

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2007
First Extraordinary Session, 2007
Second Extraordinary Session, 2006

Volume II
Chapters 146-262
Chapters 1 - 5
Chapters 1 - 12

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

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

TABLE OF CONTENTS

LABOR

146.	(HB3117)	Clarifying That Contractors Must Have a State Contractors License in Order to Submit a Bid with the State of West Virginia	1275
147.	(SB21)	Restricting Contractor Licensee's Work until Adverse Judgment Satisfied	1278
148.	(*HB2747)	Regulating Plumbers and Fire Protection Workers	1283

LAW ENFORCEMENT

149.	(SB526)	Relating to Political Activities of Deputy Sheriffs and Municipal Police Officers	1299
150.	(SB505)	Relating to State Police Death, Disability and Retirement Fund	1307

LEGISLATIVE RULES

151.	(*HB2616)	Authorizing the Department of Administration to Promulgate Legislative Rules	1339
152.	(SB314)	Authorizing Department of Education and the Arts Promulgate Legislative Rules	1367
153.	(SB278)	Authorizing Department of Health and Human Resources Promulgate Legislative Rules	1370
154.	(SB276)	Authorizing Department of Military Affairs and Public Safety Promulgate Legislative Rules	1383
155.	(*HB2590)	Authorizing the Department of Revenue to Promulgate Legislative Rules	1390
156.	(SB274)	Authorizing Department of Transportation Promulgate Legislative Rules	1398
157.	(SB319)	Authorizing Miscellaneous Boards and Agencies Promulgate Legislative Rules	1402

TABLE OF CONTENTS

158. (*HB2670) Authorizing the Department of
Commerce to Promulgate
Legislative Rules 1449

LEVIES

159. (SB360) Extending Time Local Levying
Bodies May Meet 1458

LIBRARIES

160. (*HB2048) Clarifying Public Library Board
Service Areas as Determined by
the Library Commission 1459

LIENS

161. (SB414) Establishing Flat Fee for Certain
Services by Circuit Clerks 1461

LIFE ESTATES

162. (SB55) Updating Mortality Tables and
Interest Rate Used in Life
Estate Valuation 1467

LIMITED LIABILITY COMPANIES

163. (HB2526) Allowing Acupuncturists to Form
Limited Liability Companies 1472

MAGISTRATE COURTS

164. (SB140) Relating to Depositing Certain Moneys
into Magistrate Court Fund 1473
165. (SB415) Authorizing Magistrate Courts Assess
Fee for Criminal Records Checks 1476

MARKETING AND COMMUNICATIONS

166. (SB393) Creating Marketing and
Communications Office 1477

TABLE OF CONTENTS

MENTALLY ILL PERSONS

167. (HB3184) Relating to Confidentiality,
Disclosure and Authorization
for Disclosure of Mental Health
Information 1480

168. (SB117) Relating to Determining Competency
to Stand Trial 1484

METRO GOVERNMENT

169. (SB435) Clarifying Consolidated
Local Government Act 1501

MINERS' HEALTH, SAFETY AND TRAINING

170. (SB68) Improving Coal Mine
Health and Safety. 1505

MINORS

171. (HB2332) Clarifying That Magistrate Courts Have
Concurrent Jurisdiction with Circuit
Courts with Laws Prohibiting the
Use of Tobacco by Minors. 1527

MORTGAGE BROKERS

172. (*HB2776) Relating to the West Virginia
Residential Mortgage Lender,
Broker and Servicer Act. 1532

MOTOR VEHICLES

173. (*HB2775) Exempting New Residents from
Payment of the Privilege Tax upon
a Showing That the Applicant Was
Not a Resident of this State at the
Time the Vehicle Was Purchased 1539

174. (SB523) Consolidating and Eliminating Certain
Division of Motor Vehicles' Fees 1556

TABLE OF CONTENTS

175.	(SB398)	Authorizing Division of Motor Vehicles to Suspend or Refuse to Register Certain Interstate Commerce Motor Carriers . . .	1637
176.	(SB169)	Requiring Insurance Companies Obtain Title to Certain Totaled Vehicles	1643
177.	(SB601)	Revising Provisions Governing Motor Vehicle Dealers' Establishment or Relocation	1648
178.	(*HB2808)	Increasing the Fee for Issuance of One-Trip Permits	1666
179.	(HB2481)	Allowing a Registrant to Transfer the Registration of a Class C Vehicle to Another Class C Type Vehicle Titled In the Name of the Registrant	1667
180.	(SB412)	Providing Penalties for Hand Held Cell Phone Violations by Minor While Driving	1671
181.	(*HB2051)	Including Lasers as a Method of Proving the Speed of Vehicles	1679
182.	(HB2781)	Modifying the Statutory Limitation on the Length of School Buses	1681

MUNICIPAL HOME RULE

183.	(SB747)	Creating Municipal Home Rule Pilot Program	1683
------	---------	--	------

MUNICIPAL JUDGES

184.	(*HB2120)	Prescribing Minimum Standards for Municipal Judges	1690
------	-----------	--	------

MUNICIPALITIES

185.	(HB2204)	Providing That Retiring Municipal Police Officers May Keep Their Service Revolver	1692
186.	(SB615)	Authorizing Certain Municipalities to Enter into Contracts for Electric Power Purchase	1694

TABLE OF CONTENTS

187. (*HB2709) Requiring the Installation of Fire Hydrants at Intervals of Not More than Every Two Thousand Feet on All New Installation of Water Mains 1698

NAME CHANGE

188. (SB139) Denying Petition for Name Change in Certain Cases 1699

NATIONAL GUARD

189. (SB667) Providing Student Financial Aid for Certain Military Service 1702

NATURAL RESOURCES

190. (SB389) Defining Blue Catfish as Game Fish 1706
191. (*HB2840) Relating to Transportation of Wildlife Outside of the State 1711
192. (HB2908) Removing an Outdated Reference to the Assessed Value of Livestock Used to Determine the Value of Livestock Killed by a Bear 1713
193. (HB2703) Authorizing Certain Students Receiving Instruction in Fly Fishing to Fly Fish While under the Supervision of an Instructor without Obtaining a License 1718
194. (SB396) Exempting Site-Specific Data on Certain Rare Plant or Animal Species from Disclosure 1723
195. (SB376) Assessing Fee for Processing Scientific Collecting Permits 1724
196. (SB611) Relating to Division of Natural Resources' Long-Term Contracts with Third Parties 1726
197. (SB460) Providing Notice to Division of Natural Resources, Division of Forestry and State Forest Superintendent Relating to Oil and Gas Access Roads 1728

TABLE OF CONTENTS

NURSE OVERTIME AND PATIENT SAFETY ACT

198. (*HB2436) Modifying the Nurse Overtime
and Patient Safety Act 1730

PARKING

199. (*HB2714) Revising Requirements for Parking
Areas Designated for Use by
Persons with Mobility Impairments 1734

PERFORMANCE REVIEW ACT

200. (SB187) Relating to WV Performance
Review Act 1746

PERSONNEL

201. (SB589) Allowing Monetary Incentives in
Programs to Improve Public Service . . . 1763
202. (SB746) Requiring Director of Division of
Personnel Report on Centralized
Personnel System 1766

PROFESSIONS AND OCCUPATIONS

203. (*HB2527) Revising the Sunrise Review Process 1767
204. (SB573) Creating Programs to Monitor
Physicians, Podiatrists and Physician
Assistants Who Are Recovering
Substance Abusers 1773
205. (HB3006) Limiting the Number of Terms a
Member of the Board of Physical
Therapy May Serve 1798
206. (*HB2800) Relating to the Practice of Medical
Imaging and Radiation Therapy 1800

PUBLIC EMPLOYEES GRIEVANCE

207. (SB442) Relating to Grievance Procedures
for Certain State and
Educational Employees 1834

TABLE OF CONTENTS

PUBLIC EMPLOYEES INSURANCE

208. (SB129) Authorizing PEIA to Transfer Excess Reserve Funds to Retiree Health Benefit Trust Fund 1891

PUBLIC MONEYS

209. (SB438) Relating to Investment Management Board 1914

PUBLIC SAFETY

210. (*HB2348) Prohibiting the Seizure of Lawfully Carried Firearms During a Proclaimed State of Emergency 1929

PUBLIC SERVICE COMMISSION

211. (*HB2938) Including Motor Carrier Inspectors and Enforcement Officers in the Definition of Law-Enforcement Officer 1933

PURCHASING CARD PROGRAM

212. (SB203) Creating Purchasing Improvement Fund 1941

RACIAL PROFILING

213. (*HB2568) Extending the Sunset Provision Regarding Racial Profiling Analysis 1946

REAL ESTATE DIVISION

214. (SB582) Creating Real Estate Division in Department of Administration 1949

TABLE OF CONTENTS

ROADS AND HIGHWAYS

215. (*HB2804) Eliminating Time Schedules for
Utility Relocation on Highway
Projects 2001

SOLID WASTE

216. (SB524) Requiring Proof of Lawful Disposal
of Solid Waste 2004

SUNSET

217. (SB186) Continuing Board of Embalmers
and Funeral Directors 2006
218. (HB2587) Continuing the Board of Optometry 2007
219. (SB171) Continuing Board of Accountancy 2008
220. (HB2586) Continuing the Board of
Veterinary Medicine 2009
221. (HB2349) Continuing the Board of
Registration for Sanitarians 2009
222. (SB190) Continuing Board of Examiners
of Psychologists 2010
223. (HB2574) Continuing the Board of Social
Work Examiners 2011
224. (SB172) Continuing Board of Respiratory
Care Practitioners 2011

SURVIVOR BENEFITS

225. (*HB2801) Providing a Fifty Thousand Dollar
Death Benefit to the Families of
Firefighters and EMS Personnel
Who Are Killed in the Line of Duty 2012

TABLE GAMES

226. (*HB2718) Authorizing West Virginia Lottery
Table Games at State Racetracks 2015

TABLE OF CONTENTS

TAXATION

227.	(HB3072)	Relating to Defining "Charitable Exemptions" for Purposes of the Municipal Business and Occupation Tax	2088
228.	(HB2991)	Authorizing the Tax Commissioner to Conduct Criminal Record Checks of Prospective Employees of the Tax Division	2108
229.	(SB541)	Relating to Public School Finance	2110
230.	(HB3141)	Relating to Whom Assessors May Issue Proof of Payment of Personal Property Taxes	2130
231.	(SB406)	Including Qualified Continuing Care Retirement Communities under Tax Limitations Amendment	2132
232.	(SB441)	Relating to Wind Power Projects Tax Treatment	2136
233.	(SB672)	Relating Generally to Special Method for Appraising Dealer Vehicle Inventory	2153
234.	(HB2988)	Relating to the West Virginia Tax Procedure and Administration Act	2160
235.	(HB2990)	Making Technical Corrections to Assure the Proper Collection of Offset Fees	2163
236.	(SB588)	Removing Tax Expiration Date on Manufacturing or Production of Synthetic Fuel from Coal	2170
237.	(HB2989)	Relating to Certain Tax Shelters Used to Avoid Paying State Income Taxes	2182
238.	(*HB3048)	Providing Credit for Specified High Technology Manufacturers	2187
239.	(*HB2945)	Providing for Tax Credits for Apprenticeship Training in Construction Trades	2193
240.	(*HB2955)	Continuing a Flat-Rate Excise Tax on Motor Fuel at \$.205	2196

TABLE OF CONTENTS

241.	(SB631)	Providing Refundable Exemption for Certain Contractor Purchases	2202
242.	(SB690)	Exempting Consumers Sales and Service Tax on Highway Construction and Maintenance Materials	2204
243.	(*HB2380)	Exempting the Purchase of Certain Drugs, Durable Medical Goods, Etc., from the Consumers Sales and Service Tax	2223
244.	(HB2917)	Repealing the Requirement in the Consumers Sales and Service Tax and the Personal Income Tax That Require the Accelerated Payment of Those Taxes in the Month of June	2224
245.	(SB569)	Creating Special Railroad and Intermodal Enhancement Fund	2232
246.	(HB2285)	Updating the Meaning of Federal Adjusted Gross and Certain Other Terms Used in West Virginia Personal Income Tax Act	2238
247.	(SB749)	Relating to Business Taxes Generally	2240
248.	(*HB2314)	Updating the Meaning of "Federal Taxable Income" and Certain Other Terms Used but Not Defined in the West Virginia Corporation Net Income Tax Act	2289
249.	(SB540)	Providing Tax Credits for Certain Utility Taxpayers	2291
250.	(HB2992)	Decreasing the Health Care Provider Tax Imposed on Gross Receipts of Providers of Nursing Facility Services	2292

TOBACCO SETTLEMENT

251.	(SB185)	Creating Tobacco Settlement Finance Authority	2295
------	---------	--	------

TABLE OF CONTENTS

TOURISM

252. (*HB2309) Relating to Tourism Development
Projects and Tourism Expansion
Projects 2330

TRAFFIC REGULATIONS

253. (SB96) Authorizing Fire Department-Owned
Apparatuses Use Yellow
Flashing Lights 2339

UNITRUSTS

254. (HB3272) Relating to Total
Return Unitrusts 2346

VETERANS

255. (SB387) Guaranteeing Certain Veterans
Military Grave Markers 2357

WEST VIRGINIA WORKS PROGRAM

256. (SB518) Conforming WV Works Program
with Federal Law Requirements 2358

WORKERS' COMPENSATION

257. (SB595) Revising Workers'
Compensation Statutes 2372

WORKFORCE AND PROMISE REPORTS

258. (SB489) Relating to Promise Scholarship Graduates
Report to Legislative Oversight
Commission on Workforce Investment
for Economic Development 2407

WORTHLESS CHECKS

259. (*HB2741) Relating to Worthless Checks 2411

TABLE OF CONTENTS

ZONING

260. (SB475) Allowing Appellant File Stay with
Board of Zoning Appeals 2418

LOCAL LAWS

LOCAL - FAYETTE COUNTY

261. (SB757) Extending Time for Smithers
Town Council to Meet as
Levying Body 2421

LOCAL - MINERAL COUNTY

262. (SB217) Extending Time for Piedmont
City Council to Meet as
Levying Body 2422

TABLE OF CONTENTS

ACTS

First Extraordinary Session, 2007

Chapter	Bill No.		Page
APPROPRIATIONS			
1.	(HB103)	Making a Supplementary Appropriation to Department of Administration-Division of General Services, Department of Commerce, Division of Natural Resources, Etc.	2425
2.	(HB102)	Making a Supplementary Appropriation to the Department of Agriculture, the West Virginia Conservation Agency, the Department of Administration, Department of Education	2431
ESTATES AND TRUSTS			
3.	(HB101)	Relating to the Administration of Estates by Fiduciary Commissioners	2443
PROFESSIONS AND OCCUPATIONS			
4.	(SB1001)	Authorizing Certain Pharmacy-Related Practices	2447
STATE POLICE			
5.	(SB1002)	Relating to Compensation of West Virginia State Police	2470

TABLE OF CONTENTS

ACTS

Second Extraordinary Session, 2006

Chapter	Bill No.		Page
APPROPRIATIONS			
1.	(HB212)	Making a Supplementary Appropriation to the Department of Administration - Consolidated Public Retirement Board	2481
TAXATION			
2.	(SB2001)	Increasing Certain Senior Citizens' and Disabled Persons' Tax Credit for Property Taxes	2483
3.	(SB2002)	Eliminating Corporation Net Income Tax Adjustment for Pre-1967 Gains on Property Sales	2486
4.	(SB2003)	Relating to Consumers Sales and Service Tax on Food	2494
5.	(SB2004)	Reducing Business Franchise Tax Rate	2497
6.	(SB2005)	Reducing Corporation Net Income Tax Rate	2499
7.	(SB2006)	Terminating Certain Tax Credits for Capital Company and Venture Capital Company Investments	2502
8.	(SB2007)	Relating to Tourism Development Project Tax Credits	2504
9.	(SB2008)	Increasing Personal Income Withholding Tax for Certain Nonresidents	2505
10.	(SB2009)	Imposing Personal Income Withholding Tax on Property Sales by Nonresidents	2517
11.	(SB2010)	Providing Low-Income Family Tax Credit	2526

TABLE OF CONTENTS

12. (SB2011) Providing Tax Exemption for
Certain Purchases by
Contractors for Direct-Use
Manufacturing Plants 2535



CHAPTER 146

**(H.B. 3117 - By Delegates Morgan, Martin, Argento, Cann,
Hartman, Hutchins, Palumbo, D. Poling, Staggers,
Swartzmiller and Andes)**

[Passed March 7, 2007; in effect from passage.]

[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §21-11-6 of the Code of West Virginia, 1931, as amended, relating to clarifying that contractors must have a state contractors license in order to submit a bid with the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §21-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-6. Necessity for license; exemptions.

1 (a) No person may engage in this state in any act as a
2 contractor, or submit a bid to perform work as a contractor,
3 as defined in this article, unless such person holds a license
4 issued under the provisions of this article. No firm,
5 partnership, corporation, association or other entity shall

6 engage in contracting in this state unless an officer thereof
7 holds a license issued pursuant to this article.

8 (b) Any person to whom a license has been issued under
9 this article shall keep the license or a copy thereof posted in
10 a conspicuous position at every construction site where work
11 is being done by the contractor. The contractor's license
12 number shall be included in all contracting advertisements
13 and all fully executed and binding contracts. Any person
14 violating the provisions of this subsection shall be subject,
15 after hearing, to a warning, a reprimand, or a fine of not more
16 than two hundred dollars.

17 (c) Except as otherwise provided in this code, the
18 following are exempt from licensure:

19 (1) Work done exclusively by employees of the United
20 States Government, the State of West Virginia, a county,
21 municipality or municipal corporation, and any governmental
22 subdivision or agency thereof;

23 (2) The sale or installation of a finished product, material
24 or article or merchandise which is not actually fabricated into
25 and does not become a permanent fixed part of the structure;

26 (3) Work performed personally by an owner or lessee of
27 real property on property the primary use of which is for
28 agricultural or farming enterprise;

29 (4) A material supplier who renders advice concerning
30 use of products sold and who does not provide construction
31 or installation services;

32 (5) Work performed by a public utility company
33 regulated by the West Virginia Public Service Commission
34 and its employees;

35 (6) Repair work contracted for by the owner of the
36 equipment on an emergency basis in order to maintain or
37 restore the operation of such equipment;

38 (7) Work performed by an employer's regular employees,
39 for which the employees are paid regular wages and not a
40 contract price, on property owned or leased by the employer
41 which is not intended for speculative sale or lease;

42 (8) Work personally performed on a structure by the
43 owner or occupant thereof; and

44 (9) Work performed when the specifications for such
45 work have been developed or approved by engineering
46 personnel employed by the owner of a facility by registered
47 professional engineers licensed pursuant to the laws of this
48 state when the work to be performed because of its
49 specialized nature or process cannot be reasonably or timely
50 contracted for within the general area of the facility.

CHAPTER 147**(Com. Sub. for S.B. 21 - By Senator Bowman)**

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §21-11-14 of the Code of West Virginia, 1931, as amended, relating to granting the West Virginia Contractor Licensing Board the authority to take disciplinary action including assessing a civil penalty against a licensee for failure to satisfy an adverse judgment in favor of a consumer entered by a magistrate or circuit court.

Be it enacted by the Legislature of West Virginia:

That §21-11-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**§21-11-14. Disciplinary powers of the board.**

- 1 (a) The board has the power and authority to impose the
- 2 following disciplinary actions:
 - 3 (1) Permanently revoke a license;
 - 4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

6 (4) Impose limitations or conditions on the professional
7 practice of a licensee;

8 (5) Impose requirements for remedial professional
9 education to correct deficiencies in the education, training
10 and skill of a licensee;

11 (6) Impose a probationary period requiring a licensee to
12 report regularly to the board on matters related to the grounds
13 for probation; the board may withdraw probationary status if
14 the deficiencies that require the sanction are remedied;

15 (7) Order a contractor who has been found, after hearing,
16 to have violated any provision of this article or the rules of
17 the board to provide, as a condition of licensure, assurance of
18 financial responsibility. The form of financial assurance may
19 include, but is not limited to, a surety bond, a cash bond, a
20 certificate of deposit, an irrevocable letter of credit or
21 performance insurance: *Provided*, That the amount of
22 financial assurance required under this subdivision may not
23 exceed the total of the aggregate amount of the judgments or
24 liens levied against the contractor or the aggregate value of
25 any corrective work ordered by the board or both: *Provided*,
26 *however*, That the board may remove this requirement for
27 licensees against whom no complaints have been filed for a
28 period of five continuous years ; and

29 (8) A fine not to exceed one thousand dollars.

30 (b) No license issued under the provisions of this article
31 may be suspended or revoked without a prior hearing before
32 the board: *Provided*, That the board may summarily suspend

33 a licensee pending a hearing or pending an appeal after
34 hearing upon a determination that the licensee poses a clear,
35 significant and immediate danger to the public health and
36 safety.

37 (c) The board may reinstate the suspended or revoked
38 license of a person if, upon a hearing, the board finds and
39 determines that the person is able to practice with skill and
40 safety.

41 (d) The board may accept the voluntary surrender of a
42 license: *Provided*, That the license may not be reissued unless
43 the board determines that the licensee is competent to resume
44 practice and the licensee pays the appropriate renewal fee.

45 (e) A person or contractor adversely affected by
46 disciplinary action may appeal to the board within sixty days
47 of the date the disciplinary action is taken. The board shall
48 hear the appeal within thirty days from receipt of notice of
49 appeal in accordance with the provisions of chapter
50 twenty-nine-a of this code. Hearings shall be held in
51 Charleston. The board may retain a hearing examiner to
52 conduct the hearings and present proposed findings of fact
53 and conclusions of law to the board for its action.

54 (f) Any party adversely affected by any action of the
55 board may appeal that action in either the circuit court of
56 Kanawha County, West Virginia, or in the circuit court of the
57 county in which the petitioner resides or does business,
58 within thirty days after the date upon which the petitioner
59 received notice of the final order or decision of the board.

60 (g) The following are causes for disciplinary action:

61 (1) Abandonment, without legal excuse, of any
62 construction project or operation engaged in or undertaken by
63 the licensee;

64 (2) Willful failure or refusal to complete a construction
65 project or operation with reasonable diligence, thereby
66 causing material injury to another;

67 (3) Willful departure from or disregard of plans or
68 specifications in any material respect without the consent of
69 the parties to the contract;

70 (4) Willful or deliberate violation of the building laws or
71 regulations of the state or of any political subdivision thereof;

72 (5) Willful or deliberate failure to pay any moneys when
73 due for any materials free from defect, or services rendered
74 in connection with the person's operations as a contractor
75 when the person has the capacity to pay or when the person
76 has received sufficient funds under the contract as payment
77 for the particular construction work for which the services or
78 materials were rendered or purchased, or the fraudulent
79 denial of any amount with intent to injure, delay or defraud
80 the person to whom the debt is owed;

81 (6) Willful or deliberate misrepresentation of a material
82 fact by an applicant or licensee in obtaining a license or in
83 connection with official licensing matters;

84 (7) Willful or deliberate failure to comply in any material
85 respect with the provisions of this article or the rules of the
86 board;

87 (8) Willfully or deliberately acting in the capacity of a
88 contractor when not licensed or as a contractor by a person
89 other than the person to whom the license is issued except as
90 an employee of the licensee;

91 (9) Willfully or deliberately acting with the intent to
92 evade the provisions of this article by: (i) Aiding or abetting
93 an unlicensed person to evade the provisions of this article;
94 (ii) combining or conspiring with an unlicensed person to
95 perform an unauthorized act; (iii) allowing a license to be
96 used by an unlicensed person; or (iv) attempting to assign,
97 transfer or otherwise dispose of a license or permitting the
98 unauthorized use thereof;

99 (10) Engaging in any willful, fraudulent or deceitful act
100 in the capacity as a contractor whereby substantial injury is
101 sustained by another;

102 (11) Performing work which is not commensurate with a
103 general standard of the specific classification of contractor or
104 which is below a building or construction code adopted by
105 the municipality or county in which the work is performed;

106 (12) Knowingly employing a person or persons who do
107 not have the legal right to be employed in the United States;

108 (13) Failing to execute written contracts prior to
109 performing contracting work in accordance with section ten
110 of this article;

111 (14) Failing to abide by an order of the board; or

112 (15) Failing to satisfy a judgment or execution ordered by
113 a magistrate court, circuit court or arbitration board.

114 (h) In all disciplinary hearings the board has the burden
115 of proof as to all matters in contention. No disciplinary action
116 may be taken by the board except on the affirmative vote of
117 at least six members thereof. Other than as specifically set
118 out herein, the board has no power or authority to impose or
119 assess damages.

CHAPTER 148

**(Com. Sub. for H.B. 2747 - By Delegates Argento,
Barker, Iaquina, Manchin, Martin, Perdue, Tucker, Yost,
Blair, Porter and Rowan)**

[Passed March 10, 2007; in effect from passage.]

[Approved by the Governor on March 22, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-14-1, §21-14-2, §21-14-3, §21-14-4, §21-14-5, §21-14-6, §21-14-7, §21-14-8 and §21-14-9; and to amend said code by adding thereto a new article, designated §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7, §29-3D-8 and §29-3D-9, all relating to regulating plumbers and fire protection workers; definitions; requiring plumbers to be licensed by the Commissioner of Labor; requiring fire protection workers to be licensed by the State Fire Marshal; exemptions from licensure; rule-making authority for the Commissioner of Labor and the State Fire Marshal; providing enforcement procedures; criminal penalties; and providing that no political subdivision of the state may mandate additional licensing requirements.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-14-1, §21-14-2, §21-14-3, §21-14-4, §21-14-5, §21-14-6, §21-14-7, §21-14-8 and §21-14-9; and that said code be amended by adding thereto a new article, designated §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7, §29-3D-8 and §29-3D-9, all to read as follows:

Chapter

21. Labor.

29. Miscellaneous Boards and Commissions.

CHAPTER 21. LABOR.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

- §21-14-1. Declaration of purpose.
- §21-14-2. Definitions.
- §21-14-3. License required; exemptions.
- §21-14-4. Rule-making authority.
- §21-14-5. Enforcement.
- §21-14-6. Denial, suspension and revocation of license.
- §21-14-7. Penalties.
- §21-14-8. Inapplicability of local ordinances.
- §21-14-9. Disposition of fees.

§21-14-1. Declaration of purpose.

- 1 The provisions of this article are intended to protect the
- 2 health, safety and welfare of the public as well as public and
- 3 private property by assuring the competence of those who
- 4 perform plumbing through licensure by the Commissioner of
- 5 Labor.

§21-14-2. Definitions.

1 As used in this article:

2 (a) "License" means a valid and current license issued by
3 the Commissioner of Labor in accordance with the provisions
4 of this article.

5 (b) "Journeyman plumber" means a person qualified by
6 at least eight thousand hours of plumbing or related
7 experience and who is competent to instruct and supervise
8 the work of a plumber in training.

9 (c) "Master plumber" means a person with at least twelve
10 thousand hours of plumbing work experience and who is
11 competent to design plumbing systems, and to instruct and
12 supervise the plumbing work of journeyman plumbers, and
13 plumbers in training.

14 (d) "Plumber in training" means a person with interest in
15 and an aptitude for performing plumbing work but who alone
16 is not capable of performing plumbing work, and who has
17 fewer than eight thousand hours of plumbing experience.

18 (e) "Plumbing" means the practice, materials and fixtures
19 utilized within a building in the installation, extension and
20 alteration of all piping, fixtures, water treatment devices,
21 plumbing appliances and appurtenances, in connection with
22 sanitary drainage or storm drainage facilities; the plumbing
23 venting systems; medical gas systems; fuel oil and gas piping
24 for residential, commercial and institutional facilities;
25 backflow preventers; and public or private water supply
26 systems, as defined by the state building code.

27 (f) "Single family dwelling" means a building which is
28 occupied as, or designed or intended for occupancy as, a
29 single residence for one or more persons.

§21-14-3. License required; exemptions.

1 (a) On and after the first day of January, two thousand
2 nine, a person performing or offering to perform plumbing
3 work in this state shall have a license issued by the
4 Commissioner of Labor, in accordance with the provisions of
5 this article.

6 (b) A person licensed under this article must carry a copy
7 of the license on any job in which plumbing work is being
8 performed.

9 (c) This article does not apply to:

10 (1) A person who personally performs plumbing work on
11 a single family dwelling owned or leased by that person or by
12 a member of that person's immediate family;

13 (2) A person who performs plumbing at any
14 manufacturing plant or other industrial establishment as an
15 employee of the person, firm or corporation operating the
16 plant or establishment;

17 (3) A person who performs plumbing work while
18 employed by an employer who engages in the business of
19 selling appliances at retail, so long as such plumbing work is
20 performed incidental to the installation or repair of appliances
21 sold by the employer;

22 (4) A person who, while employed by a public utility or
23 its affiliate, performs plumbing in connection with the
24 furnishing of public utility service;

25 (5) A person who performs plumbing work while
26 engaging in the business of installing, altering or repairing
27 water distribution or drainage lines outside the foundation
28 walls of a building, public or private sewage treatment or
29 water treatment systems including all associated structures or
30 buildings, sewers or underground utility services;

31 (6) A person who performs plumbing work while
32 engaged in the installation, extension, dismantling,
33 adjustment, repair, servicing or alteration of a heating
34 ventilation and air conditioning (HVAC) system, air-veyor
35 system, air exhaust system or air handling system;

36 (7) A person who performs plumbing work at a coal mine
37 that is being actively mined or where coal is being processed;
38 or

39 (8) A person who performs plumbing work at
40 manufacturing, industrial and natural gas facilities.

§21-14-4. Rule-making authority.

1 The Commissioner of Labor shall propose rules for
2 legislative approval, in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code, for the
4 implementation and enforcement of the provisions of this
5 article, which shall provide:

- 6 (1) Standards and procedures for issuing and renewing
7 licenses, including classifications of licenses as defined in
8 this article, applications, examinations and qualifications;
9
- 10 (2) Provisions for the granting of licenses without
11 examination, to applicants who present satisfactory evidence
12 of having the expertise required to perform work at the level
13 of the classifications defined in this article and who apply
14 for licensure on or before the first day of July, two thousand
15 nine: *Provided*, That if a license issued under the authority
16 of this subsection subsequently lapses, the applicant is
17 subject to all licensure requirements, including the
18 examination;
- 19 (3) Reciprocity provisions;
- 20 (4) Procedures for investigating complaints and revoking
21 or suspending licenses, including appeal procedures;
- 22 (5) Fees for testing, issuance and renewal of licenses, and
23 other costs necessary to administer the provisions of this
24 article;
- 25 (6) Enforcement procedures; and
- 26 (7) Any other rules necessary to effectuate the purposes
27 of this article.

§21-14-5. Enforcement.

- 1 The Commissioner of Labor and his or her Deputy
2 Commissioner or any compliance officer of the Division of
3 Labor as authorized by the Commissioner of Labor is
4 authorized to enforce the provisions of this article, and may,

5 at reasonable hours, enter any building or premises where
6 plumbing work is performed and issue cease and desist
7 orders for noncompliance.

§21-14-6. Denial, suspension and revocation of license.

1 (a) The Commissioner of Labor may deny a license to
2 any applicant who fails to comply with the rules established
3 by the Commissioner of Labor, or who lacks the necessary
4 qualifications.

5 (b) The Commissioner of Labor may, upon complaint or
6 upon his or her own inquiry, and after notice to the licensee,
7 suspend or revoke a licensee's license if:

8 (1) The license was granted upon an application or
9 documents supporting the application which materially
10 misstated the terms of the applicant's qualifications or
11 experience;

12 (2) The licensee subscribed or vouched for a material
13 misstatement in his or her application for licensure;

14 (3) The licensee incompetently or unsafely performs
15 plumbing work; or

16 (4) The licensee violated any statute of this state, any
17 legislative rule or any ordinance of any municipality or
18 county of this state which protects the consumer or public
19 against unfair, unsafe, unlawful or improper business
20 practices.

§21-14-7. Penalties.

1 (a) On and after the first day of January, two thousand
2 nine, a person performing or offering to perform plumbing
3 work without a license issued by the Commissioner of Labor,
4 is subject to a cease and desist order.

5 (b) Any person continuing to engage in plumbing work
6 after the issuance of a cease and desist order is guilty of a
7 misdemeanor and, upon conviction thereof, is subject to the
8 following penalties:

9 (1) For the first offense, a fine of not less than two
10 hundred dollars nor more than one thousand dollars;

11 (2) For the second offense, a fine of not less than five
12 hundred dollars nor more than two thousand dollars, or
13 confinement in jail for not more than six months, or both;

14 (3) For the third and subsequent offenses, a fine of not
15 less than one thousand dollars nor more than five thousand
16 dollars, and confinement in jail for not less than thirty days
17 nor more than one year.

18 (c) A separate offense means each day, after official
19 notice is given, that a person performs plumbing work that is
20 unlawful or is not in compliance with the provisions of this
21 article.

22 (d) The Commissioner of Labor may institute
23 proceedings in the circuit court of the county where the
24 alleged violation of the provisions of this article occurred or

25 are occurring to enjoin any violation of any provision of this
26 article. A circuit court by injunction may compel compliance
27 with the provisions of this article, with the lawful orders of
28 the Commissioner of Labor and with any final decision of the
29 Commissioner of Labor. The Commissioner of Labor shall be
30 represented in all such proceedings by the Attorney General
31 or his or her assistants.

32 (e) Any person adversely affected by an action of the
33 Commissioner of Labor may appeal the action pursuant to the
34 provisions of chapter twenty-nine-a of this code.

§21-14-8. Inapplicability of local ordinances.

1 On and after the first day of January, two thousand nine,
2 a political subdivision of this state may not require, as a
3 condition precedent to the performance of plumbing work in
4 the political subdivision, a person who holds a valid and
5 current license issued under the provisions of this article, to
6 have any other license or other evidence of competence as a
7 plumber.

§21-14-9. Disposition of fees.

1 All fees paid pursuant to the provisions of this article,
2 shall be paid to the Commissioner of Labor and deposited in
3 a special revenue account with the State Treasurer for the use
4 of the Commissioner of Labor to enforce the provisions of
5 this article.

**CHAPTER 29. MISCELLANEOUS BOARDS AND
COMMISSIONS.**

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

- §29-3D-1. Declaration of purpose.
- §29-3D-2. Definitions.
- §29-3D-3. License required; exemptions.
- §29-3D-4. Rule-making authority.
- §29-3D-5. Enforcement.
- §29-3D-6. Denial, suspension and revocation of license.
- §29-3D-7. Penalties.
- §29-3D-8. Inapplicability of local ordinances.
- §29-3D-9. Disposition of fees.

§29-3D-1. Declaration of purpose.

1 The provisions of this article are intended to protect the
2 health, safety and welfare of the public as well as public and
3 private property by assuring the competence of those who
4 perform fire protection work through licensure by the State
5 Fire Marshal.

§29-3D-2. Definitions.

1 As used in this article:

2 (a) "Fire protection layout technician" is an individual
3 who has achieved National Institute for Certification in
4 Engineering Technologies (NICET) Level III or higher
5 certification, and who has the knowledge, experience and
6 skills necessary to layout fire protection systems based on
7 engineering design documents.

8 (b) "Fire protection system" means any fire protection
9 suppression device or system designed, installed and
10 maintained in accordance with the applicable National Fire
11 Protection Association (NFPA) codes and standards, but does
12 not include public or private mobile fire vehicles.

13 (c) "Fire protection work" means the installation,
14 alteration, extension, maintenance, or testing of all piping,
15 materials and equipment inside a building, including the use
16 of shop drawings prepared by a fire protection layout
17 technician, in connection with the discharge of water, other
18 special fluids, chemicals or gases and backflow preventers
19 for fire protection for the express purpose of extinguishing or
20 controlling fire.

21 (d) "Journeyman sprinkler fitter" means a person
22 qualified by at least ten thousand hours of work experience
23 installing, adjusting, repairing and dismantling fire protection
24 systems and who is competent to instruct and supervise the
25 fire protection work of a sprinkler fitter in training.

26 (e) "License" means a valid and current license issued by
27 the State Fire Marshal in accordance with the provisions of
28 this article.

29 (f) "Sprinkler fitter in training" means a person with
30 interest in and an aptitude for performing fire protection work
31 but who alone is not capable of performing such work, and
32 who has fewer than ten thousand hours of experience
33 installing, adjusting, repairing and dismantling fire protection
34 systems.

§29-3D-3. License required; exemptions.

1 (a) On and after the first day of January, two thousand
2 nine, a person performing or offering to perform fire
3 protection work in this state shall have a license issued by the
4 State Fire Marshal, in accordance with the provisions of this
5 article.

6 (b) A person licensed under this article must carry a copy
7 of the license on any job in which fire protection work is
8 being performed.

9 (c) This article does not apply to:

10 (1) A person who personally performs fire protection
11 work on a single family dwelling owned or leased, and
12 occupied by that person;

13 (2) A person who performs fire protection work at any
14 manufacturing plant or other industrial establishment as an
15 employee of the person, firm or corporation operating the
16 plant or establishment;

17 (3) A person who, while employed by a public utility or
18 its affiliate, performs fire protection work in connection with
19 the furnishing of public utility service.

20 (4) A person who performs fire protection work while
21 engaging in the business of installing, altering or repairing
22 water distribution or drainage lines outside the foundation
23 walls of a building, public or private sewage treatment or

24 water treatment systems including all associated structures or
25 buildings, sewers or underground utility services;

26 (5) A person who performs fire protection work while
27 engaged in the installation, extension, dismantling,
28 adjustment, repair or alteration of a heating ventilation and
29 air conditioning (HVAC) system, air-veyor system, air
30 exhaust system or air handling system; or

31 (6) A person who performs fire protection work at a coal
32 mine that is being actively mined or where coal is being
33 processed.

§29-3D-4. Rule-making authority.

1 The State Fire Marshal shall propose rules for legislative
2 approval, in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, for the implementation
4 and enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards and procedures for issuing and renewing
7 licenses, including classifications of licenses as defined in
8 this article, applications, examinations and qualifications;

9 (2) Provisions for the granting of licenses without
10 examination, to applicants who present satisfactory evidence
11 of having the expertise required to perform work at the level
12 of the classifications defined in this article and who apply for
13 licensure on or before the first day of July, two thousand
14 nine: *Provided*, That if a license issued under the authority

15 of this subsection subsequently lapses, the applicant is
16 subject to all licensure requirements, including the
17 examination;

18 (3) Reciprocity provisions;

19 (4) Procedures for investigating complaints and revoking
20 or suspending licenses, including appeal procedures;

21 (5) Fees for testing, issuance and renewal of licenses, and
22 other costs necessary to administer the provisions of this
23 article;

24 (6) Enforcement procedures; and

25 (7) Any other rules necessary to effectuate the purposes
26 of this article.

§29-3D-5. Enforcement.

1 The State Fire Marshal and his or her deputy fire marshal,
2 assistant fire marshal or assistant fire marshal-in-training, is
3 authorized to enforce the provisions of this article, and may,
4 at reasonable hours, enter any building or premises where fire
5 protection work is performed and issue citations for
6 noncompliance.

§29-3D-6. Denial, suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by

3 the State Fire Marshal, or who lacks the necessary
4 qualifications.

5 (b) The State Fire Marshal may, upon complaint or upon
6 his or her own inquiry, and after notice to the licensee,
7 suspend or revoke a licensee's license if:

8 (1) The license was granted upon an application or
9 documents supporting the application which materially
10 misstated the terms of the applicant's qualifications or
11 experience;

12 (2) The licensee subscribed or vouched for a material
13 misstatement in his or her application for licensure;

14 (3) The licensee incompetently or unsafely performs
15 plumbing or fire protection work; or

16 (4) The licensee violated any statute of this state, any
17 legislative rule or any ordinance of any municipality or
18 county of this state which protects the consumer or public
19 against unfair, unsafe, unlawful or improper business
20 practices.

§29-3D-7. Penalties.

1 (a) On and after the first day of January, two thousand
2 nine, a person performing or offering to perform fire
3 protection work without a license issued by the State Fire
4 Marshal, is subject to a citation.

5 (b) Any person continuing to engage in fire protection
6 work after the issuance of a citation is guilty of a
7 misdemeanor and, upon conviction thereof, is subject to the
8 following penalties:

9 (1) For the first offense, a fine of not less than two
10 hundred dollars nor more than one thousand dollars;

11 (2) For the second offense, a fine of not less than five
12 hundred dollars nor more than two thousand dollars, or
13 confinement in jail for not more than six months, or both;

14 (3) For the third and subsequent offenses, a fine of not
15 less than one thousand dollars nor more than five thousand
16 dollars, and confinement in jail for not less than thirty days
17 nor more than one year.

18 (c) A separate offense means each day, after official
19 notice is given, that a person performs fire protection work
20 that is unlawful or is not in compliance with the provisions of
21 this article.

22 (d) The State Fire Marshal may institute proceedings in
23 the circuit court of the county where the alleged violation of
24 the provisions of this article occurred or are now occurring to
25 enjoin any violation of any provision of this article. A circuit
26 court by injunction may compel compliance with the
27 provisions of this article, with the lawful orders of the State
28 Fire Marshal and with any final decision of the State Fire
29 Marshal. The State Fire Marshal shall be represented in all
30 such proceedings by the Attorney General or his or her
31 assistants.

32 (e) Any person adversely affected by an action of the
33 State Fire Marshal may appeal the action pursuant to the
34 provisions of chapter twenty-nine-a of this code.

§29-3D-8. Inapplicability of local ordinances.

1 On and after the first day of January, two thousand nine,
2 a political subdivision of this state may not require, as a
3 condition precedent to the performance of fire protection

4 work in the political subdivision, a person who holds a valid
5 and current license issued under the provisions of this article,
6 to have any other license or other evidence of competence as
7 a fire protection worker.

§29-3D-9. Disposition of fees.

1 All fees paid pursuant to the provisions of this article,
2 shall be paid to the State Fire Marshal and deposited in a
3 special revenue account with the State Treasurer for the use
4 of the State Fire Marshal as provided in subsection (c),
5 section twelve-b, article three of this chapter.



CHAPTER 149

(S.B. 526 - By Senators Jenkins, Sprouse, Bailey and Plymale)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor April 4, 2007.]

AN ACT to amend and reenact §7-14-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-14-19 of said code, all relating to the political activities of deputy sheriffs and municipal police officers; amending the list of prohibited political activities by deputy sheriffs and municipal police officers; providing certain exceptions; prohibiting deputy sheriffs and municipal police officers from being candidates for or holding public office in the county or municipality where employed; prohibiting deputy sheriffs and municipal police officers from soliciting political contributions or donations

from members or employees of the county or municipality; setting forth certain permissible activities; and providing penalties for appointed or elected officials who violate the provisions of this bill.

Be it enacted by the Legislature of West Virginia:

That §7-14-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-14-19 of said code be amended and reenacted, all to read as follows:

Chapter

- 7. **County Commissions and Officers.**
- 8. **Municipal Corporations**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-15. Political activities of members prohibited; exceptions.

1 (a) A deputy sheriff covered by the provisions of this
2 article may not:

3 (1) Solicit any assessment, subscription or contribution
4 for any political party, committee or candidate from any
5 person who is a member or employee of the county sheriff's
6 department by which they are employed;

7 (2) Use any official authority or influence, including, but
8 not limited to, the wearing by a deputy sheriff of his or her
9 uniform, for the purpose of interfering with or affecting the
10 nomination, election or defeat of any candidate or the passage
11 or defeat of any ballot issue: *Provided*, That this subdivision
12 shall not be construed to prohibit any deputy sheriff from

13 casting his or her vote at any election while wearing his or
14 her uniform;

15 (3) Coerce or command anyone to pay, lend or contribute
16 anything of value to a party, committee, organization, agency
17 or person for the nomination, election or defeat of a ballot
18 issue; or

19 (4) Be a candidate for or hold any other public office in
20 the county in which he or she is employed: *Provided*, That
21 any deputy sheriff that is subject to the provisions of 5 U. S.
22 C. §1501, *et seq.*, may not be a candidate for elective office.

23 (b) Other types of partisan or nonpartisan political
24 activities not inconsistent with the provisions of subsection
25 (a) of this section are permissible political activities for
26 deputy sheriffs.

27 (c) No person may be appointed or promoted to or
28 demoted or dismissed from any position held by a deputy
29 sheriff or in any way favored or discriminated against
30 because of his or her engagement in any political activities
31 authorized by the provisions of this section. Any elected or
32 appointed official who violates the provisions of this
33 subsection is guilty of a misdemeanor and, upon conviction
34 thereof, shall be punished by the penalties contained in
35 section twenty-six, article fifteen, chapter eight of this code.

36 (d) Any deputy sheriff violating the provisions of this
37 section shall have his appointment vacated and he shall be
38 removed, in accordance with the pertinent provisions of this
39 section.

40 (e) Any three residents of the county may file their
41 written petition with the civil service commission thereof
42 setting out therein the grounds upon which a deputy sheriff
43 of such county should be removed for a violation of
44 subsection (a) of this section. Notice of the filing of such
45 petition shall be given by the commission to the accused
46 deputy, which notice shall require him to file a written
47 answer to the charges set out in the petition within thirty days
48 of the date of such notice. The petition and answer thereto, if
49 any, shall be entered upon the records of the civil service
50 commission. If the answer is not filed within the time stated,
51 or any extension thereof for cause which in the discretion of
52 the civil service commission may be granted, an order shall
53 be entered by the commission declaring the appointment of
54 the deputy vacated. If such answer is filed within the time
55 stated, or any extension thereof for cause which in the
56 discretion of the civil service commission may be granted,
57 the accused deputy may demand within such period a public
58 hearing on the charges, or the civil service commission may,
59 in its discretion and without demand therefor, set a date and
60 time for a public hearing on the charges, which hearing shall
61 be within thirty days of the filing of said answer, subject,
62 however, to any continuances which may in the discretion of
63 the civil service commission be granted. A written record of
64 all testimony taken at such hearing shall be kept and
65 preserved by the civil service commission, which record shall
66 be sealed and not be open to public inspection if no appeal be
67 taken from the action of the commission. The commission at
68 the conclusion of the hearing, or as soon thereafter as
69 possible, shall enter an order sustaining, in whole or in part,
70 the charges made or shall dismiss the charges as unfounded.
71 In the event the charges are sustained in whole or in part, the
72 order shall also declare the appointment of such deputy to be
73 vacated and thereupon the sheriff shall immediately remove

74 the deputy from his office and from the payroll of the county.
75 Notice of the action of the commission shall be given by
76 registered letter to the county court and the sheriff. If the
77 sheriff fails to immediately comply with the order of the
78 commission, he shall be punished for contempt, upon
79 application of the commission to the circuit court of the
80 county.

81 (f) An appeal from the ruling of the commission may be
82 had in the same manner and within the same time as specified
83 in section seventeen of this article for an appeal from a ruling
84 of a commission after hearing held in accordance with the
85 provisions of said section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-19. Political activities of members prohibited; exceptions.

1 (a) A member of a paid police department may not:

2 (1) Solicit any assessment, subscription or contribution
3 for any political party, committee or candidate from any

4 person who is a member or employee of the municipality by
5 which they are employed;

6 (2) Use any official authority or influence, including, but
7 not limited to, the wearing by a municipal police officer of
8 his or her uniform for the purpose of interfering with or
9 affecting the nomination, election or defeat of any candidate
10 or the passage or defeat of any ballot issue: *Provided*, That
11 this subdivision shall not be construed to prohibit any
12 municipal police officer from casting his or her vote at any
13 election while wearing his or her uniform;

14 (3) Coerce or command anyone to pay, lend or contribute
15 anything of value to a party, committee, organization, agency
16 or person for the nomination, election or defeat of a ballot
17 issue; or

18 (4) Be a candidate for or hold any other public office in
19 the municipality in which he or she is employed: *Provided*,
20 That any municipal police officer that is subject to the
21 provisions of 5 U. S. C. §1501, *et seq.*, may not be a
22 candidate for elective office.

23 (b) Other types of partisan or nonpartisan political
24 activities not inconsistent with the provisions of subsection
25 (a) of this section are permissible political activities for
26 municipal police officers.

27 (c) No person may be appointed or promoted to or
28 demoted or dismissed from any position held by a municipal
29 police officer or in any way favored or discriminated against
30 because of his or her engagement in any political activities
31 authorized by the provisions of this section. Any elected or
32 appointed official who violates the provisions of this

33 subsection is guilty of a misdemeanor and, upon conviction
34 thereof, shall be punished by the penalties contained in
35 section twenty-six, article fifteen of this chapter.

36 (d) Any member of any such paid police department
37 violating the provisions of this section shall have his
38 appointment vacated and he shall be removed, in accordance
39 with the pertinent provisions of this section.

40 (e) Any three residents of any such city may file their
41 written petition with the policemen's civil service
42 commission thereof setting out therein the grounds upon
43 which a member of the paid police department of such city
44 should be removed for a violation of subsection (a) of this
45 section. Notice of the filing of such petition shall be given by
46 said commission to the accused member, which notice shall
47 require the said member to file a written answer to the
48 charges set out in the petition within thirty days of the date of
49 said notice. The said petition and answer thereto, if any, shall
50 be entered upon the records of the commission. If such
51 answer is not filed within the time stated, or any extension
52 thereof for cause which in the discretion of the commission
53 may be granted, an order shall be entered by the commission
54 declaring the appointment of said member vacated; if such
55 answer is filed within the time stated, or any extension
56 thereof for cause which in the discretion of the commission
57 may be granted, the accused member may demand within
58 such period a public hearing on the charges, or the
59 commission may, in its discretion and without demand
60 therefor, set a time for a public hearing on said charges,
61 which hearing shall be within thirty days of the filing of said
62 answer, subject, however, to any continuances which may in
63 the discretion of the commission be granted. A written record
64 of all testimony taken at such hearing shall be kept and

65 preserved by the commission, which record shall be sealed
66 and not be open to public inspection, if no appeal be taken
67 from the action of the commission. The commission at the
68 conclusion of the hearing, or as soon thereafter as possible,
69 shall enter an order sustaining, in whole or in part, the
70 charges made or shall dismiss the charges as unfounded. In
71 the event the charges are sustained in whole or in part, the
72 order shall also declare the appointment of said member to be
73 vacated and thereupon the proper municipal authorities shall
74 immediately remove said member from the police force and
75 from the payroll of said city. Notice of the action of the
76 commission shall be given by registered letter to the mayor
77 and chief of police of the city; and for failure to immediately
78 comply with the order of the commission such officer or
79 officers shall be punished for contempt, upon application of
80 the commission to the circuit court of the county in which the
81 city or the major portion of the territory thereof is located.

82 (f) An appeal from the ruling of the commission may be
83 had in the same manner and within the same time as specified
84 in section twenty of this article for an appeal from a ruling of
85 a commission after hearing held in accordance with the
86 provisions of said section.

CHAPTER 150

(S.B. 505 - By Senators Foster and Unger)

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §15-2-25a, §15-2-25b, §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-31a, §15-2-31b, §15-2-32, §15-2-33, §15-2-34, §15-2-35, §15-2-37, §15-2-38, §15-2-39 and §15-2-44 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia State Police Death, Disability and Retirement Fund; meaning of terms; definitions; continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund; retirement; awards and benefits; leased employees; retirement annual annuity adjustments; credit toward retirement for member's prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service; awards and benefits for disability incurred in performance of duty; awards and benefits for disability due to other causes; disability physical examinations; termination; application for disability benefit; determinations; annual report on disability retirement experience; retirant not to exercise police authority; retention of group insurance; awards and benefits to dependents of member when the member dies in performance of duty; dependents of a duty disability retirant; dependent child scholarship and amount; awards and benefits to dependents of employee when the employee dies from

nonservice-connected causes; awards and benefits to dependents of retirant or after employee serves twenty years; refunds to certain employees upon discharge or resignation; deferred retirement; refunds to dependents upon death of member not eligible for benefits; dependent child or children; and federal law maximum benefit limitations.

Be it enacted by the Legislature of West Virginia:

That §15-2-25a, §15-2-25b, §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-31a, §15-2-31b, §15-2-32, §15-2-33, §15-2-34, §15-2-35, §15-2-37, §15-2-38, §15-2-39 and §15-2-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

- §15-2-25a. Meaning of terms.
- §15-2-25b. Definitions.
- §15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.
- §15-2-27. Retirement; awards and benefits; leased employees.
- §15-2-27a. Retirement annual annuity adjustments.
- §15-2-28. Credit toward retirement for members's prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service.
- §15-2-29. Awards and benefits for disability incurred in performance of duty.
- §15-2-30. Awards and benefits for disability due to other causes.
- §15-2-31. Disability physical examinations; termination.
- §15-2-31a. Application for disability benefit; determinations.
- §15-2-31b. Annual report on disability retirement experience.
- §15-2-32. Retirant not to exercise police authority; retention of group insurance.
- §15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.
- §15-2-34. Awards and benefits to dependents of employee when the employee dies from nonservice-connected causes.
- §15-2-35. Awards and benefits to dependents of retirant or after an employee serves twenty years.

- §15-2-37. Refunds to certain employees upon discharge or resignation; deferred retirement.
- §15-2-38. Refund to dependents upon death of member not eligible for benefits.
- §15-2-39. Dependent child or children.
- §15-2-44. Federal law maximum benefit limitations.

§15-2-25a. Meaning of terms.

1 Any term used in this article relating to the Death,
2 Disability and Retirement Fund has the same meaning as
3 when used in a comparable context of the laws of the United
4 States, unless a different meaning is clearly required. Any
5 reference in this article to the Internal Revenue Code means
6 the Internal Revenue Code, as it has been amended.

§15-2-25b. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (a) "Agency" means the West Virginia State Police.

4 (b) "Beneficiary" means a surviving spouse or other
5 surviving beneficiary who is entitled to, or will be entitled to,
6 an annuity or other benefit payable by the fund.

7 (c) "Board" means the West Virginia Consolidated Public
8 Retirement Board created pursuant to article ten-d, chapter
9 five of this code.

10 (d) "Dependent child" means any unmarried child or
11 children born to or adopted by a member of the fund who is:

12 (1) Under the age of eighteen;

13 (2) After reaching eighteen years of age, continues as a
14 full-time student in an accredited high school, college,
15 university, business or trade school, until the child or children
16 reaches the age of twenty-three years; or

17 (3) Is financially dependent on the member by virtue of
18 a permanent mental or physical disability upon evidence
19 satisfactory to the board.

20 (e) "Dependent parent" means the member's parent or
21 step-parent claimed as a dependent by the member for federal
22 income tax purposes at the time of the member's death.

23 (f) "Employee" means any person regularly employed in
24 the service of the agency as a law-enforcement officer before
25 the twelfth day of March, one thousand nine hundred nine-
26 four, and who is eligible to participate in the fund.

27 (g) "Fund", "plan" or "system" means the West Virginia
28 State Police Death, Disability and Retirement Fund.

29 (h) "Law-enforcement officer" means an individual
30 employed or otherwise engaged in either a public or private
31 position which involves the rendition of services relating to
32 enforcement of federal, state or local laws for the protection
33 of public or private safety, including, but not limited to,
34 positions as deputy sheriffs, police officers, marshals,
35 bailiffs, court security officers or any other law-enforcement
36 position which requires certification, but excluding positions
37 held by elected sheriffs or appointed chiefs of police whose
38 duties are determined by the board to be purely
39 administrative in nature.

40 (i) "Member" means any person who has contributions
41 standing to his or her credit in the fund and who has not yet
42 entered into retirement status.

43 (j) "Partially disabled" means an employee's inability, on
44 a probable permanent basis, to perform the essential duties of
45 a law-enforcement officer by reason of any medically
46 determinable physical or mental impairment which has lasted
47 or can be expected to last for a continuous period of not less
48 than twelve months, but which impairment does not preclude
49 the employee from engaging in other types of nonlaw-
50 enforcement employment.

51 (k) "Physical or mental impairment" means an
52 impairment that results from an anatomical, physiological or
53 psychological abnormality that is demonstrated by medically
54 accepted clinical and laboratory diagnostic techniques.

55 (l) "Retirant " or "retiree" means any former member who
56 is receiving an annuity payable by the fund;

57 (m) "Surviving spouse" means the person to whom the
58 member was legally married at the time of the member's
59 death and who survived the member.

60 (n) "Totally disabled" means an employee's probable
61 permanent inability to engage in substantial gainful activity
62 by reason of any medically determined physical or mental
63 impairment that can be expected to result in death or that has
64 lasted or can be expected to last for a continuous period of
65 not less than twelve months. For purposes of this subsection,
66 an employee is totally disabled only if his or her physical or
67 mental impairments are so severe that he or she is not only
68 unable to perform his or her previous work as an employee

69 of the agency but also cannot, considering his or her age,
70 education and work experience, engage in any other kind of
71 substantial gainful employment which exists in the state
72 regardless of whether: (1) The work exists in the immediate
73 area in which the employee lives; (2) a specific job vacancy
74 exists; or (3) the employee would be hired if he or she
75 applied for work.

**§15-2-26. Continuation of Death, Disability and Retirement
Fund; designating the Consolidated Public
Retirement Board as administrator of fund.**

1 (a) There is continued the Death, Disability and
2 Retirement Fund created for the benefit of members, retirants
3 and any dependents of retirants or deceased members of the
4 fund.

5 (b) There shall be deducted from the monthly payroll of
6 each employee and paid into the fund six percent of the
7 amount of his or her salary: *Provided*, That beginning on the
8 first day of July, one thousand nine hundred ninety-four,
9 there shall be deducted from the monthly payroll of each
10 employee and paid into the fund seven and one-half percent
11 of the amount of his or her salary: *Provided, however*, That
12 on and after the first day of July, one thousand nine hundred
13 ninety-five, there shall be deducted from the monthly payroll
14 of each employee and paid into the fund nine percent of the
15 amount of his or her salary. An additional twelve percent of
16 the monthly salary of each employee shall be paid by the
17 State of West Virginia monthly into the fund out of the
18 annual appropriation for the agency: *Provided further*, That
19 beginning on the first day of July, one thousand nine hundred
20 ninety-five, the agency shall pay thirteen percent of the
21 monthly salary of each employee into the fund: *And provided*

22 *further*, That beginning on the first day of July, one thousand
23 nine hundred ninety-six, the agency shall pay fourteen
24 percent of the monthly salary of each employee into the fund:
25 *And provided further*, That on and after the first day of July,
26 one thousand nine hundred ninety-seven, the agency shall
27 pay fifteen percent of the monthly salary of each employee
28 into the fund. There shall also be paid into the fund amounts
29 that have previously been collected by the superintendent of
30 the agency on account of payments to employees for court
31 attendance and mileage, rewards for apprehending wanted
32 persons, fees for traffic accident reports and photographs,
33 fees for criminal investigation reports and photographs, fees
34 for criminal history record checks, fees for criminal history
35 record reviews and challenges or from any other sources
36 designated by the superintendent. All moneys payable into
37 the fund shall be deposited in the State Treasury and the
38 board shall keep a separate account thereof.

39 (c) Notwithstanding any other provisions of this article,
40 forfeitures under the fund shall not be applied to increase the
41 benefits any member would otherwise receive under the fund.

42 (d) The moneys in this fund, and the right of a member to
43 a retirement allowance, to the return of contributions, or to
44 any benefit under the provisions of this article, are exempt
45 from any state or municipal tax; are not subject to execution,
46 garnishment, attachment or any other process whatsoever,
47 with the exception that the benefits or contributions under the
48 fund are subject to "qualified domestic relations orders" as
49 that term is defined in Section 414(p) of the Internal Revenue
50 Code with respect to governmental plans; and are
51 unassignable except as is provided in this article. The fund
52 shall be administered by the board created pursuant to article
53 ten-d, chapter five of this code.

54 (e) All moneys paid into and accumulated in the fund,
55 except amounts designated or set aside by the awards, shall
56 be invested by the West Virginia Investment Management
57 Board as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The board shall retire any member of the fund who
2 has filed with the board his or her voluntary petition in
3 writing for retirement and:

4 (1) Has or shall have completed twenty-five years of
5 service as a member of the fund (including military service
6 credit granted under the provisions of section twenty-eight of
7 this article);

8 (2) Has or shall have attained the age of fifty years and
9 has or shall have completed twenty years of service as a
10 member of the fund (excluding military service credit granted
11 under section twenty-eight of this article); or

12 (3) Being under the age of fifty years has or shall have
13 completed twenty years of service as a member of the fund
14 (excluding military service credit granted under section
15 twenty-eight of this article).

16 (b) When the board retires any member under any of the
17 provisions of this section, the member is entitled to receive
18 annually and shall be paid from the fund in equal monthly
19 installments during his or her lifetime while in status of
20 retirement, one or the other of two amounts, whichever is the
21 greater:

22 (1) An amount equal to five and one-half percent of the
23 aggregate of salary paid to the employee during the whole
24 period of service as an employee of the agency; or

25 (2) The sum of six thousand dollars.

26 When a member has or shall have served twenty years or
27 longer but less than twenty-five years as a member of the
28 fund and is retired under any of the provisions of this section
29 before he or she has attained the age of fifty years, payment
30 of monthly installments of the amount of retirement award to
31 the member shall commence on the day following the date he
32 or she attains the age of fifty years. Beginning on the
33 fifteenth day of July, one thousand nine hundred ninety-four,
34 in no event may the provisions of section thirteen, article
35 sixteen, chapter five of this code be applied in determining
36 eligibility to retire with either immediate or deferred
37 commencement of benefit.

38 (c) A member meeting the age and service requirements
39 of this section who terminates employment at two thousand
40 four hundred hours may begin to receive retirement annuity
41 payments immediately upon termination of employment. Any
42 member meeting the age and service requirements of this
43 section who terminates employment at a time of day other
44 than two thousand four hundred hours shall receive a pro rata
45 share of a full day's amount for that day. Upon receipt of
46 properly executed forms from the agency and the member,
47 the board shall process the member's retirement petition and
48 commence annuity payments as soon as administratively
49 feasible.

50 (d) Any individual who is a leased employee is not
51 eligible to participate in the fund. For purposes of this fund,
52 a "leased employee" means any individual who performs

53 services as an independent contractor or pursuant to an
54 agreement with an employee leasing organization or other
55 similar organization. If a question arises regarding the status
56 of an individual as a leased employee, the board has final
57 power to decide the question.

§15-2-27a. Retirement annual annuity adjustments.

1 (a) Every retirant of the fund who is fifty-five years of
2 age or older and who is retired by the board under the
3 provisions of section twenty-seven of this article; every
4 retirant of the fund who is retired by the board under the
5 provisions of section twenty-nine or thirty of this article; and
6 every beneficiary receiving a benefit pursuant to section
7 thirty-three or thirty-four of this article is eligible to receive
8 an annual retirement annuity adjustment equal to three and
9 seventy-five hundredths percent of his or her retirement
10 award or beneficiary award. The adjustments may not be
11 retroactive. Yearly adjustments shall begin upon the first day
12 of July of each year. The annuity adjustments shall be paid to
13 the retirants or beneficiaries from the fund in equal monthly
14 installments while in status of retirement or payment of
15 beneficiary award. The annuity adjustments shall supplement
16 the retirement awards and benefits as provided in this article.

17 (b) Any retirant or beneficiary who receives a benefit
18 pursuant to the provisions of section twenty-nine, thirty,
19 thirty-three or thirty-four of this article shall begin to receive
20 the annual annuity adjustment one year after the
21 commencement of the benefit on the next July first:
22 *Provided*, That if the retirant has been retired for less than
23 one year or if the beneficiary has been in receipt of
24 beneficiary payments for less than one year when the first
25 annuity adjustment is given on that July first, that first

26 annuity adjustment shall be a pro rata share of the full year's
27 annuity adjustment.

**§15-2-28. Credit toward retirement for member's prior military
service; credit toward retirement when employee
has joined armed forces in time of armed conflict;
qualified military service.**

1 (a) For purposes of this section, the term "active military
2 duty" means full-time active duty with the armed forces of
3 the United States, namely the United States Air Force, Army,
4 Coast Guard, Marines or Navy; and service with the National
5 Guard or reserve military forces of any of the armed forces
6 when the employee has been called to active full-time duty
7 and has received no compensation during the period of the
8 duty from any person other than the armed forces.

9 (b) Any member of the fund who has previously served
10 on active military duty is entitled to and shall receive credit
11 on the minimum period of service required by law for
12 retirement pay from the service of the West Virginia State
13 Police under the provisions of this article for a period equal
14 to the active military duty not to exceed five years, subject to
15 the following:

16 (1) That he or she has been honorably discharged from
17 the armed forces;

18 (2) That he or she substantiates by appropriate
19 documentation or evidence his or her period of active
20 military duty;

21 (3) That he or she is not receiving credit from any other
22 retirement system administered by the board for his or her
23 active military duty; and

24 (4) That, except with respect to disability retirement pay
25 awarded under section thirty of this article, he or she has
26 actually served with the fund for twenty years exclusive of
27 his or her active military duty.

28 (c) The amount of retirement pay to which any member
29 is entitled shall be calculated and determined as if he or she
30 had been receiving for the period of his or her active military
31 duty a monthly salary from the agency equal to the average
32 monthly salary which he or she actually received from the
33 agency for his or her total service with the agency exclusive
34 of the active military duty. The superintendent shall transfer
35 and pay into the fund from moneys appropriated for the
36 agency, a sum equal to eighteen percent of the aggregate of
37 the salaries on which the retirement pay of all members has
38 been calculated and determined for their periods of active
39 military duty. In addition, any person who, while an
40 employee of the agency was commissioned, enlisted or
41 inducted into the armed forces of the United States or, being
42 a member of the reserve officers' corps, was called to active
43 duty in the armed forces between the first day of September,
44 one thousand nine hundred forty, and the close of hostilities
45 in World War II, or between the twenty-seventh day of June,
46 one thousand nine hundred fifty, and the close of the armed
47 conflict in Korea on the twenty-seventh day of July, one
48 thousand nine hundred fifty-three, between the first day of
49 August, one thousand nine hundred sixty-four, and the close
50 of the armed conflict in Vietnam, or during any other period
51 of armed conflict by the United States whether sanctioned by
52 a declaration of war by the Congress or by executive or other

53 order of the President, is entitled to and shall receive credit
54 on the minimum period of service required by law for
55 retirement pay from the service of the West Virginia State
56 Police for a period equal to the full time he or she has or
57 shall, pursuant to the commission, enlistment, induction or
58 call, have served with the Armed Forces subject to the
59 following:

60 (1) That he or she has been honorably discharged from
61 the armed forces;

62 (2) That within ninety days after honorable discharge
63 from the armed forces he or she has presented himself or
64 herself to the superintendent and offered to resume service as
65 an active employee of the agency; and

66 (3) That he or she has made no voluntary act, whether by
67 reenlistment, waiver of discharge, acceptance of commission
68 or otherwise, to extend or participate in extension of the
69 period of service with the armed forces beyond the period of
70 service for which he or she was originally commissioned,
71 enlisted, inducted or called.

72 (d) That amount of retirement pay to which any employee
73 is entitled shall be calculated and determined as if the
74 employee has continued in the active service of the agency at
75 the rank or grade to him or her appertaining at the time of the
76 commission, induction, enlistment or call, during a period
77 coextensive with the time the employee served with the
78 armed forces pursuant to the commission, induction,
79 enlistment or call. The superintendent of the agency shall
80 transfer and pay each month into the fund from moneys
81 appropriated for the agency a sum equal to eighteen percent
82 of the aggregate of salary which all employees would have

83 been entitled to receive had they continued in the active
84 service of the agency during a period coextensive with the
85 time the employee served with the armed forces pursuant to
86 the commission, induction, enlistment or call: *Provided*, That
87 the total amount of military service credit allowable under
88 this section shall not exceed five years.

89 (e) Notwithstanding any of the preceding provisions of
90 this section, contributions, benefits and service credit with
91 respect to qualified military service shall be provided in
92 accordance with Section 414(u) of the Internal Revenue
93 Code. For purposes of this section, "qualified military
94 service" has the same meaning as in Section 414(u) of the
95 Internal Revenue Code. The board may determine all
96 questions and make all decisions relating to this section and,
97 pursuant to the authority granted to the board in section one,
98 article ten-d, chapter five of this code, may promulgate rules
99 relating to contributions, benefits and service credit to
100 comply with Section 414(u) of the Internal Revenue Code.

§15-2-29. Awards and benefits for disability incurred in performance of duty.

1 (a) Any member of the fund who has not yet entered
2 retirement status on the basis of age and service and who
3 becomes partially disabled by injury, illness or disease
4 resulting from any occupational risk or hazard inherent in or
5 peculiar to the services required of employees of the agency
6 or incurred pursuant to or while the employee was engaged
7 in the performance of his or her duties as an employee of the
8 agency shall, if, in the opinion of the board, he or she is by
9 reason of that cause probably permanently unable to perform
10 adequately the duties required of him or her as an employee
11 of the agency, but is able to engage in any other gainful

12 employment in a field other than law enforcement, be retired
13 from active service by the board. The member thereafter is
14 entitled to receive annually from the fund in equal monthly
15 installments during his or her lifetime; or until the disability
16 eligibility sooner terminates, one or the other of two amounts,
17 whichever is greater:

18 (1) An amount equal to five and one-half percent of the
19 total salary which would have been earned during twenty-five
20 years, or during actual service if more than twenty-five years
21 in the fund, based on the average earnings of the retirant
22 while employed as an employee of the agency; or

23 (2) The sum of six thousand dollars.

24 (b) A retirant who is partially disabled under this article
25 may not, while in receipt of benefits for partial disability, be
26 employed as a law-enforcement officer: *Provided*, That a
27 retirant retired on partial disability under this article may
28 serve as an elected sheriff or appointed chief of police in the
29 state without a loss of disability retirement benefits so long
30 as the elected or appointed position is shown, to the
31 satisfaction of the board, to require the performance of
32 administrative duties and functions only, as opposed to the
33 full range of duties of a law-enforcement officer.

34 (c) If any member not yet in retirement status on the basis
35 of age and service is found by the board to be permanently
36 and totally disabled as the result of a physical or mental
37 impairment resulting from any occupational risk or hazard
38 inherent in or peculiar to the services required of employees
39 of the agency or incurred pursuant to or while the member
40 was engaged in the performance of his or her duties as an
41 employee of the agency, the member is entitled to receive

42 annually and there shall be paid from the fund in equal
43 monthly installments during his or her lifetime or until the
44 disability eligibility sooner terminates, an amount equal to
45 eight and one-half percent of the total salary which would
46 have been earned by the employee during twenty-five years,
47 or during actual service if more than twenty-five years of
48 service in the fund, based on the average earnings of the
49 retirant while employed as an employee of the agency:
50 *Provided*, That in no event may the amount be less than
51 fifteen thousand dollars per annum, unless otherwise required
52 by this article.

53 (d) The superintendent may expend moneys from funds
54 appropriated for the agency in payment of medical, surgical,
55 laboratory, X-ray, hospital, ambulance and dental expenses
56 and fees and reasonable costs and expenses incurred in the
57 purchase of artificial limbs and other approved appliances
58 which may be reasonably necessary for any member or
59 disability retirant who has or becomes temporarily,
60 permanently or totally disabled by injury, illness or disease
61 resulting from any occupational risk or hazard inherent in or
62 peculiar to the service required of employees of the agency
63 or incurred pursuant to or while the member was or shall be
64 engaged in the performance of duties as an employee of the
65 agency. Whenever the superintendent determines that any
66 disabled member or retirant is ineligible to receive any of the
67 aforesaid benefits at public expense, the superintendent shall,
68 at the request of the disabled member or retirant, refer the
69 matter to the board for hearing and final decision. In no case
70 will the compensation rendered to health care providers for
71 medical and hospital services exceed the then current rate
72 schedule approved by the West Virginia Insurance
73 Commission.

74 (e) Any member awarded a disability benefit under the
75 provisions of this section may receive retirement disability
76 annuity payments on the day following the board's approval
77 of his or her disability application. Upon termination of
78 employment and receipt of properly executed forms from the
79 agency and the member, the board shall process the member's
80 disability retirement benefit and commence annuity payments
81 as soon as administratively feasible.

82 (f) For the purposes of this section, the term "salary" does
83 not include any compensation paid for overtime service.

§15-2-30. Awards and benefits for disability due to other causes.

1 (a) If any employee who has served less than twenty
2 years and who remains in the active service of the agency
3 has, in the opinion of the board, become permanently
4 partially or totally disabled to the extent that the employee
5 cannot adequately perform the duties required of an
6 employee of the agency from any cause other than those set
7 forth in the preceding section and not due to vicious habits,
8 intemperance or willful misconduct on his or her part, the
9 employee shall be retired by the board. The employee is
10 entitled to receive annually and shall be paid from the fund in
11 equal monthly installments during a period equal to one-half
12 the time he or she served as an employee of the agency or
13 until the disability eligibility sooner terminates, a sum equal
14 to five and one-half percent of the total salary which would
15 have been earned during twenty-five years of service. At the
16 end of the one-half time period of service, the benefit payable
17 for the remainder of the retirant's life is an annual sum paid
18 in monthly installments equal to one-half the base salary
19 received by the retirant from the agency in the preceding
20 twelve-month period immediately prior to the disability

21 award: *Provided*, That if the retirant was not employed with
22 the agency for twelve months immediately prior to the
23 disability award, the amount of monthly salary shall be
24 annualized for the purpose of determining the benefit.

25 (b) If the employee, at the time of retirement under the
26 terms of this section, has served twenty years or longer as an
27 employee of the agency, the employee is entitled to receive
28 annually and shall be paid from the fund in equal monthly
29 installments, commencing on the date the employee is retired
30 and continuing during his or her lifetime while in status of
31 retirement or until the disability eligibility sooner terminates,
32 a sum equal to five and one-half percent of the aggregate of
33 salary paid to the retirant through the day immediately
34 preceding his or her disability award, to be determined in the
35 manner provided by subsection (c), section twenty-seven of
36 this article.

37 (c) An employee awarded a disability benefit under the
38 provisions of this section may receive retirement disability
39 annuity payments on the day following the board's approval
40 of his or her disability application. Upon termination of
41 employment and receipt of properly executed forms from the
42 agency and the employee, the board shall process the
43 disability retirement benefit and commence annuity payments
44 as soon as administratively feasible.

45 (d) For the purposes of this section, the term "salary"
46 does not include any compensation paid for overtime service.

§15-2-31. Disability physical examinations; termination.

1 The board may require any retirant who has been retired
2 with compensation on account of disability to submit to a

3 physical and/or mental examination by a physician or
4 physicians selected or approved by the board and cause all
5 costs incident to the examination including hospital,
6 laboratory, X-ray, medical and physicians' fees to be paid out
7 of funds appropriated to defray the current expense of the
8 agency and a report of the findings of the physician or
9 physicians shall be submitted in writing to the board for its
10 consideration. If, from the report or from the report and
11 hearing on the report, the board is of the opinion and finds
12 that the disabled retirant has recovered from the disability to
13 the extent that he or she is able to perform adequately the
14 duties of a law-enforcement officer, the board shall order that
15 all payments from the fund to that disabled retirant be
16 terminated. If, from the report or the report and hearing on
17 the report, the board is of the opinion and finds that the
18 disabled retirant has recovered from his or her previously
19 determined probable permanent disability to the extent that
20 he or she is able to engage in gainful employment but
21 remains unable to adequately perform the duties of a law-
22 enforcement officer, the board shall order the payment, in
23 monthly installments of an amount equal to two thirds of the
24 salary, in the case of a retirant retired under the provisions of
25 section twenty-nine of this article or equal to one half of the
26 salary, in the case of a retirant retired under the provisions of
27 section thirty of this article, excluding any compensation paid
28 for overtime service, for the twelve-month employment
29 period immediately preceding the disability award: *Provided,*
30 That if the retirant had not been employed with the fund for
31 twelve months immediately prior to the disability award, the
32 amount of monthly salary shall be annualized for the purpose
33 of determining the benefit.

§15-2-31a. Application for disability benefit; determinations.

1 (a) Application for a disability benefit may be made by a
2 member under the provisions of section twenty-nine of this
3 article, by an employee under the provisions of section thirty
4 of this article or, if the member or employee is under an
5 incapacity, by a person acting with legal authority on the
6 member's or the employee's behalf. After receiving an
7 application for a disability benefit, the board shall notify the
8 superintendent of the agency that an application has been
9 filed: *Provided*, That when, in the judgment of the
10 superintendent, an employee is no longer physically or
11 mentally fit for continued duty as an employee of the West
12 Virginia State Police and the employee has failed or refused
13 to make application for disability benefits under this article,
14 the superintendent may petition the board to retire the
15 employee on the basis of disability pursuant to rules which
16 may be established by the board. Within thirty days of the
17 superintendent's receipt of the notice from the board or the
18 filing of the superintendent's petition with the board, the
19 superintendent shall forward to the board a statement
20 certifying the duties of the employee's employment,
21 information relating to the superintendent's position on the
22 work relatedness of the employee's alleged disability,
23 complete copies of the employee's medical file and any other
24 information requested by the board in its processing of the
25 application, if this information is requested timely.

26 (b) The board shall propose legislative rules in
27 accordance with the provisions of article three, chapter
28 twenty-nine-a of this code relating to the processing of
29 applications and petitions for disability retirement under this
30 article.

31 (c) The board shall notify the member and the
32 superintendent of its final action on the disability application
33 or petition within ten days of the board's final action. The
34 notice shall be sent by certified mail, return receipt requested.
35 If either the member or the superintendent is aggrieved by the
36 decision of the board and intends to pursue judicial review of
37 the board's decision as provided in section four, article five,
38 chapter twenty-nine-a of this code, the party so aggrieved
39 shall notify the board within twenty days of the member's or
40 superintendent's receipt of the board's notice that they intend
41 to pursue judicial review of the board's decision.

42 (d) (1) The board shall require each disability benefit
43 recipient to file an annual certified statement of earnings, to
44 include the amount and source of earnings and any other
45 information required in legislative rules which may be
46 proposed by the board. The board may waive or modify the
47 requirement that a recipient of total disability benefits file the
48 annual statement of earnings if the board's physician certifies
49 that the recipient's disability is ongoing. The board shall
50 annually examine the information submitted by each
51 recipient. If a disability retiree refuses to file a statement and
52 other information required by the board, the disability benefit
53 shall be suspended, after notice and opportunity to be heard,
54 until the statement and information are filed.

55 (2) The board shall annually examine any information
56 available from the State Tax Commissioner on all recipients
57 of disability benefits pursuant to article ten, chapter eleven of
58 this code.

59 (e) (1) A nonblind recipient earning annual income
60 exceeding the equivalent of eight hundred sixty dollars per
61 month in the year two thousand six, after impairment-related

62 work expenses are subtracted from earnings, has engaged in
63 substantial gainful activity. A statutorily blind recipient has
64 engaged in substantial gainful activity in the year two
65 thousand six if the recipient has earned annual income
66 exceeding the equivalent of one thousand four hundred fifty
67 dollars per month after impairment-related work expenses are
68 subtracted from earnings.

69 (2) The substantial gainful activity dollar limit shall be
70 automatically adjusted annually to correspond to the dollar
71 limit as established and published by the United States Social
72 Security Administration for each year in accordance with
73 methods published in the Federal Register (FR6582905
74 December 29, 2000) and similar methods used by the Social
75 Security Administration applying the average annual wage
76 index.

77 (3) If after review of a disability retiree's annual
78 statement of earnings, tax records or other financial
79 information, as required or otherwise obtained by the board,
80 the board determines that earnings of the recipient of total
81 disability benefits in the preceding year are sufficient to show
82 that the recipient engaged in substantial gainful activity, the
83 disability retiree's disability annuity shall be terminated by
84 the board, upon recommendation of the board's disability
85 review committee and after notice and opportunity to be
86 heard, on the first day of the month following the board's
87 action.

88 (4) If the board obtains information that a recipient of
89 partial disability benefits is employed as a law-enforcement
90 officer, upon recommendation of the board's disability review
91 committee and after notice and an opportunity to be heard,

92 the board shall terminate the recipient's disability benefits on
93 the first day of the month following the board's action.

94 (f) Any person who wishes to reapply for disability
95 retirement and whose disability retirement has been
96 terminated by the board pursuant to this section may do so
97 within ninety days of the effective date of termination:
98 *Provided*, That any person reapplying for disability benefits
99 shall undergo an examination at the applicant's expense by an
100 appropriate medical professional selected by the board as part
101 of the reapplication process.

102 (g) Notwithstanding other provisions in this section, any
103 person whose disability retirement has been terminated by the
104 board pursuant to this section may apply for regular
105 retirement benefits upon meeting the eligibility requirements
106 of age and years of service.

§15-2-31b. Annual report on disability retirement experience.

1 Not later than the first day of January, two thousand six,
2 and each first day of January thereafter, the board shall
3 prepare a report for the preceding fiscal year of the disability
4 retirement experience of the West Virginia State Police
5 Death, Disability and Retirement Fund. The report shall
6 specify the total number of disability applications submitted,
7 the status of each application as of the last day of the fiscal
8 year, total applications granted or denied, and the percentage
9 of disability benefit recipients to the total number of West
10 Virginia State Police employees who are members of the
11 fund. The report shall be submitted to the Governor and the
12 chairpersons of the standing committees of the Senate and

13 House of Delegates with primary responsibility for retirement
14 legislation.

§15-2-32. Retirant not to exercise police authority; retention of group insurance.

1 A retirant may not exercise any of the powers conferred
2 upon active employees by section twelve of this article; but
3 is entitled to receive free of cost to the retirant and retain as
4 his or her separate property one complete standard uniform
5 prescribed by section ten of this article: *Provided*, That the
6 uniform may be worn by a retirant on occasions prescribed
7 by the superintendent. The superintendent shall maintain at
8 public expense for the benefit of all retirants that group life
9 insurance mentioned in section ten of this article. The
10 superintendent, when he or she is of opinion that the public
11 safety shall require, may recall to active duty during any
12 period determined by the superintendent, any retiree who is
13 retired under the provisions of section twenty-seven of this
14 article, provided the consent of the retiree to reassume duties
15 of active membership shall first be obtained. Any retirant
16 who resumes status of active membership is not entitled to
17 receive retirement pay or benefits, but in lieu thereof, is
18 entitled to receive that rate of salary and allowance pertinent
19 to the rank or grade previously held by the retirant. When the
20 former retirant is released from active duty, he or she shall
21 reassume the status of retirement and shall be entitled to
22 receive appropriate benefits as provided by this article:
23 *Provided*, That the amount of the benefits shall in no event be
24 less than the amount determined by the order of the board
25 previously made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

1 (a) The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member who
3 has lost or loses his or her life by reason of injury, illness or
4 disease resulting from an occupational risk or hazard inherent
5 in or peculiar to the service required of employees while the
6 member was or is engaged in the performance of his or her
7 duties as an employee of the agency, or if a retirant dies from
8 any cause after having been retired pursuant to the provisions
9 of section twenty-nine of this article, the surviving spouse or
10 other dependent is entitled to receive and shall be paid from
11 the fund benefits as follows: To the surviving spouse
12 annually, in equal monthly installments during his or her
13 lifetime the greater of one or the other of two amounts:

14 (1) An amount equal to five and one-half percent of the
15 total salary which was or would have been earned by the
16 deceased member or duty disability retirant during twenty-
17 five years of service based on the average earnings of the
18 member or duty disability retirant while employed by the
19 agency; or

20 (2) The sum of six thousand dollars.

21 (b) In addition, the surviving spouse is entitled to receive
22 and shall be paid one hundred dollars monthly for each
23 dependent child or children. If the surviving spouse dies or if
24 there is no surviving spouse, there shall be paid monthly to
25 each dependent child or children from the fund a sum equal
26 to twenty-five percent of the surviving spouse's entitlement.
27 If there is no surviving spouse and no dependent child or
28 children, there shall be paid annually in equal monthly
29 installments from the fund to the dependent parents of the

30 deceased member or retirant during their joint lifetimes a sum
31 equal to the amount which a surviving spouse, without
32 children, would have received: *Provided*, That when there is
33 one dependent parent surviving, that parent is entitled to
34 receive during his or her lifetime one-half the amount which
35 both parents, if living, would have been entitled to receive.

36 (c) Any person qualified as a surviving dependent child
37 under this section, in addition to any other benefits due under
38 this or other sections of this article, is entitled to receive a
39 scholarship to be applied to the career development education
40 of that person. This sum up to but not exceeding seven
41 thousand five hundred dollars shall be paid from the fund to
42 any university or college in this state or to any trade or
43 vocational school or other entity in this state approved by the
44 board, to offset the expenses of tuition, room and board,
45 books, fees or other costs incurred in a course of study at any
46 of those institutions so long as the recipient makes
47 application to the board on an approved form and under rules
48 as provided by the board and maintains scholastic eligibility
49 as defined by the institution or the board. The board may by
50 appropriate rules define age requirements, physical and
51 mental requirements, scholastic eligibility, disbursement
52 methods, institutional qualifications and other requirements
53 as necessary and not inconsistent with this section.

54 (d) A surviving spouse or dependent of an employee
55 meeting the requirements of this section is entitled to receive
56 beneficiary payments on the first day following the date the
57 deceased employee is removed from payroll by the agency.
58 A surviving spouse or dependent of a member who is not
59 currently an employee meeting the requirements of this
60 section is entitled to receive beneficiary payments on the first
61 day following the date of the deceased member's death. A
62 surviving spouse or dependent of a retirant meeting the
63 requirements of this section is entitled to receive beneficiary
64 payments on the first day of the month following the date of

65 the deceased retirant's death. Upon receipt of properly
66 executed forms from the agency and the surviving spouse or
67 dependent, the board shall process the surviving spouse or
68 dependent benefit as soon as administratively feasible.

69 (e) For the purposes of this section, the term "salary"
70 does not include any compensation paid for overtime service.

**§15-2-34. Awards and benefits to dependents of employee when
the employee dies from nonservice-connected
causes.**

1 (a) If an employee of the agency, before having
2 completed twenty years of service as an employee of the
3 agency, dies from any cause other than those specified in this
4 article and not due to vicious habits, intemperance or willful
5 misconduct on his or her part, there shall be paid annually in
6 equal monthly installments from the fund to the surviving
7 spouse of the employee during his or her lifetime, or until
8 such time as the surviving spouse remarries, a sum equal to
9 two and three-quarters percent of the total salary which
10 would have been earned by the employee during twenty-five
11 years of service with the agency based on his or her average
12 earnings while employed with the agency. If there is no
13 surviving spouse, or the surviving spouse dies or remarries,
14 there shall be paid monthly to each dependent child or
15 children from the fund, a sum equal to twenty-five percent of
16 the surviving spouse's entitlement. If there is no surviving
17 spouse and no dependent child or children, there shall be paid
18 annually in equal monthly installments from the fund to the
19 dependent parents of the deceased employee during their
20 joint lifetimes, a sum equal to the amount which a surviving
21 spouse would have been entitled to receive: *Provided*, That
22 when there is only one dependent parent surviving, that
23 parent is entitled to receive during his or her lifetime one-half

24 the amount which both parents, if living, would have been
25 entitled to receive.

26 (b) A surviving spouse or dependent meeting the
27 requirements of this section is entitled to receive beneficiary
28 payments on the first day following the date the deceased
29 employee is removed from payroll by the agency. Upon
30 receipt of properly executed forms from the agency and the
31 surviving spouse or dependent, the board shall process the
32 surviving spouse or dependent benefit as soon as
33 administratively feasible.

34 (c) For the purposes of this section, the term "salary"
35 does not include compensation paid for overtime service.

**§15-2-35. Awards and benefits to dependents of retirant or after
an employee serves twenty years.**

1 (a) When any employee of the agency has completed
2 twenty years of service or longer as an employee of the
3 agency and has died or dies from any cause or causes other
4 than those specified in this article before having been retired
5 by the board, and when a retirant has died or dies after having
6 been retired by the board under the provisions of this article,
7 there shall be paid annually in equal monthly installments
8 from the fund to the surviving spouse of the employee or
9 retirant during the lifetime or until remarriage of the
10 surviving spouse, an amount equal to three-fourths the
11 retirement benefits the deceased retirant was receiving or
12 would have been entitled to receive while in status of
13 retirement, or would have been entitled to receive to the same
14 effect as if the employee had been retired under the
15 provisions of this article immediately prior to the time of his
16 or her death and in no event to be less than five thousand
17 dollars, unless otherwise required under this article, and in

18 addition the surviving spouse shall be entitled to receive and
19 shall be paid from the fund the sum of one hundred dollars
20 monthly for each dependent child or children. If the surviving
21 spouse dies or remarries or if there is no surviving spouse,
22 there shall be paid monthly from the fund to each dependent
23 child or children of the deceased employee or retirant a sum
24 equal to twenty-five percent of the surviving spouse's
25 entitlement. If there is no surviving spouse or no surviving
26 spouse eligible to receive benefits and no dependent child or
27 children, there shall be paid annually in equal monthly
28 installments from the fund to the dependent parents of the
29 deceased employee or retirant during their joint lifetimes a
30 sum equal to the amount which a surviving spouse without
31 children would have been entitled to receive: *Provided*, That
32 when there is only one dependent parent surviving, the parent
33 shall be entitled to receive during his or her lifetime one-half
34 the amount which both parents, if living, would have been
35 entitled to receive.

36 (b) A surviving spouse or dependent of an employee
37 meeting the requirements of this section is entitled to receive
38 beneficiary payments on the first day following the date the
39 deceased employee is removed from payroll by the agency.
40 A surviving spouse or dependent of a retirant meeting the
41 requirements of this section is entitled to receive beneficiary
42 payments on the first day of the month following the date of
43 the deceased retirant's death. Upon receipt of properly
44 executed forms from the agency and the surviving spouse or
45 dependent, the board shall process the surviving spouse or
46 dependent benefit as soon as administratively feasible.

**§15-2-37. Refunds to certain employees upon discharge or
resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the
2 superintendent or otherwise terminates employment with the
3 agency, at the written request of the member to the board, is

4 entitled to receive from the fund a sum equal to the aggregate
5 of the principal amount of moneys deducted from his or her
6 salary and paid into the fund plus four percent interest
7 compounded thereon calculated annually as provided and
8 required by this article.

9 (b) Any member withdrawing contributions who may
10 thereafter be reemployed by the agency shall not receive any
11 prior service credit in the fund on account of former service.
12 The employee may redeposit in the fund established in article
13 two-a of this chapter the amount of the refund, together with
14 interest thereon at the rate of seven and one-half percent per
15 annum from the date of withdrawal to the date of redeposit,
16 in which case he or she shall receive the same credit on
17 account of his or her former service as if no refund had been
18 made. He or she shall become a member of the retirement
19 system established in article two-a of this chapter.

20 (c) Every employee who completes ten years of service
21 with the agency is eligible, upon separation of employment,
22 either to withdraw his or her contributions in accordance with
23 subsection (a) of this section or to choose not to withdraw his
24 or her accumulated contributions with interest. Upon
25 attainment of age sixty-two, a member who chooses not to
26 withdraw his or her contributions is eligible to receive a
27 retirement annuity. Any member choosing to receive the
28 deferred annuity under this subsection is not eligible to
29 receive the annual annuity adjustment provided in section
30 twenty-seven-a of this article. When the board retires any
31 member under any of the provisions of this section, the
32 member is entitled to receive annually and shall be paid from
33 the fund in equal monthly installments during the lifetime of
34 the member while in status of retirement one or the other of
35 two amounts, whichever is greater:

36 (1) An amount equal to five and one-half percent of the
37 aggregate of salary paid to the employee during the whole
38 period of service as an employee of the agency; or

39 (2) The sum of six thousand dollars.

40 (d) A member may choose, in lieu of a life annuity
41 available under the provisions of subsection (c) of this
42 section, an annuity in a reduced amount payable during the
43 member's lifetime, with one half of the reduced monthly
44 amount paid to his or her surviving spouse, for the spouse's
45 remaining lifetime after the death of the retirant. Reduction
46 of this monthly benefit amount shall be calculated to be of
47 equal actuarial value to the life annuity the member could
48 otherwise have chosen.

49 (e) A member retiring under the provisions of this section
50 may receive retirement annuity payments on the day
51 following his or her attaining age sixty-two. Upon receipt of
52 properly executed forms from the agency and the member,
53 the board shall process the member's retirement benefit and
54 commence annuity payments as soon as administratively
55 feasible.

**§15-2-38. Refund to dependents upon death of member not
eligible for benefits.**

1 If any member dies and the board is of the opinion after
2 hearing that the dependent or dependents of the member are
3 ineligible under the provisions of this article to receive any of
4 the benefits provided herein, the board shall refund to the
5 spouse, if surviving, but if not surviving, to the children of
6 the member, and if there is no surviving spouse or children,
7 to the dependent parents, a sum equal to the aggregate of the

8 principal amount of all moneys deducted from the salary of
9 the member and paid into the fund. If there is no surviving
10 spouse or children or dependent parent or parents, then a sum
11 equal to the aggregate of the principal amount of all moneys
12 deducted from the salary of the member and paid into the
13 fund will be paid to the member's estate. Whenever a refund
14 is made to the surviving spouse or other dependents of the
15 deceased member, the surviving spouse or other dependents
16 shall not be entitled to any other rights or benefits from the
17 fund.

§15-2-39. Dependent child or children.

1 In any case where under the terms of this article benefits
2 are provided for dependent child or children, the benefits
3 shall be paid for so long as they continue to meet the
4 qualifications provided under the provisions of this article.

§15-2-44. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the fund in compliance
3 with the limitations of Section 415 of the Internal Revenue
4 Code and regulations under that section to the extent
5 applicable to governmental plans so that no annuity or other
6 benefit provided under this fund shall exceed those
7 limitations. The extent to which any annuity or other benefit
8 payable under this fund shall be reduced as compared with
9 the extent to which an annuity, contributions or other benefits
10 under any other defined benefit plans or defined contribution
11 plans required to be taken into consideration under Section
12 415 of the Internal Revenue Code shall be determined by the
13 board in a manner that shall maximize the aggregate benefits
14 payable to the member. If the reduction is under this fund, the
15 board shall advise affected members or retirants of any
16 additional limitation on the annuities required by this section.

CHAPTER 151

**(Com. Sub. for H.B. 2616 - By Delegates Brown, Miley,
Burdiss, Talbott, Overington and Pino)**

[Passed March 8, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

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 Department of Administration and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Administration; 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; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the Department of Administration to promulgate a legislative rule relating to cannibalization of state property; authorizing the Department of Administration to promulgate a legislative rule relating to waste disposal of state property; authorizing the Department of Administration to promulgate a legislative rule relating to the accountability of state funds and grants; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the deputy sheriff retirement system; authorizing the Consolidated Public Retirement Board to

promulgate a legislative rule relating to the teachers defined contribution system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to teachers retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the public employees retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; authorizing the Division of Personnel to promulgate a legislative rule relating to the administrative rule of the Division of Personnel; authorizing the Division of Personnel to promulgate a legislative rule relating to workers' compensation temporary total disability; authorizing the Division of Personnel to promulgate a legislative rule relating to interdepartmental transfer of state employees; and authorizing the Board of Risk & Insurance Management to promulgate a legislative rule relating to mine subsidence insurance.

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 at

9 the effective date of this section shall continue in full force and
10 effect until reauthorized in this chapter by legislative enactment
11 or until amended by emergency rule pursuant to the provisions
12 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. Division of Personnel.

§64-2-4. 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-eighth day of July, two thousand six, authorized under
3 the authority of section four, article three, chapter five-a of this
4 code, modified by the Department of Administration to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the eleventh day of January,
7 two thousand seven, relating to the Department of
8 Administration (purchasing, 148 CSR 1), is authorized with the
9 following amendments:

10 On pages two and three, by redesignating subdivisions 4.(a)
11 through 4.(s) as subdivisions 4.1. through 4.19;

12 On page two, subdivision 4.(a), line three, after the words
13 “commodities or services” by striking out the remainder of the
14 subsection and inserting in lieu thereof the following: “that are
15 not possible to submit for competitive bid. The Director shall
16 approve the list before the beginning of each fiscal year and
17 shall make the list available for public review. Spending units
18 may purchase the commodities and services on the list directly
19 from the vendor and are not required to have contracts for
20 purchase of those items approved by the Purchasing Division.
21 A spending unit’s request to add commodities and services to
22 the list must be accompanied by written justification and an
23 explanation of why competitive bids are not possible. Nothing
24 in this section supercedes or replaces the Attorney General’s
25 authority to approve contracts as to form.”;

26 On page three, subdivision 4.(p), after the words “relevant
27 training” by adding the words “for agency personnel”;

28 On page three, subdivision 4.(q), by striking out the words
29 “and other purchasing card vendors” and inserting in lieu
30 thereof the word “or”;

31 On page three, by striking out subdivision 4.(r) in its
32 entirety and renumbering the remaining subsection accordingly;

33 On page three, subdivision 4.(s) by striking out the words
34 “twenty five thousand dollar (\$25,000)” and inserting in lieu
35 thereof “\$25,000”;

36 On page three, subdivision 4.(s) by striking out the word
37 “include” and inserting in lieu thereof the words “may require”;

38 On page three, subdivision 5.1.(c), by striking out “Section
39 5.3(j)” and inserting in lieu thereof “subsection 5.2.”;

40 On page four, by redesignating subdivision 5.1.2. as
41 subsection 5.2.;

42 On page four, subdivision 6.1.1., by striking out the words
43 “and other purchasing card vendors” and inserting in lieu
44 thereof the word “or”;

45 On page four, subdivision 6.1.3., by striking out the words
46 “Such vendors shall pay the fee in 6.1.4.”;

47 On page four, subdivision 6.1.4., by striking out the words
48 “and other purchasing card vendors” and inserting in lieu
49 thereof the word “or”;

50 On page five, subdivision 6.1.7., line five, by striking out
51 the words “any other State agencies of political subdivision.
52 Furthermore, the” and inserting in lieu thereof the words “other
53 state agencies or political subdivisions. The”;

54 On page five, subdivision 6.1.7., lines six and seven, by
55 striking out the words “to enable the Director or spending unit”
56 and inserting in lieu thereof the word “necessary”;

57 On page five, subdivision 6.2.2., line seven, by striking out
58 the words “shall not accept as the bidder’s submission or
59 response” and inserting in lieu thereof the words “may not
60 accept”;

61 On page five, subdivision 6.2.2., line seven, by striking out
62 the words “received by” and inserting in lieu thereof the words
63 “submitted to”;

64 On page five, subdivision 6.2.4., by striking out the words
65 “Any vendor submitting bids via facsimile shall be aware that
66 bids sent in such manner” and inserting in lieu thereof the words
67 “Bids submitted via facsimile”;

68 On page five, subdivision 6.2.4., after the words
69 “completeness of” by striking out the word “bid” and inserting
70 in lieu thereof the word “bids”;

71 On page six, subdivision 6.2.5., line three, by striking out
72 the word “leave” and inserting in lieu thereof the words “be
73 removed from”;

74 On page six, subdivision 6.3.1., line one, by striking out the
75 words “the delivering of” and inserting in lieu thereof the word
76 “delivering”;

77 On page six, subdivision 6.3.1., line five, by striking out the
78 words “The bids” and inserting in lieu thereof the word “Bids”;

79 On page eight, subdivision 6.5.1., after the words “spending
80 units.” by striking out the remainder of the subdivision and
81 inserting in lieu thereof the following: “No person may write or
82 attempt to influence the drafter of specifications to limit
83 competition or favor or disfavor a particular vendor.”;

84 On page eight, subdivision 6.5.2., by striking out the words
85 “These standard” and inserting in lieu thereof the word
86 “Standard”;

87 On page nine, subdivision 6.5.2., after the words “the
88 Director determines there are” by striking out the remainder of
89 the subdivision and inserting in lieu thereof the following:
90 “applicable nationally accepted standards. Use of standard

91 specifications is mandatory unless an exemption is granted by
92 the Director.”;

93 On page nine, subsection 6.6., by striking out “6.6.1.”;

94 On page nine, subsection 6.6., by striking out the words “no
95 conflict of interest,” and inserting in lieu thereof the words “that
96 no conflict of interest exists,”;

97 On page nine, subsection 6.6., lines four and five, by
98 striking out the word “shall” and inserting in lieu thereof the
99 word “may”;

100 On page nine, subsection 6.6., line seven, by striking out the
101 word “vendors” and inserting in lieu thereof the word “vendor”;

102 On page nine, subdivision 7.1.2., line one, by striking out
103 the word “should” and inserting in lieu thereof the word “may”;

104 On page nine, subsection 7.2., line one, after the words “or
105 less” by inserting the words “per transaction”;

106 On page nine, subsection 7.2., line four, by striking out the
107 words “these records of the” and inserting in lieu thereof the
108 words “records of these”;

109 On page ten, subsection 7.4., line four, by striking out the
110 word “shall” and inserting in lieu thereof the word “is”;

111 On page eleven, subdivision 7.5.4., after the words “formal
112 bidding” by striking out the word “or,”;

113 On page eleven, subdivision 7.5.5., by striking out the
114 words “as described” and inserting in lieu thereof the words “in
115 the same manner described”;

116 On page eleven, subdivision 7.5.6., by striking the words
117 “used equipment to be purchased directly” and inserting in lieu
118 thereof the words “the purchase of used equipment directly from
119 the vendor”;

120 On page eleven, subsection 7.6., by striking out the word
121 “should” and inserting in lieu thereof the word “shall”;

122 On page twelve, subdivision 7.7.2., after the word
123 “practical” by striking out the words “RFQs should” and
124 inserting in lieu thereof the words Requests for Quotations
125 (RFQs)shall”;

126 On page twelve, subdivision 7.7.3., line four, by striking out
127 the word “shall” and inserting in lieu thereof the word “may”;

128 On page twelve, paragraph 7.9.1.(a), by striking out the
129 words “agencies of the federal government, agencies of other
130 states, other public bodies or other state agencies” and inserting
131 in lieu thereof the words “other public agencies and entities”;

132 On page twelve, paragraph 7.9.1.(a), after the word
133 “comparison” by striking out the word “shall” and inserting in
134 lieu thereof the word “may”;

135 On page twelve, paragraph 7.9.1.(a), by striking out the
136 words “Director believes the state’s” and inserting in lieu
137 thereof the word “State’s”;

138 On page twelve, paragraph 7.9.1.(b), after the word
139 “difference” by adding the words “in price”;

140 On pages twelve and thirteen, paragraph 7.9.1.(b), by
141 striking out the words “agencies of the federal government,
142 agencies of other states, other public bodies or other state
143 agencies” and inserting in lieu thereof the words “other public
144 agencies and entities”;

145 On page thirteen, subdivision 7.9.2., by striking out the
146 words “evidence and documentation as required by the
147 Director” and inserting in lieu thereof the words “necessary
148 evidence and documentation”;

149 On page thirteen, subdivision 7.9.2., by striking out the
150 words “only approve those requests with submitted” and
151 inserting in lieu thereof the words “approve only those requests
152 submitted with”;

153 On page thirteen, subdivision 7.9.2., by striking out the
154 words “by the Director”;

155 On page thirteen, subdivision 7.10.1., after the words “best
156 interest of the State” by striking out the remainder of the
157 subdivision and inserting in lieu thereof the following:

158 “In arriving at a determination, the Director will consider
159 the following factors, insofar as they are applicable:

160 (1) The quality, availability, and reliability of the supplies,
161 materials, equipment, or service and their adaptability to the
162 particular use required;

163 (2) The ability, capacity, and skill of the bidder;

164 (3) The sufficiency of the bidder's financial resources;

165 (4) The bidder's ability to provide maintenance, repair parts,
166 and service;

167 (5) The compatibility with existing equipment;

168 (6) The need for flexibility in evaluating new products on a
169 large scale before becoming contractually committed for all use;
170 and

171 (7) Any other relevant factors.”;

172 On page thirteen, subdivision 7.11.1., after the words
173 “Purchasing Division.” by striking out the remainder of the
174 subdivision and inserting in lieu thereof the following: “The
175 maximum budgeted amount may not be disclosed to any vendor
176 prior to the bid opening and may not be changed after the bid
177 opening.”;

178 On page thirteen, subdivision 7.11.2., line three, by
179 capitalizing the word “state”;

180 On page fourteen, subsection 7.13., by striking out
181 “7.13.1.”;

182 On page fourteen, subdivision 7.13.1, at the beginning of
183 the first sentence, by striking out the word “The” and inserting
184 in lieu thereof the words “For contracts for commodities and
185 services in the amount of \$1 million or less, the”;

186 On page fourteen, paragraphs 7.13.1.(a), by capitalizing the
187 word “state”;

188 On page fourteen, after subdivision 7.13.1, by inserting a
189 new subdivision, designated subdivision 7.13.2, to read as
190 follows:

191 “7.13.2. For contracts for commodities and services in an
192 amount exceeding \$1 million, the following contract
193 management procedures apply:

194 a. Post Award Conferences.

195 The agency administrator responsible for administering the
196 contract shall hold a post award conference with the contractor
197 to ensure a clear and mutual understanding of all contract terms
198 and conditions, and the respective responsibilities of all parties.
199 The agenda for the conference shall include, at a minimum, the
200 introduction of all participants and identification of agency and
201 contractor key personnel, and discussion of the following items:

202 (1) The scope of the contract, including specifications of
203 what the agency is buying;

204 (2) The contract terms and conditions, particularly any
205 special contract provisions;

206 (3) The technical and reporting requirements of the contract;

207 (4) The contract administration procedures, including
208 contract monitoring and progress measurement;

209 (5) The rights and obligations of both parties and the
210 contractor performance evaluation procedures;

211 (6) An explanation that the contractor will be evaluated on
212 its performance both during and at the conclusion of the contract
213 and that such information may be considered in the selection of
214 future contracts;

215 (7) Potential contract problem areas and possible solutions;

216 (8) Invoicing requirements and payment procedures, with
217 particular attention to whether payment will be made according
218 to milestones achieved by the contractor;

219 (9) An explanation of the limits of authority of the
220 personnel of both the agency and the contractor.

221 b. Monitoring.

222 The agency shall develop a comprehensive and objective
223 monitoring checklist which:

224 (1) Measures outcomes;

225 (2) Monitors compliance with contract requirements; and

226 (3) Assesses contractor performance.

227 c. Reports.

228 The agency shall make the following reports to the Director,
229 on a schedule established by the Director, but not less frequently
230 than once each year:

231 (1) Status Reports. Status reports describe the progress of
232 the work; track the organizational structure of the statement of
233 work in terms of phases, segments, deliverables and products;
234 and describe what work is complete and what work is pending
235 and contrast that status against the contract schedule. If there
236 are any unresolved issues that the agency is contractually
237 obligated to resolve, those issues should be included in the
238 status report and a resolution should be requested.

239 (2) Activity Reports. Activity reports describe all activity
240 on the project, regardless of whether substantial progress has
241 been made toward completion of the project. If payment is
242 based on the number of completed transactions, these activities
243 must be specifically set out in the report.”;

244 On page fourteen, after subsection 7.13, by inserting the
245 following:

246 “7.14. Inspection.

247 7.14.1. The agency shall inspect all materials, supplies, and
248 equipment upon delivery to insure compliance with the contract
249 requirements and specifications.

250 7.14.2. The agency shall report any discrepancies to the
251 Director immediately.

252 7.14.3. If unlisted shortages are discovered, the vendor and
253 the Director must be notified immediately.

254 7.14.4. A contractor may be required to pick up any
255 merchandise not conforming to specifications and replace the
256 merchandise immediately.

257 7.15. Substitutions.

258 Substitution of items called for in a contract is not permitted
259 without the Director's prior approval. The Director will not
260 approve substitution of items unless the substituted items are of
261 equal quality and are offered at the same or lower price.

262 7.16. Cancellations.

263 7.16.1. The director may cancel a purchase or contract
264 under any one of the following conditions including, but not
265 limited to:

266 (a) The vendor agrees to the cancellation;

267 (b) The vendor has obtained the contract by fraud, collusion,
268 conspiracy, or in conflict with any statutory or constitutional
269 provision of the State of West Virginia;

270 (c) Failure to conform to contract requirements or standard
271 commercial practices;

272 (d) The existence of an organizational conflict of interest is
273 identified; or

274 (e) Funds are not appropriated or an appropriation is
275 discontinued by the Legislature for the acquisition.

276 7.16.2. Notwithstanding other provisions of this
277 subdivision, the Director may cancel a purchase or contract for
278 any reason or for no reason, upon 30 days' notice to the vendor.

279 7.17. Damages.

280 7.17.1. A vendor who fails to perform as required under a
281 contract shall be liable for actual damages and costs incurred by
282 the state.

283 7.17.2. If any merchandise delivered under a contract has
284 been used or consumed by an agency and on testing is found not
285 to comply with specifications, no payment may be approved by
286 the Director for the merchandise until the amount of actual
287 damages incurred has been determined.

288 7.17.3. The Director shall seek to collect damages by
289 following the procedures established by the Office of the
290 Attorney General for the collection of delinquent obligations.”;
291 and

292 On page 17, subsection 11.1., by capitalizing the word
293 “internet”;

294 And,

295 On page 17, after subsection 11.1, by striking out
296 subsections 11.2, 11.3, 11.4 and 11.5 in their entirety and
297 inserting in lieu thereof the following:

298 “11.2. The state spending unit for surplus property may
299 contract with one or more nationally recognized commercial
300 Internet auction sites to coordinate sales of surplus property,
301 pursuant to the provisions of §5A-3-45 of the *West Virginia*
302 *Code* and this rule.

303 11.3. To ensure that organizations eligible under Federal
304 Property Management Regulations (41 CFR Chapter 101) have
305 priority in obtaining surplus property, all surplus property will
306 be listed on the West Virginia State Agency for Surplus
307 Property website for at least five (5) working days prior to being
308 made available on an Internet auction site.”.

309 (b) The legislative rule filed in the State Register on the
310 eleventh day of July, two thousand six, authorized under the
311 authority of section forty-four, article three, chapter five-a of
312 this code, modified by the Department of Administration to
313 meet the objections of the Legislative Rule-Making Review
314 Committee and refiled in the State Register on the sixteenth day
315 of August, two thousand six, relating to the Department of
316 Administration (cannibalization of state property, 148 CSR 16),
317 is authorized, with the following amendments:

318 On page one, by striking out subsection 1.1. in its entirety
319 and inserting in lieu thereof the following:

320 "1.1. This rule explains and clarifies operative procedures
321 for the disposal of state surplus property by cannibalization for
322 use of component parts."

323 On page one, section two, lines one and two, by striking out
324 the words "meaning as" and inserting in lieu thereof the word
325 "meanings", by striking out "§5A-1-1" and inserting in lieu
326 thereof "§§5A-1-1 *et seq.*", and by striking out "5A-3-1 *et seq.*,
327 and as follows" and inserting in lieu thereof the "§§5A-3-1 *et*
328 *seq.* In addition";

329 On page one, subsection 3.1., by striking out the word
330 "legislative" and by striking out the word "State" and inserting
331 in lieu thereof the word "state";

332 On pages one and two, by striking out section four in its
333 entirety and renumbering the remaining section accordingly;

334 On page two, section five, by inserting a new subsection to
335 read as follows:

336 "4.1. State assets shall be disposed of exclusively through
337 the state agency for surplus property.";

338 On page two, section five, by redesignating subsections 5.1.
339 through 5.6. as subsections 4.2. through 4.7.;

340 On page two, subdivisions 5.1.a. through 5.1.c., by inserting
341 the word "The" before the word "commodity";

342 On page two, subdivision 5.1.d., by inserting the word “A”
343 before the word “description”;

344 On page two, subdivision 5.1.e., by capitalizing the word
345 “whether”, after the word “If” by inserting the word “the”, and
346 by striking out the words “why the agency is” and inserting in
347 lieu thereof the word “for”;

348 On page two, subdivision 5.1.f., by capitalizing the word
349 “how”;

350 On page two, subdivision 5.1.g., lines one and two, by
351 capitalizing the word “who” and, after the word “document” by
352 inserting a comma and the words “signed by the spending
353 officer,”;

354 On page two, subdivision 5.1.g., line three, by striking out
355 the words “which will identify” and inserting in lieu thereof the
356 word “identifying”;

357 On page two, subdivision 5.1.g., line five, by striking out
358 the words “qualification. This document must be signed by the
359 spending officer.” and inserting in lieu thereof the word
360 “qualifications”;

361 On pages two and three, by striking out subsection 5.2. in its
362 entirety and by inserting in lieu thereof the following:

363 “4.2.a. If the agency plans to use the cannibalized parts
364 immediately, it must provide the following additional
365 information:

366 4.2.a.1. Whether the part restores the commodity to an
367 operable condition;

368 4.2.a.2. If the part does not restore the property to an
369 operable condition, additional justification for the initial
370 cannibalization, along with the additional steps required to
371 restore the property to an operable condition; and

372 4.2.a.3. The cost of the parts and labor to restore the
373 commodity to an operable condition without cannibalization.

374 4.2.b. The agency must properly retire an inoperable part
375 being replaced to the state agency for surplus property using the
376 authorized means of disposal outlined in W. Va. Code §5A-3-
377 45.

378 4.2.c. The Director shall make a comparison of the current
379 value of the asset being cannibalized, the value of the property
380 being repaired and the cost to repair the item without
381 cannibalization. The Director will not authorize cannibalization
382 unless the value of the repaired asset exceeds the value of the
383 asset to be cannibalized, along with the cost of the
384 cannibalization/repair process.”

385 On page three, subsection 5.3., lines one and two, after the
386 word “future use” by changing the period to a comma, by
387 striking out the words “justification must be submitted to and
388 approved by” and inserting in lieu thereof the words “it must
389 submit written justification to”;

390 On page three, subsection 5.3., after the word “property” by
391 inserting the words “for approval”;

392 On page three, subsection 5.3. by striking out “5.3.a.” and
393 by redesignating paragraphs 5.3.a.1. through 5.3.a.4 as
394 subdivisions 4.3.a. through 4.3.d.;

395 On page three, paragraph 5.3.a.1., by striking out the words
396 “the potential” and inserting in lieu thereof the word “The”;

397 On page three, paragraph 5.3.a.2. by capitalizing the word
398 “the” at the beginning of the paragraph;

399 On page three, paragraph 5.3.a.3. by capitalizing the word
400 “the” at the beginning of the paragraph and, after the word
401 “stored;”, by inserting the word “and”;

402 On page three, paragraph 5.3.a.2. by capitalizing the word
403 “the” at the beginning of the paragraph;

404 On page three, subsection 5.5., lines one and two, by
405 striking out the words “make determination” and inserting in
406 lieu thereof the word “determine” and by capitalizing the word
407 “state”;

408 On page three, paragraph 5.5.a. by striking out the word
409 “The” and inserting in lieu thereof the words “Does the” and,
410 after the word “cannibalized”, by inserting a question mark;

411 On page three, paragraph 5.5.b. by striking out the words
412 “There is” and inserting in lieu thereof the words “Is there” and,
413 after the word “form;”, by inserting a question mark, a semi-
414 colon and the word “and”;

415 On page three, paragraph 5.5.c., by striking out the word
416 “The” and inserting in lieu thereof the words “Does the” and by
417 striking out the words “does not”;

418 On page three, paragraph 5.5.c., by capitalizing the word
419 “state”;

420 On page three, paragraph 5.5.c., by striking out the word
421 “non-used” and inserting in lieu thereof the word “unused” and
422 by changing the period to a question mark;

423 And,

424 On page three, section 5.6, line one, after the words “review
425 the” by inserting the word “agency”.

426 (c) The legislative rule filed in the State Register on the
427 eleventh day of July, two thousand six, authorized under the
428 authority of section forty-four, article three, chapter five-a of
429 this code, modified by the Department of Administration to
430 meet the objections of the Legislative Rule-Making Review
431 Committee and refiled in the State Register on the sixteenth day
432 of August, two thousand six, relating to the Department of
433 Administration (waste disposal of state property, 148 CSR 17),
434 is authorized, with the following amendments:

435 On page one, by striking out subsection 1.1. in its entirety
436 and inserting in lieu thereof the following:

437 “1.1. This rule explains and clarifies operative procedures
438 for the disposal of commodities as waste.”

439 On page one, section two, lines one and two, by striking out
440 the words “meaning as” and inserting in lieu thereof the word

441 “meanings”, by striking out “§5A-1-1” and inserting in lieu
442 thereof “§§5A-1-1 *et seq.*”, and by striking out “5A-3-1 *et seq.*,
443 and as follows” and inserting in lieu thereof the “§§5A-3-1 *et*
444 *seq.* In addition”;

445 On page one, subsection 3.1., by striking out the word
446 “legislative” and by striking out the word “State” and inserting
447 in lieu thereof the word “state”;

448 On pages one and two, by striking out section four in its
449 entirety and renumbering the remaining section accordingly;

450 On page two, section five, by inserting a new subsection to
451 read as follows:

452 “4.1. State assets shall be disposed of exclusively through
453 the state agency for surplus property.”;

454 On page two, section five, by redesignating subsections 5.1.
455 through 5.8. as subsections 4.2. through 4.9.;

456 On page two, subsection 5.1., by striking out the word
457 “submits” and inserting in lieu thereof the word “shall submit”;

458 On page two, subsection 5.2., by striking out the word
459 “State” and inserting in lieu thereof the words “The state”;

460 On page two, subsection 5.2., by striking out the word
461 “evaluates” and inserting in lieu thereof the words “shall
462 evaluate”;

463 On page two, subdivision 5.3.a., by striking out the words
464 “If the” and inserting in lieu thereof the word “The”;

465 On page two, subdivision 5.3.c., by striking out the word
466 “state” and inserting in lieu thereof the word “State”;

467 On page two, subsection 5.4., by striking out “5.4.a.” and by
468 redesignating paragraphs 5.4.a.1. through 5.4.a.3. as
469 subdivisions 4.5.a. through 4.5.c.;

470 On page two, subsection 5.5., after the words “completed
471 and” by striking out the words “a physical inspection conducted

472 (if necessary), a determination is made by” and inserting in lieu
473 thereof a comma and the words “if necessary, a physical
474 inspection conducted,”;

475 On page two, subsection 5.5., after the words “surplus
476 property” by striking out the words “as to” and inserting in lieu
477 thereof the words “shall determine”;

478 On page two, subsection 5.6., after the words “using any
479 other” by striking out the words “approved method, in
480 accordance with §5A-3-45 of the West Virginia Code” and
481 inserting in lieu thereof the words “method approved by W. Va.
482 Code §5A-3-45”;

483 On page two, subsection 5.7., line one, by striking out the
484 word “with” and inserting in lieu thereof the word “within”;

485 And,

486 On page two, subsection 5.7., by striking out the words
487 “shall be” and inserting in lieu thereof the word “are”.

488 (d) The legislative rule filed in the State Register on the
489 twenty-sixth day of July, two thousand six, authorized under the
490 authority of section fourteen, article four, chapter twelve of this
491 code, modified by the Department of Administration to meet the
492 objections of the Legislative Rule-Making Review Committee
493 and refiled in the State Register on the twentieth day of
494 November, two thousand six, relating to the Department of
495 Administration (accountability of state funds and grants, 148
496 CSR 18), is authorized, with the following amendments:

497 On page one, subsection 1.1., after the word “Scope. –“ by
498 inserting the following: “This rule establishes standards and
499 procedures for recipients of state funds and grants to account for
500 the manner in which those funds are spent.”;

501 On page one, section two, after the caption, by striking out
502 “2.1.” and by redesignating subdivisions 2.1.a. through 2.1.h. as
503 subdivisions 2.1. through 2.8.;

504 On page one, subdivision 2.1.a., line two, by striking out the
505 words “engagement performed by” and inserting in lieu thereof
506 the words “agreement between a grantee and”;

507 On page one, subdivision 2.1.b., line two, by striking out the
508 words “engagement performed by” and inserting in lieu thereof
509 the words “agreement between a grantee and”;

510 On page one, subdivision 2.1.g., line one, by striking out the
511 words “engagement performed by” and inserting in lieu thereof
512 the words “agreement between a grantee and”;

513 On page one, subdivision 2.1.g., lines seven and eight, by
514 striking out the words “be in accordance with compliance
515 attestation standards” and inserting in lieu thereof the words
516 “comply with Compliance Attestation Standards”;

517 On page one, subdivision 2.1.g., line thirteen, after the word
518 “purpose.” by striking out the remainder of the subdivision and
519 inserting in lieu thereof the following: “Under specified
520 circumstances, described in section 4 of this rule, certain types
521 of independent audits may be substituted for the required
522 report.”;

523 On page one, subdivision 2.1.h., line seven, by striking out
524 the words “shall means” and inserting in lieu thereof the word
525 “means”;

526 On page two, paragraph 2.1.h.(J)., after the words “pursuant
527 to” by striking out the remainder of the paragraph and inserting
528 in lieu thereof the following: W. Va. Code §33-3-14d, §33-3-33,
529 and §33-12C-7.”;

530 On page two, subsection 3.1., by striking out the word
531 “state’s” and inserting in lieu thereof the word “state”;

532 On page two, subsection 3.1., by striking out the words “the
533 disbursement of the state grant funds” and inserting in lieu
534 thereof the words “how the state grant funds were disbursed”;

535 On page two, subsection 3.2., by striking out the words
536 “The requirement for a report of the disbursement of state grant
537 funds may be satisfied” and inserting in lieu thereof the words

538 “A grantee may satisfy the report requirement of subsection 3.1.
539 of this rule”;

540 On page two, by striking out subsection 3.3. in its entirety
541 and redesignating the remaining subsections accordingly;

542 On page two, subsection 3.4., after the word “Reports” by
543 inserting the words “required by this section”;

544 On page two, subsection 3.4., by striking out the words “a
545 minimum” and inserting in lieu thereof the word “least”;

546 On page two, subsection 3.5., by striking out the words “and
547 if” and inserting in lieu thereof the words “the expenditure and
548 if the expenditure is”;

549 On page two, subsection 3.6., by striking out the words “In
550 the event that” and inserting in lieu thereof the word “If”;

551 On page two, subsection 3.6., by striking out the word
552 “such” and inserting in lieu thereof the word “the”;

553 On page two, by striking out subsection 3.7. in its entirety
554 and inserting in lieu thereof the following:

555 “3.7. The grantee shall submit the required report within
556 two years after the end of the fiscal year in which the grantor
557 disbursed state grants to the grantee. If the grantee’s fiscal year
558 end is different from the State’s fiscal year end (June 30), the
559 grantee shall file the report within two years after the end of its
560 fiscal year following the state fiscal year in which the funds
561 were disbursed.”;

562 On page three, subsection 3.9., by striking out the word
563 “such” and inserting in lieu thereof the word “the”;

564 On page three, subsection 4.1., by striking out the word
565 “An” and inserting in lieu thereof the words “In lieu of the
566 required report, the grantee may submit an”;

567 On page three, subsection 4.1., by striking out the words
568 “may be submitted in lieu of the required report if said audit”
569 and inserting in lieu thereof the words “which”;

570 On page three, subsection 4.1., line eight, after the word
571 “and” by inserting the word “a” and by striking out the word
572 “said” and inserting in lieu thereof the word “the”;

573 On page three, by striking out subsection 4.2. in its entirety
574 and by inserting in lieu thereof the following:

575 “4.2. In lieu of the required report, the grantee may submit
576 a financial audit, performed by an independent CPA, which
577 complies with Government Auditing Standards issued by the
578 Comptroller General of the United States if the audit includes a
579 schedule of state grant receipts and expenditures and a related
580 auditor’s opinion on whether the schedule is fairly stated in
581 relation to the financial statements taken as a whole.”;

582 On page three, subsection 5.1., by striking out the words
583 “due to the fact that” and inserting in lieu thereof the word
584 “because”;

585 On page three, subsection 5.1., by striking out the words
586 “generally accepted government auditing standards” and
587 inserting in lieu thereof the words “Government Auditing
588 Standards”;

589 On page three, subsection 5.1., by striking out the words
590 “due to the fact that an audit is performed that complies” and
591 inserting in lieu thereof the words “because an audit
592 complying”;

593 On page three, subsection 5.1., after the word “A-133” by
594 striking out the word “which”;

595 On page three, subsection 5.1., after the words “The form”
596 by striking out the word “should” and inserting in lieu thereof
597 the word “shall”;

598 On page three, subsection 5.2., by striking out the words
599 “shall rest” and inserting in lieu thereof the word “rests”;

600 On page three, subsection 5.3., by striking out the words
601 “All sworn statements” and inserting in lieu thereof the words
602 “A sworn statement”;

603 On page three, subsection 5.3., after the word “include” by
604 striking out the comma and the words “at a minimum,” and
605 inserting in lieu thereof the words “at least”;

606 On page three, subsection 5.4., by striking out the words
607 “following language shall be utilized for the actual” and, after
608 the word “statement” by inserting the words “shall be in the
609 following form”;

610 On page three, subsection 5.4., by striking out “5.4.1”;

611 On page four, subsection 5.5., line one, after the word
612 “representative” by inserting the words “of the grantee”;

613 On page four, subsection 5.5., after the words “and provide”
614 by striking out the word “their” and inserting in lieu thereof the
615 words “his or her”;

616 On page four, subsection 5.5., after the word “grantor” by
617 striking out the words “of the State grants”;

618 On page four, subsection 5.5., line twelve, by striking out
619 the word “Said” and inserting in lieu thereof the word “The”;

620 On page four, by striking out subsection 5.6. in its entirety
621 and inserting in lieu thereof the following:

622 “5.6. The grantee shall submit the sworn statement of
623 expenditures within two years after the end of the fiscal year in
624 which the grantor disbursed state grants to the grantee. If the
625 grantee’s fiscal year end is different from the State’s fiscal year
626 end (June 30), the grantee shall file the report within two years
627 after the end of its fiscal year following the state fiscal year in
628 which the funds were disbursed.”;

629 On page four, subsection 6.1., after the word “expenditures”
630 by inserting the words “for state grants disbursed after July 1,
631 2003”;

632 On page four, subsection 6.1., after the words “required
633 time” by striking out the words “period for state grants
634 disbursed by the grantor after July 1, 2003”;

635 On page four, subsection 6.1., after the words “grantee
636 complies with” by striking out the word “said” and inserting in
637 lieu thereof the word “its”;

638 On page four, subsection 6.2., by striking out the words
639 “that provided the state grant”;

640 On page four, subsection 6.3., by striking out the words
641 “that provided the state grant” and by striking out the words
642 “The debarment process shall consist of the following.”;

643 On page four, subdivision 6.3.1., after the words “a grantee”
644 by striking out the word “shall” and inserting in lieu thereof the
645 word “should”;

646 On page four, subdivision 6.3.1., after the words “certified
647 mail,” by striking out the remainder of the subdivision and
648 inserting in lieu thereof the following: “return receipt requested,
649 of the reasons and the causes relied upon for the proposed
650 debarment”;

651 On page four, by striking out subdivisions 6.3.2. and 6.3.3.
652 in their entirety and inserting in lieu thereof the following:

653 “6.3.2. If the grantee disputes the proposed debarment, it
654 must submit its argument to the grantor in writing within 30
655 calendar days after receipt of the notice.

656 6.3.3. If a grantee contests the debarment decision, the
657 grantor shall decide the matter in accordance with the provisions
658 of W. Va. Code §29A-5-1 *et seq.*”

659 On page four, subdivision 6.3.4., by striking out the words
660 “shall be” and inserting in lieu thereof the word “is”;

661 On page four, subsection 6.5., line one, by striking out the
662 word “their” and inserting in lieu thereof the word “its”;

663 On page four, subsection 6.5., line three, by striking out the
664 word “for” and inserting in lieu thereof the words “with regard
665 to”;

666 On page four, subsection 6.5., line four, after the word
667 “grants” by striking out the remainder of the subsection and
668 inserting in lieu thereof the following: “from either the same
669 state spending unit or from a different one.”;

670 On page five, subsection 6.7., by striking out the words
671 “Prior to any grantor providing State grants to a person” and
672 inserting in lieu thereof the words “Before disbursing a state
673 grant”;

674 On page five, subsection 6.7., line three, by striking out the
675 word “from” and inserting in lieu thereof the word “with”;

676 On page five, subsection 7.1., by striking out the words
677 “that provides State grants”;

678 On page five, subdivision 7.2.1., line three, by striking out
679 the word “this” and inserting in lieu thereof the words “the
680 notification”;

681 On page five, subdivision 7.2.1., by striking out the words
682 “to convey the reporting requirements under W. Va. Code §12-
683 4-14”;

684 On page five, subsection 7.3., after the word “expenditures”
685 by striking out the remainder of the subsection and inserting in
686 lieu thereof the following: “for a state grant disbursed after July
687 1, 2003, within the required time.”

688 On page five, subsection 7.4., by striking out the words
689 “shall begin” and inserting in lieu thereof the word “begins” and
690 by striking out the words “these rules” and inserting in lieu
691 thereof the words “this rule”;

692 On page five, subsection 7.5., lines two and three, by
693 striking out the words “the requirements of”;

694 On page five, subsection 7.5., lines thirteen and fourteen, by
695 striking out the words “by the grantor”;

696 On page five, subsection 8.1., by striking out the words
697 “Prior to” and inserting in lieu thereof the word “Before”;

698 On page five, subsection 8.1., line two, by striking out the
699 word “grantors” and inserting in lieu thereof the words “a
700 grantor”;

701 On page five, subdivision 8.1.1., line one, by striking out
702 the word “its” and inserting in lieu thereof the word “the”;

703 On page five, subdivision 8.1.1., line two, by striking out
704 the words “to be”;

705 On page five, subdivision 8.1.1., line three, after the word
706 “person” by inserting the words “seeking the grant”;

707 On page five, subdivision 8.1.1., line four, by striking out
708 the word “Sate” and inserting in lieu thereof the word “State”;

709 On page five, subdivision 8.1.1., line eight, after the word
710 “page” by inserting the word “that”;

711 On page five, subdivision 8.1.2., lines three and six, after
712 the word “person” by inserting the words “seeking the grant”;

713 On page five, subdivision 8.1.2., line seven, by striking out
714 the word “their” and inserting in lieu thereof the word “his or
715 her”;

716 On page five, subdivision 8.1.2., line twelve, by striking out
717 the word “that”;

718 On page five, subsection 8.2., lines two, after the word
719 “person” by inserting the words “seeking the grant”;

720 And,

721 On page six, subsection 8.2., by striking out the words
722 “identified as one who is debarred or who has” and inserting in
723 lieu thereof the words “debarred or”.

§64-2-2. Consolidated Public Retirement Board.

- 1 (a) The legislative rule filed in the State Register on the
- 2 twelfth day of July, two thousand six, authorized 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
6 Committee and refiled in the State Register on the nineteenth
7 day of September, two thousand six, relating to the
8 Consolidated Public Retirement Board (deputy sheriff
9 retirement system, 162 CSR 10), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twelfth day of July, two thousand six, authorized under the
12 authority of section one, article ten-d, chapter five of this code,
13 relating to the Consolidated Public Retirement Board (teachers
14 defined contribution system, 162 CSR 3), is authorized.

15 (c) The legislative rule filed in the State Register on the
16 twelfth day of July, two thousand six, authorized under the
17 authority of section one, article ten-d, chapter five of this code,
18 relating to the Consolidated Public Retirement Board (teachers
19 retirement system, 162 CSR 4), is authorized.

20 (d) The legislative rule filed in the State Register on the
21 twelfth day of July, two thousand six, authorized under the
22 authority of section one, article ten-d, chapter five of this code,
23 modified by the Consolidated Public Retirement Board to meet
24 the objections of the Legislative Rule-Making Review
25 Committee and refiled in the State Register on the nineteenth
26 day of September, two thousand six, relating to the
27 Consolidated Public Retirement Board (public employees
28 retirement system, 162 CSR 5), is authorized.

29 (e) The legislative rule filed in the State Register on the
30 twelfth day of July, two thousand six, authorized under the
31 authority of section one, article ten-d, chapter five of this code,
32 modified by the Consolidated Public Retirement Board to meet
33 the objections of the Legislative Rule-Making Review
34 Committee and refiled in the State Register on the nineteenth
35 day of September, two thousand six, relating to the
36 Consolidated Public Retirement Board (refund, reinstatement
37 and loan interest factors, 162 CSR 7), is authorized.

§64-2-3. Division of Personnel.

1 (a) The legislative rule filed in the State Register on the
2 twenty-first day of July, two thousand six, authorized 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 thirtieth day of
7 November, two thousand six, relating to the Division of
8 Personnel (administrative rule of the West Virginia Division of
9 Personnel, 143 CSR 1), is authorized with the following
10 amendments:

11 On page seven, subsection 3.88., after the words “not to
12 exceed” by striking out the number “1,000” and inserting in lieu
13 thereof the number “720”;

14 On page twenty-one, subsection 9.4., after the words “not to
15 exceed” by striking out the number “1,000” and inserting in lieu
16 thereof the number “720”;

17 On page twenty-two, subsection 9.5., by striking subsection
18 (e) in its entirety and by redesignating the remaining subsections
19 accordingly;

20 On page thirty-nine, section nineteen, before the word
21 “Each” by adding “19.1.”;

22 And,

23 On page thirty-nine, section nineteen, by adding a new
24 subsection, designated subsection 19.2. to read as the follows:

25 19.2. Neither this section nor any other provision of this rule
26 shall interfere with the right of the Legislature, its committees,
27 administrative units and staff to have access to agency personnel
28 records under the common law, or pursuant to the provisions of
29 W. Va. Code §§4-2-5, 4-3-4, 4-5-3, 4-10-5, or any other
30 statutory provision giving a legislative agency or subunit access

31 to records of a state agency. The Legislature, its committees,
32 administrative units and staff having access to these records
33 shall maintain the confidentiality of the records, to the extent
34 reasonably possible.

35 (b) The legislative rule filed in the State Register on the
36 twenty-first day of July, two thousand six, authorized under the
37 authority of section four, article five-a, chapter twenty-three and
38 section ten, article six, chapter twenty-nine of this code, relating
39 to the Division of Personnel (workers' compensation temporary
40 total disability, 143 CSR 3), is authorized.

41 (c) The legislative rule filed in the State Register on the
42 seventeenth day of February, two thousand six, authorized under
43 the authority of section seven, article two, chapter five-f of this
44 code, modified by the Division of Personnel to meet the
45 objections of the Legislative Rule-Making Review Committee
46 and refiled in the State Register on the twenty-first day of
47 November, two thousand six, relating to the Division of
48 Personnel (interdepartmental transfer of permanent state
49 employees, 143 CSR 7), is authorized.

§64-2-4. Board of Risk and Insurance Management.

1 The legislative rule filed in the State Register on the twenty-
2 first day of July, two thousand six, authorized under the
3 authority of section fifteen, article thirty, chapter thirty-three of
4 this code, modified by the Board of Risk and Insurance
5 Management to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register on
7 the third day of November, two thousand six, relating to the
8 Board of Risk and Insurance Management (mine subsidence
9 insurance, 115 CSR 1), is authorized.

CHAPTER 152

(Com. Sub. for S.B. 314 - By Senators Minard, Fanning,
Prezioso, Unger and Boley)

[Passed March 5, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the Department of Education and the Arts; 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 the Library Commission to promulgate a legislative rule relating to the Library Commission administrative rule; authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to case services; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to resources manual.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF
EDUCATION AND THE ARTS TO
PROMULGATE LEGISLATIVE RULES.**

§64-4-1. Library Commission.
§64-4-2. Division of Rehabilitation Services.

§64-4-1. Library Commission.

1 The legislative rule filed in the State Register on the
2 twenty-third day of May, two thousand six, authorized under
3 the authority of section twenty, article one, chapter ten of this
4 code, modified by the Library Commission to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the sixteenth
7 day of January, two thousand seven, relating to the Library
8 Commission (Library Commission administrative rule, 173
9 CSR 1) is authorized with the following amendments:

10 On page 4, by striking the section heading and inserting
11 the following, “§173-1-3 Requirements for Receiving
12 Grants.”; and

13 On page 4, following the section heading for section 173-
14 1-3 by inserting a new subsection designated as 3.1, to read
15 as follows: “3.1 A public library must fulfill all of the
16 requirements set forth in this section to be eligible to receive
17 a grant from the library commission.” and renumbering the
18 remaining subsections accordingly;

19 and,

20 On page 7, subsection 5.2, by striking the subsection in
21 its entirety and inserting in lieu thereof the following:

22 5.2 The eligibility requirements contained in section 3 of
23 this rule may be waived if the Commission determines that
24 due to exceptional or uncontrollable circumstances, one or
25 more of the requirements for receiving grants contained in
26 section 3 would impose an undue hardship on a public
27 library. For the purposes of this subsection, exceptional or
28 uncontrollable circumstances may include, but are not limited
29 to, a natural or man-made disaster or a governing authority’s
30 lack of financial resources to provide adequate local funding
31 to support a public library’s operations.

32 On page 8, subsection 5.2, by striking the last sentence of
33 the subsection;

34 and,

35 On page 8 following subsection 5.4, by inserting a new
36 subsection designated as 5.5 to read as follows: “5.5 The
37 provisions of this rule shall be liberally construed to
38 accomplish its objectives and purposes.”

39 On page 8, subsection 6.2, by striking the word, “may”
40 and inserting the word, “shall” and by striking the word,
41 “only”;

42 and,

43 On page 13, subsection 9.1, after the word, “library” by
44 inserting the word, “shall”.

§64-4-2. Division of Rehabilitation Services.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section three, article ten-a, chapter eighteen
4 of this code relating to authorizing the Division of
5 Rehabilitation Services (case services, 130 CSR 1) is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-eighth day of July, two thousand six, authorized under
9 the authority of section three, article ten-a, chapter eighteen
10 of this code relating to the Division of Rehabilitation Services
11 (resources manual, 130 CSR 2) is authorized.

CHAPTER 153

**(Com. Sub. for S.B. 278 - By Senators Minard, Fanning,
Prezioso, Unger and Boley)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Health and Human Resources; 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 certificates of need; authorizing Health Care Authority to promulgate a legislative rule relating to health services offered by health professionals; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to public water system operators; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; authorizing Department of Health and

Human Resources to promulgate a legislative rule relating to recreational water facilities; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing Division of Human Services to promulgate a legislative rule relating to child care center licensing; authorizing Division of Human Services to promulgate a legislative rule relating to child-placing agencies' licensure; authorizing Division of Human Services to promulgate a legislative rule relating to minimum licensing requirements for group residential facilities in West Virginia; authorizing Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing Division of Human Services to promulgate a legislative rule relating to family child care home registration requirements; and authorizing Division of Human Services to promulgate a legislative rule relating to informal and relative family child care home registration requirements.

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.

§64-5-3. Division of Human Services.

§64-5-1. Health Care Authority.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section eight, article two-d, chapter sixteen of
4 this code, modified by the Health Care Authority to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth

7 day of January, two thousand seven, relating to the Health
8 Care Authority (certificate of need, 65 CSR 7) is authorized.

9 (b) The legislative rule filed in the State Register on the
10 twenty-eighth day of July, two thousand six, authorized under
11 the authority of section eight, article two-d, chapter sixteen of
12 this code, modified by the Health Care Authority to meet the
13 objections of the Legislative Rule-Making Review
14 Committee and refiled in the State Register on the eighteenth
15 day of January, two thousand seven, relating to the Health
16 Care Authority (health services offered by health
17 professionals, 65 CSR 17) is authorized with the following
18 amendments:

19 On page one, subsection 1.2., by striking out “@” and
20 inserting in lieu thereof “c”;

21 On page one, section two, by striking subdivision 2.1.c.
22 in its entirety and inserting in lieu thereof the following:

23 “2.1.c. Any facility owned or operated by one or more
24 health professionals licensed, authorized, or organized
25 pursuant to Chapter 30 of the West Virginia Code which
26 offers laboratory or imaging services to patients that are sent
27 by other licensed health care professionals for the sole
28 purpose of obtaining the laboratory or imaging services,
29 regardless of the cost associated with the proposal. A facility
30 shall not be deemed a diagnostic center under subsection
31 2.1.c. if the proportion of laboratory procedures performed on
32 such patients does not exceed 25% of the total laboratory
33 procedures performed by the facility, and the proportion of
34 imaging procedures performed on such patients does not
35 exceed 25% of the total imaging procedures performed by the
36 facility;”;

37 On page two, paragraph 2.1.g.1., after the words “first
38 offered;” by striking out the word “or”;

39 And,

40 On page two, paragraph 2.1.g.2., by changing the period
41 to a semi-colon and inserting the word “or” and the
42 following:

43 “2.1.g.3. Such laboratory or imaging services were
44 offered by the private office practice on the effective date of
45 this rule; provided however, that the number of laboratory or
46 imaging procedures performed on patients who are sent to the
47 private office practice subsequent to the effective date of this
48 rule for the sole purpose of obtaining laboratory or imaging
49 services must remain at or below the level performed on such
50 patients in 2006, or the level established by calculating an
51 annual average based upon calendar years 2004 through
52 2006, inclusive.”.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article one, chapter sixteen of
4 this code relating to the Department of Health and Human
5 Resources (public water systems, 64 CSR 3) is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-eighth day of July, two thousand six, authorized under
8 the authority of section four, article one, chapter sixteen of
9 this code, modified by the Department of Health and Human
10 Resources to meet the objections of the Legislative Rule-
11 Making Review Committee and refiled in the State Register
12 on the twenty-second day of December, two thousand six,
13 relating to the Department of Health and Human Resources
14 (public water system operators, 64 CSR 4) is authorized.

15 (c) The legislative rule filed in the State Register on the
16 twenty-eighth day of July, two thousand six, authorized under
17 the authority of section six, article five-r, chapter sixteen of
18 this code, modified by the Department of Health and Human
19 Resources to meet the objections of the Legislative Rule-
20 Making Review Committee and refiled in the State Register
21 on the nineteenth day of December, two thousand six,
22 relating to the Department of Health and Human Resources
23 (nursing home licensure, 64 CSR 13) is authorized.

24 (d) The legislative rule filed in the State Register on the
25 twenty-eighth day of July, two thousand six, authorized under
26 the authority of section four, article one, chapter sixteen of
27 this code, modified by the Department of Health and Human
28 Resources to meet the objections of the Legislative Rule-
29 Making Review Committee and refiled in the State Register
30 on the twenty-second day of December, two thousand six,
31 relating to the Department of Health and Human Resources
32 (recreational water facilities, 64 CSR 16) is authorized with
33 the following amendments:

34 On page four, section six, by striking out all of subsection
35 6.1. and inserting in lieu thereof a new subsection 6.1., to
36 read as follows:

37 6.1. A recreational water facility that is designed,
38 constructed or renovated after the effective date of this rule
39 shall comply with the National Spa and Pool Institute
40 ANSI/NSPI-1 2003 Standard for Public Swimming Pools,
41 ANSI/NSPI-2 1999 Standard for Public Spas, ANSI/IAF-9
42 2005 Standard for Public Water Parks and ANSI/APSP-7
43 2006 National Standard for Suction Entrapment Avoidance
44 in Swimming Pools, Wading Pools, Spa, Hot Tubs, and
45 Catch Basins. These standards are available through the
46 internet at: [http://www.nspi.org.](http://www.nspi.org;);

47 And,

48 On page nine, section ten, by striking out all of
49 subdivision 10.12.a. and inserting in lieu thereof a new
50 subdivision 10.12.a., to read as follows:

51 10.12.a. Pools with single suction outlets must meet
52 National Spa and Pool Institute ANSI/NSPI-1 2003 Standard
53 for Public Swimming Pools, public spa suction outlets must
54 meet ANSI/NSPI-2 1999 Standard for Public Spas, and
55 Public Water Park suction outlets must meet ANSI/IAF-9
56 2005 Standard for Public Water Parks and ANSI/APSP-7
57 2006 National Standard for Suction Entrapment Avoidance
58 in Swimming Pools, Wading Pools, Spa, Hot Tubs, and
59 Catch Basins. These standards are available through the
60 internet at: <http://www.nspi.org>.

61 (e) The legislative rule filed in the State Register on the
62 twenty-eighth day of July, two thousand six, authorized under
63 the authority of section three, article five, chapter sixteen of
64 this code, modified by the Department of Health and Human
65 Resources to meet the objections of the Legislative Rule-
66 Making Review Committee and refiled in the State Register
67 on the twenty-second day of January, two thousand seven,
68 relating to the Department of Health and Human Resources
69 (vital statistics, 64 CSR 32) is authorized.

70 (f) The legislative rule filed in the State Register on the
71 twenty-eighth day of July, two thousand six, authorized under
72 the authority of section fourteen, article four-c, chapter
73 sixteen of this code, modified by the Department of Health
74 and Human Resources to meet the objections of the
75 Legislative Rule-Making Review Committee and refiled in
76 the State Register on the twenty-second day of December,
77 two thousand six, relating to the Department of Health and
78 Human Resources (emergency medical services, 64 CSR 48)
79 is authorized with the following amendments:

80 On page forty-eight, section eighteen, subsection 18.6,
81 line thirty-nine, following the word “of”, by inserting the
82 words “Examiners for”;

83 On page forty-eight, section eighteen, subsection 18.7,
84 line forty-three, following the word “or” by inserting the
85 words “Examiners for”;

86 And,

87 On page forty-eight, section eighteen, subsection 18.7,
88 line forty-three, following the word “Nurses” by inserting the
89 words “or his or her designee”.

§64-5-3. Division of Human Services.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article two-b, chapter forty-nine
4 of this code, modified by the Division of Human Services to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the sixth day
7 of December, two thousand six, relating to the Division of

8 Human Services (child care center licensing, 78 CSR 1) is
9 authorized with the following amendments:

10 On page eleven, subsection 4.6, by striking out “4.6.a.”
11 and by redesignating paragraphs 4.6.a.1. through 4.6.a.3. as
12 subdivisions 4.6.a. through 4.6.c.;

13 On page twenty, subdivision 8.4.c., by striking out
14 “8.4.d.” and inserting in lieu thereof “8.4.e.”;

15 On page sixty-eight, subsection 19.11, by striking out
16 “19.11.a.” and by redesignating paragraphs 19.11.a.1.
17 through 19.11.a.4. as subdivisions 19.11.a. through 19.11.d.;

18 And,

19 On page seventy-three, section twenty-two, by striking
20 out “22.1.” and by redesignating subdivisions 22.1.a. through
21 22.1.h. as subdivisions 22.1. through 22.8.

22 (b) The legislative rule filed in the State Register on the
23 twenty-eighth day of July, two thousand six, authorized under
24 the authority of section four, article two-b, chapter forty-nine
25 of this code, modified by the Division of Human Services to
26 meet the objections of the Legislative Rule-Making Review
27 Committee and refiled in the State Register on the twentieth
28 day of November, two thousand six, relating to the Division
29 of Human Services (child placing agencies’ licensure, 78
30 CSR 2) is authorized with the following amendments:

31 On page six, subsection 4.4., by striking out “4.4.a.”;

32 On page seven, subsection 4.5., by striking out “4.5.a.”;

33 On page seven, subsection 4.7., by striking out “4.7.1.”;

34 On page eighteen, subdivision 8.1.d., by striking out
35 “8.1.d.1.”;

36 On page twenty-four, subdivision 9.6.1., by striking out
37 “9.6.a.1.”;

38 On page twenty-eight, subsection 10.6., by striking out
39 “10.6.a.”;

40 On page thirty-nine, section seventeen, by striking out
41 “17.1.” and by redesignating subdivisions 17.1.a. through
42 17.1.c as subdivisions 17.1 through 17.3;

43 On page forty, section eighteen, by striking out “18.1.”;

44 On pages fifty and fifty-one, section twenty-six, by
45 striking out “26.1.” and by redesignating subdivisions 26.1.a.
46 through 26.1.c. as subdivisions 26.1. through 26.3.;

47 And,

48 On page fifty-one, section twenty-seven, by striking out
49 “27.1.”.

50 (c) The legislative rule filed in the State Register on the
51 twenty-eighth day of July, two thousand six, authorized under
52 the authority of section four, article two-b, chapter forty-nine
53 of this code, modified by the Division of Human Services to
54 meet the objections of the Legislative Rule-Making Review
55 Committee and refiled in the State Register on the twenty-
56 second day of December, two thousand six, relating to the
57 Division of Human Services (minimum licensing
58 requirements for group residential facilities in West Virginia,
59 78 CSR 3) is authorized with the following amendments:

60 On page two, subsection 2.2, by striking out “2.2.a.”;

61 On pages two and three, subsection 2.3., by striking out
62 “2.3.a.” and by redesignating paragraphs 2.3.a.1. through
63 2.3.6. as subdivisions 2.3.a. through 2.3.f.;

64 On page seventeen, subsection 4.11., by striking out
65 “4.11.a.”;

66 On page seventeen, subsection 4.12., by striking out
67 “4.12.a.”;

68 On pages twenty-two and twenty-three, subsection 5.8.,
69 by striking out “5.8.a.” and by redesignating paragraphs
70 5.8.a.1. through 5.8.4. as subdivisions 5.8.a. through 5.8.d.;

71 On page twenty-three, subsection 5.10., by striking out
72 “5.10.a.”;

73 On pages twenty-six and twenty-seven, subsection 7.1.,
74 by striking out “7.1.a.” and by redesignating paragraphs
75 7.1.a.1. through 7.1.a.5. as subdivisions 7.1.a. through 7.1.e.;

76 On pages twenty-nine and thirty, subsection 7.9., by
77 striking out “7.9.a.” and by redesignating paragraphs 7.9.a.1.
78 through 7.9.a.11. as subdivisions 7.9.a. through 7.9.k.;

79 On page thirty, subsection 8.5., by striking out “8.5.a.”;

80 On page thirty-two, section eight, by striking paragraph
81 8.7.c.10 in its entirety and inserting in lieu thereof the
82 following:

83 “8.7.c.10. Expected outcomes as appropriate.”;

84 On page thirty-two, section eight, by striking paragraphs
85 8.7.d.4 through 8.7.d.9 in their entirety and inserting in lieu
86 thereof the following:

87 “8.7.d.4. Evidence of ability to conduct business in the
88 State of West Virginia; and

89 8.7.d.5. Evidence of a criminal background check.”;

90 On page forty-two, section eleven, by striking paragraph
91 11.2.a.3. in its entirety and inserting in lieu thereof the
92 following:

93 “11.2.a.3. Adult Pulmonary Resuscitation (CPR), unless
94 the organization serves an infant population, in which case
95 both adult and infant cardiopulmonary resuscitation training
96 is required. This training must be updated every two years.”;

97 On page forty-three, section eleven, by striking paragraph
98 11.2.a.14. in its entirety and inserting in lieu thereof the
99 following:

100 “11.2.a.14. Heimlich’s maneuver or abdominal thrust or
101 any other life-saving technique for choking/obstructed airway
102 as recognized by the American Red Cross or equivalent.”;

103 On page fifty-four, subsection 13.1, by striking out
104 “13.1.a.”;

105 On page fifty-four, subsection 13.2., by striking out
106 “13.2.a.” and by redesignating paragraph 13.2.a.1. as
107 subdivision 13.a.;

108 On page sixty, subsection 13.6., by striking out “13.6.a.”;

109 On page sixty, subsection 14.1., by striking out “14.1.a.”
110 and by redesignating paragraphs 14.1.a.1. through 14.1.a.6.
111 as subdivisions 14.1.a. through 14.1.f.;

- 112 On page sixty-one, subsection 14.3., by striking out
113 “14.3.a.” and by redesignating paragraphs 14.3.a.1. through
114 14.3.a.4. as subdivisions 14.3.a. through 14.3.d.;
- 115 On page sixty-seven, subsection 14.6., by striking out
116 “14.6.a.”;
- 117 On page sixty-nine, subsection 14.8., by striking out
118 “14.8.a.”;
- 119 On page seventy-two, subsection 14.13., by striking out
120 “14.13.a.”;
- 121 On page seventy-three, subsection 14.14., by striking out
122 “14.14.a.” and by redesignating paragraphs 14.14.a.1.
123 through 14.1.a.5. as subdivisions 14.1.a. through 14.1.e.;
- 124 On page seventy-seven, subsection 14.19., by striking out
125 “14.19.a.”;
- 126 On page eighty-two, subdivision 15.4.h., by redesignating
127 paragraphs 15.4.g.1. through 15.4.g.3 as 15.4.h.1. through
128 15.4.h.3. and by redesignating the second subdivision 15.4.h.
129 as 15.4.i.;
- 130 On page eighty-six, subdivision 16.4., by striking out
131 “16.4.a.”;
- 132 On pages ninety-one and ninety-two, subsection 18.2, by
133 striking out “18.2.a.”, by redesignating subdivisions 18.2.a.1.
134 through 18.2.a.5. as subdivisions 18.2.a. through 18.2.e. and
135 by redesignating subparagraph 18.2.a.5.A. through
136 18.2.a.5.B. as paragraphs 18.2.e.1. through 18.2.e.5.;
- 137 On page ninety-two, subsection 18.3., by striking out
138 “18.3.a.”;
- 139 On page ninety-four, subsection 18.6., by striking out
140 “18.6.a.”;
- 141 On page ninety-five, subsection 18.7., by striking out
142 “18.7.a.” and by redesignating paragraphs 18.7.a.1. through
143 18.8.a.4. as subdivisions 18.7.a. through 18.7.d.;
- 144 On page ninety-five, subsection 19.1., by striking out
145 “19.1.a.” and by redesignating paragraphs 19.1.a.1. through
146 19.1.a.6. as subdivisions 19.1.a. through 19.1.f.;

147 On page one hundred six, subsection 20.5., by striking
148 out “20.5.a. Abrogation of Client Rights” and “20.5.a.1.”;

149 On page one hundred seven, subsection 21.1., by striking
150 out “21.1.a.”;

151 On page one hundred seven, subsection 22.1., by striking
152 out “22.1.a.”;

153 On page one hundred eight, subsection 22.2, by striking
154 out “22.1.a.”;

155 On page one hundred nine, subsection 22.5, by striking
156 out “22.5.a” and by redesignating paragraphs 22.5.a.1.
157 through 22.5.a.4. as subdivisions 22.5.a. through 22.5.d.;

158 On page one hundred eleven, subsection 22.8, by striking
159 out “22.8.a”;

160 And,

161 On page one hundred twelve, subsection 22.10, by
162 striking out “22.10.a”.

163 (d) The legislative rule filed in the State Register on the
164 twenty-eighth day of July, two thousand six, authorized under
165 the authority of section four, article two-b, chapter forty-nine
166 of this code, modified by the Division of Human Services to
167 meet the objections of the Legislative Rule-Making Review
168 Committee and refiled in the State Register on the twenty-
169 second day of January, two thousand seven, relating to the
170 Division of Human Services (family child care facility
171 licensing requirements, 78 CSR 18) is authorized with the
172 following amendments:

173 On pages four and five, subsection 4.3., by striking out
174 “4.3.a.” and by redesignating paragraphs 4.3.a.1. through
175 4.3.a.4. as subdivisions 4.3.a. through 4.3.d.;

176 On page twelve, subsection 8.1., by striking out “8.1.a.”,
177 by redesignating paragraphs 8.1.a.1. through 8.1.a.4. as
178 subdivisions 8.1. through 8.4. and by redesignating

179 subparagraphs 8.1.a.4.a. through 8.1.a.4.d. as paragraphs
180 8.4.a. through 8.4.d.;

181 On page nineteen, paragraph 14.1.a.5., by redesignating
182 subparagraphs 14.1.a.5.a. and 14.1.a.5.b. as subparagraphs
183 14.1.a.5.A. and 14.1.a.5.B.;

184 On page twenty-eight, subsection 18.3., by striking out
185 “18.3.a.” and by designating paragraphs 18.3.a.1. through
186 18.3.a.7. as subdivisions 18.3.a. through 18.3.g.;

187 And,

188 On page thirty-four, section twenty-four, by striking out
189 “24.1.”.

190 (e) The legislative rule filed in the State Register on the
191 twenty-eighth day of July, two thousand six, authorized under
192 the authority of section four, article two-b, chapter forty-nine
193 of this code, modified by the Division of Human Services to
194 meet the objections of the Legislative Rule-Making Review
195 Committee and refiled in the State Register on the sixth day
196 of December, two thousand six, relating to the Division of
197 Human Services (family child care home registration
198 requirements, 78 CSR 19) is authorized with the following
199 amendments:

200 On page thirteen, subsection 7.3, by striking out “7.3.a.”
201 and by redesignating paragraphs 7.3.a.1. through 7.3.a.5. as
202 subdivisions 7.3.a. through 7.3.e.;

203 On page eighteen, section ten, subsection 10.1.d.1, line
204 eleven, following the numeral “6”, by inserting the word
205 “months”;

206 On page twenty-three, subsection 12.2., by striking out
207 “12.2.a.” and by redesignating paragraphs 12.2.a.1. through
208 12.2.a.10. as subdivisions 12.2.a. through 12.2.j.;

209 On pages twenty-six and twenty-seven, subsection 16.1.,
210 by striking out “16.1.a.” and by redesignating paragraphs

211 16.1.a.1. through 16.1.a.6. as subdivisions 16.1.a. through
212 16.1.f.;

213 On page twenty-seven, subsection 16.2., by striking out
214 “16.2.a.” and by redesignating paragraphs 16.2.a.1. through
215 16.2.a.7. as subdivisions 16.2.a. through 16.2.g.;

216 On page twenty-eight, subsection 17.1., by striking out
217 “17.1.a.” and by redesignating paragraphs 17.1.a.1. through
218 17.1.a.7. as subdivisions 17.1.a. through 17.1.d.;

219 On pages twenty-eight and twenty-nine, subsection 17.2.,
220 by striking out “17.2.a.” and by redesignating paragraphs
221 17.2.a.1. through 17.2.a.6. as subdivisions 17.2.a. through
222 17.2.f.;

223 And,

224 On page thirty, section twenty, by striking out “20.1.”

225 (f) The legislative rule filed in the State Register on the
226 twenty-eighth day of July, two thousand six, authorized under
227 the authority of section four, article two-b, chapter forty-nine
228 of this code, modified by the Division of Human Services to
229 meet the objections of the Legislative Rule-Making Review
230 Committee and refiled in the State Register on the twenty-
231 second day of January, two thousand seven, relating to the
232 Division of Human Services (informal and relative family
233 child care home registration requirements, 78 CSR 20) is
234 authorized with the following amendments:

235 On pages nine and ten, subsection 7.4., by striking out
236 “7.4.a.” and by redesignating paragraphs 7.4.a.1. and 7.4.a.2.
237 as subdivisions 7.4.a. and 7.4.b.;

238 On page ten, subsection 7.5., by striking out “7.5.a.” and
239 by redesignating paragraphs 7.5.a.1. and 7.5.a.2 as
240 subdivisions 7.5.a. and 7.5.b.;

241 On page fourteen, section twelve, by striking out “12.1.
242 General Transportation.”, by redesignating subdivisions
243 12.1.a. and 12.1.b. as subsections 12.1. and 12.2. and by

244 redesignating paragraphs 12.1.a.1. through 12.1.a.3. as
245 subdivisions 12.1.a. through 12.1.c.;

246 And,

247 On page seventeen, section seventeen, by striking out
248 “17.1.”.

CHAPTER 154

**(Com. Sub. for S.B. 276 - By Senators Minard, Fanning,
Prezioso, Unger and Boley)**

[Passed March 5, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; 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 Division of Corrections to promulgate a legislative rule relating to parole supervision; authorizing State Fire Commission to promulgate a legislative

rule relating to the State Building Code; authorizing State Fire Commission to promulgate legislative rule relating to certification and evaluation of local fire departments; authorizing Division of Homeland Security and Emergency Management to promulgate legislative rule relating to mine and industrial accident rapid response system; authorizing Regional Jail and Correctional Facility Authority to promulgate legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails and operated by authority; and authorizing State Police to promulgate a legislative rule relating to the West Virginia DNA Data Bank.

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 THE DEPARTMENT
OF MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE
LEGISLATIVE RULES.**

- §64-6-1. Division of Corrections.
- §64-6-2. State Fire Commission.
- §64-6-3. Homeland Security and Emergency Management.
- §64-6-4. Regional Jail and Correctional Facility Authority.
- §64-6-5. State Police.

§64-6-1. Division of Corrections.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section two, article thirteen, chapter sixty-two
4 of this code relating to the Division of Corrections (parole
5 supervision, 90 CSR 2) is authorized with the following
6 amendments:

7 On page one, section two, by striking out “2.1.”;

- 8 On pages one and two, section two, by redesignating
9 subdivisions a. through r. as subdivisions 2.1. through 2.18;
- 10 On page two, subdivision 2.1.r., line four, after the word
11 “jurisdictions,” by striking out the word “you” and inserting
12 in lieu thereof the words “the parolee”;
- 13 On page two, section four, by striking out “4.1.”;
- 14 And,
- 15 On pages two and three, section four, by redesignating
16 subdivisions a. through e. as subdivisions 4.1. through 4.5.

§64-6-2. State Fire Commission.

- 1 (a) The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand six, authorized under
3 the authority of section five-b, article three, chapter twenty-
4 nine of this code relating to the State Fire Commission (State
5 Building Code, 87 CSR 4) is authorized.
- 6 (b) The legislative rule filed in the State Register on the
7 twenty-sixth day of July, two thousand six, authorized under
8 the authority of section five, article three, chapter twenty-nine
9 of this code, modified by the State Fire Commission to meet
10 the objections of the Legislative Rule-Making Review
11 Committee and refiled in the State Register on the second day
12 of November, two thousand six, relating to the State Fire
13 Commission (certification and evaluation of local fire
14 departments, 87 CSR 6) is authorized with the following
15 amendments:
- 16 On page four, by striking out subsection 5.2 in its entirety
17 and by renumbering the remaining subsections accordingly;
18 and
- 19 On page nine, subdivision 10.2.f., following the word
20 “subsection” by striking out “3.3” and inserting in lieu
21 thereof “3.2”; and

22 On page twelve, subsection 12.3, line eight, following the
23 word “subdivision”, by striking out “10.2.b” and inserting in
24 lieu thereof “10.3.b”.

§64-6-3. Homeland Security and Emergency Management.

1 The legislative rule filed in the State Register on the first
2 day of May, two thousand six, authorized under the authority
3 of section five, article five-b, chapter fifteen of this code,
4 modified by the Division of Homeland Security and
5 Emergency Management to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the nineteenth day of January, two
8 thousand seven, relating to the Division of Homeland
9 Security and Emergency Management (mine and industrial
10 accident rapid response system, 170 CSR 1) is authorized
11 with the following amendments:

12 On page one, subsection 1.1, line one, by striking out the
13 word “coordinating” and inserting in lieu thereof the words
14 “to coordinate”;

15 On page one, subsection 1.1, lines two through four, by
16 striking out the word “governing” and inserting in lieu
17 thereof the words “to govern”;

18 On page two, subsection 2.2., line one, after the word
19 “means”, by inserting the words “Mine and Industrial
20 Accident Emergency Operations Center, including”;

21 On pages two and three, by striking out subsections 2.6.,
22 2.7. and 2.8. in their entirety;

23 On page three, by striking out section three in its entirety
24 and by renumbering the following sections accordingly;

25 On page three, subsection 4.1., line three, by capitalizing
26 the word “director”;

27 On page three, subsection 4.2., line two, by striking out
28 the word “Such”, by capitalizing the word “recording” and by
29 inserting a comma after the word “automatic”;

30 On page three, subsection 4.2., lines three and four, by
31 striking out the words “to include” and inserting in lieu
32 thereof the word “including” and by striking out the words
33 “appropriate, approved and authorized”;

34 On page three, subsection 4.2., line four, after the words
35 “representative of” by inserting the word “a”, by striking out
36 the words “regulatory, enforcement, or investigative
37 agencies” and inserting in lieu thereof the words
38 “government agency responsible for enforcing rules and
39 regulations and investigating violations relating to mining
40 and industrial safety”;

41 On page three, subsection 4.2., line five, by striking out
42 the words “Such requests” and inserting in lieu thereof the
43 words “The request”, by striking out the words “the nature of
44 the need for such” and inserting in lieu thereof the words
45 “why the” and, after the word “information”, by inserting the
46 words “is needed”;

47 On page three, subsection 5.1., line one, by striking out
48 the words “shall be” and inserting in lieu thereof the word
49 “is”;

50 On page three, subsection 5.1., line two, by striking out
51 the word “purposes” and inserting in lieu thereof the word
52 “purpose” and after “§29B-1” by inserting “-1”;

53 On page four, by striking out subsection 5.2. in its
54 entirety and by renumbering the remaining subsections
55 accordingly;

56 On page four, subsection 5.3., by striking out the word
57 “should” and inserting in lieu thereof the word “must”;

58 On page four, subsection 5.4., after “W. Va. Code §29B-
59 1” by inserting “-1” and, after the words “et seq.” by striking
60 out the remainder of the subsection;

61 On page four, subsection 6.1., after the word
62 “considered”, by striking out the word “a” and, after the word
63 “requests” by inserting the words “in writing”;

64 And,

65 On page four, by striking out subsection 6.2. in its
66 entirety and renumbering the remaining subsection
67 accordingly.

§64-6-4. Regional Jail and Correctional Facility Authority.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section ten, article twenty, chapter thirty-one
4 of this code, modified by the Regional Jail and Correctional
5 Facility Authority to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the eighteenth day of January, two thousand
8 seven, relating to the Regional Jail and Correctional Facility
9 Authority (criteria and procedures for determination of
10 projected cost per day for inmates incarcerated in regional
11 jails operated by the Authority, 94 CSR 7) is authorized with
12 the following amendments:

13 On page one, subsection 2.1., line one, by striking out
14 “establishes” and inserting in lieu thereof “shall establish”;

15 On page one, subsection 2.1., line three, after the word
16 “including”, by inserting a comma;

17 On page one, subsection 2.1, line six, after the period by
18 inserting the following:

19 “Provided, that an operational reserve fund may not
20 exceed the amount of three months of anticipated operational
21 expenditures.”

22 On page one, section three, by striking out “3.1.”;

23 On page one, section three, line two, after the word
24 “entity” by inserting the words “who has or may have” and,
25 after the word “inmate”, by striking out the words “may be”;

26 On page one, subsection 4.1., after the word “Authority”,
27 by striking out the word “prepares” and inserting in lieu
28 thereof the words “shall prepare”, after the word “statement”
29 by changing the period to a comma and striking out the
30 words “This statement” and inserting in lieu thereof the word
31 “which”, and, after the word “at”, by inserting the word “a”;

32 And,

33 On page one, subsection 4.1, line three, after the word
34 “charges”, by inserting the words “per entity”.

§64-6-5. State Police.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article two-b, chapter fifteen of
4 this code, modified by the State Police to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on the twenty-third day of
7 October, two thousand six, relating to the State Police (West
8 Virginia DNA Data Bank, 81 CSR 9) is authorized.

CHAPTER 155

**(Com. Sub. for H.B. 2590 - By Delegates Brown, Miley,
Burdiss and Talbott)**

[Passed March 8, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

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 Department of Revenue 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 Alcoholic Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to licensing of retail liquor stores; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing & operations procedures; authorizing the Insurance Commissioner to promulgate a legislative rule relating to rate

filing requirements for title insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to individual limited health benefit plans; authorizing the Insurance Commissioner to promulgate a legislative rule relating to group limited health benefit plans; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to abusive tax shelters; and authorizing the Tax Commissioner to promulgate a legislative rule relating to consumers sales & service tax & use tax - reduced sales tax on food.

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 THE DEPARTMENT
OF REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. Alcohol Beverage Control Commission.

§64-7-2. Insurance Commissioner.

§64-7-3. Racing Commission.

§64-7-4. Tax Department.

§64-7-1. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand six, authorized under
3 the authority of section ten, article seven, chapter sixty, of
4 this code, relating to the Alcohol Beverage Control
5 Commission (private club licensing, 175 CSR 2), is
6 authorized with the following amendment:

7 On page one, by redesignating subdivision 2.5.1. as
8 subsection 2.6. and renumbering the remaining subsections
9 accordingly;

10 On page fifteen, subdivision 6.7.1., after the word
11 “effect” by striking out the comma and the word “and”;

12 And,

13 On page fifteen, subdivision 6.7.2. following the word
14 “rule” by inserting a comma and the following: “and

15 6.7.3. A suspension order suspending a license in the
16 interest of public safety, as specified in W. Va. Code §60-7-
17 13a”.

18 (b) The legislative rule filed in the State Register on the
19 twenty-eighth day of July, two thousand six, authorized under
20 the authority of section six, article three-A, chapter sixty, of
21 this code, relating to the Alcohol Beverage Control
22 Commission (licensing of retail liquor stores, 175 CSR 5), is
23 authorized, with the following amendment:

24 On page fifteen, by redesignating paragraph 8.1.1.a. as
25 subdivision 8.1.2. and by renumbering the remaining
26 subdivision accordingly;

27 And,

28 On page fifteen, subdivision 8.1.1.a., line two, after the
29 word “for” by striking out the word “the” and inserting in
30 lieu thereof the word “a” and, after the word “investigation”,
31 by inserting the following: “undertaken pursuant to
32 subdivision 8.1.1. of this rule”.

33 (c) The legislative rule filed in the State Register on the
34 twenty-eighth day of July, two thousand six, authorized under
35 the authority of section twenty-two, article sixteen, chapter
36 eleven, of this code, relating to the Alcohol Beverage Control
37 Commission (nonintoxicating beer licensing and operations
38 procedures, 176 CSR 1), is authorized, with the following
39 amendments:

40 On page four, by redesignating paragraph 3.1.2.a. as
41 subdivision 3.1.3. and renumbering the remaining
42 subdivision accordingly;

43 On page four, paragraph 3.1.2.a., line two, after the words
44 “by the ABCC for” by striking out the word “the” and
45 inserting in lieu thereof the word “a” and after the word
46 “investigation” by inserting the following: “undertaken
47 pursuant to subdivision 3.1.2. of this rule”;

48 On page twelve, subdivision 3.2.2, on line three, after the
49 word “manufacturer” by striking out the word “whose chief
50 place of business is outside of the State of West Virginia”;
51 and

52 On page twenty-seven, following paragraph 13.2.1.3, by
53 inserting a new paragraph designated as 13.2.1.4, to read as
54 follows:

55 “13.2.1.4. The provisions of this rule and W. Va. Code §
56 11-16-1 et. seq. shall be part of all franchise agreements
57 subject to the provisions of W. Va. Code § 11-16-21 and may
58 not be altered by the parties.”;

59 On page twenty, subdivision 6.1.14, by striking out the
60 word “and” and the comma;

61 On page twenty, subdivision 6.1.15, by changing the
62 period to a semicolon and inserting the word “and” and a
63 comma;

64 And,

65 On page twenty, following subdivision 6.1.15, by
66 inserting a new subdivision, designated as 6.1.16, to read as
67 follows:

68 “6.1.16. For any person to manufacture, sell, transport,
69 deliver, furnish, purchase, consume or possess any
70 nonintoxicating beer except as provided by the laws of this
71 state or rules lawfully promulgated by the Commissioner.”.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand six, authorized
3 under the authority of section ten, article two, chapter thirty-
4 three, of this code, modified by the Insurance Commissioner
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twentieth day of December, two thousand six, relating to the
8 insurance Commissioner (rate filing requirements for title
9 insurance companies, 114 CSR 77), is authorized with the
10 following amendment:

11 On page one, section 3, subsection 3.3, line thirty-five,
12 following the words “household purposes”, by striking out
13 the comma and the words “where the insurance affords
14 coverage in whole or in part to the person occupying the
15 property”.

16 (b) The legislative rule filed in the State Register on the
17 twenty-seventh day of July, two thousand six, authorized
18 under the authority of section ten, article two, chapter thirty-
19 three, of this code, modified by the Insurance Commissioner
20 to meet the objections of the Legislative Rule-Making
21 Review Committee and refiled in the State Register on the
22 twentieth day of December, two thousand six, relating to the
23 insurance Commissioner (individual limited health benefits
24 plans, 114 CSR 78), is authorized with the following
25 amendment:

26 On page two, section five, subsection 5.3, line eighteen,
27 by striking out the word “An” and inserting in lieu thereof the
28 following: “Except as provided in section three, article

29 fifteen-d, chapter thirty-three of the Code of West Virginia,
30 an”;

31 And,

32 On page three, section six, after subsection 6.3., by
33 inserting a new subsection, designated subsection 6.4., to
34 read as follows:

35 “6.4. Before approving any plan or policy under this rule,
36 the Commissioner must find that the plan or policy furthers
37 the legislative purpose of W. Va. Code §33-15D-1, *et seq.*, by
38 providing substantial preventative care and primary care
39 benefits. This subsection does not apply to any plan or policy
40 approved by the Commissioner prior to the effective date of
41 this rule unless and until the provider of the plan or policy
42 makes a subsequent filing with regard to such plan or
43 policy.”

44 (c) The legislative rule filed in the State Register on the
45 twenty-seventh day of July, two thousand six, authorized
46 under the authority of section ten, article two, chapter thirty-
47 three, of this code, modified by the Insurance Commissioner
48 to meet the objections of the Legislative Rule-Making
49 Review Committee and refiled in the State Register on the
50 twentieth day of December, two thousand six, relating to the
51 insurance Commissioner (group limited health benefits plans,
52 114 CSR 79), is authorized, with the following amendment:

53 On page two, section seven, after subsection 7.3., by
54 inserting a new subsection, designated subsection 7.4., to
55 read as follows:

56 “7.4. Before approving any plan or policy under this rule,
57 the Commissioner must find that the plan or policy furthers
58 the legislative purpose of W. Va. Code §33-16F-1, *et seq.*, by
59 providing substantial preventative care and primary care
60 benefits. This subsection does not apply to any plan or policy
61 approved by the Commissioner prior to the effective date of

62 this rule unless and until the provider of the plan or policy
63 makes a subsequent filing with regard to such plan or
64 policy.”.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section six, article twenty-three, chapter
4 nineteen, of this code, modified by the Racing Commission
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 seventeenth day of January, two thousand seven, relating to
8 the Racing Commission (thoroughbred racing, 178 CSR 1),
9 is authorized, with the following amendment:

10 On page four, subsection 2.53, after the word “substance”
11 by striking out the comma;

12 On page fifty-eight, subsection 66.10., after the word
13 “electrolytes.” by striking out the words “Prerace-testing”
14 and inserting in lieu thereof the words “Pre-race testing”;

15 On page fifty-eight, subsection 66.10., after the words “If
16 testing” by striking out “post race” and inserting in lieu
17 thereof the word “post-race”;

18 On page fifty-eight, subsection 66.10., after the words
19 “dioxide concentration.” by striking out the word “If” and
20 capitalizing the word “the”;

21 On page fifty-eight, subsection 66.10., after the words
22 “racing chemist” by inserting the words “shall inform the
23 stewards if he or she”;

24 On page fifty-eight, subsection 66.10., after the words
25 “per liter” by changing the comma to a period and by striking
26 out the remainder of the subsection;

27 On page fifty-eight, subsection 66.11., by striking out the
28 word “shall” and inserting in lieu thereof the word “do”;

29 On page sixty-three, by striking out subdivision 73.2.1.
30 through subparagraph 73.2.1.1.c. and inserting in lieu thereof
31 the following:

32 “73.2.a. Acting with reasonable cause, the stewards or a
33 designated representative of the Racing Commission may
34 direct any licensee, occupational permit holder or employee
35 to deliver a specimen of urine in the presence of a designated
36 person or subject himself or herself to the taking of a sample
37 of blood or other bodily fluids by a designated person.”

38 And,

39 On pages sixty-three and sixty-four, by redesignating
40 subdivisions 73.2.2. through 7.3.5. as subdivisions 73.2.b.
41 through 73.2.e.

§64-7-4. Tax Department.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand six, authorized under
3 the authority of section five, article ten, chapter eleven, of
4 this code, modified by the Tax Department to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the second day
7 of November, two thousand six, relating to the Tax
8 Department (abusive tax shelters, 110 CSR 10J), is
9 authorized, with the following amendments:

10 On page five, paragraph 3.2.17.1., on line three, by
11 striking out “3.2.13.1” and inserting in lieu thereof “3.2.13”;

12 On page fifteen, subdivision 6.3.2., by striking out the
13 words “Makes or causes another person to make a false or
14 fraudulent statement with respect to securing a tax benefit or
15 a gross valuation as to any material matter, and”;

16 And,

17 On page seventeen, subdivision 7.3.2., by striking out the
18 subdivision in its entirety and renumbering the remaining
19 subdivision.

20 (b) The legislative rule filed in the State Register on the
21 twenty-second day of December, two thousand five,
22 authorized under the authority of section five, article ten,
23 chapter eleven, of this code, modified by the Tax Department
24 to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the State Register on the
26 eighth day of June, two thousand six, relating to the Tax
27 Department (Consumers Sales and Service Tax and Use Tax
28 - reduced sales tax on food, 110 CSR 15H), is authorized,
29 with the following amendment:

30 On page eight, section 5.1, line one, after the word
31 "Section", by striking out "2" and inserting in lieu thereof
32 "3".



CHAPTER 156

**(Com. Sub. for S.B. 274 - By Senators Minard, Fanning,
Prezioso, Unger and Boley)**

[Passed March 4, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

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 Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Transportation; 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 the transportation of hazardous wastes upon the roads and highways; authorizing the Division of Highways to promulgate a legislative rule relating to waste tire remediation and environmental cleanup; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to disclosure of information from the files of the Division of Motor Vehicles.

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 THE 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 twenty-fourth day of July, two thousand six, authorized under
3 the authority of section seven, article eighteen, chapter
4 twenty-two of this code relating to the Division of Highways
5 (transportation of hazardous wastes upon the roads and
6 highways, 157 CSR 7) is authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-fourth day of July, two thousand six, authorized under
9 the authority of section eight, article two-a, chapter seventeen

10 of this code relating to the Division of Highways (waste tire
11 remediation and environmental cleanup, 157 CSR 8) is
12 authorized.

§64-8-2. Division of Motor Vehicles.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of sections nine and twelve, article two-a,
4 chapter seventeen-a of this code, modified by the Division of
5 Motor Vehicles to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the second day of November, two thousand six,
8 relating to the Division of Motor Vehicles (disclosure of
9 information from the files of the Division of Motor Vehicles,
10 91 CSR 8) is authorized with the following amendment:

11 On page one, line six, by striking out the words
12 “POLICIES PERTAINING TO THE”;

13 On page one, section three by striking out the caption and
14 inserting in lieu thereof the following: “Statutory
15 Background”;

16 On page one, subsection 3.1., line four, after the words
17 “use of the information.”, by creating a new subsection,
18 designated subsection 3.2.;

19 On page one, subsection 3.1., line six, after the word
20 “seq.”, by creating a new subsection, designated subsection
21 3.3., and by renumbering the remaining subsections
22 accordingly;

23 On page two, subsection 4.1., by placing quotation marks
24 around the words “Appropriate identification”, by striking

25 out the words “is defined as” and by inserting in lieu thereof
26 the word “means”;

27 On page two, subsection 4.2., by placing quotation marks
28 around the words “Consensual users”, by striking out the
29 word “are” and by inserting in lieu thereof the word “means”;

30 On page two, subsection 4.3., by placing quotation marks
31 around the words “Permitted users”, by striking out the word
32 “are” and by inserting in lieu thereof the word “means”;

33 On page two, subsection 4.4., by placing quotation marks
34 around the word “Requestor”, by striking out the words “is
35 defined as” and by inserting in lieu thereof the word
36 “means”;

37 On page two, subsection 4.5., by placing quotation marks
38 around the words “Required users”, by striking out the word
39 “are” and by inserting in lieu thereof the word “means”;

40 On page two, subsection 4.6., by placing quotation marks
41 around the words “Uniform Motor Vehicle Records
42 Disclosure Act” and the word “Act”;

43 On page two, subsection 4.7., by placing quotation marks
44 around the words “Written permission”;

45 On page four, after paragraph 6.2.a.3., by inserting a new
46 paragraph, designated paragraph 6.2.a.4., to read as follows:

47 If the Division discloses personal information pursuant to
48 W. Va. Code §17A-2A-7 and this subdivision, the Division
49 shall notify the person whose personal information was
50 requested in writing that the information has been disclosed
51 as required by statute and this rule. The notice provisions of
52 this paragraph do not apply to disclosure of information

53 through bulk information contracts or disclosure pursuant to
54 a subpoena or court order.;

55 On page five, subsection 7.1., by striking out the words
56 “driver’s license record” and inserting in lieu thereof the
57 words “abstract of operating record (7 years)”;

58 And,

59 On page five, subsection 7.2., by striking out the words
60 “driver history” and inserting in lieu thereof the words
61 “complete abstract of operating record”.

CHAPTER 157

**(Com. Sub. for S.B. 319 - By Senators Minard, Fanning,
Prezioso, Unger and Boley)**

[Passed March 9, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies of the state 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 Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia agricultural liming materials; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia Plant Pest Control Act; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to noxious weeds; authorizing Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing State Auditor to promulgate a legislative rule relating to transaction fees and rate structures; authorizing State Conservation Agency to promulgate a legislative rule relating to the State Conservation Committee; authorizing Board of Examiners in Counseling to promulgate a legislative rule relating to licensing; authorizing Board of Examiners in Counseling to promulgate a legislative rule relating to license renewal and continuing education requirements; authorizing Hospital Finance Authority to promulgate a legislative rule relating to establishment of a fee schedule and costs allocations applicable to the issuance of bonds by the authority; authorizing Board of Landscape Architects to promulgate a legislative rule relating to registration of landscape architects; authorizing Board of Landscape Architects to promulgate a legislative rule relating to continuing education; authorizing Board of Landscape Architects to promulgate a legislative rule relating to fees; authorizing Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures for physicians and podiatrists; authorizing Board of Osteopathy to promulgate a legislative rule relating to osteopathic physician assistants; authorizing Board of Pharmacy to promulgate a legislative rule relating to ephedrine

and pseudoephedrine control; authorizing Real Estate Commission to promulgate a legislative rule relating to requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage businesses; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to continuing education; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to dialysis technicians; authorizing Secretary of State to promulgate a legislative rule relating to procedures for canvassing elections; authorizing Secretary of State to promulgate a legislative rule relating to procedures for recount of election results; authorizing Secretary of State to promulgate a legislative rule relating to absentee voting by military voters who are members of reserve units called to active duty; authorizing Secretary of State to promulgate a legislative rule relating to procedures for handling ballots and counting write-in votes in counties using optical scan ballots; authorizing Secretary of State to promulgate a legislative rule relating to the Uniform Commercial Code; repealing a rule promulgated by the Secretary of State relating to West Virginia Product Lien Central Filing System; authorizing State Treasurer to promulgate a legislative rule relating to providing services to political subdivisions; and authorizing Board of Veterinary Medicine to promulgate a legislative rule relating to registration of veterinary technicians.

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 to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

- §64-9-1. Commissioner of Agriculture.
- §64-9-2. Board of Architects.
- §64-9-3. State Auditor.
- §64-9-4. State Conservation Agency.
- §64-9-5. Board of Examiners in Counseling.
- §64-9-6. Hospital Finance Authority.
- §64-9-7. Board of Landscape Architects.
- §64-9-8. Massage Therapy Licensure Board.
- §64-9-9. Board of Medicine.
- §64-9-10. Board of Osteopathy.
- §64-9-11. Board of Pharmacy.
- §64-9-12. Real Estate Commission.
- §64-9-13. Board of Registered Professional Nurses.
- §64-9-14. Secretary of State.
- §64-9-15. State Treasurer.
- §64-9-16. Board of Veterinary Medicine.

§64-9-1. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of July, two thousand six, authorized under
3 the authority of section two, article nine, chapter nineteen of
4 this code, modified by the Commissioner of Agriculture to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the fifteenth
7 day of September, two thousand six, relating to the
8 Commissioner of Agriculture (animal disease control, 61
9 CSR 1) is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twentieth day of July, two thousand six, authorized under the
12 authority of section eight, article fifteen-a, chapter nineteen
13 of this code, modified by the Commissioner of Agriculture to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the fifteenth
16 day of September, two thousand six, relating to the
17 Commissioner of Agriculture (West Virginia Agricultural
18 Liming Materials Law, 61 CSR 6A) is authorized with the
19 following amendments:

20 On page three, subsection 6.2., after the word
21 “commissioner”, by striking out the word “shall” and
22 inserting in lieu thereof the word “may”;

23 And,

24 On page three, subsection 8.1., by striking out “8.1.a.”

25 (c) The legislative rule filed in the State Register on the
26 twentieth day of July, two thousand six, authorized under the
27 authority of section three, article twelve, chapter nineteen of
28 this code, modified by the Commissioner of Agriculture to
29 meet the objections of the Legislative Rule-Making Review
30 Committee and refiled in the State Register on the twenty-
31 fourth day of October, two thousand six, relating to the
32 Commissioner of Agriculture (West Virginia Plant Pest
33 Control Act, 61 CSR 14) is authorized.

34 (d) The legislative rule filed in the State Register on the
35 twentieth day of July, two thousand six, authorized under the
36 authority of section four, article twelve-d, chapter nineteen of
37 this code, modified by the Commissioner of Agriculture to
38 meet the objections of the Legislative Rule-Making Review
39 Committee and refiled in the State Register on the fifteenth
40 day of September, two thousand six, relating to the
41 Commissioner of Agriculture (noxious weeds, 61 CSR 14A)
42 is authorized.

§64-9-2. Board of Architects.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand six, authorized under
3 the authority of section one, article twelve, chapter thirty of
4 this code, modified by the Board of Architects to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth
7 day of September, two thousand six, relating to the Board of
8 Architects (registration of architects, 2 CSR 1) is authorized
9 with the following amendment:

10 On page nine, subsection 8.8., line six, after the words
11 “regardless of age.”, by striking out the remainder of the
12 subsection.

§64-9-3. State Auditor.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section ten-c, article three, chapter twelve of
4 this code, relating to the State Auditor (transaction fee and
5 rate structure, 155 CSR 4) is authorized.

§64-9-4. State Conservation Agency.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article twenty-one-a, chapter
4 nineteen of this code, modified by the State Conservation
5 Agency to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the seventeenth day of November, two thousand six,
8 relating to the State Conservation Agency (State
9 Conservation Committee, 63 CSR 1) is authorized.

§64-9-5. Board of Examiners in Counseling.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand six, authorized
3 under the authority of section five, article thirty-one, chapter
4 thirty of this code, modified by the Board of Examiners in
5 Counseling to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twentieth day of December, two thousand six, relating
8 to the Board of Examiners in Counseling (licensing, 27 CSR
9 1) is authorized with the following amendments:

10 On page three, subsection 4.2., by striking out “4.2.1”;

11 On page three, by redesignating subdivision 5.1.a as
12 subsection 5.2;

13 On page three, by redesignating paragraphs 5.1.a.(1).
14 through 5.1.a.(5) as subdivisions 5.2.a. through 5.2.e.;

15 On page four, subdivision 6.1.b., at the beginning of the
16 sentence, by striking out the words “The applicant” and
17 inserting in lieu thereof the words “After the effective date of
18 this rule in 2007, applicants”;

19 On page six, paragraph 6.1.b.11, after the words “family
20 counseling/therapy” by inserting a semicolon;

21 On page eight, subdivision 6.2.c, line fifteen, after the
22 word “supervisor” by inserting the word “shall”;

23 On page eight, subdivision 6.2.c., in the final sentence of
24 the subdivision after the words “statement detailing” by
25 striking out the word “their” and inserting in lieu thereof the
26 words “his or her”;

27 On page eight, subsection 7.1, in the first sentence after
28 the words “must meet the” by inserting the words
29 “equivalency of”;

30 On page nine, subsection 7.1, in the final sentence after
31 the words “in 1986” by inserting the words “and who have
32 maintained their licenses continually since that time”;

33 On page nine, paragraph 7.1.b.1., after the words “of this
34 section” by striking out the words “will receive credit of forty
35 (40) contact hours for each renewal prior to the effective
36 date” and inserting in lieu thereof the words “may use the
37 forty (40) contact hours earned for each renewal to meet the
38 course requirements set forth in section 6.1.b.”;

39 On page nine, subsection 7.2, in the first sentence after
40 the words “must meet the” by inserting the words
41 “equivalency of”;

42 On page nine, section eight, line one by striking out
43 “8.1.”;

44 On page ten, by redesignating subdivisions 8.1.a. through
45 8.1.c. as subdivisions 8.1 through 8.3.;

46 On page twelve, section thirteen, line one by striking out
47 "13.1." and by striking out the word "persons" and inserting
48 in lieu thereof the word "person";

49 On page fourteen, subsection 16.6., line one, after the
50 words "36 months", by striking out the comma and words
51 "subject to the following renewal provision";

52 On page fourteen, subdivision 16.6.a., line one, by
53 striking out "16.6.a.";

54 On page fourteen, section seventeen, line one, by striking
55 out "17.1";

56 And,

57 On page fourteen, by redesignating subdivisions 17.1.a.
58 through 17.1.e. as subdivisions 17.1. through 17.5.

59 (b) The legislative rule filed in the State Register on the
60 twenty-seventh day of July, two thousand six, authorized
61 under the authority of section five, article thirty-one, chapter
62 thirty of this code, relating to the Board of Examiners in
63 Counseling (license renewal and continuing education
64 requirements, 27 CSR 3) is authorized with the following
65 amendments:

66 On page two, subsection 5.1., by striking out "5.1.a.";

67 On page two, subdivision 5.1.a., line nine, after the words
68 "renewals can" by inserting the word "be" and after the
69 words "obtained through" by striking out "ACA" and
70 inserting in lieu thereof the words "American Counseling
71 Association (ACA)";

72 On page two, subsection 5.2., by striking out "5.2.a.";

- 73 On page three, subsection 5.5., by striking out “5.5.a.”;
- 74 On page three, subsection 5.8., after the word “status” by
75 striking out the comma;
- 76 On page three, subsection 5.9, after the word “programs”
77 by changing the semicolon to a period;
- 78 On page three, subsection 5.9., by striking out “5.9.1.”;
- 79 On page three, subdivision 5.9.1, line five, by striking out
80 the word “program” and, after the words “home study”, by
81 inserting the word “program”;
- 82 And,
- 83 On pages three and four, section six, by striking out
84 “6.1.” and by redesignating subdivisions 6.1.a. through 6.1.d.
85 as subdivisions 6.1. through 6.4.

§64-9-6. Hospital Finance Authority.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section five, article twenty-nine-a, chapter
4 sixteen of this code, modified by the Hospital Finance
5 Authority to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the thirtieth day of October, two thousand six, relating to
8 the Hospital Finance Authority (establishment of a fee
9 schedule and costs allocations applicable to the issuance of
10 bonds by the Hospital Finance Authority, 116 CSR 1) is
11 authorized.

§64-9-7. Board of Landscape Architects.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section six, article twenty-two, chapter thirty
4 of this code, modified by the Board of Landscape Architects

5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 eleventh day of January, two thousand seven, relating to the
8 Board of Landscape Architects (registration of landscape
9 architects, 9 CSR 1) is authorized with the following
10 amendments:

11 On page one, subsection 1.2., after “30-22-”, by striking
12 out the remainder of the subsection and inserting in lieu
13 thereof “6”;

14 On page one, subdivision 2.2.e., by striking out the word
15 “Means”;

16 On page two, subdivision 2.2.g., by striking out the word
17 “Means”;

18 On page two, subdivision 2.2.j., by striking out the word
19 “Means”;

20 On page three, subsection 3.5., line three, by striking out
21 the word “Secretaries” and inserting in lieu thereof the word
22 “secretaries”;

23 On page three, subsection 3.5., line four, by striking out
24 the word “Secretaries” and inserting in lieu thereof the word
25 “secretaries”;

26 On page three, subsection 4.1., line three, by striking out
27 the word “shall” and inserting in lieu thereof the word “may”;

28 On page three, subsection 4.1., line four, by striking out
29 the word “shall” and inserting in lieu thereof the word “may”;

30 On page three, subsection 4.10., after the words “number
31 and” by inserting the word “the”;

32 On page four, subdivision 4.12.b., after the word
33 “provided”, by striking out the comma;

34 On page four, subdivision 4.12.c., by striking out the
35 word “shall” and inserting in lieu thereof the word “may”;

36 On page four, paragraph 4.13.a.1., after the word
37 “certification”, by changing the comma to a semicolon;

38 On page four, paragraph 4.13.a.2., by capitalizing the
39 word “if”;

40 On page four, subdivision 4.13.b., by striking out the
41 word “prescribed” and inserting in lieu thereof the word
42 “provided”;

43 On page four, subsection 5.1., by striking out the word
44 “plus” and inserting in lieu thereof the word “and”;

45 On page four, subsection 5.2., after the word “place” by
46 striking out the period and the words “The Board” and
47 inserting in lieu thereof the word “and”;

48 On page five, subsection 5.4., after the words
49 “examination period.” by striking out the word “Those” and
50 inserting in lieu thereof the words “If the applicant fails to
51 successfully complete those”;

52 On page five, subsection 5.4., after the word “failed”, by
53 striking out the words “must be retaken”;

54 On page five, subsection 5.4., after the words “(2) year
55 period” by striking out the period and the words “If not
56 retaken during this two (2) year period”;

57 On page five, subsection 5.5., by striking out the word
58 “must” and inserting in lieu thereof the words “who fails to”;

59 On page five, subsection 5.5., after the words “(5) year
60 period”, by striking out the period and the words “Applicants
61 not so doing”;

62 On page five, subsection 5.6., by striking out the words
63 “in the event that” and inserting in lieu thereof the word “if”;

64 On page five, subsection 5.6., by striking out the words
65 “maintain a credit of” and inserting in lieu thereof the word
66 “credit”;

67 On page five, subsection 5.6., after the words “handling
68 fee.” by striking out the words “Examination credit for the
69 applicant” and inserting in lieu thereof the words “The
70 credit”;

71 On page five, subsection 5.6., after the words “original
72 examination date” by striking out the words “after which the
73 remaining credit is forfeit” and inserting in lieu thereof the
74 words “or be forfeited”;

75 On page five, section six, by striking out subsection
76 6.3.in its entirety and inserting in lieu thereof the following:
77 “6.3. A temporary permit may not be renewed or a new one
78 issued.”;

79 On page five, subsection 7.1., by striking out the words
80 “to the Board within thirty (30) days of the change” and after
81 the words “current information” by inserting the words
82 “within thirty (30) days of the change”;

83 On page five, subdivision 7.3.a., after the word
84 “requirements” by striking out the word “as”;

85 On page five, subdivision 7.3.b., by striking out the word
86 “required” and inserting in lieu thereof the word “renewal”;

87 On page five, subdivision 7.3.b., after the word “fee” by
88 inserting the word “and”;

89 On page six, subdivision 7.3.c., by striking out the word
90 “prescribed in” and by inserting the words “in accordance
91 with”;

92 On page six, subdivision 7.4.f., by striking out the word
93 “shall” and inserting in lieu thereof the word “may”;

94 On page six, subdivision 7.5.a., after the words “(4)
95 years” by striking out the comma and the word “desiring”
96 and inserting in lieu thereof the words “and who desires”;

97 On page six, subdivision 7.5.b., by striking out the word
98 “prescribed” and inserting in lieu thereof the word
99 “provided”;

100 On page seven, subdivision 7.5.c., by striking out the
101 word “The” and inserting in lieu thereof the word “A”;

102 On page seven, subdivision 7.5.c., after the word
103 “registrant” by inserting the words “seeking reinstatement”;

104 On page seven, subdivision 8.2.b., after the word
105 “signature”, by striking out the words “that is” and inserting
106 in lieu thereof a comma and the words “provided pursuant
107 to”;

108 On page seven, subdivision 8.2.b., after the word
109 “process” by striking out the comma;

110 On page seven, paragraph 8.2.b.2., by capitalizing the
111 word “capable”;

112 On page seven, paragraph 8.2.b.3., by capitalizing the
113 word “under”;

114 On page seven, paragraph 8.2.b.4., by capitalizing the
115 word “linked”;

116 On page seven, subsection 8.3., by striking out the words
117 “for the use in the State of West Virginia”;

118 On page seven, subdivisions 8.4.b. through 8.4.d., by
119 capitalizing the word “the”;

120 On page eight, subsection 8.9., line four, after the words
121 “revocation of” by inserting the words “his or her”;

122 On page eight, subsection 8.11., by striking out the words
123 “the registrant signing and sealing documents” and inserting
124 in lieu thereof the word “Documents”;

125 On page eight, subsection 8.11., after the words “shall
126 be” by inserting the words “signed and sealed by”;

127 On page eight, subsection 8.12., by striking out the words
128 “made by”;

129 On page eight, subsection 8.12., after the word “she” by
130 inserting the words “has made”;

131 On page eight, subsection 9.1., by striking out the word
132 “who” and inserting in lieu thereof the word “which”;

133 On page eight, subsection 9.1., by striking out the words
134 “met the provisions” and inserting in lieu thereof the words
135 “satisfied the requirements”;

136 On page eight, subsection 9.1., by striking out the words
137 “the seal of the Board” and inserting in lieu thereof the word
138 “seal”;

139 On page nine, subsection 9.3., line one, after the word
140 “including” by inserting the words “those for”;

141 On page nine, subsection 9.6., by striking out “9.6.a.” and
142 redesignating paragraphs 9.6.a.1. through 9.6.a.4. as
143 subdivisions 9.6.a. through 9.6.d.;

144 On page nine, by striking out paragraph 9.6.a.2. in its
145 entirety;

146 On page nine, paragraph 9.6.a.3., by striking out the word
147 “prescribed” and inserting in lieu thereof the words “as
148 provided”;

149 On page nine, paragraph 9.6.a.4., by striking out the word
150 “who” and inserting in lieu thereof the word “which”;

151 On page nine, subsection 9.9., after the word “submitted”
152 by striking out the words “to the Board”;

153 On page nine, subsection 9.9., after the words
154 “responsible charge” by striking out the comma and inserting
155 the word “any”;

156 On page ten, subdivision 10.3.d., after the word
157 “experience” by striking out the comma and the word “nor”
158 and inserting in lieu thereof the word “or”;

159 On page ten, subdivision 10.3.d., after the word “any” by
160 striking out the word “such”;

161 On page ten, subdivision 10.3.e., after the word “field” by
162 striking out the words “landscape architecture”;

163 On page ten, subdivision 10.3.e., after the words “upon
164 request” by striking out the words “of the landscape
165 architect”;

166 On page ten, subdivision 10.4.d., after the word “advice”
167 by striking out the comma and the word “who” and inserting
168 in lieu thereof the word “which”;

169 On page ten, subdivision 10.4.e., by striking out the word
170 “found” and inserting in lieu thereof the word “founded”;

171 On page eleven, subdivision 10.4.f., line two, after the
172 word “terminate”, by inserting the words “his or her”;

173 On page eleven, subdivision 10.4.f., after the words
174 “reference to the project.” by striking out the remainder of
175 the subdivision;

176 On page eleven, subdivision 10.4.g., by striking out the
177 word “shall” and inserting in lieu thereof the word “may”;

178 On page eleven, subdivision 10.4.h., by striking out the
179 word “shall” and inserting in lieu thereof the word “may”;

180 On page eleven, subdivision 10.5.c., by striking out the
181 word “shall” and inserting in lieu thereof the word “may”;

182 On page eleven, subdivision 10.5.d., by striking out the
183 word “shall” and inserting in lieu thereof the word “may”;

184 On page eleven, subdivision 10.5.e., line one, by striking
185 out the word “shall” and inserting in lieu thereof the word
186 “may”;

187 On page eleven, subdivision 10.5.e., by striking out the
188 word “organization” and inserting in lieu thereof the word
189 “firm”;

190 On page eleven, subdivision 10.5.e., by striking out the
191 words “private concern, shall” and inserting in lieu thereof
192 the words “firm, may”;

193 On page eleven, subdivision 10.5.e., line five, by striking
194 out the words “private concern” and inserting in lieu thereof
195 the word “firm”;

196 On page eleven, subdivision 10.5.f., line one, by striking
197 out the word “shall” and inserting in lieu thereof the word
198 “may”;

199 On page eleven, subdivision 10.5.f., line two, by striking
200 out the word “shall” and inserting in lieu thereof the word
201 “may”;

202 On page eleven, subdivision 10.5.g., by striking out the
203 word “shall” and inserting in lieu thereof the word “may”;

204 On page twelve, subsection 10.6., line one, by striking
205 out the word “shall” and inserting in lieu thereof the word
206 “may”;

207 On page twelve, subsection 10.6., after the words
208 “misrepresentation of his or her” by striking out the comma
209 and inserting the word “own”;

210 On page twelve, subsection 10.6., line two, by striking
211 out the word “shall” and inserting in lieu thereof the word
212 “may”;

213 On page twelve, subsection 10.6., after the words “of
214 prior assignments.” by striking out the remainder of the
215 subsection;

216 On page twelve, subsection 10.7., line one, by striking
217 out the word “shall” and inserting in lieu thereof the word
218 “may”;

219 And,

220 On page twelve, subsection 10.9., after the words
221 “grounds for” by striking out the words “a charge of” and
222 inserting in lieu thereof the words “charging a violation”.

223 (b) The legislative rule filed in the State Register on the
224 twenty-eighth day of July, two thousand six, authorized under
225 the authority of section six, article twenty-two, chapter thirty

226 of this code, modified by the Board of Landscape Architects
227 to meet the objections of the Legislative Rule-Making
228 Review Committee and refiled in the State Register on the
229 eleventh day of January, two thousand seven, relating to the
230 Board of Landscape Architects (continuing education, 9 CSR
231 2) is authorized with the following amendments:

232 On page one, section two, by striking out “2.1” and by
233 redesignating subdivisions 2.1.a. through 2.1.c. as
234 subdivisions 2.1. through 2.3.;

235 On page one, subdivision 2.1.c., after the word “tutorials”
236 by striking out the semicolon;

237 On page one, subdivision 2.1.c., after the word
238 “provided”, by striking out the comma;

239 On page one, subsection 3.1., by striking out the words
240 “for each renewal period” and inserting in lieu thereof the
241 word “annually”;

242 On page two, subdivision 3.3.e, after the word
243 “architecture” by striking out the words “and to” and
244 inserting in lieu thereof the word “of”;

245 On page two, subsection 3.4., by striking out the words
246 “continuing education related”;

247 On page two, subsection 3.4., after the word “activity” by
248 inserting the words “for continuing education credit”;

249 On page two, subsection 3.5., by striking out the words
250 “When a” and inserting in lieu thereof the word “A”;

251 On page two, subsection 3.5., by striking out the words
252 “under suspension seeks” and inserting in lieu thereof the
253 words “has been suspended may seek”;

254 On page two, subsection 3.5., after the words
255 “reinstatement of” by striking out the words “a license, the
256 person seeking reinstatement shall complete” and inserting in
257 lieu thereof the words “his or her license by completing”;

258 On page two, subsection 3.5., by striking out the words
259 “professional development hours” and inserting in lieu
260 thereof the words “PDH units”;

261 On page two, subsection 3.5., line six, after the words
262 “PDH units and”, by inserting the word “to”;

263 On page two, section four, by striking out “4.1.” and by
264 redesignating subdivisions 4.1.a and 4.1.b. as subdivisions
265 4.1. and 4.2.;

266 On page two, subsection 4.1, by striking out the words
267 “maintaining records is the responsibility of the licensee.”;

268 On page three, section five, by striking out “5.1.” and by
269 redesignating subdivisions 5.1.a. through 5.1.d. as
270 subdivisions 5.1. through 5.4.;

271 On page three, subsection 5.1., by striking out the word
272 “board” and inserting in lieu thereof the word “Board”;

273 On page three, subdivision 5.1.a., by striking out the
274 words “way of”;

275 On page three, subdivision 5.1.a., after the word
276 “exempt”, by striking out the words “for the first renewal
277 period following the original date of” and inserting in lieu
278 thereof the words “from continuing education requirements
279 until their licenses have been renewed a first time after
280 initial”;

281 On page three, subdivision 5.1.b., by striking out the
282 words “professional development hours” and inserting in lieu
283 thereof the words “PDH units”;

284 On page three, subdivision 5.1.c., lines two and four, by
285 striking out the word “board” and inserting in lieu thereof the
286 word “Board”;

287 On page three, subdivision 5.1.c., after the word
288 “occurs.” by striking out the remainder of the subdivision;

289 On page three, subdivision 5.1.d., by striking out the
290 word “Licensee” and inserting in lieu thereof the word
291 “licensee”;

292 On page three, subdivision 5.1.d., after the word
293 “exempt” by inserting the words “from continuing education
294 requirements”;

295 On page three, subsection 6.1., after the word “proof”, by
296 striking out the words “of satisfying the” and inserting in lieu
297 thereof the words “that he or she has satisfied”;

298 And,

299 On page three, subsection 6.2., line five, by striking out
300 the word “further” and inserting in lieu thereof the word
301 “additional”.

302 (c) The legislative rule filed in the State Register on the
303 twenty-eighth day of July, two thousand six, authorized under
304 the authority of section six, article twenty-two, chapter thirty
305 of this code, relating to the Board of Landscape Architects
306 (fees, 9 CSR 3) is authorized with the following amendments:

307 On page one, by striking out subsection 2.2. in its entirety
308 and inserting in lieu thereof the following:

309 2.2. “Board” means the West Virginia State Board of
310 Landscape Architects.;

311 On page one, by striking out “2.2.a.” and inserting in lieu
312 thereof “2.3.”;

313 On page one, subdivision 2.2.a., by placing quotation
314 marks around the word “Registrant” and by striking out the
315 hyphen and inserting in lieu thereof the word “means”;

316 On page one, subsection 3.1., by striking out the words
317 “West Virginia State Board of Landscape Architects” and
318 inserting in lieu thereof the word “Board”;

319 On page one, subsection 3.2., by striking out the word
320 “The” and inserting in lieu thereof the words “Each year
321 during the month of April, the”;

322 On page one, subsection 3.2., after the word “registrant”
323 by striking out the words “during the month of April of each
324 year”;

325 On page one, subsection 3.4., by striking out the words
326 “A renewal” and inserting in lieu thereof the words “If a
327 renewal application is”;

328 And,

329 On page one, subsection 3.4., after the word “June”, by
330 inserting a comma and the words “the registrant’s license”.

§64-9-8. Massage Therapy Licensure Board.

1 The legislative rule filed in the State Register on the
2 seventeenth day of July, two thousand six, authorized under
3 the authority of section six, article thirty-seven, chapter thirty
4 of this code, modified by the Massage Therapy Licensure
5 Board to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 third day of August, two thousand six, relating to the
8 Massage Therapy Licensure Board (general provisions, 194
9 CSR 1) is authorized with the following amendment:

10 On page four, by redesignating subdivision 3.11.a. as
11 subsection 3.12. and by renumbering the remaining
12 subsections accordingly.

§64-9-9. Board of Medicine.

1 The legislative rule filed in the State Register on the
2 twenty-second day of May, two thousand six, authorized
3 under the authority of section seven, article three, chapter
4 thirty of this code, modified by the Board of Medicine to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 sixth day of July, two thousand six, relating to the Board of
8 Medicine (licensing and disciplinary procedures for
9 physicians and podiatrists, 11 CSR 1A) is authorized.

§64-9-10. Board of Osteopathy.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand six, authorized
3 under the authority of section one, article fourteen-a, chapter
4 thirty of this code relating to the Board of Osteopathy
5 (osteopathic physician assistants, 24 CSR 2) is authorized.

§64-9-11. Board of Pharmacy.

1 The legislative rule filed in the State Register on the
2 seventh day of July, two thousand five, authorized under the
3 authority of sections six and seven, article ten, chapter sixty-a
4 of this code, modified by the Board of Pharmacy to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eleventh
7 day of October, two thousand five, relating to the Board of
8 Pharmacy (ephedrine and pseudoephedrine control, 15 CSR
9 11) is authorized.

§64-9-12. Real Estate Commission.

1 The legislative rule filed in the State Register on the
2 twenty-third day of March, two thousand six, authorized
3 under the authority of section eight, article forty, chapter
4 thirty of this code relating to the Real Estate Commission
5 (requirements in licensing real estate brokers, associate
6 brokers and salespersons and the conduct of brokerage
7 businesses, 174 CSR 1) is authorized with the following
8 amendment:

9 On page one, subsection 1.1., by striking out the word
10 “regulations” and inserting in lieu thereof the word “rules”.

§64-9-13. Board of Registered Professional Nurses.

1 (a) The legislative rule filed in the State Register on the
2 sixteenth day of June, two thousand six, authorized under the
3 authority of section four, article seven, chapter thirty of this
4 code, modified by the Board of Examiners for Registered
5 Professional Nurses to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the twenty-eighth day of July, two thousand six,

8 relating to the Board of Examiners for Registered
9 Professional Nurses (policies and criteria for the evaluation
10 and accreditation of colleges, departments or schools of
11 nursing, 19 CSR 1) is authorized.

12 (b) The legislative rule filed in the State Register on the
13 sixteenth day of June, two thousand six, authorized under the
14 authority of section four, article seven, chapter thirty of this
15 code, modified by the Board of Examiners for Registered
16 Professional Nurses to meet the objections of the Legislative
17 Rule-Making Review Committee and refiled in the State
18 Register on the twenty-eighth day of July, two thousand six,
19 relating to the Board of Examiners for Registered
20 Professional Nurses (requirements for registration and
21 licensure, 19 CSR 3) is authorized with the following
22 amendments:

23 On page one, subsection 1.1., after the word “nurse” by
24 inserting the words “and describes behavior which constitutes
25 professional misconduct subject to disciplinary action”;

26 On page one, subsection 1.2, by striking out “and §30-1-
27 4”;

28 On page one, subsection 2.2., by striking out the word
29 “Supervision” and inserting in lieu thereof the word
30 “supervision” and after the period by striking out the
31 quotation mark;

32 On page one, subsection 2.3., by striking out the words
33 “Professional Character” and inserting in lieu thereof the
34 words “professional character” and by striking out the word
35 “Board” and inserting in lieu thereof the word “board”;

36 On page one, subsection 2.6., by striking out the words
37 “national council of state boards of nursing” and inserting in
38 lieu thereof the words “National Council of State Boards of
39 Nursing”;

40 On page two, by striking out paragraph 3.1.a.4. in its
41 entirety and inserting in lieu thereof the following:

42 3.1.a.4. Request and submit to the board the results of a
43 state and a national electronic criminal history records check
44 by the State Police.

45 3.1.a.4.A. The applicant shall furnish to the State Police
46 a full set of fingerprints and any additional information
47 required to complete the criminal history records checks.

48 3.1.a.4.B. The applicant is responsible for any fees
49 required by the State Police in order to complete the criminal
50 history records checks.

51 3.1.a.4.C. The criminal history records required by this
52 paragraph must have been requested within the twelve
53 (12) months immediately before the application is filed with
54 the Board.

55 3.1.a.4.D. The board may require the applicant to obtain
56 an electronic criminal history records check from a similar
57 agency in the state of the technician or applicant's residence,
58 if outside of West Virginia.

59 3.1.a.4.E. To be qualified for licensure, the results of the
60 criminal history records checks must be unremarkable and
61 verified by a source acceptable to the board other than the
62 applicant.

63 3.1.a.4.F. Instead of requiring the applicant to apply
64 directly to the State Police for the criminal history records
65 checks, the board may contract with a company specializing
66 in the services required by this paragraph.

67 3.1.a.4.G. The board may deny licensure or certification
68 to any applicant who fails or refuses to submit the criminal
69 history records checks required by this subsection.;

70 On page two, subdivision 3.1.b., by striking out the word
71 "Veterans" and inserting in lieu thereof the word "veterans";

72 On page two, subdivision 3.1.b., after the words "et seq."
73 by inserting the words "an applicant who is a veteran";

74 On page three, by striking out paragraph 3.1.b.5. in its
75 entirety and inserting in lieu thereof the following:

76 3.1.b.5. Request and submit to the board the results of a
77 state and a national electronic criminal history records check
78 by the State Police.

79 3.1.b.5.A. The applicant shall furnish to the State Police
80 a full set of fingerprints and any additional information
81 required to complete the criminal history records checks.

82 3.1.b.5.B. The applicant is responsible for any fees
83 required by the State Police in order to complete the criminal
84 history records checks.

85 3.1.b.5.C. The criminal history records required by this
86 paragraph must have been requested within the twelve
87 (12) months immediately before the application is filed with
88 the Board.

89 3.1.b.5.D. The board may require the applicant to obtain
90 an electronic criminal history records check from a similar
91 agency in the state of the technician or applicant's residence,
92 if outside of West Virginia.

93 3.1.b.5.E. To be qualified for licensure, the results of the
94 criminal history records checks must be unremarkable and
95 verified by a source acceptable to the board other than the
96 applicant.

97 3.1.b.5.F. Instead of requiring the applicant to apply
98 directly to the State Police for the criminal history records
99 checks, the board may contract with a company specializing
100 in the services required by this paragraph.

101 3.1.b.5.G. The board may deny licensure or certification
102 to any applicant who fails or refuses to submit the criminal
103 history records checks required by this subsection.;

104 On page four, by redesignating subparagraph 3.1.c.5.B.
105 as part 3.1.c.5.B.1. and by redesignating part 3.1.c.5.B.1. as
106 part 3.1.c.5.B.2.;

107 On page four, subparagraph 3.1.c.5.C., by striking out the
108 word "Provide" and inserting in lieu thereof the word
109 "provide";

110 On page four, by striking out paragraph 3.1.c.6. in its
111 entirety and inserting in lieu thereof the following:

112 3.1.c.6. Request and submit to the board the results of a
113 state and a national electronic criminal history records check
114 by the State Police.

115 3.1.c.6.A. The applicant shall furnish to the State Police
116 a full set of fingerprints and any additional information
117 required to complete the criminal history records checks.

118 3.1.c.6.B. The applicant is responsible for any fees
119 required by the State Police in order to complete the criminal
120 history records checks.

121 3.1.c.6.C. The criminal history records required by this
122 paragraph must have been requested within the twelve
123 (12) months immediately before the application is filed with
124 the Board.

125 3.1.c.6.D. The board may require the applicant to obtain
126 an electronic criminal history records check from a similar
127 agency in the state of the technician or applicant's residence,
128 if outside of West Virginia.

129 3.1.c.6.E. To be qualified for licensure, the results of the
130 criminal history records checks must be unremarkable and
131 verified by a source acceptable to the board other than the
132 applicant.

133 3.1.c.6.F. Instead of requiring the applicant to apply
134 directly to the State Police for the criminal history records
135 checks, the board may contract with a company specializing
136 in the services required by this paragraph.

137 3.1.c.6.G. The board may deny licensure or certification
138 to any applicant who fails or refuses to submit the criminal
139 history records checks required by this subsection.;

140 On page four, subdivision 3.2.a., by striking out the word
141 "Applicant" and inserting in lieu thereof the word
142 "Applicants";

143 On page four, subparagraph 3.2.a.1.B, by capitalizing the
144 words “board of examiners for registered professional
145 nurses”;

146 On page five, subparagraph 3.2.a.1.D., by striking out the
147 word “Board” and inserting in lieu thereof the word “board”;

148 On page five, paragraph 3.2.a.2, by capitalizing the words
149 “national council licensure examination”;

150 On page five, subparagraph 3.2.b.1.B, by capitalizing the
151 words “board of examiners for registered professional
152 nurses”;

153 On page six, paragraph 3.2.b.2, by capitalizing the words
154 “national council licensure examination”;

155 On page seven, subparagraph 3.2.c.1.B, by capitalizing
156 the words “board of examiners for registered professional
157 nurses”;

158 On page seven, paragraph 3.2.c.2., by capitalizing the
159 words “national council licensure examination”;

160 On page nine, subdivision 7.1.c., by striking out the word
161 “Board” and inserting in lieu thereof the word “board”;

162 On page nine, subdivision 7.1.d., after the word “system”
163 by striking out the word “as”;

164 On page nine, subdivision 7.1.d., after the word
165 “Nursing” by inserting a comma;

166 On page eleven, subdivision 7.2.i., by striking out the
167 words “ninety (90)” and inserting in lieu thereof the words
168 “one hundred eighty (180)”;

169 On page eleven, subsection 8.1., after the word
170 “affidavit” by striking out the semicolon;

171 On page eleven, subsection 8.1., line seven, by striking
172 out the word “as”;

173 On page eleven, subsection 9.1., after the words “issued
174 by” by striking out the word “this” and inserting in lieu
175 thereof the word “the”;

176 On pages eleven and twelve, section nine, by striking out
177 “9.1.a.” and by redesignating paragraphs 9.1.a.1. through
178 9.1.a.6. as subdivisions 9.1.a. through 9.1.f.;

179 On page twelve, paragraph 9.1.a.6., by striking out the
180 words “Provided, the” and inserting in lieu thereof the words
181 “The fee for a”;

182 On page twelve, paragraph 9.1.a.6., after the word “shall”
183 by striking out the words “have a” and inserting in lieu
184 thereof the word “be” and after the word “prorated”, by
185 striking out the remainder of the paragraph;

186 On page twelve, subsection 9.2., by striking out “9.2.a”;

187 On page twelve, subsection 9.3., by striking out “9.3.a”;

188 On page twelve, subsection 9.3., after the words
189 “recipient of the designation” by striking out the word “shall”
190 and inserting in lieu thereof the word “may”;

191 On page twelve, subsection 9.3., after the words “in any
192 state and” by striking out the word “shall” and inserting in
193 lieu thereof the word “may”;

194 On page twelve, subsection 9.3., line seven, after the
195 word “nurse” by inserting a comma and after the words “he
196 or she” by striking out the words “shall be” and inserting in
197 lieu thereof the word “is”;

198 On page thirteen, subsection 10.2., line three, by striking
199 out the word “as”;

200 On page thirteen, subsection 10.3., after the word
201 “lapsed” by striking out the words “shall be” and inserting in
202 lieu thereof the word “is”;

203 On page thirteen, subsection 10.3., after the words
204 “practitioner and” by striking out the words “shall be” and
205 inserting in lieu thereof the word “is”;

- 206 On page thirteen, section eleven, by striking out “11.1”;
- 207 On page thirteen, section eleven, line eight, by striking
208 out the word “as”;
- 209 On page thirteen, subsection 12.1., after the words
210 “registration and” by striking out the word “a” and inserting
211 the word “the”;
- 212 On page thirteen, subsection 12.1., line four, by striking
213 out the word “as”;
- 214 On page thirteen, subsection 12.2., line three, by striking
215 out the word “as”;
- 216 On page thirteen, subsection 12.3., by striking out the
217 word “Board’s” and inserting in lieu thereof the word
218 “board’s”;
- 219 On page thirteen, subsection 13.1., after the word
220 “assess” by striking out the word “a” and inserting in lieu
221 thereof the word “the” and after the word “fee” by striking
222 out the word “as”;
- 223 On page thirteen, subsection 13.1., by striking out the
224 word “Board’s” and inserting in lieu thereof the word
225 “board’s”;
- 226 On page seventeen, subdivision 14.1.ss., by striking out
227 the word “Violated” and inserting in lieu thereof the word
228 “violated”;
- 229 On page seventeen, by striking out subsection 14.3. in its
230 entirety and inserting in lieu thereof the following:
- 231 14.3. Based on the nature of the complaint filed against
232 a licensee, technician, or of the information received about an
233 applicant, the Board may require the technician or applicant
234 to request and submit to the Board the results of a state and
235 a national electronic criminal history records check by the
236 State Police.
- 237 14.3.a. The licensee, technician, or applicant under
238 investigation shall furnish to the State Police a full set of

239 fingerprints and any additional information required to
240 complete the criminal history records check.

241 14.3.b. The licensee, technician, or applicant under
242 investigation is responsible for any fees required by the State
243 Police in order to complete the criminal history records
244 check.

245 14.3.c. The Board may require the licensee, technician, or
246 applicant to obtain an electronic criminal history records
247 check from a similar agency in the state of the technician or
248 applicant's residence, if outside of West Virginia.

249 14.3.d. Instead of requiring the licensee, technician, or
250 applicant under investigation to apply directly to the State
251 Police for the criminal history records checks, the Board may
252 contract with a private vendor to provide the services
253 required in this subsection.

254 14.3.e. The Board may deny licensure or certification or
255 take disciplinary action against any licensee, technician, or
256 applicant who fails or refuses to submit the criminal history
257 records checks required by this subsection.;

258 On page eighteen, subdivision 15.1.b., by striking out the
259 word "Board's" and inserting in lieu thereof the word
260 "board's";

261 On page eighteen, subdivision 15.1.c., after the words
262 "satisfaction of" by striking out the word "Board's" and
263 inserting in lieu thereof the word "board's";

264 On page eighteen, subdivision 15.1.c., after the words
265 "extent of" by striking out the word "Board's" and inserting
266 in lieu thereof the word "board's";

267 And,

268 On page eighteen, section sixteen, by striking out "16.1".

269 (c) The legislative rule filed in the State Register on the
270 sixteenth day of June, two thousand six, authorized under the
271 authority of section four, article seven, chapter thirty of this
272 code, modified by the Board of Examiners for Registered

273 Professional Nurses to meet the objections of the Legislative
274 Rule-Making Review Committee and refiled in the State
275 Register on the twenty-eighth day of July, two thousand six,
276 relating to the Board of Examiners for Registered
277 Professional Nurses (continuing education, 19 CSR 11) is
278 authorized with the following amendments:

279 On page two, subdivision 3.2.1, after the words “during
280 the” by inserting the word “twelve”;

281 On page three, subdivision 3.5.3, line three, after the
282 words “or shall” by striking out the word “to”;

283 And,

284 On page six, paragraph 4.4.2.a, by striking out the word
285 “completed” and inserting in lieu thereof the word
286 “Completing”.

287 (d) The legislative rule filed in the State Register on the
288 thirtieth day of August, two thousand five, authorized under
289 the authority of sections six and seven, article seven-c,
290 chapter thirty of this code, modified by the Board of
291 Examiners for Registered Professional Nurses to meet the
292 objections of the Legislative Rule-Making Review
293 Committee and refiled in the State Register on the twenty-
294 eighth day of July, two thousand six, relating to the Board of
295 Examiners for Registered Professional Nurses (dialysis
296 technicians, 19 CSR 13) is authorized with the following
297 amendments:

298 On page one, subsection 1.1., line two, by striking out the
299 words “dialysis technicians,” and inserting in lieu thereof the
300 word “and”;

301 On page one, subsection 1.1., by striking out the words
302 “for approving and disapproving” and inserting in lieu
303 thereof the words “approval of”;

304 On page one, section two, by adding the following:

305 2.1. “Advisory council” means the Dialysis Technician
306 Advisory Council provided for in W. Va. Code §30-7C-9;

307 2.2. “Board” means the West Virginia Board of
308 Examiners for Registered Professional Nurses;

309 and by renumbering the remaining subsections
310 accordingly;

311 On page one, subsection 2.1., line two, by striking out the
312 words “comprised of” and inserting in lieu thereof a comma
313 and the word “including”;

314 On page one, subsection 2.4., by striking out the words
315 “upon delegation by the registered professional nurse or
316 physician”;

317 On page one, section two, subsection 2.5., line three, after
318 the words “status or” by inserting the word “of”;

319 On page two, after subsection 2.5., by adding the
320 following:

321 2.8. “Nurse administrator” means the registered
322 professional nurse responsible for administering a Board-
323 approved dialysis technician training program;

324 On page two, after subsection 2.7., by adding the
325 following:

326 2.11. “Training program” means a dialysis training
327 program;

328 On page two, subsection 3.1., by striking out the words
329 “providing hemodialysis care” and after the word “provide”
330 by inserting the word “hemodialysis”;

331 On page two, subsection 3.1, by striking out the words
332 “that the performance of the care be delegated” and inserting
333 in lieu thereof the words “the delegation of authority”;

334 On page two, by striking out subsection 3.2. in its entirety
335 and inserting in lieu thereof the following:

336 3.2. The dialysis technician may not being dialysis care
337 until a registered professional nurse or physician has first
338 assessed the patient upon entering the dialysis unit to assure

339 that he or she is stable and then delegated dialysis care to the
340 dialysis technician.;

341 On page two, subsection 3.3, line two, after the word
342 “access” by changing the semi-colon to a comma and by
343 striking out the word “reports” and inserting in lieu thereof
344 the word “report”;

345 On page two, subsection 3.3, after the word “physician”
346 by inserting a comma;

347 On page two, subsection 3.3, by striking out the words
348 “prior to” and inserting in lieu thereof the word “before”;

349 On page two, subsection 3.3, by striking out the word
350 “proceeding” and inserting in lieu thereof the word
351 “proceeds”;

352 On page two, subsection 3.4, by striking out the word
353 “shall” and inserting in lieu thereof the word “may”;

354 On page three, subdivision 3.5.c., by striking out the
355 words “There is validation of the dialysis technicians” and
356 inserting in lieu thereof the words “The nurse administrator
357 has validated the dialysis technician’s”;

358 On page four, paragraph 3.5.g.6., by striking out the word
359 “engaging” and inserting in lieu thereof the word “engage”;

360 On page four, paragraph 3.5.g.7., by striking out the
361 words “by a dialysis technician”;

362 On page four, by striking out paragraph 3.5.g.8. in its
363 entirety and inserting in lieu thereof the following:

364 3.5.g.8. Not engage in sexual misconduct or in conduct
365 that may reasonably be interpreted as sexual or in any verbal
366 behavior that is or may reasonably be interpreted as seductive
367 or sexually demeaning to a patient. The patient is always
368 presumed incapable of giving free, full or informed consent
369 to these behaviors; and;

370 On page four, paragraph 3.5.g.9., by striking out the word
371 “Treats” and inserting in lieu thereof the word “Treat”;

372 On page four, subdivision 3.5.h., after the word
373 “technician” by inserting the word “shall”;

374 On page four, paragraph 3.5.h.1., by striking out the word
375 “Implements” and inserting in lieu thereof the word
376 “Implement”;

377 On page four, paragraph 3.5.h.1., by striking out the word
378 “clarifies” and inserting in lieu thereof the word “clarify”;
379 and, after the word “information” by changing the semicolon
380 to a period;

381 On page four, paragraph 3.5.h.1., by striking out
382 “3.5.h.1.a” and by redesignating parts 3.5.h.1.a.1 and
383 3.5.h.1.a.2 as subparagraphs 3.5.h.1.A. and 3.5.h.1.B.;

384 On page five, paragraph 3.5.h.2., by striking out the word
385 “Initiates” and inserting in lieu thereof the word “Initiate”;

386 On page five, subdivision 3.5.i., by striking out the word
387 “shall” and inserting in lieu thereof the word “may”;

388 On page five, subsection 3.7., after the words “subject to”
389 by inserting the word “disciplinary”;

390 On page five, subsection 4.1., by striking out the word
391 “shall” and inserting in lieu thereof the word “may”;

392 On page five, subsection 4.1., by striking out the word
393 “only” and, after the word “medications” by striking out the
394 word “as” and inserting in lieu thereof the word “if”;

395 On page five, subsection 4.1., after the words
396 “prescription and” by striking out the word “as”;

397 On page five, subsection 4.2., by striking out the words
398 “Administration of” and inserting in lieu thereof the words
399 “Except as provided by this rule, a dialysis technician may
400 not administer” and after the word “medications” by striking
401 out the remainder of the subsection;

402 On page six, subdivision 5.1.a., by striking out the words
403 “to be approved” and inserting in lieu thereof the word

404 “approval” and, after the word “shall” by striking out the
405 colon and inserting the word “shall”;

406 On pages six and seven, section five, by striking out
407 paragraph 5.1.a.1. in its entirety and by redesignating
408 subparagraphs 5.1.a.1.A. through 5.1.a.1.E. as paragraphs
409 5.1.a.1. through 5.1.a.5.;

410 On page seven, subsection 5.2., by striking out the words
411 “make a determination regarding the approval status of” and
412 inserting in lieu thereof the words “either approve or
413 disapprove”;

414 On page seven, subsection 5.3., by striking out the words
415 “be current” and inserting in lieu thereof the word
416 “continue”;

417 On page seven, subsection 5.3., line four, after the word
418 “period” by striking out the comma;

419 On page seven, subsection 5.6., after the words “of the
420 Board”, by striking out the comma and after the words
421 “meeting the requirements” by striking out the comma;

422 On page eight, subdivision 6.1.b., by striking out the
423 words “registered professional nurse administering the
424 program” and inserting in lieu thereof the words “nurse
425 administrator”;

426 On page eight, by striking out subdivision 6.1.c., in its
427 entirety and by inserting in lieu thereof the following:

428 6.1.c. The training program shall immediately notify the
429 Board in writing when the nurse administrator vacates the
430 position or is replaced and provide the name and
431 qualifications of the new or interim nurse administrator. A
432 training program may not initiate a new class of dialysis
433 technician trainees unless the new or interim nurse
434 administrator meets the has the qualifications required by this
435 rule.;

436 On page eight, paragraph 6.1.d.1., after the word “The”
437 by inserting the words “training program shall provide”;

438 On page eight, paragraph 6.1.d.1., after the word
439 “instructor” by striking out the words “shall be provided”;

440 On page eight, paragraph 6.1.d.2., by striking out the
441 words “registered professional nurse who is responsible for
442 administering the program” and inserting in lieu thereof the
443 words “nurse administrator”;

444 On page eight, paragraph 6.1.d.3., after the word “The”,
445 by inserting the words “training program shall report”;

446 On page eight, paragraph 6.1.d.3., after the word
447 “faculty” by striking out the words “shall be reported”;

448 On page nine, subdivision 6.1.e., by striking out the
449 words “There shall be” and inserting in lieu thereof the words
450 “Each training program shall develop”;

451 On page nine, subdivision 6.1.e., after the word “which”
452 by inserting the word “shall”;

453 On page nine, paragraph 6.1.e.3., by striking out the
454 words “registered professional”;

455 On page nine, subdivision 6.1.f., after the words “offered
456 by the” by inserting the word “training”;

457 On page nine, subdivision 6.1.f., by striking out the
458 words “which prepares an individual to perform dialysis
459 care”;

460 On page nine, subdivision 6.1.f., by striking out the
461 words “which is a minimum” and inserting in lieu thereof the
462 words “of at least”;

463 On page nine, subdivision 6.1.f., after the word “twenty”
464 by inserting “(320)”;

465 On page nine, subdivision 6.1.f., line four, by striking out
466 the words “shall include”;

467 On page nine, subdivision 6.1.f., by striking out the
468 words “for the application of” and inserting in lieu thereof the
469 words “to apply”;

470 On page nine, subdivision 6.1.f., by striking out the
471 words “for the achievement of” and inserting in lieu thereof
472 the words “to achieve”;

473 On page nine, paragraph 6.1.f.1., after the word
474 “instruction” by inserting a comma and striking out the words
475 “shall include instruction”;

476 On page nine, paragraph 6.1.f.1., after the word “visuals”,
477 by inserting a comma and by striking out the word “which”
478 and inserting in lieu thereof the word “shall”;

479 On page eleven, by striking out paragraph 6.1.f.2. in its
480 entirety and inserting in lieu thereof the following:

481 6.1.f.2. The program shall develop written tests for each
482 unit in the curriculum, including a final test, and shall
483 conduct a skills performance evaluation.;

484 On page eleven, by striking out subparagraph 6.1.f.2.A.
485 in its entirety and inserting in lieu thereof the following:

486 6.1.f.2.A. Exams may be administered by paper/pencil or
487 by computer;

488 On page twelve, subdivision 6.1.g., by striking out the
489 words “registered professional nurse responsible for
490 administering the program” and inserting in lieu thereof the
491 words “nurse administrator”;

492 On page twelve, subdivision 6.1.g., after the word
493 “adopt” by inserting the word “written”;

494 On page twelve, paragraph 6.1.g.1., after the words “of
495 age and” by striking out the words “the individual”;

496 On page twelve, paragraph 6.1.g.5., after the words
497 “completed the” by inserting the words “three hundred
498 twenty”;

499 On page twelve, subparagraph 6.1.g.6.A., by striking out
500 the words “dialysis technician-”;

501 On page twelve, subparagraph 6.1.g.6.A., by striking out
502 the words “There shall be a statement of” and inserting in
503 lieu thereof the words “The nurse administrator shall adopt
504 a”;

505 On page thirteen, subparagraph 6.1.g.6.C., by striking out
506 the word “completed” and inserting in lieu thereof the word
507 “completes”;

508 On page fourteen, subparagraph 6.1.g.6.F., by striking
509 out the words “registered professional nurse responsible for
510 administering the program” and inserting in lieu thereof the
511 words “nurse administrator”;

512 On page fourteen, subdivision 6.1.h., after the words
513 “training program,” by inserting the words “the program shall
514 notify”;

515 On page fourteen, subdivision 6.1.h., by striking out the
516 words “shall be notified”;

517 On page fourteen, subdivision 6.1.h., after the word
518 “date” by changing the comma to a period and inserting the
519 words “The notice shall include”;

520 On page fourteen, by striking out subdivision 6.1.i. in its
521 entirety and inserting in lieu thereof the following:

522 6.1.i. If any changes are made to the training program
523 previously approved by the Board when a facility changes
524 ownership, the training program may only be approved as a
525 new program;

526 On page fifteen, subdivision 7.2.c., by striking out the
527 words “registered professional nurse responsible for
528 administering the program” and inserting in lieu thereof the
529 words “nurse administrator”;

530 On page fifteen, subdivision 8.1.a., by striking out the
531 words “Subsection 6.5.” and inserting in lieu thereof the
532 words “subsection 6.5. of this rule”;

533 On page sixteen, subdivision 8.2.c., after the words
534 “deficiency report” and “any” by changing the semicolons to
535 commas;

536 On page seventeen, subdivision 10.1.b., by striking out
537 the word “organization” and inserting in lieu thereof the
538 word “organization’s”;

539 On page eighteen, subsection 10.3., after the words “set
540 forth in” by striking out the words “subdivision 13.10.1” and
541 inserting in lieu thereof “subsection 10.1”;

542 On page eighteen, subsection 10.3., by striking out the
543 words “subdivision 13.10.1” and inserting in lieu thereof
544 “subsection 10.1”;

545 On page eighteen, subsection 10.4., by striking out the
546 words “specified by the Board”;

547 On page eighteen, subsection 10.4., line four, by striking
548 out the words “subdivision 13.10.1” and inserting in lieu
549 thereof “subsection 10.1.”;

550 On page eighteen, subsection 10.4., line six, by striking
551 out the words “subdivision 13.10.1” and inserting in lieu
552 thereof “subsection 10.1”;

553 On page eighteen, subsection 10.6., by striking out the
554 words “subdivision 13.10.1” and inserting in lieu thereof
555 “subsection 10.1”;

556 On page eighteen, subsection 10.7., lines two and three,
557 by striking out the words “subdivision 13.10.1” and inserting
558 in lieu thereof “subsection 10.1”;

559 On page eighteen, section eleven, by striking out “11.1.”
560 and by redesignating subdivisions 11.1.a. through 11.1.c. as
561 subdivisions 11.1. through 11.3.;

562 On page eighteen, section eleven, after the words
563 “examination offered by” by striking out the word “an” and
564 by inserting in lieu thereof the words “one of the following
565 approved”;

- 566 On page eighteen, section eleven, after the word
567 “organization” by striking out the words “approved by the
568 Board of Nursing. The approved testing organizations are”;
- 569 On page nineteen, subsection 12.5., by striking out “fo”
570 and inserting in lieu thereof the word “for”;
- 571 On page nineteen, by striking out “13.1”;
- 572 On page nineteen, section thirteen, after the words “July
573 1” by striking out the comma;
- 574 On page nineteen, subsection 14.1., by striking out the
575 words “in order to engage in dialysis care”;
- 576 On page twenty, subdivision 14.1.a., by striking out the
577 words “shall be submitted”;
- 578 On page twenty, subdivision 14.1.d., after the semicolon
579 by inserting the word “and”;
- 580 On page twenty, subdivision 14.1.e., after “DUI)” by
581 striking out the semicolon;
- 582 On page twenty, subdivision 14.1.e., after the word “and”
583 by inserting the words “a letter of explanation that addresses
584 each conviction.”;
- 585 On page twenty, section fourteen, by striking out
586 subdivision 14.1.f. in its entirety;
- 587 On page twenty-one, subdivision 14.8.a., by striking out
588 the word “Boards” and inserting in lieu thereof the word
589 “Board’s”;
- 590 On page twenty-one, subdivision 14.8.e., by striking out
591 the word “Completion” and inserting in lieu thereof the
592 words “The results”;
- 593 On page twenty-two, subsection 15.1., by striking out the
594 words “The renewal period for dialysis technicians is annual.
595 All” and inserting in lieu thereof the words “Dialysis
596 technician”;

597 On page twenty-two, subsection 15.3., after the words
598 “application for” by inserting the word “reinstatement”;

599 On page twenty-three, subdivision 16.1.e., after the words
600 “he or she is” by inserting the word “not”;

601 On page twenty-five, subdivision 16.1.mm., before the
602 word “listed” by inserting the word “is”;

603 On page twenty-six, by striking out subsection 16.3. in its
604 entirety and inserting in lieu thereof the following:

605 16.3. Based on the nature of the complaint filed against
606 a technician or of the information received about an
607 applicant, the Board may require the technician or applicant
608 to request and submit to the Board the results of a state and
609 a national electronic criminal history records check by the
610 State Police.

611 16.3.a. The technician or applicant under investigation
612 shall furnish to the State Police a full set of fingerprints and
613 any additional information required to complete the criminal
614 history records check.

615 16.3.b. The technician or applicant under investigation
616 is responsible for any fees required by the State Police in
617 order to complete the criminal history records check.

618 16.3.c. The Board may require the technician or applicant
619 to obtain an electronic criminal history records check from a
620 similar agency in the state of the technician or applicant’s
621 residence, if outside of West Virginia.

622 16.3.d. Instead of requiring the technician or applicant
623 under investigation to apply directly to the State Police for
624 the criminal history records checks, the Board may contract
625 with a private vendor to provide the services required in this
626 subsection.

627 16.3.e. The Board may deny certification or take
628 disciplinary action against any technician or applicant who
629 fails or refuses to submit the criminal history records checks
630 required by this subsection.

631 And,

632 On page twenty-six, section sixteen, by striking out
633 subsection 16.6. in its entirety.

§64-9-14. Secretary of State.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section six, article one-a, chapter three of this
4 code, modified by the Secretary of State to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 second day of December, two thousand six, relating to the
8 Secretary of State (procedures for canvassing elections, 153
9 CSR 18) is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-eighth day of July, two thousand six, authorized under
12 the authority of section six, article one-a, chapter three of this
13 code, modified by the Secretary of State to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the twenty-
16 second day of December, two thousand six, relating to the
17 Secretary of State (procedures for recount of election results,
18 153 CSR 20) is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-eighth day of July, two thousand six, authorized under
21 the authority of section six, article one-a, chapter three of this
22 code, modified by the Secretary of State to meet the
23 objections of the Legislative Rule-Making Review
24 Committee and refiled in the State Register on the twelfth
25 day of January, two thousand seven, relating to the Secretary
26 of State (absentee voting by military voters who are members
27 of reserve units called to active duty, 153 CSR 23) is
28 authorized.

29 (d) The legislative rule filed in the State Register on the
30 twenty-eighth day of July, two thousand six, authorized under
31 the authority of section six, article one-a, chapter three of this
32 code, modified by the Secretary of State to meet the
33 objections of the Legislative Rule-Making Review

34 Committee and refiled in the State Register on the twenty-
35 second day of December, two thousand six, relating to the
36 Secretary of State (procedures for handling ballots and
37 counting write-in votes in counties using optical scan ballots,
38 153 CSR 27) is authorized.

39 (e) The legislative rule filed in the State Register on the
40 twenty-eighth day of July, two thousand six, authorized under
41 the authority of section five hundred twenty-six, article nine,
42 chapter forty-six of this code, modified by the Secretary of
43 State to meet the objections of the Legislative Rule-Making
44 Review Committee and refiled in the State Register on the
45 nineteenth day of October, two thousand six, relating to the
46 Secretary of State (Uniform Commercial Code, 153 CSR 35)
47 is authorized.

48 (f) The legislative rule filed in the State Register on the
49 first day of September, one thousand nine hundred eighty-
50 nine, authorized under the authority of section four hundred
51 seven, article nine, chapter forty-six of this code, modified by
52 the Secretary of State to meet the objections of the
53 Legislative Rule-Making Review Committee and refiled in
54 the State Register on the twentieth day of November, one
55 thousand nine hundred eighty-nine, relating to the Secretary
56 of State (West Virginia Product Lien Central Filing System,
57 153 CSR 13) is hereby repealed.

§64-9-15. State Treasurer.

1 The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand six, authorized under
3 the authority of section six, article three-a, chapter twelve of
4 this code, modified by the Treasurer's Office to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 seventh day of October, two thousand six, relating to the
8 Treasurer's Office (providing services to political
9 subdivisions, 112 CSR 13) is authorized with the following
10 amendments:

11 On page one, subsection 1.1., by striking out the word
12 "Services" and inserting in lieu thereof the word "services"

13 and by striking out the words "Political Subdivisions" and
14 inserting in lieu thereof the words "political subdivisions";

15 On page one, subsection 2.4., by striking out the word
16 "Fee" and inserting in lieu thereof the word "fee";

17 On page one, subsection 2.5., after the word "Credit" by
18 striking out the word "Card" and inserting in lieu thereof the
19 word "card" and by striking out the words "Charge Card" and
20 inserting in lieu thereof the words "charge card";

21 On page two, subsection 2.6., by striking out the word
22 "Merchant" and inserting in lieu thereof the word
23 "merchant";

24 On page two, subsection 2.7., after the word "Debit" by
25 striking out the word "Card" and inserting in lieu thereof the
26 word "card" and by striking out the words "Financial
27 Institution" and inserting in lieu thereof the words "financial
28 institution";

29 On page two, subsection 2.8., after the word "Discount"
30 by striking out the word "Fee" and inserting in lieu thereof
31 the word "fee"; by striking out the word "Merchant" and
32 inserting in lieu thereof the word "merchant"; and by striking
33 out the words "Card Issuer" and inserting in lieu thereof the
34 words "card issuer";

35 On page two, subsection 2.9., by striking out the words
36 "Electronic Payment" and inserting in lieu thereof the words
37 "electronic payment";

38 On page two, subsection 2.11., after the word
39 "Electronic" by striking out the word "Payment" and
40 inserting in lieu thereof the word "payment" and by striking
41 out the words "Wire Transfer" and inserting in lieu thereof
42 the words "wire transfer";

43 On page two, subsection 2.12., after the word "Financial"
44 by striking out the word "Institution" and inserting in lieu
45 thereof the word "institution";

46 On page two, subsection 2.16., by striking out the words
47 "Lockbox Services" and inserting in lieu thereof the words

48 “lockbox services” and by striking out the words “Financial
49 Institution” and inserting in lieu thereof “financial
50 institution”;

51 On page three, subsection 2.17., by striking out the words
52 “Political Subdivisions” and inserting in lieu thereof the
53 words “political subdivisions”;

54 On page three, subsection 2.18., after the word “Political”
55 by striking out the word “Subdivision” and inserting in lieu
56 thereof the word “subdivision” and by striking out the words
57 “Board of Education” and inserting in lieu thereof the words
58 “board of education”;

59 On page three, subsection 2.19., after the words “Point
60 of” by striking out the words “Sale Terminal” and inserting
61 in lieu thereof the words “sale terminal”; after the word
62 “POS” by striking out the word “Terminal” and inserting in
63 lieu thereof the word “terminal”; and, on lines three and four,
64 by striking out the words “Financial Institution” and inserting
65 in lieu thereof the words “financial institution”;

66 On page three, subsection 2.21., by striking out the words
67 “Lockbox Services” and inserting in lieu thereof the words
68 “lockbox services”;

69 On page three, subsection 2.25., by striking out the words
70 “Wholesale Lockbox” and inserting in lieu thereof the words
71 “wholesale lockbox”; by striking out “Wholesale Lockbox
72 Services” and inserting in lieu thereof the words “wholesale
73 lockbox services”; and by striking out “Wholetail Lockbox
74 Services” and inserting in lieu thereof “wholetail lockbox
75 services”;

76 On page three, subsection 2.26., after the word “Wire” by
77 striking out the word “Transfer” and inserting in lieu thereof
78 the word “transfer”;

79 On page three, subsection 3.1., after the word “Political”
80 by striking out the word “Subdivision” and inserting in lieu
81 thereof the word “subdivision”;

82 On page four, subsections 3.2. and 3.3., by striking out
83 the words “Political Subdivision” and inserting in lieu thereof
84 the words “political subdivision”;

85 On page four, subsection 3.5., by striking out the word
86 “Services” and inserting in lieu thereof the word “services”;

87 On page four, subsection 3.7., by striking out the words
88 “Political Subdivision” and inserting in lieu thereof the words
89 “political subdivision” and by striking out the word
90 “Services” and inserting in lieu thereof the word “services”;

91 On page four, subsections 4.1., 4.3., and 4.4., after the
92 word “Political” by striking out the word “Subdivisions” and
93 inserting in lieu thereof the word “subdivisions” and by
94 striking out the word “Services” and inserting in lieu thereof
95 the word “services”;

96 On page four, subsection 4.2., by striking out the words
97 “Political Subdivision” and inserting in lieu thereof the words
98 “political subdivision”;

99 On page four, subsection 4.5., by striking out the words
100 “Political Subdivisions” and inserting in lieu thereof the
101 words “political subdivisions”;

102 On page five, subdivisions 5.5.(a) and 5.5.(e), by striking
103 out the word “Services” and inserting in lieu thereof the word
104 “services”;

105 On page five, subdivisions 5.5.(b) and 5.5.(f), by striking
106 out the words “Political Subdivision” and inserting in lieu
107 thereof the words “political subdivision”;

108 On page five, subdivision 5.5.(c), by striking out the
109 words “Political Subdivision” and inserting in lieu thereof the
110 words “political subdivision” and by striking out the word
111 “Services” and inserting in lieu thereof the word “services”;

112 On page five, subdivision 5.5.(d), by striking out the
113 words “Political Subdivisions” and inserting in lieu thereof
114 the words “political subdivisions” and by striking out the
115 word “Services” and inserting in lieu thereof the word
116 “services”;

117 On page five, subdivision 5.5.(g), by striking out the
118 words “Political Subdivision” and inserting in lieu thereof the
119 words “political subdivision” and by striking out the words
120 “Political Subdivisions” and inserting in lieu thereof the
121 words “political subdivisions”;

122 On page five, subsection 5.2., by striking out the words
123 “Political Subdivision” and inserting in lieu thereof the words
124 “political subdivision”;

125 On page five, subsection 6.1., by striking out the words
126 “Political Subdivision” and inserting in lieu thereof the words
127 “political subdivision”; by striking out the word “Services”
128 and inserting in lieu thereof the word “services”; and by
129 striking out the words “Convenience Fee” and inserting in
130 lieu thereof the words “convenience fee”;

131 And,

132 On page five, subsection 6.2., by striking out the words
133 “Convenience Fee” and inserting in lieu thereof the words
134 “convenience fee”.

§64-9-16. Board of Veterinary Medicine.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article ten, chapter thirty of this
4 code, modified by the Board of Veterinary Medicine to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twentieth
7 day of October, two thousand six, relating to the Board of

8 Veterinary Medicine (registration of veterinary technicians,
9 26 CSR 3) is authorized with the following amendments:

10 On page one, subsection 1.2., by striking out “30-10-7”
11 and inserting in lieu thereof “30-10-1 and §30-10-4”;

12 On page one, subsection 2.2, after the words “physically
13 present and”, by striking out the words “that he or she is
14 within proper visual or audible distance to adequately” and
15 inserting in lieu thereof the words “within adequate visual
16 and audible distance to”;

17 On page one, subsection 2.3., lines one and two, by
18 striking out the words “under the direction of a veterinarian”;

19 On page one, subsection 2.3, after the words
20 “veterinarian who”, by striking out the words “may or may
21 not be physically present.” and inserting in lieu thereof the
22 words “is physically present in the building where and when
23 the procedures are being performed.”;

24 On page two, subsection 3.1., after the word
25 “Technology”, by striking out the comma;

26 On page three, subsection 9.B, after subdivision (10), by
27 inserting the word “and” and a new subdivision (11) to read
28 as follows:

29 “(11) Perform external suturing.”;

30 On page seven, subsection 15.1, after the words
31 “veterinary technology” by inserting a comma and the words
32 “at least four (4) of which must be in the field of veterinary
33 science.”;

34 And,

35 On page nine, subdivision 16.1.b., after the words
36 “continuing education hours” by inserting a comma and the
37 words “at least four (4) of which must be in the field of
38 veterinary science”.

CHAPTER 158

**(Com. Sub. for H.B. 2670 - By Delegates Brown, Miley,
Burdiss, Talbott and Overington)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 28, 2007.]

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 Department of Commerce 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 Office of Miners Health, Safety and Training to promulgate a legislative rule relating to protective clothing and equipment; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to standards for certification of coal mine electricians; authorizing the Bureau of Employment Programs to promulgate a legislative rule relating to requiring agencies to revoke or not grant issue or renew approval documents with employing units on the bureau's default list; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; 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 special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife disease management; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources.

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. Office of Miners Health Safety and Training.
- §64-10-2. Bureau of Employment Programs.
- §64-10-3. Division of Forestry.
- §64-10-4. Division of Natural Resources.

§64-10-1. Office of Miners Health Safety and Training.

1 (a) The legislative rule filed in the State Register on the
 2 twenty-seventh day of April, two thousand six, authorized
 3 under the authority of section six, article two, chapter twenty-
 4 two-a, section thirty-eight, article two, chapter twenty-two-a
 5 and section fifty-five, article two, chapter twenty-two-a of
 6 this code, modified by the Office of Miners Health Safety
 7 and Training to meet the objections of the Legislative Rule-
 8 Making Review Committee and refiled in the State Register
 9 on the eighteenth day of January, two thousand seven,
 10 relating to the Office of Miners Health Safety and Training

11 (protective clothing and equipment, 56 CSR 4), is authorized
12 with the following amendments:

13 On page one, subsection 1.1., by striking out the words
14 “these emergency rules” and inserting in lieu thereof the
15 words “this rule”;

16 On page one, subsection 2.1., by striking out the word
17 “State’s” and inserting in lieu thereof the word “state’s”;

18 On page one, subsection 2.1., line four, by striking out
19 the words “these legislative rules” and inserting in lieu
20 thereof the words “this rule”;

21 On page two, subsection 2.2., by striking out the words
22 “these rules” and inserting in lieu thereof the words “this
23 rule”;

24 On page two, subsection 3.1., by striking out the words
25 “as they are defined” and inserting in lieu thereof the word
26 “used”;

27 On page two, subsection 3.2., by striking out the words
28 “shall mean” and inserting in lieu thereof the word “means”;

29 On page two, subsection 3.3., by striking out the words
30 “shall herein refer” and inserting in lieu thereof the word
31 “means”;

32 On page three, subsection 4.1., by striking out the words
33 “these rules” and inserting in lieu thereof the words “this
34 rule”;

35 On page four, subsection 5.2., by striking out
36 “department of labor” and inserting in lieu thereof
37 “Department of Labor”;

38 On page four, subsection 5.2., after the word “Provided,”
39 by striking out “However,”;

40 On page four, subsection 5.3., line three, after the word
41 “training” by striking out the comma and the word
42 “provided” and inserting in lieu thereof a colon and the words
43 “Provided, That” and by striking out the word
44 “manufacturers” and inserting in lieu thereof the word
45 “manufacturers”;

46 On page four, subsection 5.3., after the words “limited
47 to” by changing the semi-colon to a colon;

48 On page five, subsection 6.1., by striking out the words
49 “these rules” and inserting in lieu thereof the words “this
50 rule”;

51 On page five, subsection 6.2., by striking out the words
52 “these rules” and inserting in lieu thereof the words “this
53 rule”;

54 On page eight, subparagraph 6.10.4.a.1., by striking out
55 §56-4-6" and inserting in lieu thereof “56 CSR 4-6”;

56 On page nine, subsection 6.14., by striking out the words
57 “these rules” and inserting in lieu thereof the words “this
58 rule”;

59 On page nine, by striking out subsection 6.15. in its
60 entirety;

61 On pages ten and eleven, by striking out subsection 7.4.
62 in its entirety;

63 On page eleven, by redesignating subdivision 8.1.1. as
64 subsection 8.2. and redesignating the remaining subsections
65 accordingly;

66 On page eleven, by redesignating subdivision 8.3.1. as
67 subsection 8.5. and redesignating the remaining subsections
68 accordingly;

69 On page fifteen, subsection 8.13., by striking out the
70 words “these rules” and inserting in lieu thereof the words
71 “this rule”;

72 On pages fifteen and sixteen, by striking out subsection
73 8.15. in its entirety;

74 On page seventeen, subsection 9.10., by striking out the
75 words “these rules” and inserting in lieu thereof the words
76 “this rule”;

77 And,

78 On page twenty, by striking out subsection 9.18. in its
79 entirety.

80 (b) The legislative rule filed in the State Register on the
81 twenty-eighth day of July, two thousand six, authorized under
82 the authority of sections six and thirty-eight, article one,
83 chapter twenty-two-a of this code, modified by the Office of
84 Miners Health Safety and Training to meet the objections of
85 the Legislative Rule-Making Review Committee and refiled
86 in the State Register on the eighteenth day of January, two
87 thousand seven, relating to the Office of Miners Health
88 Safety and Training (standards for certification of coal mine
89 electricians, 48 CSR 7), is authorized, with the following
90 amendments:

91 “On page three, subsection 4.1., by striking out the words
92 “Section 8.2.1.” and inserting in lieu thereof the words “8.3”;

93 On page four, section five, by designating the last two
94 paragraphs of the section as subsections 5.2. and 5.3.,
95 respectively;

96 On page four, section six, by designating the second
97 paragraph of the section as subsection 6.2. and by
98 redesignating the following subsection accordingly;

99 On page five, section six, by designating the last
100 paragraph of the section as subsection 6.4.;

101 On page five, subsection 8.1., by striking out the words
102 “Section 8.2.1.” and inserting in lieu thereof the words
103 “Section 8.3”;

104 On pages five and six, by striking out subdivision 8.2.1.
105 in its entirety and inserting in lieu thereof the following:

106 “8.3. Criteria and standards for alternative electrical
107 training programs must be adopted by unanimous approval of
108 the Director and the Board of Miner Training, Education and
109 Certification. An alternative electrical training program will
110 not become effective until approved by the Secretary of State
111 as an emergency rule or by the Legislature as an amendment
112 to this rule.” and redesignating the remaining subsection
113 accordingly;

114 And,

115 On page six, section nine, by designating the last
116 paragraph of the section as subsection 9.3.”.

§64-10-2. Bureau of Employment Programs.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand six, authorized under
3 the authority of section six, article two, chapter twenty-one-a,
4 of this code, modified by the Bureau of Employment
5 Programs to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twelfth day of January, two thousand seven, relating
8 to the Bureau of Employment Programs (requiring state
9 agencies to revoke or not to grant, issue or renew approval
10 documents with employing units on the bureau’s default list,
11 96 CSR 1), is authorized.

§64-10-3. Division of Forestry.

1 The legislative rule filed in the State Register on the
2 twenty-second day of June, two thousand six, authorized
3 under the authority of section three-a, article one-a, chapter
4 nineteen, of this code, modified by the Division of Forestry

5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twelfth day of January, two thousand seven, relating to the
8 Division of Forestry (ginseng, 22 CSR 1), is authorized, with
9 the following amendments:

10 On page two, section three, by striking out “3.1.”;

11 On page three, by redesignating subdivision 6.1.1. as
12 subsection 6.2. and by redesignating the remaining
13 subsections accordingly;

14 On page four, section seven, by striking out “7.1.”;

15 On page four, section eight, by striking out “8.1.”;

16 On page five, by redesignating subdivision paragraph
17 9.2.2.1. as subdivision 9.2.2.;

18 On page five, section ten, by striking out “10.1.”;

19 On page six, section eleven, by striking out “11.1.”;

20 And,

21 On page six, subsection 13.2., after the words “Freedom
22 of Information Act” by striking out the remainder of the
23 subsection and inserting in lieu thereof the following: “as
24 having a significant commercial value to the extent permitted
25 by W. Va. Code §29B-1-4(1).”.

§64-10-4. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section twenty-three-a, article two, chapter
4 twenty, of this code, relating to the Division of Natural
5 Resources (commercial whitewater outfitters, 58 CSR 12), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-eighth day of July, two thousand six, authorized under

9 the authority of section seven, article one, chapter twenty, of
10 this code, relating to the Division of Natural Resources
11 (special boating rules, 58 CSR 26), is authorized.

12 (c) The legislative rule filed in the State Register on the
13 twenty-eighth day of July, two thousand six, authorized under
14 the authority of section seven, article one, chapter twenty, of
15 this code, modified by the Division of Natural Resources to
16 meet the objections of the Legislative Rule-Making Review
17 Committee and refiled in the State Register on the eighteenth
18 day of December, two thousand six, relating to the Division
19 of Natural Resources (deer hunting, 58 CSR 50), is
20 authorized.

21 (d) The legislative rule filed in the State Register on the
22 twenty-eighth day of July, two thousand six, authorized under
23 the authority of section seven, article one, chapter twenty, of
24 this code, modified by the Division of Natural Resources to
25 meet the objections of the Legislative Rule-Making Review
26 Committee and refiled in the State Register on the second day
27 of November, two thousand six, relating to the Division of
28 Natural Resources (wildlife disease management, 58 CSR
29 69), is authorized, with the amendments:

30 On page 2, subsection 2.3, line eight, after the word
31 “landscape” and the period, by striking the remainder of the
32 subsection and inserting in lieu thereof, the following: “The
33 Director shall, at least annually after the establishment of a
34 containment area, review and evaluate any and all new
35 information relating to wildlife disease epidemiology and
36 surveillance to determine whether any such designation of a
37 containment area should be modified or rescinded and shall
38 report these findings to the Natural Resources Commission.
39 Prior to the establishment of a containment area, the Director
40 shall consult with:

41 2.3.a. wildlife biologists within the Wildlife Resources
42 Section that are knowledgeable of wildlife diseases;

43 2.3.b. a Department of Agriculture veterinarian
44 knowledgeable of wildlife diseases;

45 2.3.c. conservation officers familiar with local and
46 regional landscape features; and

47 2.3.d. the Natural Resources Commission.”;

48 And,

49 On page 3, by striking subsection 4.1 and inserting the
50 following, “4.1. It is illegal to feed cervids or other wildlife
51 in a containment area as determined by the Director and
52 established for the management, control or eradication of
53 chronic wasting disease, bovine tuberculosis, avian influenza
54 or other wildlife diseases. Provided, that song and
55 insectivorous birds may be fed so long as the person or
56 persons feeding the same shall not do so in a manner that
57 causes a congregation of cervids or other wildlife or in a
58 manner that said person or persons reasonably should have
59 known would cause a congregation of cervids or other
60 wildlife Provided further, that captive cervids may be fed
61 inside cervid facilities permitted by the Division of Natural
62 Resources.”.

63 (e) The legislative rule filed in the State Register on the
64 twenty-eighth day of July, two thousand six, authorized under
65 the authority of section seven, article one, chapter twenty, of
66 this code, modified by the Division of Natural Resources to
67 meet the objections of the Legislative Rule-Making Review
68 Committee and refiled in the State Register on the second day
69 of November, two thousand six, relating to the Division of
70 Natural Resources (public use of campgrounds and recreation
71 areas in West Virginia state wildlife management areas under
72 the Division of Natural Resources, 58 CSR 70), is authorized,
73 with the following amendments:

74 On page one, subsection 2.2., by striking out the word
75 “shall” and inserting in lieu thereof the word “may”;

- 76 On page two, section three, by striking out “3.1.”;
- 77 On page two, subsection 2.18., by striking out the word
78 “shall” and inserting in lieu thereof the word “may”;
- 79 And,
- 80 On page two, by striking out subsection 3.2. in its
81 entirety.

CHAPTER 159

(S.B. 360 - By Senators Bowman and Kessler)

[Passed February 14, 2007; in effect from passage.]

[Approved by the Governor on February 28, 2007.]

AN ACT to amend and reenact §11-8-9 of the Code of West Virginia, 1931, as amended, relating to extending the time a local levying body may meet as a levying body.

Be it enacted by the Legislature of West Virginia:

That §11-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-9. Meetings of local levying bodies.

- 1 (a) Each local levying body shall hold a meeting or
2 meetings between the seventh and twenty-eighth days of
3 March for the transaction of business generally and
4 particularly for the business herein required.

5 (b) When a levy is placed on the ballot for consideration
6 during a primary election, each local levying body may
7 extend its time to meet as a levying body until the first day of
8 June of that year.

CHAPTER 160

(Com. Sub. for H.B. 2048 - By Delegate Overington)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §10-1-5 of the Code of West Virginia, 1931, as amended, relating to clarifying public library board service areas as determined by the Library Commission; and providing for appointment of members at large from the service area.

Be it enacted by the Legislature of West Virginia:

That §10-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-5. Board of library directors -- Qualifications; term of office; vacancies; removal; no compensation.

1 (a) Whenever a public library is established under this
2 article, the governing authority or authorities shall appoint a
3 board of directors with five members chosen with reference
4 to their fitness for such office, from:

5 (1) The citizens of the library's service area, as
6 determined by the Library Commission; or

7 (2) The county in which the library is located.

8 (b) The board of directors for a regional library shall
9 consist of not less than five nor more than ten members, with
10 a minimum of one member from each county in the region.
11 The total number of directors and the apportionment of
12 directors by county shall be determined by joint action of the
13 governing authorities concerned.

14 (c) The term of office for a director is five years from the
15 first day of July following the appointment. Directors may
16 only serve two consecutive terms, and may serve until their
17 successors are appointed and qualified.

18 (d) For a new board of directors under this article, the
19 initial appointment of the directors shall be staggered.
20 Thereafter all appointments shall be for terms of five years.

21 (e) Vacancies in the board shall be immediately reported
22 by the board to the governing authority and filled by
23 appointment. Vacancies for an unexpired term shall be
24 immediately reported by the board to the governing authority
25 and filled by appointment for the remainder of the term only.

26 (f) A director may be removed for just cause in the
27 manner provided by the bylaws of the library board.

28 (g) No compensation shall be paid to any director.

CHAPTER 161

**(Com. Sub. for S.B. 414 - By Senators Oliverio, Foster,
Green, Stollings, Wells, Barnes, Caruth, Deem, Hall,
McKenzie and Yoder)**

[Passed March 18, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §38-5B-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §59-1-11 of said code, all relating to establishing a flat fee for certain services rendered by circuit clerks; eliminating other miscellaneous fees charged by circuit clerks; clarifying that clerk will send copy of suggestee execution by certified mail; and authorizing the circuit clerk to assess a fee for creating and administering certain special funds.

Be it enacted by the Legislature of West Virginia:

That §38-5B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §59-1-11 of said code be amended and reenacted, all to read as follows:

Chapter

38. Liens.

59. Fees; Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 38. LIENS.

**ARTICLE 5B. SUGGESTION OF THE STATE AND
POLITICAL SUBDIVISIONS;
GARNISHMENT AND
SUGGESTION OF PUBLIC
OFFICERS.**

**§38-5B-4. Notice to judgment debtor of execution against
salary or wages; time for service on officer of
suggestee.**

1 A certified copy of an execution issued under this article
2 against salary or wages shall be served by the clerk of the
3 court who issued the execution upon the judgment debtor or
4 his or her agent authorized to accept service of process, by
5 certified mail, return receipt requested, and delivery restricted
6 to the addressee. The day and hour of mailing shall be
7 clearly noted on the face of the original execution and the
8 officer to whom it is delivered for collection shall not make
9 service upon the proper officer until the expiration of five
10 days from that time.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered by the clerk the following fees which shall
3 be paid in advance by the parties for whom services are to be
4 rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals or any
8 other action, cause, suit or proceeding, one hundred forty-five
9 dollars, of which thirty dollars of that amount shall be
10 deposited in the Courthouse Facilities Improvement Fund
11 created by section six, article twenty-six, chapter twenty-nine
12 of this code and ten dollars shall be deposited in the special
13 revenue account created in section six hundred three, article
14 twenty-six, chapter forty-eight of this code to provide legal
15 services for domestic violence victims;

16 (2) For instituting an action for medical professional
17 liability, two hundred sixty dollars, of which ten dollars of
18 that amount shall be deposited in the Courthouse Facilities
19 Improvement Fund created by section six, article twenty-six,
20 chapter twenty-nine of this code;

21 (3) Beginning on and after the first day of July, one
22 thousand nine hundred ninety-nine, for instituting an action
23 for divorce, separate maintenance or annulment, one hundred
24 thirty-five dollars;

25 (4) For petitioning for the modification of an order
26 involving child custody, child visitation, child support or
27 spousal support, eighty-five dollars; and

28 (5) For petitioning for an expedited modification of a
29 child support order, thirty-five dollars.

30 (b) In addition to the foregoing fees, the following fees
31 shall likewise be charged and collected:

32 (1) For preparing an abstract of judgment, five dollars;

- 33 (2) For any transcript, copy or paper made by the clerk
34 for use in any other court or otherwise to go out of the office,
35 for each page, fifty cents;
- 36 (3) For action on suggestion, twenty-five dollars;
- 37 (4) For issuing an execution, twenty-five dollars;
- 38 (5) For issuing or renewing a suggestee execution,
39 twenty-five dollars;
- 40 (6) For vacation or modification of a suggestee execution,
41 one dollar;
- 42 (7) For docketing and issuing an execution on a transcript
43 of judgment from magistrate's court, three dollars;
- 44 (8) For arranging the papers in a certified question, writ
45 of error, appeal or removal to any other court, ten dollars, of
46 which five dollars of that amount shall be deposited in the
47 Courthouse Facilities Improvement Fund created by section
48 six, article twenty-six, chapter twenty-nine of this code;
- 49 (9) For postage and express and for sending or receiving
50 decrees, orders or records, by mail or express, three times the
51 amount of the postage or express charges;
- 52 (10) For each subpoena, on the part of either plaintiff or
53 defendant, to be paid by the party requesting the same, fifty
54 cents;
- 55 (11) For additional service (plaintiff or appellant) where
56 any case remains on the docket longer than three years, for
57 each additional year or part year, twenty dollars; and

58 (12) For administering funds deposited into a federally
59 insured interest-bearing account or interest-bearing
60 instrument pursuant to a court order, fifty dollars, to be
61 collected from the party making the deposit. A fee collected
62 pursuant to this subdivision shall be paid into the general
63 county fund.

64 (c) The clerk shall tax the following fees for services in
65 any criminal case against any defendant convicted in such
66 court:

67 (1) In the case of any misdemeanor, eighty-five dollars;
68 and

69 (2) In the case of any felony, one hundred five dollars, of
70 which ten dollars of that amount shall be deposited in the
71 Courthouse Facilities Improvement Fund created by section
72 six, article twenty-six, chapter twenty-nine of this code.

73 (d) The clerk of a circuit court shall charge and collect a
74 fee of twenty-five dollars per bond for services rendered by
75 the clerk for processing of criminal bonds and the fee shall be
76 paid at the time of issuance by the person or entity set forth
77 below:

78 (1) For cash bonds, the fee shall be paid by the person
79 tendering cash as bond;

80 (2) For recognizance bonds secured by real estate, the fee
81 shall be paid by the owner of the real estate serving as surety;

82 (3) For recognizance bonds secured by a surety company,
83 the fee shall be paid by the surety company;

84 (4) For ten percent recognizance bonds with surety, the
85 fee shall be paid by the person serving as surety; and

86 (5) For ten percent recognizance bonds without surety,
87 the fee shall be paid by the person tendering ten percent of
88 the bail amount.

89 In instances in which the total of the bond is posted by
90 more than one bond instrument, the above fee shall be
91 collected at the time of issuance of each bond instrument
92 processed by the clerk and all fees collected pursuant to this
93 subsection shall be deposited in the Courthouse Facilities
94 Improvement Fund created by section six, article twenty-six,
95 chapter twenty-nine of this code. Nothing in this subsection
96 may be construed as authorizing the clerk to collect the above
97 fee from any person for the processing of a personal
98 recognizance bond.

99 (e) The clerk of a circuit court shall charge and collect a
100 fee of ten dollars for services rendered by the clerk for
101 processing of bailpiece and the fee shall be paid by the surety
102 at the time of issuance. All fees collected pursuant to this
103 subsection shall be deposited in the Courthouse Facilities
104 Improvement Fund created by section six, article twenty-six,
105 chapter twenty-nine of this code.

106 (f) No clerk shall be required to handle or accept for
107 disbursement any fees, cost or amounts of any other officer
108 or party not payable into the county treasury, except on order
109 of the court or in compliance with the provisions of law
110 governing such fees, costs or accounts.

CHAPTER 162

**(Com. Sub. for S.B. 55 - By Senators Caruth, Guills,
Yoder and Hall)**

[Passed March 9, 2007, in effect from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to repeal §43-2-4 and §43-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §43-2-1, §43-2-2 and §43-2-3 of said code, all relating to updating the mortality tables and interest rate used in the valuation of a life estate; and repealing antiquated sections relating to inchoate right of dower.

Be it enacted by the Legislature of West Virginia:

That §43-2-4 and §43-2-5 of the Code of West Virginia, 1931, as amended, be repealed; and that §43-2-1, §43-2-2 and §43-2-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. VALUATION OF LIFE ESTATES.

§43-2-1. Gross sum in payment of life estates.

§43-2-2. Rule of calculation.

§43-2-3. Examples.

§43-2-1. Gross sum in payment of life estates.

1 When a party as a tenant for life, or in dower, or
2 otherwise, is entitled to the annual interest on a sum of
3 money, or is entitled to the use of any estate, or any part
4 thereof, or of the proceeds arising therefrom by a sale or
5 otherwise, and is willing to accept a gross sum in lieu thereof,
6 or the party liable for such interest, or affected by such claim,
7 has the right to pay a gross sum in lieu thereof, or if a court

LIFE ESTATES

[Ch. 162

8 in any proceeding decrees a gross sum to be paid in lieu
 9 thereof, or if it shall be desirable for any purpose to ascertain
 10 the value thereof, the sum to be paid or the present value
 11 thereof shall be calculated according to the following chart:

12	Age	Annuity	Life Estate	Remainder
13	0	17.1944	.96289	.03711
14	1	17.3242	.97015	.02985
15	2	17.3073	.96921	.03079
16	3	17.2851	.96797	.03203
17	4	17.2597	.96654	.03346
18	5	17.2316	.96497	.03503
19	6	17.2014	.96328	.03672
20	7	17.1690	.96146	.03854
21	8	17.1346	.95954	.04046
22	9	17.0977	.95747	.04253
23	10	17.0582	.95526	.04474
24	11	17.0162	.95291	.04709
25	12	16.9720	.95043	.04957
26	13	16.9261	.94786	.05214
27	14	16.8796	.94526	.05474
28	15	16.8330	.94265	.05735
29	16	16.7865	.94004	.05996
30	17	16.7398	.93743	.06257
31	18	16.6926	.93479	.06521
32	19	16.6439	.93206	.06794
33	20	16.5932	.92922	.07078
34	21	16.5401	.92625	.07375
35	22	16.4849	.92315	.07685
36	23	16.4270	.91991	.08009
37	24	16.3663	.91651	.08349
38	25	16.3022	.91292	.08708
39	26	16.2348	.90915	.09085
40	27	16.1636	.90516	.09484

Ch. 162]

LIFE ESTATES

41	28	16.0890	.90099	.09901
42	29	16.0109	.89661	.10339
43	30	15.9293	.89204	.10796
44	31	15.8442	.88728	.11272
45	32	15.7555	.88231	.11769
46	33	15.6627	.87711	.12289
47	34	15.5659	.87169	.12831
48	35	15.4645	.86601	.13399
49	36	15.3589	.86010	.13990
50	37	15.2486	.85392	.14608
51	38	15.1333	.84747	.15253
52	39	15.0130	.84073	.15927
53	40	14.8872	.83369	.16631
54	41	14.7556	.82632	.17368
55	42	14.6182	.81862	.18138
56	43	14.4748	.81059	.18941
57	44	14.3255	.80223	.19777
58	45	14.1707	.79356	.20644
59	46	14.0104	.78458	.21542
60	47	13.8449	.77532	.22468
61	48	13.6741	.76575	.23425
62	49	13.4978	.75588	.24412
63	50	13.3158	.74568	.25432
64	51	13.1281	.73518	.26482
65	52	12.9355	.72439	.27561
66	53	12.7380	.71333	.28667
67	54	12.5356	.70199	.29801
68	55	12.3284	.69039	.30961
69	56	12.1163	.67851	.32149
70	57	11.8995	.66637	.33363
71	58	11.6787	.65400	.34600
72	59	11.4545	.64145	.35855
73	60	11.2273	.62873	.37127
74	61	10.9968	.61582	.38418
75	62	10.7622	.60268	.39732

LIFE ESTATES

[Ch. 162]

76	63	10.5234	.58931	.41069
77	64	10.2809	.57573	.42427
78	65	10.0348	.56195	.43805
79	66	9.7847	.54794	.45206
80	67	9.5299	.53367	.46633
81	68	9.2709	.51917	.48083
82	69	9.0085	.50448	.49552
83	70	8.7440	.48966	.51034
84	71	8.4785	.47480	.52520
85	72	8.2128	.45991	.54009
86	73	7.9474	.44505	.55495
87	74	7.6815	.43016	.56984
88	75	7.4142	.41520	.58480
89	76	7.1449	.40011	.59989
90	77	6.8735	.38491	.61509
91	78	6.6006	.36964	.63036
92	79	6.3280	.35437	.64563
93	80	6.0577	.33923	.66077
94	81	5.7918	.32434	.67566
95	82	5.5314	.30976	.69024
96	83	5.2765	.29549	.70451
97	84	5.0255	.28143	.71857
98	85	4.7769	.26750	.73250
99	86	4.5327	.25383	.74617
100	87	4.2964	.24060	.75940
101	88	4.0679	.22780	.77220
102	89	3.8473	.21545	.78455
103	90	3.6348	.20355	.79645
104	91	3.4338	.19229	.80771
105	92	3.2479	.18188	.81812
106	93	3.0765	.17229	.82771
107	94	2.9171	.16336	.83664
108	95	2.7660	.15490	.84510
109	96	2.6241	.14695	.85305
110	97	2.4928	.13960	.86040

Ch. 162]

LIFE ESTATES

111	98	2.3696	.13270	.86730
112	99	2.2496	.12598	.87402
113	100	2.1329	.11944	.88056
114	101	2.0180	.11301	.88699
115	102	1.9052	.10669	.89331
116	103	1.7935	.10043	.89957
117	104	1.6743	.09376	.90624
118	105	1.5578	.08724	.91276
119	106	1.4085	.07887	.92113
120	107	1.2279	.06876	.93124
121	108	.9484	.05311	.94689
122	109	.4735	.02652	.97348

§43-2-2. Rule of calculation.

1 Calculate the interest at five and six-tenths percent upon
2 the sum to the income of which or upon the value of the
3 property to the use of which the person is entitled. Multiply
4 this interest by the present value of an annuity of one dollar
5 as set opposite the person's age in the table and the product is
6 the gross value of the life estate of such person therein.

§43-2-3. Examples.

1 Suppose a person whose age is fifty is tenant for life in
2 the whole of an estate worth \$18,000. The annual interest on
3 that sum at five and six-tenths percent is \$1,008. The present
4 value of an annuity of one dollar at the age of fifty, as
5 appears by the table in the annuity column, is \$13.3158,
6 which multiplied by \$1,008, the amount of the annual
7 interest, gives \$13,422.33 as the gross value of such life
8 estate in the premises or the proceeds thereof.

CHAPTER 163

**(H.B. 2526 - By Delegates Morgan, Eldridge, Hatfield, Hutchins,
D. Poling, Andes, Cowles, C. Miller, Schoen and Stagers)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §31B-13-1301 of the Code of West Virginia, 1931, as amended, relating to allowing acupuncturists to form professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

That §31B-13-1301 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1301. Definitions.

1 As used in this article:

2 (1) "Licensing board" means the governing body or
3 agency established under chapter thirty of this code which is
4 responsible for the licensing and regulation of the practice of
5 the profession which the professional limited liability
6 company is organized to provide;

7 (2) "Professional limited liability company" means a
8 limited liability company organized under this chapter for the
9 purpose of rendering a professional service; and

10 (3) "Professional service" means the services rendered by
11 the following professions: Attorneys-at-law under article two,
12 physicians and podiatrists under article three, dentists under
13 article four, optometrists under article eight, accountants
14 under article nine, veterinarians under article ten, architects
15 under article twelve, engineers under article thirteen,

16 osteopathic physicians and surgeons under article fourteen,
17 chiropractors under article sixteen, psychologists under
18 article twenty-one, social workers under article thirty,
19 acupuncturists under article thirty-six and land surveyors
20 under article thirteen-a, all of chapter thirty of this code.

●

CHAPTER 164

**(S.B. 140 - By Senators Kessler, Foster, Green, Jenkins,
Minard, Stollings, Wells, White, Barnes, Caruth, Deem,
Hall, McKenzie and Yoder)**

[Passed February 2, 2007; in effect ninety days from passage.]

[Approved by the Governor on February 20, 2007.]

AN ACT to amend and reenact §50-3-4 of the Code of West Virginia, 1931, as amended, relating to deposit of certain moneys collected in magistrate court.

Be it enacted by the Legislature of West Virginia:

That §50-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

1 (a) All costs collected in magistrate courts in a civil
2 proceeding pursuant to the provisions of section one of this
3 article and all costs collected in magistrate courts in a
4 criminal proceeding pursuant to the provisions of section two
5 of this article shall be submitted on or before the tenth day of
6 the month following the month of their collection to the
7 magistrate court clerk along with any information that may be
8 required by the rules of the Supreme Court of Appeals and by
9 the rules of the State Auditor.

10 (b)(1) The special county fund known as the magistrate
11 court fund established in each county by chapter thirty-three,
12 Acts of the Legislature, regular session, one thousand nine
13 hundred seventy-six, as amended and reenacted in subsequent
14 Acts of the Legislature, is hereby continued. The moneys
15 credited to the fund may be used solely for the purposes
16 provided in this section.

17 (2) The magistrate court clerk of each county shall pay
18 the sum of ten dollars collected in magistrate court for each
19 civil and criminal proceeding into the magistrate court fund
20 during each fiscal year until there is paid a sum equal to
21 fifteen thousand dollars multiplied by the number of
22 magistrates authorized for the county.

23 (3) A county may, in accordance with the supervisory
24 rules of the Supreme Court of Appeals, appropriate and spend
25 from the fund such sums as are necessary to defray the
26 expenses of providing services to magistrate courts.

27 (c)(1) There is hereby created in the State Treasury a
28 special escrow account designated as the Magistrate Court
29 Surplus Account. The moneys credited to the account may
30 be used solely for the purposes provided in this subsection.

31 (2) Beginning on the first day of July, two thousand, all
32 costs collected during a fiscal year in excess of the sum
33 specified in subdivision (2), subsection (b) of this section
34 shall be deposited in the Magistrate Court Surplus Account
35 in the State Treasury.

36 (3) Beginning on the first day of September, two
37 thousand one, and on the first day of September of each year
38 thereafter, in accordance with the supervisory rules of the
39 Supreme Court of Appeals, funds from the Magistrate Court
40 Surplus Account deposited therein as excess costs collected
41 in the prior fiscal year pursuant to the provisions of
42 subdivision (2) of this subsection shall be disbursed as a

43 supplement to any county magistrate court fund which
44 generated less than fifteen thousand dollars per magistrate in
45 the prior fiscal year in accordance with the provisions of this
46 subsection.

47 (4) The amount disbursed to a county magistrate court
48 fund from the Magistrate Court Surplus Account, when
49 combined with the court costs generated by the magistrate
50 court fund of the county in the prior fiscal year, may not
51 exceed fifteen thousand dollars per magistrate.

52 (5) The disbursements described in subdivision (3) of this
53 subsection shall be made as follows:

54 (A) There shall be distributed to each county magistrate
55 court fund that generated less than nine thousand dollars in
56 the prior fiscal year the sum of nine thousand dollars less the
57 amount of court costs generated by the county magistrate
58 court fund in the prior fiscal year. To the extent that the
59 funds available for this disbursement are insufficient to fully
60 fund this disbursement, the funds available shall be disbursed
61 to these counties on a pro rata basis.

62 (B) Any funds that remain available for disbursement
63 after disbursements made pursuant to paragraph (A) of this
64 subdivision shall be disbursed in equal shares to each county
65 magistrate court fund that generated less than fifteen
66 thousand dollars per magistrate in the prior fiscal year. The
67 shares to be disbursed to each county magistrate court fund
68 are to be equal to the number of magistrates in the county.
69 Any disbursement made under this paragraph shall be subject
70 to the limitations specified in subdivision (4) of this
71 subsection.

72 (6) Any funds that remain available in the Magistrate
73 Court Surplus Account after the disbursements have been
74 made pursuant to the provisions of paragraphs (A) and (B),
75 subdivision (5) of this subsection shall be deposited by the
76 State Treasurer into the General Revenue Fund of the state.

CHAPTER 165

(S.B. 415 - By Senators Kessler, Oliverio, Chafin, Foster, Hunter, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §50-3-7 of the Code of West Virginia, 1931, as amended, relating to authorizing magistrate courts to assess a fee of twenty-five dollars for criminal records checks.

Be it enacted by the Legislature of West Virginia:

That §50-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-7. Records of magistrate court; reports.

1 (a) Records of the judicial transactions of magistrate
2 court shall be kept as required by the rules of the Supreme
3 Court of Appeals. If, after judgment is rendered in a
4 matter, no appeal is filed within the time allotted, the
5 records of the proceedings shall be forwarded to the
6 magistrate court clerk. The records shall be maintained by
7 the magistrate court clerk in accordance with the rules of
8 the Supreme Court of Appeals.

9 Records of the financial dealings of the magistrate
10 court shall be kept as may be required by the rules of the
11 State Auditor, who shall promulgate the rules only after
12 consultation with the Supreme Court of Appeals.

13 The magistrate court shall prepare and submit the

14 reports as may be required by the rules of the Supreme
15 Court of Appeals or by the State Auditor.

16 (b)(1) Upon receipt of a written request, the magistrate
17 court clerk shall perform a criminal history record search
18 of criminal records in his or her possession. Each request
19 shall be accompanied by a 25-dollar fee for each name that
20 is to be the subject of the records search.

21 (2) The provisions of this subsection shall not apply to:

22 (A) Federal, state, county or municipal officials;

23 (B) Court-appointed attorneys;

24 (C) Prosecuting attorneys; and

25 (D) Persons utilizing court provided public access
26 terminals.

27 (3) All moneys collected pursuant to this subsection
28 shall be remitted to the general fund in the State Treasury
29 on or before the tenth day of the following month.



CHAPTER 166

(Com. Sub. for S.B. 393 - By Senator Bowman)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-1a, relating to the Marketing and Communications Office; creating the Marketing and Communications Office in the Department of Commerce; authorizing the office to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity

or person; authorizing the assessment of fees; setting fees; creating a special revenue account; providing for expenditure of funds; requiring certain reports; and providing sunset provisions.

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 §5B-1-1a, to read as follows:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1a. Marketing and Communications Office.

1 (a) There is hereby created in the Department of
2 Commerce the Marketing and Communications Office. The
3 office is created to provide marketing and communications
4 goods and services to other state agencies, departments, units
5 of state or local government or other entity or person.

6 (b) The office is authorized to charge for goods and
7 services it provides to other state agencies. The Secretary of
8 the Department of Commerce shall approve a fee schedule
9 determining the amounts that may be charged for goods and
10 services provided by the office to other state agencies.

11 (c) All moneys collected shall be deposited in a special
12 account in the State Treasury to be known as the Department
13 of Commerce Marketing and Communications Operating
14 Fund. Expenditures from the fund shall be for the operation
15 of the office and are not authorized from collections but are
16 to be made only in accordance with appropriation by the
17 Legislature and in accordance with the provisions of article
18 two, chapter eleven-b of this code: *Provided*, That for the
19 fiscal year ending the thirtieth day of June, two thousand
20 eight, expenditures are authorized from collections and shall

21 be expended at the discretion of the Secretary of the
22 Department of Commerce rather than pursuant to
23 appropriation by the Legislature.

24 (d) Any balance remaining at the end of any fiscal year
25 shall not revert to the General Revenue Fund, but shall
26 remain in the fund for expenditures in accordance with the
27 purposes set forth in this section.

28 (e) The Department of Commerce shall develop and
29 maintain a system of annual or more frequent performance
30 measures useful in gauging the efficiency and effectiveness
31 of the office's marketing and communications activities. The
32 measures shall also reflect the office's efficiency and
33 effectiveness with respect to commercially available
34 marketing and communications services and any private
35 sector benchmarks which might be identified or created. For
36 the purposes of this section, "performance measures" means
37 income, output, quality, self-sufficiency and outcome
38 metrics.

39 (f) Beginning on the first day of January, two thousand
40 eight, and annually every year thereafter, the Secretary of the
41 Department of Commerce shall report to the Joint Committee
42 on Government and Finance, the Joint Standing Committee
43 on Finance and the Joint Commission on Economic
44 Development on the performance of the office. This report
45 is to include a statement of the performance measurements
46 for the office developed by the Secretary of the Department
47 of Commerce and an analysis of the office's performance.

48 (g) Pursuant to the provisions of article ten, chapter four
49 of this code, the Marketing and Communications Office shall
50 continue to exist until the first day of July, two thousand ten,
51 unless sooner terminated, continued or reestablished.

CHAPTER 167**(H.B. 3184 - By Delegate Wysong)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-9 of said code, all relating to confidentiality, disclosure and authorization for disclosure of mental health information obtained in the course of treatment or evaluation of individuals.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-9 of said code be amended and reenacted, all to read as follows:

Article

- 3. Confidentiality.**
- 5. Involuntary Hospitalization.**

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

§27-3-2. Authorization of disclosure of confidential information.

§27-3-1. Definition of confidential information; disclosure.

- 1 (a) Communications and information obtained in the
- 2 course of treatment or evaluation of any client or patient are
- 3 confidential information. Such confidential information
- 4 includes the fact that a person is or has been a client or
- 5 patient, information transmitted by a patient or client or
- 6 family thereof for purposes relating to diagnosis or treatment,
- 7 information transmitted by persons participating in the

8 accomplishment of the objectives of diagnosis or treatment,
9 all diagnoses or opinions formed regarding a client's or
10 patient's physical, mental or emotional condition; any advice,
11 instructions or prescriptions issued in the course of diagnosis
12 or treatment, and any record or characterization of the matters
13 hereinbefore described. It does not include information
14 which does not identify a client or patient, information from
15 which a person acquainted with a client or patient would not
16 recognize such client or patient, and uncoded information
17 from which there is no possible means to identify a client or
18 patient.

19 (b) Confidential information may be disclosed:

20 (1) In a proceeding under section four, article five of this
21 chapter to disclose the results of an involuntary examination
22 made pursuant to sections two, three or four, article five of
23 this chapter;

24 (2) In a proceeding under article six-a of this chapter to
25 disclose the results of an involuntary examination made
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a finding
28 that the information is sufficiently relevant to a proceeding
29 before the court to outweigh the importance of maintaining
30 the confidentiality established by this section;

31 (4) To protect against a clear and substantial danger of
32 imminent injury by a patient or client to himself, herself or
33 another;

34 (5) For treatment or internal review purposes, to staff of
35 the mental health facility where the patient is being cared for
36 or to other health professionals involved in treatment of the
37 patient; and

38 (6) Without the patient's consent as provided for under
39 the Privacy Rule of the federal Health Insurance Portability
40 and Accountability Act of 1996, 45 C. F. R. §164.506 for
41 thirty days from the date of admission to a mental health

42 facility if: (i) The provider makes a good faith effort to
43 obtain consent from the patient or legal representative prior
44 to disclosure; (ii) the minimum information necessary is
45 released for a specifically stated purpose; and (iii) prompt
46 notice of the disclosure, the recipient of the information and
47 the purpose of the disclosure is given to the patient or legal
48 representative.

§27-3-2. Authorization of disclosure of confidential information.

1 No consent or authorization for the transmission or
2 disclosure of confidential information is effective unless it is
3 in writing and signed by the patient or client by his or her
4 legal guardian. Every person signing an authorization shall
5 be given a copy.

6 Every person requesting the authorization shall inform
7 the patient, client or authorized representative that refusal to
8 give the authorization will in no way jeopardize his or her
9 right to obtain present or future treatment.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-9. Rights of patients.

1 (a) No person may be deprived of any civil right solely
2 by reason of his or her receipt of services for mental illness,
3 mental retardation or addiction, nor does the receipt of the
4 services modify or vary any civil right of the person,
5 including, but not limited to, civil service status and
6 appointment, the right to register for and to vote at elections,
7 the right to acquire and to dispose of property, the right to
8 execute instruments or rights relating to the granting,
9 forfeiture or denial of a license, permit, privilege or benefit
10 pursuant to any law, but a person who has been adjudged
11 incompetent pursuant to article eleven of this chapter and
12 who has not been restored to legal competency may be
13 deprived of such rights. Involuntary commitment pursuant
14 to this article does not of itself relieve the patient of legal
15 capacity.

16 (b) Each patient of a mental health facility receiving
17 services from the facility shall receive care and treatment that
18 is suited to his or her needs and administered in a skillful,
19 safe and humane manner with full respect for his or her
20 dignity and personal integrity.

21 (c) Every patient has the following rights regardless of
22 adjudication of incompetency:

23 (1) Treatment by trained personnel;

24 (2) Careful and periodic psychiatric reevaluation no less
25 frequently than once every three months;

26 (3) Periodic physical examination by a physician no less
27 frequently than once every six months; and

28 (4) Treatment based on appropriate examination and
29 diagnosis by a staff member operating within the scope of his
30 or her professional license.

31 (d) The chief medical officer shall cause to be developed
32 within the clinical record of each patient a written treatment
33 plan based on initial medical and psychiatric examination not
34 later than seven days after he or she is admitted for treatment.
35 The treatment plan shall be updated periodically, consistent
36 with reevaluation of the patient. Failure to accord the patient
37 the requisite periodic examinations or treatment plan and
38 reevaluations entitles the patient to release.

39 (e) A clinical record shall be maintained at a mental
40 health facility for each patient treated by the facility. The
41 record shall contain information on all matters relating to the
42 admission, legal status, care and treatment of the patient and
43 shall include all pertinent documents relating to the patient.
44 Specifically, the record shall contain results of periodic
45 examinations, individualized treatment programs, evaluations
46 and reevaluations, orders for treatment, orders for application
47 for mechanical restraint and accident reports, all signed by
48 the personnel involved.

49 (f) Every patient, upon his or her admission to a hospital
50 and at any other reasonable time, shall be given a copy of the
51 rights afforded by this section.

52 (g) The Secretary of the Department of Health and
53 Human Resources shall propose rules for legislative approval
54 in accordance with the provisions of article three, chapter
55 twenty-nine-a of this code to protect the personal rights of
56 patients not inconsistent with this section.

CHAPTER 168

(Com. Sub. for S.B. 117 - By Senators Oliverio and Hunter)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §27-6A-10 and §27-6A-11, all relating to the determination of a person's competency to stand trial and of criminal responsibility generally; addressing court jurisdiction over persons found not guilty by reason of mental illness; defining terms; requiring release from jurisdiction of the court under certain circumstances; requiring periodic review of person found incompetent to stand trial; establishing time limits for motions and hearings; adding provisions for forensic evaluations and evaluators; addressing evaluations of diminished capacity and dangerousness; providing for responsibility of costs; and requiring the Department of Health and Human Resources to establish policies and procedures related to rates and reimbursements for evaluations and related services.

Be it enacted by the Legislature of West Virginia:

That §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 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 §27-6A-10 and §27-6A-11, all to read as follows:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

- §27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.
- §27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.
- §27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.
- §27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.
- §27-6A-5. Release of acquittee to less restrictive environment; discharge from jurisdiction of the court.
- §27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.
- §27-6A-8. Credit for time; expenses.
- §27-6A-9. Competency to be adjudicated in juvenile court.
- §27-6A-10. Medications and management of court-ordered individuals.
- §27-6A-11. Payment to forensic evaluators.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

1 (a) For purposes of this article:

2 (1) A “qualified forensic psychiatrist” is:

3 (A) A psychiatrist licensed under the laws in this state to
 4 practice medicine who has completed post-graduate
 5 education in psychiatry in a program accredited by the
 6 Accreditation Council of Graduate Medical Education; and

7 (B) Board eligible or board certified in forensic
8 psychiatry by the American Board of Psychiatry and
9 Neurology or actively enrolled in good standing in a West
10 Virginia training program accredited by the Accreditation
11 Council of Graduate Medical Education to make the
12 evaluator eligible for board certification by the American
13 Board of Psychiatry and Neurology in forensic psychiatry or
14 has two years of experience in completing court-ordered
15 forensic criminal evaluations, including having been
16 qualified as an expert witness by a West Virginia circuit
17 court.

18 (2) A “qualified forensic psychologist” is:

19 (A) A licensed psychologist licensed under the laws of
20 this state to practice psychology; and

21 (B) Board eligible or board certified in forensic
22 psychology by the American Board of Professional
23 Psychology or actively enrolled in good standing in a West
24 Virginia training program approved by the American Board
25 of Forensic Psychology to make the evaluator eligible for
26 board certification in forensic psychology or has at least two
27 years of experience in performing court-ordered forensic
28 criminal evaluations, including having been qualified as an
29 expert witness by a West Virginia circuit court.

30 (3) A “qualified forensic evaluator” is either a qualified
31 forensic psychiatrist or a qualified forensic psychologist as
32 defined in this section.

33 (4) “Department” means the Department of Health and
34 Human Resources.

35 (b) No qualified forensic evaluator may perform a
36 forensic evaluation on an individual under this chapter if the
37 qualified forensic evaluator has been the individual’s treating

38 psychologist or psychiatrist within one year prior to any
39 evaluation order.

**§27-6A-2. Competency of defendant to stand trial; cause for
appointment of qualified forensic evaluator;
written report; observation period.**

1 (a) Whenever a court of record has reasonable cause to
2 believe that a defendant in which an indictment has been
3 returned, or a warrant or summons issued, may be
4 incompetent to stand trial it shall, sua sponte or upon motion
5 filed by the state or by or on behalf of the defendant, at any
6 stage of the proceedings order a forensic evaluation of the
7 defendant's competency to stand trial to be conducted by one
8 or more qualified forensic psychiatrists, or one or more
9 qualified forensic psychologists. If a court of record or other
10 judicial officer orders both a competency evaluation and a
11 criminal responsibility or diminished capacity evaluation, the
12 competency evaluation shall be performed first, and if a
13 qualified forensic evaluator is of the opinion that a defendant
14 is not competent to stand trial, no criminal responsibility or
15 diminished capacity evaluation may be conducted without
16 further order of the court. The initial forensic evaluation may
17 not be conducted at a state inpatient mental health facility
18 unless the defendant resides there.

19 (b) The court shall require the party making the motion
20 for the evaluation, and other parties as the court considers
21 appropriate, to provide to the qualified forensic evaluator
22 appointed under subsection (a) of this section any
23 information relevant to the evaluations within ten business
24 days of its evaluation order. The information shall include,
25 but not be limited to:

26 (1) A copy of the warrant or indictment;

27 (2) Information pertaining to the alleged crime, including
28 statements by the defendant made to the police, investigative
29 reports and transcripts of preliminary hearings, if any;

30 (3) Any available psychiatric, psychological, medical or
31 social records that are considered relevant;

32 (4) A copy of the defendant's criminal record; and

33 (5) If the evaluations are to include a diminished capacity
34 assessment, the nature of any lesser included criminal
35 offenses.

36 (c) A qualified forensic evaluator shall schedule and
37 arrange for the prompt completion of any court-ordered
38 evaluation which may include record review and defendant
39 interview and shall, within ten business days of the date of
40 the completion of any evaluation, provide to the court of
41 record a written, signed report of his or her opinion on the
42 issue of competency to stand trial. If it is the qualified
43 forensic evaluator's opinion that the defendant is not
44 competent to stand trial, the report shall state whether the
45 defendant is substantially likely to attain competency within
46 the next three months and, in order to attain competency to
47 stand trial, whether the defendant requires inpatient
48 management in a mental health facility. The court may
49 extend the ten-day period for filing the report if a qualified
50 forensic evaluator shows good cause to extend the period, but
51 in no event may the period exceed thirty days. If there are no
52 objections by the state or defense counsel, the court may, by
53 order, dismiss the requirement for a written report if the
54 qualified forensic evaluator's opinion may otherwise be made
55 known to the court and interested parties.

56 (d) If the court determines that the defendant has been
57 uncooperative during the forensic evaluation ordered
58 pursuant to subsection (a) of this section or there have been
59 one or more inadequate or conflicting forensic evaluations

60 performed pursuant to subsection (a) of this section and the
61 court has reason to believe that an observation period is
62 necessary in order to determine if a person is competent to
63 stand trial, the court may order the defendant be committed
64 to a mental health facility designated by the department for
65 a period not to exceed fifteen days and an additional
66 evaluation be conducted in accordance with subsection (a) of
67 this section by one or more qualified forensic psychiatrists,
68 or a qualified forensic psychiatrist and a qualified forensic
69 psychologist. The court shall order that at the conclusion of
70 the fifteen-day observation period the sheriff of the county
71 where the defendant was charged shall take immediate
72 custody of the defendant for transportation and disposition as
73 ordered by the court.

74 (e) A mental health facility not operated by the state is
75 not obligated to admit and treat a defendant under this
76 section.

**§27-6A-3. Competency of defendant to stand trial
determination; preliminary finding; hearing;
evidence; disposition.**

1 (a) Within five days of the receipt of the qualified
2 forensic evaluator's report and opinion on the issue of
3 competency to stand trial, the court of record shall make a
4 preliminary finding on the issue of whether the defendant is
5 competent to stand trial and if not competent whether there
6 is a substantial likelihood that the defendant will attain
7 competency within the next three months. If the court of
8 record orders, or if the state or defendant or defendant's
9 counsel within twenty days of receipt of the preliminary
10 findings requests, a hearing, then a hearing shall be held by
11 the court of record within fifteen days of the date of the
12 preliminary finding, absent good cause being shown for a
13 continuance. If a hearing order or request is not filed within
14 twenty days, the preliminary findings of the court become the
15 final order.

16 (b) At a hearing to determine a defendant's competency
17 to stand trial the defendant has the right to be present and he
18 or she has the right to be represented by counsel and
19 introduce evidence and cross-examine witnesses. The
20 defendant shall be afforded timely and adequate notice of the
21 issues at the hearing and shall have access to all forensic
22 evaluator's opinions. All rights generally afforded a
23 defendant in criminal proceedings shall be afforded to a
24 defendant in the competency proceedings, except trial by
25 jury.

26 (c) The court of record pursuant to a preliminary finding
27 or hearing on the issue of a defendant's competency to stand
28 trial and with due consideration of any forensic evaluation
29 conducted pursuant to sections two and three of this article
30 shall make a finding of fact upon a preponderance of the
31 evidence as to the defendant's competency to stand trial based
32 on whether or not the defendant has sufficient present ability
33 to consult with his or her lawyer with a reasonable degree of
34 rational understanding and whether he or she has a rational as
35 well as a factual understanding of the proceedings against
36 him or her.

37 (d) If at any point in the proceedings the defendant is
38 found competent to stand trial, the court of record shall
39 forthwith proceed with the criminal proceedings.

40 (e) If at any point in the proceedings the defendant is
41 found not competent to stand trial, the court of record shall at
42 the same hearing, upon the evidence, make further findings
43 as to whether or not there is a substantial likelihood that the
44 defendant will attain competency within the next ensuing
45 three months.

46 (f) If at any point in the proceedings the defendant is
47 found not competent to stand trial and is found substantially
48 likely to attain competency, the court of record shall in the
49 same order, upon the evidence, make further findings as to

50 whether the defendant requires, in order to attain
51 competency, inpatient management in a mental health
52 facility. If inpatient management is required, the court shall
53 order the defendant be committed to an inpatient mental
54 health facility designated by the department to attain
55 competency to stand trial and for a competency evaluation.
56 The term of this commitment may not exceed three months
57 from the time of entry into the facility. However, upon
58 request by the chief medical officer of the mental health
59 facility and based on the requirement for additional
60 management to attain competency to stand trial, the court of
61 record may, prior to the termination of the three-month
62 period, extend the period up to nine months from entry into
63 the facility. A forensic evaluation of competency to stand
64 trial shall be conducted by a qualified forensic evaluator and
65 a report rendered to the court, in like manner as subsections
66 (a) and (c), section two of this article, every three months
67 until the court determines the defendant is not competent to
68 stand trial and is not substantially likely to attain competency.

69 (g) If at any point in the proceedings the defendant is
70 found not competent to stand trial and is found not
71 substantially likely to attain competency and if the defendant
72 has been indicted or charged with a misdemeanor or felony
73 which does not involve an act of violence against a person,
74 the criminal charges shall be dismissed. The dismissal order
75 may, however, be stayed for twenty days to allow civil
76 commitment proceedings to be instituted by the prosecutor
77 pursuant to article five of this chapter. The defendant shall be
78 immediately released from any inpatient facility unless civilly
79 committed.

80 (h) If at any point in the proceedings the defendant is
81 found not competent to stand trial and is found not
82 substantially likely to attain competency, and if the defendant
83 has been indicted or charged with a misdemeanor or felony
84 in which the misdemeanor or felony does involve an act of
85 violence against a person, then the court shall determine on

86 the record the offense or offenses of which the person
87 otherwise would have been convicted, and the maximum
88 sentence he or she could have received. A defendant shall
89 remain under the court's jurisdiction until the expiration of
90 the maximum sentence unless the defendant attains
91 competency to stand trial and the criminal charges reach
92 resolution or the court dismisses the indictment or charge.
93 The court shall order the defendant be committed to a mental
94 health facility designated by the department that is the least
95 restrictive environment to manage the defendant and that will
96 allow for the protection of the public. Notice of the maximum
97 sentence period with an end date shall be provided to the
98 mental health facility. The court shall order a qualified
99 forensic evaluator to conduct a dangerousness evaluation to
100 include dangerousness risk factors to be completed within
101 thirty days of admission to the mental health facility and a
102 report rendered to the court within ten business days of the
103 completion of the evaluation. The medical director of the
104 mental health facility shall provide the court a written clinical
105 summary report of the defendant's condition at least annually
106 during the time of the court's jurisdiction. The court's
107 jurisdiction shall continue an additional ten days beyond any
108 expiration to allow civil commitment proceedings to be
109 instituted by the prosecutor pursuant to article five of this
110 chapter. The defendant shall then be immediately released
111 from the facility unless civilly committed.

112 (i) If the defendant has been ordered to a mental health
113 facility pursuant to subsection (h) of this section and the court
114 receives notice from the medical director or other responsible
115 official of the mental health facility that the defendant no
116 longer constitutes a significant danger to self or others, the
117 court shall conduct a hearing within thirty days to consider
118 evidence, with due consideration of the qualified forensic
119 evaluator's dangerousness report or clinical summary report
120 to determine if the defendant shall be released to a less
121 restrictive environment. The court may order the release of
122 the defendant only when the court finds that the defendant is

123 no longer a significant danger to self or others. When a
124 defendant's dangerousness risk factors associated with mental
125 illness are reduced or eliminated as a result of any treatment,
126 the court, in its discretion, may make the continuance of
127 appropriate treatment, including medications, a condition of
128 the defendant's release from inpatient hospitalization. The
129 court shall maintain jurisdiction of the defendant in
130 accordance with said subsection. Upon notice that a
131 defendant ordered to a mental health facility pursuant to said
132 subsection who is released on the condition that he or she
133 continues treatment does not continue his or her treatment,
134 the prosecuting attorney shall, by motion, cause the court to
135 reconsider the defendant's release. Upon a showing that
136 defendant is in violation of the conditions of his or her
137 release, the court shall reorder the defendant to a mental
138 health facility under the authority of the department which is
139 the least restrictive setting that will allow for the protection
140 of the public.

141 (j) The prosecuting attorney may, by motion, and in due
142 consideration of any chief medical officer's or forensic
143 evaluator's reports, cause the competency to stand trial of a
144 defendant subject to the court's jurisdiction pursuant to
145 subsection (h) of this section or released pursuant to
146 subsection (i) of this section to be determined by the court of
147 record while the defendant remains under the jurisdiction of
148 the court, and in which case the court may order a forensic
149 evaluation of competency to stand trial be conducted by a
150 qualified forensic evaluator and a report rendered to the court
151 in like manner as subsections (a) and (c), section two of this
152 article.

153 (k) Any defendant found not competent to stand trial may
154 at any time petition the court of record for a hearing on his or
155 her competency.

156 (l) Notice of court findings of a defendant's competency
157 to stand trial, of commitment for inpatient management to

158 attain competency, of dismissal of charges, of order for
159 inpatient management to protect the public, of release or
160 conditional release, or any hearings to be conducted pursuant
161 to this section shall be sent to the prosecuting attorney, the
162 defendant and his or her counsel, and the mental health
163 facility. Notice of court release hearing or order for release or
164 conditional release pursuant to subsection (i) of this section
165 shall be made available to the victim or next of kin of the
166 victim of the offense for which the defendant was charged.
167 The burden is on the victim or next of kin of the victim to
168 keep the court apprised of that person's current mailing
169 address.

170 (m) A mental health facility not operated by the state is
171 not obligated to admit or treat a defendant under this section.

**§27-6A-4. Criminal responsibility or diminished capacity
evaluation; court jurisdiction over persons
found not guilty by reason of mental illness.**

1 (a) If the court of record finds, upon hearing evidence or
2 representations of counsel for the defendant, that there is
3 probable cause to believe that the defendant's criminal
4 responsibility or diminished capacity will be a significant
5 factor in his or her defense, the court shall appoint one or
6 more qualified forensic psychiatrists or qualified forensic
7 psychologists to conduct a forensic evaluation of the
8 defendant's state of mind at the time of the alleged offense.
9 However, if a qualified forensic evaluator is of the opinion
10 that the defendant is not competent to stand trial that no
11 criminal responsibility or diminished capacity evaluation may
12 be conducted. The forensic evaluation may not be conducted
13 at a state inpatient mental health facility unless the defendant
14 has been ordered to a mental health facility in accordance
15 with subsection (c), section two of this article or subsection
16 (f) or (h), section three of this article. To the extent possible,
17 qualified forensic evaluators who have conducted evaluations
18 of competency under subsection (a), section two of this

19 chapter shall be used to evaluate criminal responsibility or
20 diminished capacity under this subsection.

21 (b) The court shall require the party making the motion
22 for the evaluations, and other parties as the court considers
23 appropriate, to provide to the qualified forensic evaluator
24 appointed under subsection (a) of this section any
25 information relevant to the evaluation within ten business
26 days of its evaluation order. The information shall include,
27 but not be limited to:

28 (1) A copy of the warrant or indictment;

29 (2) Information pertaining to the alleged crime, including
30 statements by the defendant made to the police, investigative
31 reports and transcripts of preliminary hearings, if any;

32 (3) Any available psychiatric, psychological, medical or
33 social records that are considered relevant;

34 (4) A copy of the defendant's criminal record; and

35 (5) If the evaluation is to include a diminished capacity
36 assessment, the nature of any lesser criminal offenses.

37 (c) A qualified forensic evaluator shall schedule and
38 arrange within fifteen days of the receipt of appropriate
39 documents the completion of any court-ordered evaluation
40 which may include record review and defendant interview
41 and shall, within ten business days of the date of the
42 completion of any evaluation, provide to the court of record
43 a written, signed report of his or her opinion on the issue of
44 criminal responsibility and if ordered, on diminished
45 capacity. The court may extend the ten-day period for filing
46 the report if a qualified forensic evaluator shows good cause
47 to extend the period, but in no event may the period exceed
48 thirty days. If there are no objections by the state or defense
49 counsel, the court may, by order, dismiss the requirement for

50 a written report if the qualified forensic evaluator's opinion
51 may otherwise be made known to the court and interested
52 parties.

53 (d) If the court determines that the defendant has been
54 uncooperative during a forensic evaluation ordered pursuant
55 to subsection (a) of this section or there are inadequate or
56 conflicting forensic evaluations performed pursuant to
57 subsection (a) of this section, and the court has reason to
58 believe that an observation period and additional forensic
59 evaluation or evaluations are necessary in order to determine
60 if a defendant was criminally responsible or with diminished
61 capacity, the court may order the defendant be admitted to a
62 mental health facility designated by the department for a
63 period not to exceed fifteen days and an additional evaluation
64 be conducted and a report rendered in like manner as
65 subsections (a) and (b) of this section by one or more
66 qualified forensic psychiatrists or one or more qualified
67 forensic psychologists. At the conclusion of the observation
68 period, the court shall enter a disposition order and the sheriff
69 of the county where the defendant was charged shall take
70 immediate custody of the defendant for transportation and
71 disposition as ordered by the court.

72 (e) If the verdict in a criminal trial is a judgment of not
73 guilty by reason of mental illness, the court shall determine
74 on the record the offense or offenses of which the acquittee
75 could have otherwise been convicted, and the maximum
76 sentence he or she could have received. The acquittee shall
77 remain under the court's jurisdiction until the expiration of
78 the maximum sentence or until discharged by the court. The
79 court shall commit the acquittee to a mental health facility
80 designated by the department that is the least restrictive
81 environment to manage the acquittee and that will allow for
82 the protection of the public. Notice of the maximum sentence
83 period with end date shall be provided to the mental health
84 facility. The court shall order a qualified forensic evaluator
85 to conduct a dangerousness evaluation to include

86 dangerousness risk factors to be completed within thirty days
87 of admission to the mental health facility and a report
88 rendered to the court within ten business days of the
89 completion of the evaluation. The medical director of the
90 mental health facility shall provide the court a written clinical
91 summary report of the defendant's condition at least annually
92 during the time of the court's jurisdiction. The court's
93 jurisdiction continues an additional ten days beyond any
94 expiration to allow civil commitment proceedings to be
95 instituted by the prosecutor pursuant to article five of this
96 chapter. The defendant shall then be immediately released
97 from the facility unless civilly committed.

98 (f) In addition to any court-ordered evaluations
99 completed pursuant to section two, three or four of this
100 article, the defendant or the state has the right to an
101 evaluation or evaluations by a forensic evaluator or
102 evaluators of his or her choice and at his or her expense.

103 (g) A mental health facility not operated by the state is
104 not required to admit or treat a defendant or acquittee under
105 this section.

**§27-6A-5. Release of acquittee to less restrictive environment;
discharge from jurisdiction of the court.**

1 (a) If, at any time prior to the expiration of the court's
2 jurisdiction, the chief medical officer or responsible official
3 of the mental health facility to which an acquittee has been
4 ordered pursuant to subsection (e), section four of this article
5 believes that the acquittee is not mentally ill or does not have
6 significant dangerousness risk factors associated with mental
7 illness, he or she shall file with the court of record notice of
8 the belief and shall submit evidence in support of the belief
9 to include a forensic evaluation dangerousness report
10 conducted in like manner as said subsection and
11 recommendations for treatment, including medications, that
12 reduce or eliminate the dangerousness risk factors associated

13 with mental illness. The court of record shall hold a hearing
14 within thirty days of receipt of the notice to consider
15 evidence as to whether the acquittee shall be released from the
16 mental health facility to a less restrictive environment. Notice
17 of the hearing shall be made available to the prosecuting
18 attorney responsible for the charges brought against the
19 acquittee at trial, the acquittee and his or her counsel and the
20 mental health facility. If upon consideration of the evidence
21 the court determines that an acquittee may be released from a
22 mental health facility to a less restrictive setting, the court
23 shall order, within fifteen days of the hearing, the acquittee be
24 released upon terms and conditions, if any, the court
25 considers appropriate for the safety of the community and the
26 well-being of the acquittee. Any terms and conditions
27 imposed by the court must be protective and therapeutic in
28 nature, not punitive. When a defendant's dangerousness risk
29 factors associated with mental illness are reduced or
30 eliminated as a result of any treatment, the court, in its
31 discretion, may make the continuance of appropriate
32 treatment, including medications, a condition of the
33 defendant's release from inpatient hospitalization. The court
34 shall maintain jurisdiction of the defendant in accordance
35 with said subsection. Upon notice that an acquittee released
36 on the condition that he or she continues appropriate
37 treatment does not continue his or her treatment, the
38 prosecuting attorney responsible for the charges brought
39 against the acquittee at trial shall, by motion, cause the court
40 to reconsider the acquittee's release and upon a showing that
41 the acquittee is in violation of the conditions of his or her
42 release, the court may reorder the acquittee to a mental health
43 facility designated by the department which is the least
44 restrictive setting appropriate to manage the acquittee and
45 protect the public.

46 (b) No later than thirty days prior to the release from a
47 mental health facility or other management setting of an
48 acquittee because of the expiration of the court's jurisdiction
49 as set in accordance with subsection (e), section four of this

50 article, if the acquittee's physician, psychologist, chief
51 medical officer or other responsible party is of the opinion
52 that the acquittee's mental illness renders the acquittee to be
53 likely to cause serious harm to self or others, the supervising
54 physician, psychologist, chief medical officer or other
55 responsible party shall notify the court of record who shall
56 promptly notify the prosecuting attorney in the county of the
57 court having jurisdiction of the opinion and the basis for the
58 opinion. Following notification, the prosecuting attorney may
59 file, within ten days, a civil commitment application against
60 the acquittee pursuant to article five of this chapter.

**§27-6A-6. Judicial hearing of defendant's defense other than not
guilty by reason of mental illness.**

1 If a defendant who has been found to be not competent to
2 stand trial believes that he or she can establish a defense of
3 not guilty to the charges pending against him or her, other
4 than the defense of not guilty by reason of mental illness, the
5 defendant may request an opportunity to offer a defense
6 thereto on the merits before the court which has criminal
7 jurisdiction. If the defendant is unable to obtain legal counsel,
8 the court of record shall appoint counsel for the defendant to
9 assist him or her in supporting the request by affidavit or
10 other evidence. If the court of record in its discretion grants
11 such a request, the evidence of the defendant and of the state
12 shall be heard by the court of record sitting without a jury. If
13 after hearing such petition the court of record finds
14 insufficient evidence to support a conviction, it shall dismiss
15 the indictment and order the release of the defendant from
16 criminal custody. The release order, however, may be stayed
17 for ten days to allow civil commitment proceedings to be
18 instituted by the prosecutor pursuant to article five of this
19 chapter: *Provided*, That a defendant committed to a mental
20 health facility pursuant to subsection (f) or (h), section three
21 of this article shall be immediately released from the facility
22 unless civilly committed.

§27-6A-8. Credit for time; expenses.

1 (a) If a person is convicted of a crime, any time spent in
2 involuntary confinement in a mental health facility as a result
3 of being charged with the crime shall be credited to the
4 sentence.

5 (b) All inpatient care and treatment shall be paid by the
6 department.

§27-6A-9. Competency to be adjudicated in juvenile court.

1 In a similar manner and in accordance with procedures
2 set forth in subsection (a), section two of this article or
3 subsection (a), section four of this article, a juvenile court
4 may order a qualified forensic evaluator to conduct an
5 evaluation of a juvenile to aid the court in its disposition
6 under chapter forty-nine of this code. In a similar manner and
7 in accordance with procedures set forth in subsection (d),
8 section two of this article or subsection (d), section four of
9 this article, a juvenile court may order a period of observation
10 for an alleged delinquent or neglected juvenile at a mental
11 health facility designated by the department to aid the court
12 in its disposition. The period of observation may not exceed
13 fifteen days.

§27-6A-10. Medications and management of court-ordered individuals.

1 (a) At any time pursuant to section two, three or four of
2 this article an individual is court ordered to a mental health
3 facility, the individual has the right to receive treatment under
4 the standards of medical management.

5 (b) An individual with health care decision-making
6 capacity may refuse medications or other management unless
7 court-ordered to be treated or unless a treating clinician
8 determines that medication or other management is necessary

9 in emergencies or to prevent danger to the individual or
10 others.

§27-6A-11. Payment to forensic evaluators.

1 The department shall pay qualified forensic evaluators for
2 all matters related to conducting a court ordered forensic
3 evaluation. The department shall develop and implement a
4 process for prompt payment to qualified forensic evaluators.
5 The department shall establish policies and procedures for
6 establishing a maximum rate schedule for each of the four
7 evaluation types (competency to stand trial, criminal
8 responsibility, diminished capacity, dangerousness) to
9 include all efforts towards the completion of each evaluation
10 such as scheduling and administrative tasks, record review,
11 psychological and other testing, interviews, report writing,
12 research, preparation and consultation. Such policies and
13 procedures shall include input from provider representatives
14 as necessary and appropriate. Any rate schedule shall be fair
15 and reasonable. The department shall consider requests for
16 payment in excess of established rates or other expenses for
17 good cause shown.

CHAPTER 169

**(S.B. 435 - By Senators Bowman, Bailey, Barnes, Boley,
Foster, Jenkins, Kessler, McCabe, Minard, Stollings,
Sypolt, White and Yoder)**

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §7A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §7A-4-1 of said code; and to amend and reenact §7A-7-6 of said code, all relating to metro government; clarifying the constitutional authority for the creation of a metro government; increasing the

time frame for a charter review committee to conclude its study; providing plans for metro government formation; and providing that municipalities other than the principal city are not automatically consolidated into a metro government.

Be it enacted by the Legislature of West Virginia:

That §7A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7A-4-1 of said code be amended and reenacted; and that §7A-7-6 of said code be amended and reenacted, all to read as follows:

Article

1. **General Provisions.**
4. **Charter Review Committee.**
7. **Elections on Metro Government.**

ARTICLE 1. GENERAL PROVISIONS.

§7A-1-4. Authority to consolidate.

1 (a) A municipality, county or metro government in this
2 state is authorized to form a consolidated local government
3 with another municipality, county or metro government upon
4 approval by the voters of the affected areas.

5 (b) The Legislature has the constitutional authority to
6 permit municipalities to consolidate pursuant to section
7 thirty-nine-a, article VI of the West Virginia Constitution
8 permitting home rule for municipalities. Pursuant to section
9 thirteen, article IX of the West Virginia Constitution
10 permitting reformation of county commissions, the
11 Legislature has the authority to permit counties to consolidate
12 and municipalities and counties to consolidate to create a new
13 executive or legislative tribunal, or both, in the form of a
14 metro government that performs both the duties of a
15 municipality and a county.

ARTICLE 4. CHARTER REVIEW COMMITTEE.

§7A-4-1. Study by charter review committee and draft of proposed charter.

- 1 (a) The charter review committee shall study matters
2 relating to the feasibility of consolidation.

- 3 (b) The charter review committee shall further address in
4 the charter the powers and authority of the proposed
5 consolidated local government, including, but not limited to:
 - 6 (1) The territory encompassed by the consolidated local
7 government, including all affected municipalities, counties
8 and metro governments, or parts thereof, to be included in the
9 boundaries of the consolidated local government;
 - 10 (2) The fiscal impact of the proposed consolidation on the
11 affected municipalities, counties and metro governments
12 including:
 - 13 (A) The cost of providing services by the consolidated
14 local government;
 - 15 (B) Projected revenues available to the consolidated local
16 government based upon proposed classifications and tax
17 structures; and
 - 18 (C) Projected economies of scale resulting from
19 consolidation;
 - 20 (3) The name of the proposed consolidated local
21 government;
 - 22 (4) The seat of the proposed consolidated local
23 government;
 - 24 (5) The representation plan based upon population for the
25 territory encompassed by the consolidation consistent with
26 state and federal law to include consideration of under
27 represented areas and minorities;
 - 28 (6) The creation of the governing body of the proposed
29 consolidated local government, including an odd number of
30 governing officers of not less than five, their qualifications
31 for holding office, titles, powers, duties, terms of office,

32 manner of election, compensation, method of removal, role
33 of constitutional officers in new government and other
34 pertinent matters consistent with state and federal law;

35 (7) The effective date of the charter once consolidation is
36 approved by the electorate;

37 (8) A procedure for the efficient and timely transition of
38 specified services, functions and responsibilities from each
39 affected municipality, county and metro government and its
40 respective departments and agencies to the consolidated local
41 government to occur within two years from the date the
42 charter becomes effective; and

43 (9) The method by which a consolidated local government
44 may dissolve after existing for a minimum of six years.

45 (c) The charter review committee shall complete its study
46 and draft a proposed charter within two years from the date
47 of its organizational meeting.

48 (d) With regard to a proposed metro consolidation, the
49 metro charter review committee may utilize one of the plans
50 for organizing a municipal government described in section
51 two, article three, chapter eight of this code in the charter for
52 the metro government, but is not limited to these forms of
53 government.

ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.

§7A-7-6. Municipalities within territory remain incorporated in metro government.

1 Municipalities, other than the principal city, are not
2 automatically consolidated into the metro government. Upon
3 the approval by voters of metro consolidation, municipalities
4 within the territory of the metro government remain
5 incorporated and continue to perform their functions as
6 permitted by law unless dissolved or consolidated pursuant
7 to section eight of this article.

CHAPTER 170

**(Com. Sub. for S.B. 68 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §22A-1-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §22A-2-4a; to amend and reenact §22A-2-5 of said code; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-7; and to amend said code by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all relating generally to coal mine health and safety; authorizing Director of the Office of Miners' Health, Safety and Training, upon a finding of imminent danger, to issue closure orders for mines under certain circumstances; prohibiting the use of a belt conveyor entry as an intake air course and providing exceptions thereto; providing requirements for the design, construction and inspection of seals and the atmospheric monitoring of sealed areas; prohibiting use of certain seals and providing for requirements for remediation of existing seals under certain circumstances; prohibiting the use of bottom mining and providing exceptions thereto; requiring continuing education for underground mine foremen-fire bosses and setting course requirements; continuing the Mine Safety Technology Task Force; legislative findings; establishing powers and duties of task force; reimbursement; and task force consultation in approval of safety devices.

Be it enacted by the Legislature of West Virginia:

That §22A-1-15 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 §22A-2-4a; that §22A-2-5 of said code be amended and reenacted; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-7; and that said code be amended by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all to read as follows:

Article

1. **Office of Miners' Health, Safety and Training; Administration; Enforcement.**
2. **Underground Mines.**
7. **Board of Miner Training, Education and Certification.**
11. **Mine Safety Technology.**

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-15. Findings, orders and notices.

1 (a) If upon any inspection of a coal mine an authorized
2 representative of the director finds that an imminent danger
3 exists, the representative shall determine the area throughout
4 which the danger exists and shall immediately issue an order
5 requiring the operator of the mine or the operator's agent to
6 cause immediately all persons, except those referred to in
7 subdivisions (1), (2), (3) and (4), subsection (e) of this
8 section, to be withdrawn from and to be prohibited from
9 entering the area until an authorized representative of the
10 director determines that the imminent danger no longer
11 exists.

12 (b) If upon any inspection of a coal mine an authorized
13 representative of the director finds that there has been a
14 violation of the law, but the violation has not created an
15 imminent danger, he or she shall issue a notice to the operator

16 or the operator's agent fixing a reasonable time for the
17 abatement of the violation. If upon the expiration of the
18 period of time, as originally fixed or subsequently extended,
19 an authorized representative of the director finds that the
20 violation has not been totally abated, and if the director also
21 finds that the period of time should not be further extended,
22 the director shall find the extent of the area affected by the
23 violation and shall promptly issue an order requiring the
24 operator of the mine or the operator's agent to cause
25 immediately all persons, except those referred to in
26 subdivisions (1), (2), (3) and (4), subsection (e) of this
27 section, to be withdrawn from and to be prohibited from
28 entering the area until an authorized representative of the
29 director determines that the violation has been abated.

30 (c) If upon any inspection of a coal mine an authorized
31 representative of the director finds that an imminent danger
32 exists in an area of the mine, in addition to issuing an order
33 pursuant to subsection (a) of this section, the director shall
34 review the compliance record of the mine.

35 (1) A review of the compliance record conducted in
36 accordance with this subsection shall, at a minimum, include
37 a review of the following:

38 (A) Any closure order issued pursuant to subsection (a)
39 of this section;

40 (B) Any closure order issued pursuant to subsection (b)
41 of this section;

42 (C) Any enforcement measures taken pursuant to this
43 chapter, other than those authorized under subsections (a) and
44 (b) of this section;

45 (D) Any evidence of the operator's lack of good faith in
46 abating violations at the mine;

47 (E) Any accident, injury or illness record that
48 demonstrates a serious safety or health management problem
49 at the mine;

50 (F) The number of employees at the mine, the size, layout
51 and physical features of the mine and the length of time the
52 mine has been in operation; and

53 (G) Any mitigating circumstances.

54 (2) If, after review of the mine's compliance record, the
55 director determines that the mine has a history of repeated
56 significant and substantial violations of a particular standard
57 caused by unwarrantable failure to comply or a history of
58 repeated significant and substantial violations of standards
59 related to the same hazard caused by unwarrantable failure to
60 comply and the history or histories demonstrate the
61 operator's disregard for the health and safety of miners, the
62 director shall issue a closure order for the entire mine and
63 shall immediately issue an order requiring the operator of the
64 mine or the operator's agent to cause immediately all persons,
65 except those referred to in subdivisions (1), (2), (3) and (4),
66 subsection (e) of this section, to be withdrawn from and to be
67 prohibited from entering the mine until a thorough inspection
68 of the mine has been conducted by the office and the director
69 determines that the operator has abated all violations related
70 to the imminent danger and any violations unearthed in the
71 course of the inspection.

72 (d) All employees on the inside and outside of a mine
73 who are idled as a result of the posting of a withdrawal order
74 by a mine inspector shall be compensated by the operator at
75 their regular rates of pay for the period they are idled, but not
76 more than the balance of the shift. If the order is not
77 terminated prior to the next working shift, all the employees
78 on that shift who are idled by the order are entitled to full
79 compensation by the operator at their regular rates of pay for

Ch. 170] MINERS' HEALTH, SAFETY AND TRAINING

80 the period they are idled, but for not more than four hours of
81 the shift.

82 (e) The following persons are not required to be
83 withdrawn from or prohibited from entering any area of the
84 coal mine subject to an order issued under this section:

85 (1) Any person whose presence in the area is necessary,
86 in the judgment of the operator or an authorized
87 representative of the director, to eliminate the condition
88 described in the order;

89 (2) Any public official whose official duties require him
90 or her to enter the area;

91 (3) Any representative of the miners in the mine who is,
92 in the judgment of the operator or an authorized
93 representative of the director, qualified to make coal mine
94 examinations or who is accompanied by such a person and
95 whose presence in the area is necessary for the investigation
96 of the conditions described in the order; and

97 (4) Any consultant to any of the persons set forth in this
98 subsection.

99 (f) Notices and orders issued pursuant to this section shall
100 contain a detailed description of the conditions or practices
101 which cause and constitute an imminent danger or a violation
102 of any mandatory health or safety standard and, where
103 appropriate, a description of the area of the coal mine from
104 which persons must be withdrawn and prohibited from
105 entering.

106 (g) Each notice or order issued under this section shall be
107 given promptly to the operator of the coal mine or the
108 operator's agent by an authorized representative of the
109 director issuing the notice or order and all the notices and

110 orders shall be in writing and shall be signed by the
111 representative and posted on the bulletin board at the mine.

112 (h) A notice or order issued pursuant to this section may
113 be modified or terminated by an authorized representative of
114 the director.

115 (i) Each finding, order and notice made under this section
116 shall promptly be given to the operator of the mine to which
117 it pertains by the person making the finding, order or notice.

118 (j) *Definitions.* — For the purposes of this section only,
119 the following terms have the following meanings:

120 (1) “Unwarrantable failure” means aggravated conduct,
121 constituting more than ordinary negligence, by a mine
122 operator in relation to a violation of this chapter of the code;
123 and

124 (2) “Significant and substantial violation” shall have the
125 same meaning as that established in 6 FMSHRC 1 (1984).

ARTICLE 2. UNDERGROUND MINES.

§22A-2-4a. Use of belt air.

§22A-2-5. Unused and abandoned parts of mine.

§22A-2-4a. Use of belt air.

1 (a) *Definitions.* — For purposes of this section, “belt air”
2 means the use of a belt conveyor entry as an intake air course
3 to ventilate the working sections of a mine or areas where
4 mechanized mining equipment is being installed or removed.

5 (b) Upon the effective date of the enactment of this
6 section, belt air may not be used to ventilate the working
7 sections of a mine or areas where mechanized mining
8 equipment is being installed or removed: *Provided*, That if an

Ch. 170] MINERS' HEALTH, SAFETY AND TRAINING

9 alternative method of ventilation will at all times guarantee
10 no less than the same measure of protection afforded the
11 miners of an underground mine by the foregoing or if the
12 application of the foregoing to an underground mine will
13 result in a diminution of safety to the miners in the mine, the
14 director may approve the interim use of belt air pursuant to
15 the following:

16 (1) For those operators using belt air pursuant to a
17 ventilation plan approved by the director in accordance with
18 the provisions of section two of this article prior to the
19 effective date of the enactment of this section, the director
20 shall cause an inspection to be made of the mine ventilation
21 system and ventilation equipment. The director may allow the
22 continued use of belt air in that mine if he or she determines
23 that: (i) The use meets the minimum requirements of 30 CFR
24 75.350(b); and (ii) the use, as set forth in the ventilation plan
25 and as inspected, will at all times guarantee no less than the
26 same measure of protection afforded the miners of the mine
27 if belt air were not used, or that the prohibition of the use of
28 belt air in the mine will result in a diminution of safety to the
29 miners in the mine.

30 (2) For those operators submitting on or after the
31 effective date of the enactment of this section, a ventilation
32 plan proposing the use of belt air to the director pursuant to
33 section two of this article, the director shall immediately
34 upon receipt of the plan give notice of the plan to the
35 representative of the miners in that mine and cause any
36 investigation to be made that the director considers
37 appropriate: *Provided*, That the investigation shall include a
38 review of any comments on the plan submitted by the
39 representative of miners in the mine. Upon receiving the
40 report of the investigation, the director shall make findings of
41 fact and issue a written decision, incorporating in the decision
42 his or her findings and an order approving or denying the use
43 of belt air pursuant to the terms of the ventilation plan. To

44 approve the use of belt air pursuant to a ventilation plan, the
45 director shall, at a minimum, determine that: (i) The
46 operator's proposed use of belt air meets the minimum
47 requirements of 30 CFR 75.350(b); and (ii) approval of the
48 proposed use of belt air will at all times guarantee no less
49 than the same measure of protection afforded the miners of
50 the mine if belt air were not used, or that the prohibition of
51 the use of belt air in the mine will result in a diminution of
52 safety to the miners in the mine.

53 (3) The interim use of belt air shall be accurately
54 reflected in operator's plan of ventilation, as approved by the
55 director in accordance with the provisions of section two of
56 this article.

57 (c) Upon completion of the independent scientific and
58 engineering review concerning the use of belt air and the
59 composition and fire retardant properties of belt materials in
60 underground coal mining by the technical study panel created
61 pursuant to the provisions of 30 U. S. C. §963 and the
62 Secretary of the United States Department of Labor's
63 corresponding report to Congress pursuant to the review, the
64 Board of Coal Mine Health and Safety shall, within thirty
65 days of the Secretary of Labor's report to Congress, provide
66 the Governor with its recommendations, if any, for the
67 enactment, repeal or amendment of any statute or rule which
68 would enhance the safe ventilation of underground mines and
69 the health and safety of miners: *Provided*, That at least sixty
70 days after the Secretary of Labor's report to Congress, the
71 Board of Coal Mine Health, Safety and Training shall
72 promulgate emergency rules regulating the use of belt air in
73 light of that report: *Provided, however*, That the provisions of
74 subsections (a) and (b) of this section shall expire and no
75 longer have any force and effect upon the filing of such
76 emergency rules.

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned after
2 the first day of July, one thousand nine hundred seventy-one,
3 shall be sealed or ventilated. If the workings are sealed, the
4 sealing shall be done with incombustible material in a manner
5 prescribed by the director and one or more of the seals of
6 every sealed area shall be fitted with a pipe and cap or valve
7 to permit the sampling of gases and measuring of hydrostatic
8 pressure behind the seals. For the purpose of this section,
9 working within a panel shall not be considered to be
10 abandoned until the panel is abandoned.

11 (b) Air that has passed through an abandoned area or an
12 area which is inaccessible or unsafe for inspection shall not
13 be used to ventilate any working place in any working mine,
14 unless permission is granted by the director with unanimous
15 agreement of the technical and mine safety review
16 committee. Air that has been used to ventilate seals shall not
17 be used to ventilate any working place in any working mine.
18 Air which has been used to ventilate an area from which the
19 pillars have been removed shall not be used to ventilate any
20 working place in a mine, except that the air, if it does not
21 contain 0.25 volume percent or more of methane, may be
22 used to ventilate enough advancing working places
23 immediately adjacent to the line of retreat to maintain an
24 orderly sequence of pillar recovery on a set of entries. Before
25 sealed areas, temporary or permanent, are reopened, the
26 director shall be notified.

27 (c) On or after the effective date of the amendment and
28 reenactment of this section during the regular session of the
29 Legislature in two thousand seven, a professional engineer
30 registered with the Board of Registration for Professional
31 Engineers pursuant to article thirteen, chapter thirty of this

32 code shall certify the design of all new seals as meeting the
33 criteria established by the director. Every seal design shall
34 have the professional engineer's certificate and signature, in
35 addition to his or her seal, in the following form:

36 "I the undersigned, do hereby certify that this seal design
37 is, to the best of my knowledge, in accordance with all
38 applicable requirements under state and federal law, rules and
39 regulations.

40 _____ P.E."

41 (d) On or after the effective date of the amendment and
42 reenactment of this section during the regular session of the
43 Legislature in two thousand seven, the director shall approve
44 the construction of all new seals in accordance with rules
45 authorized in this section. The construction shall also be:

46 (1) Certified by the mine foreman-fire boss of the mine
47 as being in accordance with the design certified by a
48 professional engineer pursuant to subsection (c) of this
49 section; and

50 (2)(A) Constructed of solid concrete blocks and in
51 accordance with the other provisions of 30 CFR 75.335(a)(1);
52 or

53 (B) Constructed in a manner that the director has
54 approved as having the capability to withstand pressure equal
55 to or greater than a seal constructed in accordance with the
56 provisions of 30 CFR 75.335(a)(1).

57 (e) On or after the effective date of the amendment and
58 reenactment of this section during the regular session of the
59 Legislature in two thousand seven, the operator shall inspect

Ch. 170] MINERS' HEALTH, SAFETY AND TRAINING

60 the physical condition of all seals and measure the
61 atmosphere behind all seals in accordance with protocols
62 developed by the Board of Coal Mine Health and Safety,
63 pursuant to rules authorized in this section and consistent
64 with a mine-specific atmospheric measurement plan
65 submitted to and approved by the director. The atmospheric
66 measurements shall include, but not be limited to, the
67 methane and oxygen concentrations and the barometric
68 pressure. The atmospheric measurements also shall be
69 recorded with ink or indelible pencil in a book kept for that
70 purpose on the surface at a location designated by the
71 operator. The protocols shall specify appropriate methods for
72 inspecting the physical condition of seals, measuring the
73 mine atmosphere in sealed workings, and inerting the mine
74 atmosphere behind the seals, where appropriate.

75 (f)(1) In all mines containing workings sealed using seals
76 constructed in accordance with the provisions of 30 CFR
77 75.335(a)(2) which are constructed: (A) Of cementitious
78 foam blocks; or (B) with methods or materials that the Board
79 of Coal Mine Health and Safety determines do not provide an
80 adequate level of protection to miners, the operator shall,
81 pursuant to a plan submitted to and approved by the director,
82 remediate the seals by either enhancing the seals or
83 constructing new seals in place of or immediately outby the
84 seals. After being remediated, all seals must have the
85 capability to withstand pressure equal to or greater than a seal
86 constructed in accordance with the provisions of 30 CFR
87 75.335(a)(1). The design, development, submission and
88 implementation of the remediation plan is the responsibility
89 of the operator of each mine. Pursuant to rules authorized in
90 this section, the Board of Coal Mine Health and Safety shall
91 specify appropriate methods of enhancing the seals.

92 (2) Notwithstanding any provision of this code to the
93 contrary, if the director determines that any seal described in
94 subdivision (1) of this subsection is incapable of being
95 remediated in a safe and effective manner, the mine foreman-
96 fire boss shall, at least once every twenty-four hours, inspect
97 the physical condition of the seal and measure the
98 atmosphere behind the seal. The daily inspections and
99 measurements shall otherwise be performed in accordance
100 with the protocols and atmospheric measurement plan
101 established pursuant to subsection (e) of this section.

102 (g) Upon the effective date of the amendment and
103 reenactment of this section during the regular session of the
104 Legislature in two thousand seven, second mining of lower
105 coal on retreat, also known as bottom mining, shall not be
106 permitted in workings that will be sealed unless an operator
107 has first submitted and received approval by the director of
108 a remediation plan that sets forth measures that will be taken
109 to mitigate the effects of remnant ramps and other conditions
110 created by bottom mining on retreat which can increase the
111 force of explosions originating in and emanating out of
112 workings that have been bottom mined. The director shall
113 require that certification in a manner similar to that set forth
114 in subsection (c) of this section shall be obtained by the
115 operator from a professional engineer and the mine foreman-
116 fire boss for the plan design and plan implementation,
117 respectively.

118 (h) No later than sixty days after the effective date of the
119 amendment and reenactment of this section during the regular
120 session of the Legislature in two thousand seven, the Board
121 of Coal Mine Health and Safety shall develop and promulgate
122 rules pursuant to the provisions of section four, article six of
123 this chapter to implement and enforce the provisions of this
124 section.

Ch. 170] MINERS' HEALTH, SAFETY AND TRAINING

125 (i) Upon the issuance of mandatory health and safety
126 standards relating to the sealing of abandoned areas in
127 underground coal mines by the Secretary of the United States
128 Department of Labor pursuant to 30 U. S. C. § 811, as
129 amended by section ten of the federal Mine Improvement and
130 New Emergency Response Act of 2006, the director, working
131 in consultation with the Board of Coal Mine Health and
132 Safety, shall, within thirty days, provide the Governor with
133 his or her recommendations, if any, for the enactment, repeal
134 or amendment of any statute or rules which would enhance
135 the safe sealing of abandoned mine workings and the health
136 and safety of miners.

**ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION
AND CERTIFICATION.**

§22A-7-5. Board powers and duties.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

§22A-7-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for
2 a program of education, training and examination to be
3 required of all prospective miners and miners prior to their
4 certification in any of the various miner specialties
5 requiring certification under this article or any other
6 provision of this code. The specialties include, but are not
7 limited to, underground miner, surface miner, apprentice,
8 underground mine foreman-fire boss, assistant underground
9 mine foreman-fire boss, shotfirer, mine electrician and belt
10 examiner. Notwithstanding the provisions of this section,
11 the director may by rule further subdivide the classifications
12 for certification.

13 (b) The board may require certification in other miner
14 occupational specialties: *Provided*, That no new specialty

15 may be created by the board unless certification in a new
16 specialty is made desirable by action of the federal
17 government requiring certification in a specialty not
18 enumerated in this code.

19 (c) The board may establish criteria and standards for a
20 program of preemployment education and training to be
21 required of miners working on the surface at underground
22 mines who are not certified under the provisions of this
23 article or any other provision of this code.

24 (d) The board shall set minimum standards for a
25 program of continuing education and training of certified
26 persons and other miners on an annual basis: *Provided*, That
27 the standards shall be consistent with the provisions of
28 section seven of this article. Prior to issuing the standards,
29 the board shall conduct public hearings at which the parties
30 who may be affected by its actions may be heard. The
31 education and training shall be provided in a manner
32 determined by the director to be sufficient to meet the
33 standards established by the board.

34 (e) The board may, in conjunction with any state, local
35 or federal agency or any other person or institution, provide
36 for the payment of a stipend to prospective miners enrolled
37 in one or more of the programs of miner education, training
38 and certification provided in this article or any other
39 provision of this code.

40 (f) The board may also, from time to time, conduct any
41 hearings and other oversight activities required to ensure
42 full implementation of programs established by it.

43 (g) Nothing in this article empowers the board to revoke
44 or suspend any certificate issued by the director of the
45 Office of Miners' Health, Safety and Training.

46 (h) The board may, upon its own motion or whenever
47 requested to do so by the director, consider two certificates
48 issued by this state to be of equal value or consider training
49 provided or required by federal agencies to be sufficient to
50 meet training and education requirements set by it, the
51 director, or by the provisions of this code.

**§22A-7-7. Continuing education requirements for
underground mine foreman-fire boss.**

1 (a) An existing underground mine foreman-fire boss
2 certified pursuant to this article shall complete the
3 continuing education requirements in this section within
4 two years from the effective date of this section and every
5 two years thereafter. An underground mine foreman-fire
6 boss certified pursuant to this article on or after the effective
7 date of this section shall complete the continuing education
8 requirements in this section within two years of their
9 certification and every two years thereafter. The continuing
10 education requirements of this section may not be satisfied
11 by the completion of other training requirements mandated
12 by the provisions of this chapter.

13 (b) In order to receive continuing education credit
14 pursuant to this section, a mine foreman-fire boss shall
15 satisfactorily complete a mine foreman-fire boss continuing
16 education course approved by the board and taught by a
17 qualified instructor approved by the director. The mine
18 foreman-fire boss shall not suffer a loss in pay while
19 attending a continuing education course. The mine foreman-
20 fire boss shall submit documentation to the office certified
21 by the instructor that indicates the required continuing
22 education has been completed prior to the deadlines set
23 forth in this subsection: *Provided*, That a mine foreman-fire
24 boss may submit documentation of continuing education
25 completed in another state for approval and acceptance by
26 the board.

27 (c) The mine foreman-fire boss shall complete at least
28 eight hours of continuing education every two years.

29 (d) The content of the continuing education course shall
30 include, but not be limited to:

31 (1) Selected provisions of this chapter and 30 U. S. C.
32 §801, *et seq.*;

33 (2) Selected provisions of the West Virginia and federal
34 underground coal mine health and safety rules and
35 regulations;

36 (3) The responsibilities of a mine foreman-fire boss;

37 (4) Selected policies and memoranda of the Office of
38 Miners' Health, Safety and Training, the Board of Coal
39 Mine Health and Safety and the Board of Miner Training,
40 Education and Certification;

41 (5) A review of fatality and accident trends in
42 underground coal mines; and

43 (6) Other subjects as determined by the Board of Miner
44 Training, Education and Certification.

45 (e) The board may approve alternative training
46 programs tailored to specific mines.

47 (f) Failure to complete the requirements of this section
48 shall result in suspension of a mine foreman-fire boss
49 certification pending completion of the continuing
50 education requirements. During the pendency of the
51 suspension, the individual may not perform statutory duties
52 assigned to a mine foreman-fire boss under West Virginia
53 law. The office shall send notice of any suspension to the
54 last address the certified mine foreman-fire boss reported to

55 the director. If the requirements are not met within two
56 years of the suspension date, the director may file a petition
57 with the board of appeals pursuant to the procedures set
58 forth in section thirty-one, article one of this chapter and,
59 upon determining that the requirements have not been met,
60 the board of appeals may revoke the mine foreman-fire
61 boss' certification, which shall not be renewed except upon
62 successful completion of the examination prescribed by law
63 for mine foremen-fire bosses or upon completion of other
64 training requirements established by the board: *Provided*,
65 That an individual having his or her mine foreman-fire boss
66 certification suspended pursuant to this section who also
67 holds a valid mine foreman-fire boss certification from
68 another state may have the suspension lifted by completing
69 training requirements established by the board.

70 (g) The office shall make a program of instruction that
71 meets the requirements for continuing education set forth in
72 this section regularly available in regions of the state, based
73 on demand, for individuals possessing mine foreman-fire
74 boss certifications who are not serving in a mine foreman-
75 fire boss capacity: *Provided*, That the office may collect a
76 fee from program participants to offset the cost of the
77 program.

78 (h) The office shall make available to operators and
79 other interested parties a list of individuals whose mine
80 foreman-fire boss certification is in suspension or has been
81 revoked pursuant to this section.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

§22A-11-3. Task force powers and duties.

§22A-11-4. Approval of devices.

§22A-11-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (1) That the first priority and concern of all persons in
3 the coal mining industry must be the health and safety of its
4 most precious resource -- the miner;

5 (2) That in furtherance of this priority, the provisions of
6 article two of this chapter are designed to protect the health
7 and safety of this state's coal miners by requiring certain
8 minimum standards for, among other things, certain health
9 and safety technology used by each underground miner;

10 (3) That the proper implementation of this technology
11 in West Virginia's underground mines would benefit from
12 the specialized oversight of persons with experience and
13 competence in coal mining, coal mine health and safety and
14 the expanding role of technology; and

15 (4) That, in furtherance of provisions of this section, it
16 is the intent of the Legislature to create a permanent task
17 force which, on a continuous basis, shall evaluate and study
18 issues relating to the commercial availability and functional
19 and operational capability of existing and emerging
20 technologies in coal mine health and safety, as well as
21 issues relating to the implementation, compliance and
22 enforcement of regulatory requirements governing the
23 technologies.

**§22A-11-2. Mine Safety Technology Task Force continued;
membership; method of nomination and
appointment.**

1 (a) The Mine Safety Technology Task Force, created
2 and existing under the authority of the director pursuant to

Ch. 170] MINERS' HEALTH, SAFETY AND TRAINING

3 the provisions of section six, article one of this chapter, is
4 continued as provided by this article.

5 (b) The task force shall consist of nine members who
6 are appointed as specified in this section:

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of operators in this state. When these members
10 are to be appointed, the Governor shall request from the
11 major trade association representing operators in this state
12 a list of three nominees for each position on the task force.
13 All nominees shall be persons with special experience and
14 competence in coal mine health and safety. There shall be
15 submitted with the list, a summary of the qualifications of
16 each nominee. For purposes of this subdivision, the major
17 trade association representing operators in this state is that
18 association which represents operators accounting for over
19 one half of the coal produced in mines in this state in the
20 year prior to the year in which the appointment is to be
21 made.

22 (2) The Governor shall appoint, by and with the advice
23 and consent of the Senate, three members who can
24 reasonably be expected to represent the viewpoint of the
25 working miners of this state. When members are to be
26 appointed, the Governor shall request from the major
27 employee organization representing coal miners within this
28 state a list of three nominees for each position on the task
29 force. The highest ranking official within the major
30 employee organization representing coal miners within this
31 state shall submit a list of three nominees for each position
32 on the board. The nominees shall have a background in coal
33 mine health and safety.

34 (3) The Governor shall appoint, by and with the advice
35 and consent of the Senate, one certified mine safety
36 professional from the College of Engineering and Mineral
37 Resources at West Virginia University;

38 (4) The Governor shall appoint, by and with the advice
39 and consent of the Senate, one attorney with experience in
40 issues relating to coal mine health and safety; and

41 (5) The ninth member of the task force is the director,
42 or his or her designee, who shall serve as chair of the task
43 force. The director shall furnish to the task force any
44 secretarial, clerical, technical, research and other services
45 that are necessary to the conduct of the business of the task
46 force.

47 (c) Each appointed member of the task force shall serve
48 at the will and pleasure of the Governor.

49 (d) Whenever a vacancy on the task force occurs,
50 nominations and appointments shall be made in the manner
51 prescribed in this section: *Provided*, That in the case of an
52 appointment to fill a vacancy, nominations of three persons
53 for each vacancy shall be requested by and submitted to the
54 Governor within thirty days after the vacancy occurs by the
55 major trade association or major employee organization, if
56 any, which nominated the person whose seat on the task
57 force is vacant.

58 (e) Each member of the task force shall be paid the
59 expense reimbursement, as is paid to members of the
60 Legislature for their interim duties as recommended by the
61 Citizens Legislative Compensation Commission and
62 authorized by law for each day or portion thereof engaged
63 in the discharge of official duties. In the event the expenses
64 are paid by a third party, the member shall not be
65 reimbursed by the state. The reimbursement shall be paid

66 out of the State Treasury upon a requisition upon the State
67 Auditor, properly certified by the Office of Miners' Health,
68 Safety and Training. An employer shall not prohibit a
69 member of the task force from exercising leave of absence
70 from his or her place of employment in order to attend a
71 meeting of the task force or a meeting of a subcommittee of
72 the task force, or to prepare for a meeting of the task force,
73 any contract of employment to the contrary
74 notwithstanding.

§22A-11-3. Task force powers and duties.

1 (a) The task force shall provide technical and other
2 assistance to the office related to the implementation of the
3 new technological requirements set forth in the provisions
4 of section fifty-five, article two, of this chapter, as amended
5 and reenacted during the regular session of the Legislature
6 in the year two thousand six, and requirements for other
7 mine safety technologies.

8 (b) The task force, working in conjunction with the
9 director, shall continue to study issues regarding the
10 commercial availability, the functional and operational
11 capability and the implementation, compliance and
12 enforcement of the following protective equipment:

13 (1) Self-contained self-rescue devices, as provided in
14 subsection (f), section fifty-five, article two of this chapter;

15 (2) Wireless emergency communication devices, as
16 provided in subsection (g), section fifty-five, article two of
17 this chapter;

18 (3) Wireless emergency tracking devices, as provided in
19 subsection (h), section fifty-five, article two of this chapter;
20 and

21 (4) Any other protective equipment required by this
22 chapter or rules promulgated in accordance with the law
23 that the director determines would benefit from the
24 expertise of the task force.

25 (c) The task force shall on a continuous basis study,
26 monitor and evaluate:

27 (1) The potential for enhancing coal mine health and
28 safety through the application of existing technologies and
29 techniques;

30 (2) Opportunities for improving the integration of
31 technologies and procedures to increase the performance
32 and survivability of coal mine health and safety systems;

33 (3) Emerging technological advances in coal mine
34 health and safety; and

35 (4) Market forces impacting the development of new
36 technologies, including issues regarding the costs of
37 research and development, regulatory certification and
38 incentives designed to stimulate the marketplace.

39 (d) On or before the first day of July of each year, the
40 task force shall submit a report to the Governor and the
41 Board of Coal Mine Health and Safety that shall include,
42 but not be limited to:

43 (1) A comprehensive overview of issues regarding the
44 implementation of the new technological requirements set
45 forth in the provisions of section fifty-five, article two, of
46 this chapter, or rules promulgated in accordance with the
47 law;

48 (2) A summary of any emerging technological advances
49 that would improve coal mine health and safety;

50 (3) Recommendations, if any, for the enactment, repeal
51 or amendment of any statute which would enhance

52 technological advancement in coal mine health and safety;
53 and

54 (4) Any other information the task force considers
55 appropriate.

56 (e) In performing its duties, the task force shall, where
57 possible, consult with, among others, mine engineering and
58 mine safety experts, radiocommunication and telemetry
59 experts and relevant state and federal regulatory personnel.

§22A-11-4. Approval of devices.

1 Prior to approving any protective equipment or device
2 that has been evaluated by the task force pursuant to the
3 provisions of subsection (b), section three of this article, the
4 director shall consult with the task force and review any
5 applicable written reports issued by the task force and the
6 findings set forth in the reports and shall consider the
7 findings in making any approval determination.

CHAPTER 171

**(H.B. 2332 - By Delegates Perry, Amores, Craig, Perdue,
Campbell, Anderson, Cann and Long)**

[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §49-5-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that magistrate courts have concurrent juvenile jurisdiction with circuit courts with regard to enforcement of laws prohibiting the possession or use of tobacco or tobacco products by minors; and giving such concurrent juvenile jurisdiction to municipal courts.

Be it enacted by the Legislature of West Virginia:

That §49-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of
2 proceedings brought under this article.

3 (b) If during a criminal proceeding in any court it is
4 ascertained or appears that the defendant is under the age of
5 nineteen years and was under the age of eighteen years at
6 the time of the alleged offense, the matter shall be
7 immediately certified to the juvenile jurisdiction of the
8 circuit court. The circuit court shall assume jurisdiction of
9 the case in the same manner as cases which are originally
10 instituted in the circuit court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts have concurrent juvenile jurisdiction with
13 the circuit court for a violation of a traffic law of West
14 Virginia, for a violation of section nine, article six, chapter
15 sixty, section three or section four, article nine-a, chapter
16 sixteen, or section nineteen, article sixteen, chapter eleven
17 of this code, or for any violation of chapter twenty of this
18 code. Juveniles are liable for punishment for violations of
19 these laws in the same manner as adults except that
20 magistrate courts have no jurisdiction to impose a sentence
21 of incarceration for the violation of these laws.

22 (d) Notwithstanding any other provision of this article,
23 municipal courts have concurrent juvenile jurisdiction with
24 the circuit court for a violation of any municipal ordinance

25 regulating traffic, for any municipal curfew ordinance
26 which is enforceable or for any municipal ordinance
27 regulating or prohibiting public intoxication, drinking or
28 possessing alcoholic liquor or nonintoxicating beer in
29 public places, any other act prohibited by section nine,
30 article six, chapter sixty or section nineteen, article sixteen,
31 chapter eleven of this code or underage possession or use of
32 tobacco or tobacco products, as provided in article nine-a,
33 chapter sixteen of this code. Municipal courts may impose
34 the same punishment for these violations as a circuit court
35 exercising its juvenile jurisdiction could properly impose,
36 except that municipal courts have no jurisdiction to impose
37 a sentence of incarceration for the violation of these laws.

38 (e) A juvenile may be brought before the circuit court
39 for proceedings under this article only by the following
40 means:

41 (1) By a juvenile petition requesting that the juvenile be
42 adjudicated as a status offender or a juvenile delinquent; or

43 (2) By certification or transfer to the juvenile
44 jurisdiction of the circuit court from the criminal
45 jurisdiction of the circuit court, from any foreign court, or
46 from any magistrate court or municipal court in West
47 Virginia.

48 (f) If a juvenile commits an act which would be a crime
49 if committed by an adult, and the juvenile is adjudicated
50 delinquent for that act, the jurisdiction of the court which
51 adjudged the juvenile delinquent continues until the juvenile
52 becomes twenty-one years of age. The court has the same
53 power over that person that it had before he or she became
54 an adult, and has the further power to sentence that person
55 to a term of incarceration: *Provided*, That any such term of
56 incarceration may not exceed six months. This authority
57 does not preclude the court from exercising criminal

58 jurisdiction over that person if he or she violates the law
59 after becoming an adult or if the proceedings have been
60 transferred to the court's criminal jurisdiction pursuant to
61 section ten of this article.

62 (g) A juvenile is entitled to be admitted to bail or
63 recognizance in the same manner as an adult and shall be
64 afforded the protection guaranteed by Article III of the
65 West Virginia Constitution.

66 (h) A juvenile has the right to be effectively represented
67 by counsel at all stages of proceedings under the provisions
68 of this article. If the juvenile or the juvenile's parent or
69 custodian executes an affidavit showing that the juvenile
70 cannot afford an attorney, the court shall appoint an
71 attorney, who shall be paid in accordance with article
72 twenty-one, chapter twenty-nine of this code.

73 (i) In all proceedings under this article, the juvenile
74 shall be afforded a meaningful opportunity to be heard.
75 This includes the opportunity to testify and to present
76 and cross-examine witnesses. The general public shall be
77 excluded from all proceedings under this article except that
78 persons whose presence is requested by the parties and
79 other persons whom the circuit court determines have a
80 legitimate interest in the proceedings may attend: *Provided,*
81 That in cases in which a juvenile is accused of committing
82 what would be a felony if the juvenile were an adult, an
83 alleged victim or his or her representative may attend any
84 related juvenile proceedings, at the discretion of the
85 presiding judicial officer: *Provided, however,* That in any
86 case in which the alleged victim is a juvenile, he or she may
87 be accompanied by his or her parents or representative, at
88 the discretion of the presiding judicial officer.

89 (j) At all adjudicatory hearings held under this article,
90 all procedural rights afforded to adults in criminal

91 proceedings shall be afforded the juvenile unless
92 specifically provided otherwise in this chapter.

93 (k) At all adjudicatory hearings held under this article,
94 the rules of evidence applicable in criminal cases apply,
95 including the rule against written reports based upon
96 hearsay.

97 (l) Except for res gestae, extrajudicial statements made
98 by a juvenile who has not attained fourteen years of age
99 to law-enforcement officials or while in custody are not
100 admissible unless those statements were made in the
101 presence of the juvenile's counsel. Except for res gestae,
102 extrajudicial statements made by a juvenile who has not
103 attained sixteen years of age but who is at least fourteen
104 years of age to law-enforcement officers or while in
105 custody, are not admissible unless made in the presence of
106 the juvenile's counsel or made in the presence of, and with
107 the consent of, the juvenile's parent or custodian, and the
108 parent or custodian has been fully informed regarding the
109 juvenile's right to a prompt detention hearing, the juvenile's
110 right to counsel, including appointed counsel if the juvenile
111 cannot afford counsel, and the juvenile's privilege against
112 self-incrimination.

113 (m) A transcript or recording shall be made of all
114 transfer, adjudicatory and dispositional hearings held in
115 circuit court. At the conclusion of each of these hearings,
116 the circuit court shall make findings of fact and conclusions
117 of law, both of which shall appear on the record. The court
118 reporter shall furnish a transcript of the proceedings at no
119 charge to any indigent juvenile who seeks review of any
120 proceeding under this article if an affidavit is filed stating
121 that neither the juvenile nor the juvenile's parents or
122 custodian have the ability to pay for the transcript.

CHAPTER 172

**(Com. Sub. for H.B. 2776 - By Delegates Moore, Kominar, Perry,
Barker, Carmichael and Ashley)**

[Passed March 7, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, all relating to mortgage broker, lender and loan originator licenses; requiring certain licensees to license all loan originators; and permitting the Banking Commissioner to enter into information sharing agreements with other mortgage regulators.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL
MORTGAGE LENDER, BROKER
AND SERVICER ACT.**

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender, broker or loan originator; exemptions.

§31-17-11. Records and reports; examination of records; analysis.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) "Primary mortgage loan" means a consumer loan
3 made to an individual which is secured, in whole or in part,

4 by a primary mortgage or deed of trust upon any interest in
5 real property used as an owner-occupied residential dwelling
6 with accommodations for not more than four families;

7 (2) "Subordinate mortgage loan" means a consumer loan
8 made to an individual which is secured, in whole or in part,
9 by a mortgage or deed of trust upon any interest in real
10 property used as an owner-occupied residential dwelling with
11 accommodations for not more than four families, which
12 property is subject to the lien of one or more prior recorded
13 mortgages or deeds of trust;

14 (3) "Person" means an individual, partnership,
15 association, trust, corporation or any other legal entity, or any
16 combination thereof;

17 (4) "Lender" means any person who makes or offers to
18 make or accepts or offers to accept or purchases or services
19 any primary or subordinate mortgage loan in the regular
20 course of business. A person is considered to be acting in the
21 regular course of business if he or she makes or accepts, or
22 offers to make or accept, more than five primary or
23 subordinate mortgage loans in any one calendar year;

24 (5) "Broker" means any person acting in the regular
25 course of business who, for a fee or commission or other
26 consideration, negotiates or arranges, or who offers to
27 negotiate or arrange, or originates, processes or assigns a
28 primary or subordinate mortgage loan between a lender and
29 a borrower. A person is considered to be acting in the regular
30 course of business if he or she negotiates or arranges, or
31 offers to negotiate or arrange, or originates, processes or
32 assigns any primary or subordinate mortgage loans in any one
33 calendar year; or if he or she seeks to charge a borrower or
34 receive from a borrower money or other valuable
35 consideration in any primary or subordinate mortgage
36 transaction before completing performance of all broker
37 services that he or she has agreed to perform for the
38 borrower;

39 (6) "Brokerage fee" means the fee or commission or other
40 consideration charged by a broker or loan originator for the
41 services described in subdivision (5) of this section;

42 (7) "Additional charges" means every type of charge
43 arising out of the making or acceptance of a primary or
44 subordinate mortgage loan, except finance charges, including,
45 but not limited to, official fees and taxes, reasonable closing
46 costs and certain documentary charges and insurance
47 premiums and other charges which definition is to be read in
48 conjunction with and permitted by section one hundred nine,
49 article three, chapter forty-six-a of this code;

50 (8) "Finance charge" means the sum of all interest and
51 similar charges payable directly or indirectly by the debtor
52 imposed or collected by the lender incident to the extension
53 of credit as coextensive with the definition of "loan finance
54 charge" set forth in section one hundred two, article one,
55 chapter forty-six-a of this code;

56 (9) "Commissioner" means the Commissioner of Banking
57 of this state;

58 (10) "Applicant" means a person who has applied for a
59 lender's, broker's or loan originator's license;

60 (11) "Licensee" means any person duly licensed by the
61 commissioner under the provisions of this article as a lender,
62 broker or loan originator;

63 (12) "Amount financed" means the total of the following
64 items to the extent that payment is deferred:

65 (a) The cash price of the goods, services or interest in
66 land, less the amount of any down payment, whether made in
67 cash or in property traded in;

68 (b) The amount actually paid or to be paid by the seller
69 pursuant to an agreement with the buyer to discharge a
70 security interest in or a lien on property traded in; and

71 (c) If not included in the cash price:

72 (i) Any applicable sales, use, privilege, excise or
73 documentary stamp taxes;

74 (ii) Amounts actually paid or to be paid by the seller for
75 registration, certificate of title or license fees; and

76 (iii) Additional charges permitted by this article;

77 (13) "Affiliated" means persons under the same
78 ownership or management control. As to corporations,
79 limited liability companies or partnerships, where common
80 owners manage or control a majority of the stock,
81 membership interests or general partnership interests of one
82 or more such corporations, limited liability companies or
83 partnerships, those persons are considered affiliated. In
84 addition, persons under the ownership or management control
85 of the members of an immediate family shall be considered
86 affiliated. For purposes of this section, "immediate family"
87 means mother, stepmother, father, stepfather, sister,
88 stepsister, brother, stepbrother, spouse, child and
89 grandchildren;

90 (14) "Servicing" or "servicing a residential mortgage
91 loan" means through any medium or mode of communication
92 the collection or remittance for, or the right or obligation to
93 collect or remit for another lender, note owner or noteholder,
94 payments of principal, interest, including sales finance
95 charges in a consumer credit sale, and escrow items as
96 insurance and taxes for property subject to a residential
97 mortgage loan; and

98 (15) "Loan originator" means an individual who, on
99 behalf of a licensed mortgage broker, under the direct
100 supervision and control of a licensee who is engaged in
101 brokering activity, and in exchange for compensation by that
102 broker, performs any of the services described in subsection
103 (5) of this section.

§31-17-2. License required for lender, broker or loan originator; exemptions.

1 (a) No person may engage in this state in the business of
2 lender, broker or loan originator unless and until he or she
3 first obtains a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked, and
5 no foreign corporation may engage in business in this state
6 unless it is registered with the Secretary of State to transact
7 business in this state.

8 (b) An entity applying for or holding both a lender and
9 broker license shall license all of its individual loan
10 originators if that entity brokers a majority of its residential
11 mortgage loans. The determination of whether an entity
12 brokers the majority of its residential mortgage loans is based
13 upon the most recent annual report filed with the division
14 pursuant to section eleven of this article. A new applicant
15 applying for both a lender license and a broker license shall
16 license all of its loan originators unless the applicant can
17 demonstrate, through data compiled for other state regulators,
18 that it acts as a lender for a majority of its residential
19 mortgage loans made.

20 (c) Brokerage fees, additional charges and finance
21 charges imposed by licensed mortgage brokers, lenders and
22 loan originators are exempt from the tax imposed by article
23 fifteen, chapter eleven of this code beginning on the first day
24 of January, two thousand four.

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

- 27 (1) Federally insured depository institutions;
- 28 (2) Regulated consumer lender licensees;
- 29 (3) Insurance companies;

30 (4) Any other lender licensed by and under the regular
31 supervision and examination for consumer compliance of any
32 agency of the federal government;

33 (5) Any agency or instrumentality of this state, federal,
34 county or municipal government or on behalf of the agency
35 or instrumentality;

36 (6) By a nonprofit community development organization
37 making mortgage loans to promote home ownership or
38 improvements for the disadvantaged which loans are subject
39 to federal, state, county or municipal government supervision
40 and oversight; or

41 (7) Habitat for Humanity International, Inc., and its
42 affiliates providing low-income housing within this state.

43 Loans made subject to this exemption may be assigned,
44 transferred, sold or otherwise securitized to any person and
45 shall remain exempt from the provisions of this article, except
46 as to reporting requirements in the discretion of the
47 commissioner where the person is a licensee under this
48 article. Nothing herein shall prohibit a broker licensed under
49 this article from acting as broker of an exempt loan and
50 receiving compensation as permitted under the provisions of
51 this article.

52 (e) A person or entity designated in subsection (d) of this
53 section may take assignments of a primary or subordinate
54 mortgage loan from a licensed lender and the assignments of
55 said loans that they themselves could have lawfully made as
56 exempt from the provisions of this article under this section
57 do not make that person or entity subject to the licensing,
58 bonding, reporting or other provisions of this article except
59 as the defense or claim would be preserved pursuant to
60 section one hundred two, article two, chapter forty-six-a of
61 this code.

62 (f) The placement or sale for securitization of a primary
63 or subordinate mortgage loan into a secondary market by a
64 licensee may not subject the warehouse or final
65 securitization holder or trustee to the provisions of this
66 article: *Provided*, That the warehouse, final securitization
67 holder or trustee under an arrangement is either a licensee, or
68 person or entity entitled to make exempt loans of that type
69 under this section, or the loan is held with right of recourse
70 to a licensee.

**§31-17-11. Records and reports; examination of records;
analysis.**

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

13 (b) Each licensee shall file with the commissioner on or
14 before the fifteenth day of March of each year a report under
15 oath or affirmation concerning his or her business and
16 operations in this state for the preceding license year in the
17 form prescribed by the commissioner.

18 (c) The commissioner may, at his or her discretion, make
19 or cause to be made an examination of the books, accounts
20 and records of every lender or broker licensee pertaining to
21 primary and subordinate mortgage loans made in this state
22 under the provisions of this article, for the purpose of
23 determining whether each lender and broker licensee is

24 complying with the provisions hereof and for the purpose of
25 verifying each lender or broker licensee's annual report. If
26 the examination is made outside this state, the licensee shall
27 pay the cost thereof in like manner as applicants are required
28 to pay the cost of investigations outside this state.

29 (d) The commissioner shall publish annually an aggregate
30 analysis of the information furnished in accordance with the
31 provisions of subsection (b) or (c) of this section, but the
32 individual reports shall not be public records and shall not be
33 open to public inspection.

34 (e) The commissioner may enter into cooperative and
35 information sharing agreements with regulators in other
36 states or with federal authorities to discharge his or her
37 responsibilities under this article.

●

CHAPTER 173

**(Com. Sub. for H.B. 2775 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-15-3c; and to
amend and reenact §17A-3-4 of said code, all relating to the
taxation of motor vehicles; providing an exemption for new
residents of this state from payment of the privilege tax upon a
showing that the applicant was not a resident of this state at the
time the vehicle was purchased and the vehicle was properly

titled in the applicant's previous state or jurisdiction of residence; providing a period of amnesty; eliminating the five percent tax for privilege of certification of title; imposing a five percent tax on the sale and use of motor vehicles; providing exemptions; and effective date.

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 §11-15-3c; and that §17A-3-4 of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation
17A. Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumer sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Department of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

1 (a) Notwithstanding any provision of this article or article
 2 fifteen-a of this chapter to the contrary, beginning on the first
 3 day of July, two thousand eight, all motor vehicle sales to
 4 West Virginia residents shall be subject to the consumer sales
 5 tax imposed by this article.

6 (b) *Rate of tax on motor vehicles.* -- Notwithstanding any
 7 provision of this article or article fifteen-a of this chapter to

8 the contrary, the rate of tax on the sale and use of a motor
9 vehicle shall be five percent of its sale price, as defined in
10 section two, article fifteen-b of this chapter: *Provided*, That
11 so much of the sale price or consideration as is represented by
12 the exchange of other vehicles on which the tax imposed by
13 this section or section four, article three, chapter seventeen-a
14 of this code has been paid by the purchaser shall be deducted
15 from the total actual sale price paid for the motor vehicle,
16 whether the motor vehicle be new or used.

17 (c) *Motor vehicles purchased out of state.*--
18 Notwithstanding this article or article fifteen-a to the
19 contrary, the tax imposed by this section shall apply to all
20 motor vehicles, used as defined by section one, article fifteen-
21 a, of this chapter, within this state, regardless of whether the
22 vehicle was purchased in a state other than West Virginia.

23 (d) *Definition of Sale.* -- Notwithstanding any provision
24 of this article or article fifteen-a of this chapter to the
25 contrary, for purposes of this section "sale", "sales" or
26 "selling" means any transfer or lease of the possession or
27 ownership of a motor vehicle for consideration, including
28 isolated transactions between individuals not being made in
29 the ordinary course of repeated and successive business and
30 also including casual and occasional sales between
31 individuals not conducted in a repeated manner or in the
32 ordinary course of repetitive and successive transactions.

33 (e) *Definition of Motor Vehicle.* -- For purposes of this
34 section "motor vehicle" means every propellable device in, or
35 upon which any person or property is or may be transported
36 or drawn upon a highway including but not limited to:
37 automobiles; buses; motor homes; motorcycles; motorboats;
38 all-terrain vehicles; snowmobiles; low speed vehicles; trucks,
39 truck tractors, and road tractors having a weight of less than

40 fifty-five thousand pounds; trailers, semitrailers, full trailers,
41 pole trailers, and converter gear having a gross weight of less
42 than two thousand pounds; and motorboat trailers, fold down
43 camping trailers, traveling trailers, house trailers, and motor
44 homes; except that the term “motor vehicle” does not include:
45 modular homes, manufactured homes, mobile homes, similar
46 nonmotive propelled vehicles susceptible of being moved
47 upon the highways but primarily designed for habitation and
48 occupancy; devices operated regularly for the transportation
49 of persons for compensation under a certificate of
50 convenience and necessity or contract carrier permit issued
51 by the Public Service Commission; mobile equipment as
52 defined in section one, article one, chapter seventeen-a of this
53 code; special mobile equipment as defined in section one,
54 article one, chapter seventeen-a of this code; trucks, truck
55 tractors, and road tractors having a gross weight of fifty-five
56 thousand pounds or more; trailers, semitrailers, full trailers,
57 pole trailers and converter gear, having weight of two
58 thousand pounds or greater: *Provided*, That notwithstanding
59 the provisions of section nine, article fifteen, chapter eleven
60 of this code, the exemption from tax under this section for
61 mobile equipment as defined in section one, article one,
62 chapter seventeen-a of this code; special mobile equipment
63 defined in section one, article one, chapter seventeen-a of this
64 code; Class B trucks, truck tractors, and road tractors
65 registered at a gross weight of fifty-five thousand pounds or
66 more; and Class C trailers, semitrailers, full trailers, pole
67 trailers and converter gear, having weight of two thousand
68 pounds or greater; does not subject the sale or purchase of the
69 vehicle to the consumer sales and service tax imposed by
70 section three of this article.

71 (f) *Exemptions*. -- Notwithstanding any other provision
72 of this code to the contrary, the tax imposed by this section

73 shall not be subject to any exemption in this code other than
74 the following:

75 (1) The tax imposed by this section does not apply to any
76 passenger vehicle offered for rent in the normal course of
77 business by a daily passenger rental car business as licensed
78 under the provisions of article six-d of this chapter. For
79 purposes of this section, a daily passenger car means a motor
80 vehicle having a gross weight of eight thousand pounds or
81 less and is registered in this state or any other state. In lieu of
82 the tax imposed by this section, there is hereby imposed a tax
83 of not less than one dollar nor more than one dollar and fifty
84 cents for each day or part of the rental period. The
85 Commissioner of Motor Vehicles shall propose an emergency
86 rule in accordance with the provisions of article three, chapter
87 twenty-nine-a of this code to establish this tax.

88 (2) The tax imposed by this section does not apply where
89 the motor vehicle has been acquired by a corporation,
90 partnership or limited liability company from another
91 corporation, partnership or limited liability company that is
92 a member of the same controlled group and the entity
93 transferring the motor vehicle has previously paid the tax on
94 that motor vehicle imposed by this section. For the purposes
95 of this section, control means ownership, directly or
96 indirectly, of stock or equity interests possessing fifty percent
97 or more of the total combined voting power of all classes of
98 the stock of a corporation or equity interests of a partnership
99 or limited liability company entitled to vote or ownership,
100 directly or indirectly, of stock or equity interests possessing
101 fifty percent or more of the value of the corporation,
102 partnership or limited liability company.

103 (3) The tax imposed by this section does not apply where
104 motor vehicle has been acquired by a senior citizen service

105 organization which is exempt from the payment of income
106 taxes under the United States Internal Revenue Code, Title 26
107 U.S.C. §501(c)(3) and which is recognized to be a bona fide
108 senior citizen service organization by the Bureau of Senior
109 Services existing under the provisions of article five, chapter
110 sixteen of this code.

111 (4) The tax imposed by this section does not apply to any
112 active duty military personnel stationed outside of West
113 Virginia who acquires a motor vehicle by sale within nine
114 months from the date the person returns to this state.

115 (5) The tax imposed by this section does not apply to
116 motor vehicles acquired by registered dealers of this state for
117 resale only.

118 (6) The tax imposed by this section does not apply to
119 motor vehicles acquired by this state or any political
120 subdivision thereof, or by any volunteer fire department or
121 duly chartered rescue or ambulance squad organized and
122 incorporated under the laws of this state as a nonprofit
123 corporation for protection of life or property.

124 (7) The tax imposed by this section does not apply to
125 motor vehicles acquired by an urban mass transit authority,
126 as defined in article twenty-seven, chapter eight of this code,
127 or a nonprofit entity exempt from federal and state income
128 tax under the Internal Revenue Code, for the purpose of
129 providing mass transportation to the public at large or
130 designed for the transportation of persons and being operated
131 for the transportation of persons in the public interest.

132 (8) The tax imposed by this section does not apply to the
133 registration of a vehicle owned and titled in the name of a
134 resident of this state if the applicant:

135 (A) Was not a resident of this state at the time the
136 applicant purchased or otherwise acquired ownership of the
137 vehicle;

138 (B) Presents evidence as the Commissioner of Motor
139 Vehicles may require of having titled the vehicle in the
140 applicant's previous state of residence;

141 (C) Has relocated to this state and can present such
142 evidence as the Commissioner of Motor Vehicles may require
143 to show bona-fide residency in this state;

144 (D) Presents an affidavit, completed by the assessor of the
145 applicant's county of residence, establishing that the vehicle
146 has been properly reported and is on record in the office of
147 the assessor as personal property; and

148 (E) Makes application to the Division of Motor Vehicles
149 for a title and registration, and pays all other fees required by
150 chapter seventeen-a of this code within thirty days of
151 establishing residency in this state as prescribed in subsection
152 (a), section one-a of this article.

153 (g) *Division of Motor Vehicles to collect.*--
154 Notwithstanding any provision of this article, article fifteen-a,
155 and article ten of this chapter to the contrary, the Division of
156 Motor Vehicles shall collect the tax imposed by this section:
157 *Provided*, That such tax is imposed upon the monthly
158 payments for the lease of any motor vehicle leased by a
159 resident of West Virginia, which tax is equal to five percent
160 of the amount of the monthly payment, applied to each
161 payment, and continuing for the entire term of the initial lease
162 period. The tax shall be remitted to the Division of Motor
163 Vehicles on a monthly basis by the lessor of the vehicle.

164 (h) *Dedication of tax to highways.* -- Notwithstanding any
165 provision of this article or article fifteen-a of this chapter to
166 the contrary, all taxes collected pursuant to this section, after

168 deducting the amount of any refunds lawfully paid, shall be
169 deposited in the State Road Fund in the State Treasury, and
170 expended by the Commissioner of Highways for design,
171 maintenance and construction of roads in the state highway
172 system.

173 (i) *Legislative rules; emergency rules.* -- Notwithstanding
174 any provision of this article, article fifteen-a, and article ten
175 to the contrary, the Commissioner of Motor Vehicles shall
176 promulgate legislative rules explaining and implementing this
177 section, which rules shall be promulgated in accordance with
178 the provisions of article three, chapter twenty-nine-a of this
179 code and should include a minimum taxable value and set
180 forth instances when a vehicle is to be taxed at fair market
181 value rather than its purchase price. The authority to
182 promulgate rules includes authority to amend or repeal those
183 rules. If proposed legislative rules for this section are filed in
184 the State Register before the fifteenth day of June, two
185 thousand eight, those rules may be promulgated as
186 emergency legislative rules, as provided in article three of
187 said chapter.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE AND
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-4. Application for certificate of title; fees; abolishing
privilege tax; prohibition of issuance of
certificate of title without compliance with
consumer sales and service tax provisions;
exceptions.**

1 (a) Certificates of registration of any vehicle or
2 registration plates for the vehicle, whether original issues or
3 duplicates, may not be issued or furnished by the Division of
4 Motor Vehicles or any other officer or agent charged with the
5 duty, unless the applicant already has received, or at the same
6 time makes application for and is granted, an official
7 certificate of title of the vehicle in either an electronic or
8 paper format. The application shall be upon a blank form to
9 be furnished by the Division of Motor Vehicles and shall
10 contain a full description of the vehicle, which description
11 shall contain a manufacturer's serial or identification number
12 or other number as determined by the commissioner and any
13 distinguishing marks, together with a statement of the
14 applicant's title and of any liens or encumbrances upon the
15 vehicle, the names and addresses of the holders of the liens
16 and any other information as the Division of Motor Vehicles
17 may require. The application shall be signed and sworn to by
18 the applicant. A duly certified copy of the division's
19 electronic record of a certificate of title is admissible in any
20 civil, criminal or administrative proceeding in this state as
21 evidence of ownership.

22 (b) A tax is imposed upon the privilege of effecting the
23 certification of title of each vehicle in the amount equal to
24 five percent of the value of the motor vehicle at the time of
25 the certification, to be assessed as follows:

26 (1) If the vehicle is new, the actual purchase price or
27 consideration to the purchaser of the vehicle is the value of
28 the vehicle. If the vehicle is a used or secondhand vehicle,
29 the present market value at time of transfer or purchase is the
30 value of the vehicle for the purposes of this section:
31 *Provided*, That so much of the purchase price or
32 consideration as is represented by the exchange of other
33 vehicles on which the tax imposed by this section has been

34 paid by the purchaser shall be deducted from the total actual
35 price or consideration paid for the vehicle, whether the
36 vehicle be new or secondhand. If the vehicle is acquired
37 through gift or by any manner whatsoever, unless specifically
38 exempted in this section, the present market value of the
39 vehicle at the time of the gift or transfer is the value of the
40 vehicle for the purposes of this section.

41 (2) No certificate of title for any vehicle may be issued to
42 any applicant unless the applicant has paid to the Division of
43 Motor Vehicles the tax imposed by this section which is five
44 percent of the true and actual value of the vehicle whether the
45 vehicle is acquired through purchase, by gift or by any other
46 manner whatsoever, except gifts between husband and wife
47 or between parents and children: *Provided*, That the husband
48 or wife, or the parents or children, previously have paid the
49 tax on the vehicles transferred to the State of West Virginia.

50 (3) The Division of Motor Vehicles may issue a
51 certificate of registration and title to an applicant if the
52 applicant provides sufficient proof to the Division of Motor
53 Vehicles that the applicant has paid the taxes and fees
54 required by this section to a motor vehicle dealership that has
55 gone out of business or has filed bankruptcy proceedings in
56 the United States bankruptcy court and the taxes and fees so
57 required to be paid by the applicant have not been sent to the
58 division by the motor vehicle dealership or have been
59 impounded due to the bankruptcy proceedings: *Provided*,
60 That the applicant makes an affidavit of the same and assigns
61 all rights to claims for money the applicant may have against
62 the motor vehicle dealership to the Division of Motor
63 Vehicles.

64 (4) The Division of Motor Vehicles shall issue a
65 certificate of registration and title to an applicant without

66 payment of the tax imposed by this section if the applicant is
67 a corporation, partnership or limited liability company
68 transferring the vehicle to another corporation, partnership or
69 limited liability company when the entities involved in the
70 transfer are members of the same controlled group and the
71 transferring entity has previously paid the tax on the vehicle
72 transferred. For the purposes of this section, control means
73 ownership, directly or indirectly, of stock or equity interests
74 possessing fifty percent or more of the total combined voting
75 power of all classes of the stock of a corporation or equity
76 interests of a partnership or limited liability company entitled
77 to vote or ownership, directly or indirectly, of stock or equity
78 interests possessing fifty percent or more of the value of the
79 corporation, partnership or limited liability company.

80 (5) The tax imposed by this section does not apply to
81 vehicles to be registered as Class H vehicles or Class M
82 vehicles, as defined in section one, article ten of this chapter,
83 which are used or to be used in interstate commerce. Nor
84 does the tax imposed by this section apply to the titling of
85 Class B vehicles registered at a gross weight of fifty-five
86 thousand pounds or more, or to the titling of Class C
87 semitrailers, full trailers, pole trailers and converter gear:
88 *Provided*, That if an owner of a vehicle has previously titled
89 the vehicle at a declared gross weight of fifty-five thousand
90 pounds or more and the title was issued without the payment
91 of the tax imposed by this section, then before the owner may
92 obtain registration for the vehicle at a gross weight less than
93 fifty-five thousand pounds, the owner shall surrender to the
94 commissioner the exempted registration, the exempted
95 certificate of title and pay the tax imposed by this section
96 based upon the current market value of the vehicle:
97 *Provided, however*, That notwithstanding the provisions of
98 section nine, article fifteen, chapter eleven of this code, the
99 exemption from tax under this section for Class B vehicles in

100 excess of fifty-five thousand pounds and Class C semitrailers,
101 full trailers, pole trailers and converter gear does not subject
102 the sale or purchase of the vehicles to the consumers sales
103 and service tax.

104 (6) The tax imposed by this section does not apply to
105 titling of vehicles leased by residents of West Virginia. A tax
106 is imposed upon the monthly payments for the lease of any
107 motor vehicle leased by a resident of West Virginia, which
108 tax is equal to five percent of the amount of the monthly
109 payment, applied to each payment, and continuing for the
110 entire term of the initial lease period. The tax shall be
111 remitted to the Division of Motor Vehicles on a monthly
112 basis by the lessor of the vehicle.

113 (7) The tax imposed by this section does not apply to
114 titling of vehicles by a registered dealer of this state for resale
115 only, nor does the tax imposed by this section apply to titling
116 of vehicles by this state or any political subdivision thereof,
117 or by any volunteer fire department or duly chartered rescue
118 or ambulance squad organized and incorporated under the
119 laws of this state as a nonprofit corporation for protection of
120 life or property. The total amount of revenue collected by
121 reason of this tax shall be paid into the State Road Fund and
122 expended by the Commissioner of Highways for matching
123 federal funds allocated for West Virginia. In addition to the
124 tax, there is a charge of five dollars for each original
125 certificate of title or duplicate certificate of title so issued:
126 *Provided*, That this state or any political subdivision of this
127 state or any volunteer fire department or duly chartered
128 rescue squad is exempt from payment of the charge.

129 (8) The certificate is good for the life of the vehicle, so
130 long as the vehicle is owned or held by the original holder of
131 the certificate and need not be renewed annually, or any other
132 time, except as provided in this section.

133 (9) If, by will or direct inheritance, a person becomes the
134 owner of a motor vehicle and the tax imposed by this section
135 previously has been paid to the Division of Motor Vehicles
136 on that vehicle, he or she is not required to pay the tax.

137 (10) A person who has paid the tax imposed by this
138 section is not required to pay the tax a second time for the
139 same motor vehicle, but is required to pay a charge of five
140 dollars for the certificate of retitle of that motor vehicle,
141 except that the tax shall be paid by the person when the title
142 to the vehicle has been transferred either in this or another
143 state from the person to another person and transferred back
144 to the person.

145 (11) The tax imposed by this section does not apply to
146 any passenger vehicle offered for rent in the normal course of
147 business by a daily passenger rental car business as licensed
148 under the provisions of article six-d of this chapter. For
149 purposes of this section, a daily passenger car means a Class
150 A motor vehicle having a gross weight of eight thousand
151 pounds or less and is registered in this state or any other state.
152 In lieu of the tax imposed by this section, there is hereby
153 imposed a tax of not less than one dollar nor more than one
154 dollar and fifty cents for each day or part of the rental period.
155 The commissioner shall propose an emergency rule in
156 accordance with the provisions of article three, chapter
157 twenty-nine-a of this code to establish this tax.

158 (12) The tax imposed by this article does not apply to the
159 titling of any vehicle purchased by a senior citizen service
160 organization which is exempt from the payment of income
161 taxes under the United States Internal Revenue Code, Title 26
162 U.S.C. §501(c)(3) and which is recognized to be a bona fide
163 senior citizen service organization by the senior services

164 bureau existing under the provisions of article five, chapter
165 sixteen of this code.

166 (13) The tax imposed by this section does not apply to the
167 titling of any vehicle operated by an urban mass transit
168 authority as defined in article twenty-seven, chapter eight of this
169 code or a nonprofit entity exempt from federal and state income
170 tax under the Internal Revenue Code and whose purpose is to
171 provide mass transportation to the public at large designed for
172 the transportation of persons and being operated for the
173 transportation of persons in the public interest.

174 (14) The tax imposed by this section does not apply to the
175 transfer of a title to a vehicle owned and titled in the name of
176 a resident of this state if the applicant:

177 (A) Was not a resident of this state at the time the applicant
178 purchased or otherwise acquired ownership of the vehicle;

179 (B) Presents evidence as the commissioner may require
180 of having titled the vehicle in the applicant's previous state of
181 residence;

182 (C) Has relocated to this state and can present such
183 evidence as the commissioner may require to show bona-fide
184 residency in this state;

185 (D) Presents an affidavit, completed by the assessor of the
186 applicant's county of residence, establishing that the vehicle
187 has been properly reported and is on record in the office of
188 the assessor as personal property; and

189 (E) Makes application to the division for a title and
190 registration, and pays all other fees required by this chapter
191 within thirty days of establishing residency in this state as
192 prescribed in subsection (a), section one-a of this article:
193 *Provided*, That a period of amnesty of three months be
194 established by the commissioner during the calendar year two
195 thousand seven, during which time any resident of this state,
196 having titled his or her vehicle in a previous state of
197 residence, may pay without penalty any fees required by this

198 chapter and transfer the title of his or her vehicle in
199 accordance with the provisions of this section.

200 (c) Notwithstanding any provisions of this code to the
201 contrary, the owners of trailers, semitrailers, recreational
202 vehicles and other vehicles not subject to the certificate of
203 title tax prior to the enactment of this chapter are subject to
204 the privilege tax imposed by this section: *Provided*, That the
205 certification of title of any recreational vehicle owned by the
206 applicant on the thirtieth day of June, one thousand nine
207 hundred eighty-nine, is not subject to the tax imposed by this
208 section: *Provided, however*, That mobile homes,
209 manufactured homes, modular homes and similar nonmotive
210 propelled vehicles, except recreational vehicles and house
211 trailers, susceptible of being moved upon the highways but
212 primarily designed for habitation and occupancy, rather than
213 for transporting persons or property, or any vehicle operated
214 on a nonprofit basis and used exclusively for the
215 transportation of mentally retarded or physically handicapped
216 children when the application for certificate of registration
217 for the vehicle is accompanied by an affidavit stating that the
218 vehicle will be operated on a nonprofit basis and used
219 exclusively for the transportation of mentally retarded and
220 physically handicapped children, are not subject to the tax
221 imposed by this section, but are taxable under the provisions
222 of articles fifteen and fifteen-a, chapter eleven of this code.

223 (d) Beginning on the first of July, two thousand and eight,
224 the tax imposed under this subsection (b) of this section is
225 abolished and after that date no certificate of title for any
226 motor vehicle may be issued to any applicant unless the
227 applicant provides sufficient proof to the Division of Motor
228 Vehicles that the applicant has paid the fees required by this
229 article and the tax imposed under section three-b, article
230 fifteen, chapter eleven of this code.

231 (e) Any person making any affidavit required under any
232 provision of this section who knowingly swears falsely, or
233 any person who counsels, advises, aids or abets another in the
234 commission of false swearing, or any person, while acting as
235 an agent of the Division of Motor Vehicles, issues a vehicle
236 registration without first collecting the fees and taxes or fails
237 to perform any other duty required by this chapter or chapter
238 eleven of this code to be performed before a vehicle
239 registration is issued is, on the first offense, guilty of a
240 misdemeanor and, upon conviction thereof, shall be fined not
241 more than five hundred dollars or be confined in jail for a
242 period not to exceed six months or, in the discretion of the
243 court, both fined and confined. For a second or any
244 subsequent conviction within five years, that person is guilty
245 of a felony and, upon conviction thereof, shall be fined not
246 more than five thousand dollars or be imprisoned in a state
247 correctional facility for not less than one year nor more than
248 five years or, in the discretion of the court, both fined and
249 imprisoned.

250 (f) Notwithstanding any other provisions of this section,
251 any person in the military stationed outside West Virginia or
252 his or her dependents who possess a motor vehicle with valid
253 registration are exempt from the provisions of this article for
254 a period of nine months from the date the person returns to
255 this state or the date his or her dependent returns to this state,
256 whichever is later.

257 (g) No person may transfer, purchase or sell a
258 factory-built home without a certificate of title issued by the
259 commissioner in accordance with the provisions of this
260 article:

261 (1) Any person who fails to provide a certificate of title
262 upon the transfer, purchase or sale of a factory-built home is

263 guilty of a misdemeanor and, upon conviction thereof, shall
264 for the first offense be fined not less than one hundred dollars
265 nor more than one thousand dollars, or be confined in jail for
266 not more than one year, or both fined and confined. For each
267 subsequent offense, the fine may be increased to not more
268 than two thousand dollars, with confinement in jail not more
269 than one year, or both fined and confined.

270 (2) Failure of the seller to transfer a certificate of title
271 upon sale or transfer of the factory-built home gives rise to a
272 cause of action, upon prosecution thereof, and allows for the
273 recovery of damages, costs and reasonable attorney fees.

274 (3) This subsection does not apply to a mobile or
275 manufactured home for which a certificate of title has been
276 canceled pursuant to section twelve-b of this article.

277 (h) Notwithstanding any other provision to the contrary,
278 whenever reference is made to the application for or issuance
279 of any title or the recordation or release of any lien, it
280 includes the application, transmission, recordation, transfer
281 of ownership and storage of information in an electronic
282 format.

283 (i) Notwithstanding any other provision contained in this
284 section, nothing herein shall be considered to include
285 modular homes as defined in subsection (i), section two,
286 article fifteen, chapter thirty-seven of this code and built to
287 the State Building Code as established by legislative rules
288 promulgated by the State Fire Commission pursuant to
289 section five-b, article three, chapter twenty-nine of this code.

CHAPTER 174**(Com. Sub. for S.B. 523 - By Senators Jenkins and Minard)**

[Passed March 9, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §17A-2-21 and §17A-2-23 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-3-3 and §17A-3-14 of said code; to amend and reenact §17A-4-10 of said code; to amend and reenact §17A-9-7 of said code; to amend and reenact §17A-10-8 of said code; to amend and reenact §17B-2-7c of said code; to amend and reenact §17C-5A-2a, §17C-5A-3 and §17C-5A-3a of said code; to amend and reenact §17E-1-23 of said code; and to amend and reenact §20-7-12 of said code, all relating to the regulation and registration of motor vehicles by the Division of Motor Vehicles; consolidating and eliminating certain fees collected by the Division of Motor Vehicles; authorizing the Division of Motor Vehicles to refuse to register and to suspend or revoke motor vehicle registrations of motor carriers whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration; and allowing vehicle owners to retain certain vehicles declared totaled; requiring the surrender of title and registration certificate; eliminating the special revenue account; increasing criminal penalties; and clarifying certain definitions.

Be it enacted by the Legislature of West Virginia:

That §17A-2-21 and §17A-2-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-3 and §17A-3-14 of said code be amended and reenacted; that §17A-4-10 of said code be amended and reenacted; that §17A-9-7 of said code

be amended and reenacted; that §17A-10-8 of said code be amended and reenacted; that §17B-2-7c of said code be amended and reenacted; that §17C-5A-2a, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted; that §17E-1-23 of said code be amended and reenacted; and that §20-7-12 of said code be amended and reenacted, all to read as follows:

Chapter

- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 17B. Motor Vehicle Driver’s Licenses.**
- 17C. Traffic Regulations and Laws of the Road.**
- 17E. Uniform Commercial Driver’s License Act.**
- 20. Natural Resources.**

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

Article

- 2. Division of Motor Vehicles.**
- 3. Original and Renewal of Registration; Issuance of Certificates of Title.**
- 4. Transfers of Title or Interest.**
- 9. Offenses Against Registration Laws and Suspension or Revocation of Registration.**
- 10. Fees for Registration, Licensing, Etc.**

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-21. Motor vehicle fees fund.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

§17A-2-21. Motor Vehicle Fees Fund.

1 Effective the first day of July, two thousand seven, there
2 is hereby created a special revenue account within the State
3 Treasury to be known as the Motor Vehicle Fees Fund which
4 shall consist of moneys paid into the account in accordance
5 with other provisions of this code and any additional sums
6 appropriated by the Legislature. All other taxes and fees

7 imposed and collected under the provisions of this chapter
8 shall be paid to the State Treasurer in the manner provided by
9 law and credited to the State Road Fund.

**§17A-2-23. Worthless checks tendered for fees and taxes;
penalty.**

1 If a check tendered to the Division of Motor Vehicles is
2 returned to the division unpaid for any reason, there shall be
3 a penalty of ten dollars to be paid to the division in addition
4 to the amount due the division. This penalty applies to
5 checks tendered for any fee or tax authorized to be collected
6 by the division and is in addition to any other penalties
7 imposed in this code: *Provided*, That in the event a specific
8 penalty is set forth for the nonpayment or late payment of
9 fees and taxes, the penalty set forth in this section applies
10 only to the extent that the penalty exceeds any specific
11 penalty for nonpayment or late payment.

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

**§17A-3-3. Application for registration; statement of insurance
or other proof of security to accompany
application; criminal penalties; fees; special
revolving fund.**

1 Every owner of a vehicle subject to registration under this
2 article shall make application to the division for the
3 registration of the vehicle upon the appropriate form or forms

4 furnished by the division and every application shall bear the
5 signature of the owner or his or her authorized agent, written
6 with pen and ink, and the application shall contain:

7 (a) The name, bona fide residence and mailing address of
8 the owner, the county in which he or she resides or business
9 address of the owner if a firm, association or corporation.

10 (b) A description of the vehicle including, insofar as the
11 data specified in this section may exist with respect to a given
12 vehicle, the make, model, type of body, the manufacturer's
13 serial or identification number or other number as determined
14 by the commissioner.

15 (c) In the event a motor vehicle is designed, constructed,
16 converted or rebuilt for the transportation of property, the
17 application shall include a statement of its declared gross
18 weight if the motor vehicle is to be used alone, or if the motor
19 vehicle is to be used in combination with other vehicles, the
20 application for registration of the motor vehicle shall include
21 a statement of the combined declared gross weight of the
22 motor vehicle and the vehicles to be drawn by the motor
23 vehicle; declared gross weight being the weight declared by
24 the owner to be the actual combined weight of the vehicle or
25 combination of vehicles and load when carrying the
26 maximum load which the owner intends to place on the
27 vehicle; and the application for registration of each vehicle
28 shall also include a statement of the distance between the first
29 and last axles of that vehicle or combination of vehicles.

30 The declared gross weight stated in the application shall
31 not exceed the permissible gross weight for the axle spacing
32 listed in the application as determined by the table of
33 permissible gross weights contained in chapter seventeen-c
34 of this code; and any vehicle registered for a declared gross

35 weight as stated in the application is subject to the single-axle
36 load limit set forth in said chapter.

37 (d) Each applicant shall state whether the vehicle is or is
38 not to be used in the public transportation of passengers or
39 property, or both, for compensation and if used for
40 compensation, or to be used, the applicants shall certify that
41 the vehicle is used for compensation and shall, as a condition
42 precedent to the registration of the vehicle, obtain a
43 certificate of convenience or permit from the Public Service
44 Commission unless otherwise exempt from this requirement
45 in accordance with chapter twenty-four-a of this code.

46 (e) A statement under penalty of false swearing that
47 liability insurance is in effect and will continue to be in effect
48 through the entire term of the vehicle registration period
49 within limits which shall be no less than the requirement of
50 section two, article four, chapter seventeen-d of this code,
51 which shall contain the name of the applicant's insurer, the
52 name of the agent or agency which issued the policy and the
53 effective date of the policy and any other information
54 required by the Commissioner of Motor Vehicles or that the
55 applicant has qualified as a self-insurer meeting the
56 requirements of section two, article six of said chapter and
57 that as a self-insurer he or she has complied with the
58 minimum security requirements as established in section two,
59 article four of said chapter.

60 (1) *Intentional lapses of insurance coverage.* --

61 (A) In the case of a periodic use or seasonal vehicle, as
62 defined in section three, article two-a, chapter seventeen-d of
63 this code, the owner may provide, in lieu of other statements
64 required by this section, a statement, under penalty of false
65 swearing, that liability insurance is in effect during the

66 portion of the year the vehicle is in actual use, within limits
67 which shall be no less than the requirements of section two,
68 article four, chapter seventeen-d of this code, and other
69 information relating to the seasonal use on a form designed
70 and provided by the division.

71 (B) Any registrant who prior to expiration of his or her
72 vehicle registration drops or cancels insurance coverage for
73 any reason other than periodic or seasonal use shall either
74 surrender the registration plate or shall, by certified mail,
75 notify the division of the cancellation. The notice shall
76 contain a statement under penalty of false swearing that the
77 vehicle will not be operated on the roads or highways of this
78 state.

79 (C) The registration of any vehicle upon which insurance
80 coverage has been dropped or canceled under subparagraph
81 (B) of this paragraph shall be reinstated upon submission of
82 current proof of insurance and payment of the duplicate plate
83 fee prescribed by this chapter.

84 (2) *Verification process.* —

85 The division may select any certificate of insurance,
86 owner's statement of insurance, motor vehicle registration or
87 any other form or document for verification of insurance
88 coverage with an insurance company.

89 (A) If the division verifies with an insurance company
90 that a motor vehicle was operated in this state without the
91 required security in effect based on information received on
92 an accident report, citation, court report or any other evidence
93 of motor vehicle operation, the division shall proceed against
94 the owner and driver in accordance with section seven, article
95 two-a, chapter seventeen-d of this code.

96 (B) If the division selects a motor vehicle registration for
97 verification of insurance and determines that the owner of a
98 registered motor vehicle did or does not have the required
99 security in effect at the time of verification, the division shall
100 proceed as follows:

101 (i) The division shall send a notice by certified mail to the
102 registered owner's address and to any lienholder noted on the
103 certificate of title, advising that unless the owner provides
104 verifiable proof that the vehicle was insured on the date of
105 verification or that the vehicle is or was not required to be
106 registered, the owner's driver's license will be suspended for
107 thirty days for a first offense and ninety days for a second or
108 subsequent offense and the motor vehicle registration will be
109 revoked until current verifiable proof of insurance is provided
110 to the division: *Provided*, That the division shall suspend the
111 driver's license of only one owner if a vehicle is registered in
112 more than one name.

113 (ii) If, after the notice required in clause (i) of this
114 subparagraph is given to the owner and the lienholder, the
115 owner fails to provide proof of insurance, the driver's license
116 suspension and motor vehicle registration revocation shall go
117 into effect without further notice thirty days from the date of
118 the notice.

119 (iii) The division shall reinstate the driver's license
120 without regard to the suspension period in this paragraph and
121 reinstate the motor vehicle registration upon submission of
122 proof of current insurance coverage and payment of the
123 reinstatement fees provided in section nine, article three,
124 chapter seventeen-b of this code and section seven, article
125 nine of this chapter.

126 (3) If any person making an application required under
127 the provisions of this section, in the application knowingly
128 provides false information, false proof of security or a false
129 statement of insurance, or if any person, including an
130 applicant's insurance agent, knowingly counsels, advises, aids
131 or abets another in providing false information, false proof of
132 security, or a false statement of insurance in the application
133 he or she is guilty of a misdemeanor and, upon conviction
134 thereof, shall be fined not more than five hundred dollars, or
135 be imprisoned in jail for a period not to exceed fifteen days,
136 or both fined and imprisoned and, in addition to the fine or
137 imprisonment, shall have his or her driver's license
138 suspended for a period of ninety days and vehicle registration
139 revoked if applicable.

140 (f) Any further information as may reasonably be
141 required by the division to enable it to determine whether the
142 vehicle is lawfully entitled to registration.

143 (g) Each application for registration shall be accompanied
144 by the fees provided in this article and an additional fee of
145 fifty cents for each motor vehicle for which the applicant
146 seeks registration.

147 (h) Revocation of a motor vehicle registration pursuant to
148 this section shall not affect the perfection or priority of a lien
149 or security interest attaching to the motor vehicle that is noted
150 on the certificate of title to the motor vehicle.

**§17A-3-14. Registration plates generally; description of plates;
issuance of special numbers and plates;
registration fees; special application fees;
exemptions; commissioner to promulgate
forms; suspension and nonrenewal.**

1 (a) The division upon registering a vehicle shall issue to
2 the owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet
5 the following requirements:

6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration number
8 assigned to the vehicle for which it is issued; the name of this
9 state, which may be abbreviated; and the year number for
10 which it is issued or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of one hundred feet during daylight:
14 *Provided*, That the requirements of this subdivision shall not
15 apply to the year number for which the plate is issued or the
16 date of expiration.

17 (3) Registration numbering for registration plates shall
18 begin with number two.

19 (c) The division may not issue, permit to be issued or
20 distribute any special registration plates except as follows:

21 (1) The Governor shall be issued two registration plates,
22 on one of which shall be imprinted the numeral one and on
23 the other the word one.

24 (2) State officials and judges may be issued special
25 registration plates as follows:

26 (A) Upon appropriate application, the division shall issue
27 to the Secretary of State, State Superintendent of Schools,
28 Auditor, Treasurer, Commissioner of Agriculture and the
29 Attorney General, the members of both houses of the
30 Legislature, including the elected officials of both houses of
31 the Legislature, the justices of the Supreme Court of Appeals
32 of West Virginia, the representatives and senators of the state

33 in the Congress of the United States, the judges of the West
34 Virginia circuit courts, active and retired on senior status, the
35 judges of the United States district courts for the State of
36 West Virginia and the judges of the United States Court of
37 Appeals for the fourth circuit, if any of the judges are
38 residents of West Virginia, a special registration plate for a
39 Class A motor vehicle and a special registration plate for a
40 Class G motorcycle owned by the official or his or her
41 spouse: *Provided*, That the division may issue a Class A
42 special registration plate for each vehicle titled to the official
43 and a Class G special registration plate for each motorcycle
44 titled to the official.

45 (B) Each plate issued pursuant to this subdivision shall
46 bear any combination of letters and numbers not to exceed an
47 amount determined by the commissioner and a designation of
48 the office. Each plate shall supersede the regular numbered
49 plate assigned to the official or his or her spouse during the
50 official's term of office and while the motor vehicle is owned
51 by the official or his or her spouse.

52 (C) The division shall charge an annual fee of fifteen
53 dollars for every registration plate issued pursuant to this
54 subdivision, which is in addition to all other fees required by
55 this chapter.

56 (3) The division may issue members of the National
57 Guard forces special registration plates as follows:

58 (A) Upon receipt of an application on a form prescribed
59 by the division and receipt of written evidence from the chief
60 executive officer of the Army National Guard or Air National
61 Guard, as appropriate, or the commanding officer of any
62 United States armed forces reserve unit that the applicant is
63 a member thereof, the division shall issue to any member of

64 the National Guard of this state or a member of any reserve
65 unit of the United States armed forces a special registration
66 plate designed by the commissioner for any number of Class
67 A motor vehicles owned by the member. Upon presentation
68 of written evidence of retirement status, retired members of
69 this state's Army or Air National Guard, or retired members
70 of any reserve unit of the United States armed forces, are
71 eligible to purchase the special registration plate issued
72 pursuant to this subdivision.

73 (B) The division shall charge an initial application fee of
74 ten dollars for each special registration plate issued pursuant
75 to this subdivision, which is in addition to all other fees
76 required by this chapter. Except as otherwise provided
77 herein, effective the first day of July, two thousand seven, all
78 fees currently held in the special revolving fund used in the
79 administration of this section and all fees collected by the
80 division shall be deposited in the State Road Fund.

81 (C) A surviving spouse may continue to use his or her
82 deceased spouse's National Guard forces license plate until
83 the surviving spouse dies, remarries or does not renew the
84 license plate.

85 (4) Specially arranged registration plates may be issued
86 as follows:

87 (A) Upon appropriate application, any owner of a motor
88 vehicle subject to Class A registration, or a motorcycle
89 subject to Class G registration, as defined by this article, may
90 request that the division issue a registration plate bearing
91 specially arranged letters or numbers with the maximum
92 number of letters or numbers to be determined by the
93 commissioner. The division shall attempt to comply with the
94 request wherever possible.

95 (B) The commissioner shall propose rules for legislative
96 approval in accordance with the provisions of chapter
97 twenty-nine-a of this code regarding the orderly distribution
98 of the plates: *Provided*, That for purposes of this subdivision,
99 the registration plates requested and issued shall include all
100 plates bearing the numbers two through two thousand.

101 (C) An annual fee of fifteen dollars shall be charged for
102 each special registration plate issued pursuant to this
103 subdivision, which is in addition to all other fees required by
104 this chapter.

105 (5) The division may issue honorably discharged veterans
106 special registration plates as follows:

107 (A) Upon appropriate application, the division shall issue
108 to any honorably discharged veteran of any branch of the
109 armed services of the United States a special registration
110 plate for any number of vehicles titled in the name of the
111 qualified applicant with an insignia designed by the
112 Commissioner of the Division of Motor Vehicles.

113 (B) The division shall charge a special initial application
114 fee of ten dollars in addition to all other fees required by law.
115 This special fee is to compensate the Division of Motor
116 Vehicles for additional costs and services required in the
117 issuing of the special registration. All fees collected by the
118 division shall be deposited in the State Road Fund: *Provided*,
119 That nothing in this section may be construed to exempt any
120 veteran from any other provision of this chapter.

121 (C) A surviving spouse may continue to use his or her
122 deceased spouse's honorably discharged veterans license
123 plate until the surviving spouse dies, remarries or does not
124 renew the license plate.

125 (6) The division may issue disabled veterans special
126 registration plates as follows:

127 (A) Upon appropriate application, the division shall issue
128 to any disabled veteran who is exempt from the payment of
129 registration fees under the provisions of this chapter a
130 registration plate for a vehicle titled in the name of the
131 qualified applicant which bears the letters "DV" in red and
132 also the regular identification numerals in red.

133 (B) A surviving spouse may continue to use his or her
134 deceased spouse's disabled veterans license plate until the
135 surviving spouse dies, remarries or does not renew the license
136 plate.

137 (C) A qualified disabled veteran may obtain a second
138 disabled veterans license plate as described in this section for
139 use on a passenger vehicle titled in the name of the qualified
140 applicant. The division shall charge a one-time fee of ten
141 dollars to be deposited into the State Road Fund, in addition
142 to all other fees required by this chapter, for the second plate.

143 (7) The division may issue recipients of the distinguished
144 Purple Heart medal special registration plates as follows:

145 (A) Upon appropriate application, there shall be issued to
146 any armed service person holding the distinguished Purple
147 Heart medal for persons wounded in combat a registration
148 plate for a vehicle titled in the name of the qualified applicant
149 bearing letters or numbers. The registration plate shall be
150 designed by the Commissioner of Motor Vehicles and shall
151 denote that those individuals who are granted this special
152 registration plate are recipients of the Purple Heart. All
153 letterings shall be in purple where practical.

154 (B) Registration plates issued pursuant to this subdivision
155 are exempt from all registration fees otherwise required by
156 the provisions of this chapter.

157 (C) A surviving spouse may continue to use his or her
158 deceased spouse's Purple Heart medal license plate until the
159 surviving spouse dies, remarries or does not renew the license
160 plate.

161 (D) A recipient of the Purple Heart medal may obtain a
162 second Purple Heart medal license plate as described in this
163 section for use on a passenger vehicle titled in the name of
164 the qualified applicant. The division shall charge a one-time
165 fee of ten dollars to be deposited into the State Road Fund, in
166 addition to all other fees required by this chapter, for the
167 second plate.

168 (8) The division may issue survivors of the attack on
169 Pearl Harbor special registration plates as follows:

170 (A) Upon appropriate application, the owner of a motor
171 vehicle who was enlisted in any branch of the armed services
172 that participated in and survived the attack on Pearl Harbor
173 on the seventh day of December, one thousand nine hundred
174 forty-one, the division shall issue a special registration plate
175 for a vehicle titled in the name of the qualified applicant. The
176 registration plate shall be designed by the Commissioner of
177 Motor Vehicles.

178 (B) Registration plates issued pursuant to this subdivision
179 are exempt from the payment of all registration fees
180 otherwise required by the provisions of this chapter.

181 (C) A surviving spouse may continue to use his or her
182 deceased spouse's survivors of the attack on Pearl Harbor

183 license plate until the surviving spouse dies, remarries or does
184 not renew the license plate.

185 (D) A survivor of the attack on Pearl Harbor may obtain
186 a second survivors of the attack on Pearl Harbor license plate
187 as described in this section for use on a passenger vehicle
188 titled in the name of the qualified applicant. The division
189 shall charge a one-time fee of ten dollars to be deposited into
190 the State Road Fund, in addition to all other fees required by
191 this chapter, for the second plate.

192 (9) The division may issue special registration plates to
193 nonprofit charitable and educational organizations authorized
194 under prior enactment of this subdivision as follows:

195 (A) Approved nonprofit charitable and educational
196 organizations previously authorized under the prior
197 enactment of this subdivision may accept and collect
198 applications for special registration plates from owners of
199 Class A motor vehicles together with a special annual fee of
200 fifteen dollars, which is in addition to all other fees required
201 by this chapter. The applications and fees shall be submitted
202 to the Division of Motor Vehicles with the request that the
203 division issue a registration plate bearing a combination of
204 letters or numbers with the organizations' logo or emblem,
205 with the maximum number of letters or numbers to be
206 determined by the commissioner.

207 (B) The commissioner shall propose rules for legislative
208 approval in accordance with the provisions of article three,
209 chapter twenty-nine-a of this code regarding the procedures
210 for and approval of special registration plates issued pursuant
211 to this subdivision.

212 (C) The commissioner shall set an appropriate fee to
213 defray the administrative costs associated with designing and

214 manufacturing special registration plates for a nonprofit
215 charitable or educational organization. The nonprofit
216 charitable or educational organization shall collect this fee
217 and forward it to the division for deposit in the State Road
218 Fund. The nonprofit charitable or educational organization
219 may also collect a fee for marketing the special registration
220 plates.

221 (D) The commissioner may not approve or authorize any
222 additional nonprofit charitable and educational organizations
223 to design or market special registration plates.

224 (10) The division may issue specified emergency or
225 volunteer registration plates as follows:

226 (A) Any owner of a motor vehicle who is a resident of the
227 state of West Virginia and who is a certified paramedic or
228 emergency medical technician, a member of a paid fire
229 department, a member of the state Fire Commission, the State
230 Fire Marshal, the State Fire Marshal's assistants, the State
231 Fire Administrator and voluntary rescue squad members may
232 apply for a special license plate for any number of Class A
233 vehicles titled in the name of the qualified applicant which
234 bears the insignia of the profession, group or commission.
235 Any insignia shall be designed by the commissioner. License
236 plates issued pursuant to this subdivision shall bear the
237 requested insignia in addition to the registration number
238 issued to the applicant pursuant to the provisions of this
239 article.

240 (B) Each application submitted pursuant to this
241 subdivision shall be accompanied by an affidavit signed by
242 the fire chief or department head of the applicant stating that
243 the applicant is justified in having a registration with the
244 requested insignia; proof of compliance with all laws of this

245 state regarding registration and licensure of motor vehicles;
246 and payment of all required fees.

247 (C) Each application submitted pursuant to this
248 subdivision shall be accompanied by payment of a special
249 initial application fee of ten dollars, which is in addition to
250 any other registration or license fee required by this chapter.
251 All special fees shall be collected by the division and
252 deposited into the State Road Fund.

253 (11) The division may issue specified certified firefighter
254 registration plates as follows:

255 (A) Any owner of a motor vehicle who is a resident of the
256 state of West Virginia and who is a certified firefighter may
257 apply for a special license plate which bears the insignia of
258 the profession, for any number of Class A vehicles titled in
259 the name of the qualified applicant. Any insignia shall be
260 designed by the commissioner. License plates issued
261 pursuant to this subdivision shall bear the requested insignia
262 pursuant to the provisions of this article. Upon presentation
263 of written evidence of certification as a certified firefighter,
264 certified firefighters are eligible to purchase the special
265 registration plate issued pursuant to this subdivision.

266 (B) Each application submitted pursuant to this
267 subdivision shall be accompanied by an affidavit stating that
268 the applicant is justified in having a registration with the
269 requested insignia; proof of compliance with all laws of this
270 state regarding registration and licensure of motor vehicles;
271 and payment of all required fees. The firefighter certification
272 department, section or division of the West Virginia
273 University fire service extension shall notify the
274 commissioner in writing immediately when a firefighter loses
275 his or her certification. If a firefighter loses his or her
276 certification, the commissioner may not issue him or her a
277 license plate under this subsection.

278 (C) Each application submitted pursuant to this
279 subdivision shall be accompanied by payment of a special
280 initial application fee of ten dollars, which is in addition to
281 any other registration or license fee required by this chapter.
282 All special fees shall be collected by the division and
283 deposited into the State Road Fund.

284 (12) The division may issue special scenic registration
285 plates as follows:

286 (A) Upon appropriate application, the commissioner shall
287 issue a special registration plate displaying a scenic design of
288 West Virginia which displays the words "Wild Wonderful"
289 as a slogan.

290 (B) The division shall charge a special one-time initial
291 application fee of ten dollars in addition to all other fees
292 required by this chapter. All initial application fees collected
293 by the division shall be deposited into the State Road Fund.

294 (13) The division may issue honorably discharged Marine
295 Corps league members special registration plates as follows:

296 (A) Upon appropriate application, the division shall issue
297 to any honorably discharged Marine Corps League member
298 a special registration plate for any number of vehicles titled in
299 the name of the qualified applicant with an insignia designed by
300 the Commissioner of the Division of Motor Vehicles.

301 (B) The division may charge a special one-time initial
302 application fee of ten dollars in addition to all other fees
303 required by this chapter. This special fee is to compensate
304 the Division of Motor Vehicles for additional costs and
305 services required in the issuing of the special registration and
306 shall be collected by the division and deposited in the State

307 Road Fund: *Provided*, That nothing in this section may be
308 construed to exempt any veteran from any other provision of
309 this chapter.

310 (C) A surviving spouse may continue to use his or her
311 deceased spouse's honorably discharged Marine Corps
312 League license plate until the surviving spouse dies,
313 remarries or does not renew the license plate.

314 (14) The division may issue military organization
315 registration plates as follows:

316 (A) The division may issue a special registration plate for
317 the members of any military organization chartered by the
318 United States Congress upon receipt of a guarantee from the
319 organization of a minimum of one hundred applicants. The
320 insignia on the plate shall be designed by the commissioner.

321 (B) Upon appropriate application, the division may issue
322 members of the chartered organization in good standing, as
323 determined by the governing body of the chartered
324 organization, a special registration plate for any number of
325 vehicles titled in the name of the qualified applicant.

326 (C) The division shall charge a special one-time initial
327 application fee of ten dollars for each special license plate in
328 addition to all other fees required by this chapter. All initial
329 application fees collected by the division shall be deposited
330 into the State Road Fund: *Provided*, That nothing in this
331 section may be construed to exempt any veteran from any
332 other provision of this chapter.

333 (D) A surviving spouse may continue to use his or her
334 deceased spouse's military organization registration plate

335 until the surviving spouse dies, remarries or does not renew
336 the special military organization registration plate.

337 (15) The division may issue special nongame wildlife
338 registration plates and special wildlife registration plates as
339 follows:

340 (A) Upon appropriate application, the division shall issue
341 a special registration plate displaying a species of West
342 Virginia wildlife which shall display a species of wildlife
343 native to West Virginia as prescribed and designated by the
344 commissioner and the Director of the Division of Natural
345 Resources.

346 (B) The division shall charge an annual fee of fifteen
347 dollars for each special nongame wildlife registration plate
348 and each special wildlife registration plate in addition to all
349 other fees required by this chapter. All annual fees collected
350 for nongame wildlife registration plates and wildlife
351 registration plates shall be deposited in a special revenue
352 account designated the Nongame Wildlife Fund and credited
353 to the Division of Natural Resources.

354 (C) The division shall charge a special one-time initial
355 application fee of ten dollars in addition to all other fees
356 required by this chapter. All initial application fees collected
357 by the division shall be deposited in the State Road Fund.

358 (16) The division may issue members of the Silver Haired
359 Legislature special registration plates as follows:

360 (A) Upon appropriate application, the division shall issue
361 to any person who is a duly qualified member of the Silver
362 Haired Legislature a specialized registration plate which
363 bears recognition of the applicant as a member of the Silver
364 Haired Legislature.

365 (B) A qualified member of the Silver Haired Legislature
366 may obtain one registration plate described in this subdivision
367 for use on a passenger vehicle titled in the name of the
368 qualified applicant. The division shall charge an annual fee
369 of fifteen dollars, in addition to all other fees required by this
370 chapter, for the plate. All annual fees collected by the
371 division shall be deposited in the State Road Fund.

372 (17) Upon appropriate application, the commissioner
373 shall issue to a classic motor vehicle or classic motorcycle as
374 defined in section three-a, article ten of this chapter, a special
375 registration plate designed by the commissioner. An annual
376 fee of fifteen dollars, in addition to all other fees required by
377 this chapter, shall be charged for each classic registration
378 plate.

379 (18) Honorably discharged veterans may be issued
380 special registration plates for motorcycles subject to Class G
381 registration as follows:

382 (A) Upon appropriate application, there shall be issued to
383 any honorably discharged veteran of any branch of the armed
384 services of the United States a special registration plate for
385 any number of motorcycles subject to Class G registration
386 titled in the name of the qualified applicant with an insignia
387 designed by the Commissioner of the Division of Motor
388 Vehicles.

389 (B) A special initial application fee of ten dollars shall be
390 charged in addition to all other fees required by law. This
391 special fee is to be collected by the division and deposited in
392 the State Road Fund: *Provided*, That nothing in this section
393 may be construed to exempt any veteran from any other
394 provision of this chapter.

395 (C) A surviving spouse may continue to use his or her
396 deceased spouse's honorably discharged veterans license
397 plate until the surviving spouse dies, remarries or does not
398 renew the license plate.

399 (19) Racing theme special registration plates:

400 (A) The division may issue a series of special registration
401 plates displaying National Association for Stock Car Auto
402 Racing themes.

403 (B) An annual fee of twenty-five dollars shall be charged
404 for each special racing theme registration plate in addition to
405 all other fees required by this chapter. All annual fees
406 collected for each special racing theme registration plate shall
407 be deposited into the State Road Fund.

408 (C) A special application fee of ten dollars shall be
409 charged at the time of initial application as well as upon
410 application for any duplicate or replacement registration
411 plate, in addition to all other fees required by this chapter.
412 All application fees shall be deposited into the State Road
413 Fund.

414 (20) The division may issue recipients of the Navy Cross,
415 Distinguished Service Cross, Distinguished Flying Cross, Air
416 Force Cross, Bronze Star, Silver Star or Air Medal special
417 registration plates as follows:

418 (A) Upon appropriate application, the division shall issue
419 to any recipient of the Navy Cross, Distinguished Service
420 Cross, Distinguished Flying Cross, Air Force Cross, Silver
421 Star, Bronze Star or Air Medal, a registration plate for any
422 number of vehicles titled in the name of the qualified
423 applicant bearing letters or numbers. A separate registration

424 plate shall be designed by the Commissioner of Motor
425 Vehicles for each award that denotes that those individuals
426 who are granted this special registration plate are recipients
427 of the Navy Cross, Distinguished Service Cross,
428 Distinguished Flying Cross, Air Force Cross, Silver Star or
429 Bronze Star, as applicable.

430 (B) The division shall charge a special initial application
431 fee of ten dollars in addition to all other fees required by law.
432 This special fee shall be collected by the division and
433 deposited in the State Road Fund: *Provided*, That nothing in
434 this section exempts the applicant for a special registration
435 plate under this subdivision from any other provision of this
436 chapter.

437 (C) A surviving spouse may continue to use his or her
438 deceased spouse's Navy Cross, Distinguished Service Cross,
439 Distinguished Flying Cross, Air Force Cross, Silver Star,
440 Bronze Star or Air Medal special registration plate until the
441 surviving spouse dies, remarries or does not renew the special
442 registration plate.

443 (21) The division may issue honorably discharged
444 veterans special registration plates as follows:

445 (A) Upon appropriate application, the division shall issue
446 to any honorably discharged veteran of any branch of the
447 armed services of the United States with verifiable service
448 during World War II, the Korean War, the Vietnam War, the
449 Persian Gulf War or the War Against Terrorism a special
450 registration plate for any number of vehicles titled in the
451 name of the qualified applicant with an insignia designed by
452 the commissioner denoting service in the applicable conflict.

453 (B) The division shall charge a special one-time initial
454 application fee of ten dollars in addition to all other fees
455 required by law. This special fee shall be collected by the

456 division and deposited in the State Road Fund: *Provided,*
457 That nothing contained in this section may be construed to
458 exempt any veteran from any other provision of this chapter.

459 (C) A surviving spouse may continue to use his or her
460 deceased spouse's honorably discharged veterans registration
461 plate until the surviving spouse dies, remarries or does not
462 renew the special registration plate.

463 (22) The division may issue special volunteer firefighter
464 registration plates as follows:

465 (A) Any owner of a motor vehicle who is a resident of
466 West Virginia and who is a volunteer firefighter may apply
467 for a special license plate for any Class A vehicle titled in the
468 name of the qualified applicant which bears the insignia of
469 the profession in white letters on a red background. The
470 insignia shall be designed by the commissioner and shall
471 contain a fireman's helmet insignia on the left side of the
472 license plate.

473 (B) Each application submitted pursuant to this
474 subdivision shall be accompanied by an affidavit signed by
475 the applicant's fire chief, stating that the applicant is a
476 volunteer firefighter and justified in having a registration
477 plate with the requested insignia. The applicant must comply
478 with all other laws of this state regarding registration and
479 licensure of motor vehicles and must pay all required fees.

480 (C) Each application submitted pursuant to this
481 subdivision shall be accompanied by payment of a special
482 one-time initial application fee of ten dollars, which is in
483 addition to any other registration or license fee required by
484 this chapter. All application fees shall be deposited into the
485 State Road Fund.

486 (23) The division may issue special registration plates
487 which reflect patriotic themes, including the display of any
488 United States symbol, icon, phrase or expression which
489 evokes patriotic pride or recognition.

490 (A) Upon appropriate application, the division shall issue
491 to an applicant a registration plate of the applicant's choice,
492 displaying a patriotic theme as provided in this subdivision,
493 for a vehicle titled in the name of the applicant. A series of
494 registration plates displaying patriotic themes shall be
495 designed by the Commissioner of Motor Vehicles for
496 distribution to applicants.

497 (B) The division shall charge a special one-time initial
498 application fee of ten dollars in addition to all other fees
499 required by law. This special fee shall be collected by the
500 division and deposited in the State Road Fund.

501 (24) Special license plates bearing the American flag and
502 the logo "9/11/01".

503 (A) Upon appropriate application, the division shall issue
504 special registration plates which shall display the American
505 flag and the logo "9/11/01".

506 (B) An annual fee of fifteen dollars shall be charged for
507 each plate in addition to all other fees required by this
508 chapter.

509 (C) A special application fee of ten dollars shall be
510 charged at the time of initial application as well as upon
511 application for any duplicate or replacement registration
512 plate, in addition to all other fees required by this chapter.
513 All application fees shall be deposited into the State Road
514 Fund.

515 (25) The division may issue a special registration plate
516 celebrating the centennial of the 4-H youth development
517 movement and honoring the Future Farmers of America
518 organization as follows:

519 (A) Upon appropriate application, the division may issue
520 a special registration plate depicting the symbol of the 4-H
521 organization which represents the head, heart, hands and
522 health as well as the symbol of the Future Farmers of
523 America organization which represents a cross section of an
524 ear of corn for any number of vehicles titled in the name of
525 the qualified applicant.

526 (B) The division shall charge a special initial application
527 fee of ten dollars in addition to all other fees required by law.
528 This special fee shall be collected by the division and
529 deposited in the State Road Fund.

530 (C) The division shall charge an annual fee of fifteen
531 dollars for each special 4-H Future Farmers of America
532 registration plate in addition to all other fees required by this
533 chapter.

534 (26) The division may issue special registration plates to
535 educators in the state's elementary and secondary schools and
536 in the state's institutions of higher education as follows:

537 (A) Upon appropriate application, the division may issue
538 a special registration plate designed by the commissioner for
539 any number of vehicles titled in the name of the qualified
540 applicant.

541 (B) The division shall charge a special initial application
542 fee of ten dollars in addition to all other fees required by law.

543 This special fee shall be collected by the division and
544 deposited in the State Road Fund.

545 (C) The division shall charge an annual fee of fifteen
546 dollars for each special educator registration plate in addition
547 to all other fees required by this chapter.

548 (27) The division may issue special registration plates to
549 members of the Nemesis Shrine as follows:

550 (A) Upon appropriate application, the division may issue
551 a special registration plate designed by the commissioner for
552 any number of vehicles titled in the name of the qualified
553 applicant. Persons desiring the special registration plate shall
554 offer sufficient proof of membership in Nemesis Shrine.

555 (B) The division shall charge a special initial application
556 fee of ten dollars in addition to all other fees required by law.
557 This special fee shall be collected by the division and
558 deposited in the State Road Fund.

559 (C) An annual fee of fifteen dollars shall be charged for
560 each plate in addition to all other fees required by this
561 chapter.

562 (D) Notwithstanding the provisions of subsection (d) of
563 this section, the time period for the Nemesis Shrine to comply
564 with the minimum one hundred prepaid applications is hereby
565 extended to the fifteenth day of January, two thousand five.

566 (28) The division may issue volunteers and employees of
567 the American Red Cross special registration plates as follows:

568 (A) Upon appropriate application, the division shall issue
569 to any person who is a duly qualified volunteer or employee
570 of the American Red Cross a specialized registration plate
571 which bears recognition of the applicant as a volunteer or

572 employee of the American Red Cross for any number of
573 vehicles titled in the name of the qualified applicant.

574 (B) The division shall charge a special initial application
575 fee of ten dollars in addition to all other fees required by law.
576 This special fee shall be collected by the division and
577 deposited in the State Road Fund.

578 (C) An annual fee of fifteen dollars shall be charged for
579 each plate in addition to all other fees required by this
580 chapter.

581 (29) The division shall issue special registration plates to
582 individuals who have received either the Combat Infantry
583 Badge or the Combat Medic Badge as follows:

584 (A) Upon appropriate application, the division shall issue
585 a special registration plate designed by the commissioner for
586 any number of vehicles titled in the name of the qualified
587 applicant. Persons desiring the special registration plate shall
588 offer sufficient proof that they have received either the
589 Combat Infantry Badge or the Combat Medic Badge.

590 (B) The division shall charge a special initial application
591 fee of ten dollars in addition to all other fees required by law.
592 This special fee shall be collected by the division and
593 deposited in the State Road Fund.

594 (30) The division may issue special registration plates to
595 members of the Knights of Columbus as follows:

596 (A) Upon appropriate application, the division shall issue
597 a special registration plate designed by the commissioner for
598 any number of vehicles titled in the name of the qualified
599 applicant. Persons desiring the special registration plate shall

600 offer sufficient proof of membership in the Knights of
601 Columbus.

602 (B) The division shall charge a special initial application
603 fee of ten dollars in addition to all other fees required by law.
604 This special fee shall be collected by the division and
605 deposited in the State Road Fund.

606 (C) An annual fee of fifteen dollars shall be charged for
607 each plate in addition to all other fees required by this
608 chapter.

609 (D) Notwithstanding the provisions of subsection (d) of
610 this section, the time period for the Knights of Columbus to
611 comply with the minimum one hundred prepaid applications
612 is hereby extended to the fifteenth day of January, two
613 thousand seven.

614 (31) The division may issue special registration plates to
615 former members of the Legislature as follows:

616 (A) Upon appropriate application, the division shall issue
617 a special registration plate designed by the commissioner for
618 any number of vehicles titled in the name of the qualified
619 applicant. Persons desiring the special registration plate shall
620 offer sufficient proof of former service as an elected or
621 appointed member of the West Virginia House of Delegates
622 or the West Virginia Senate.

623 (B) The division shall charge a special initial application
624 fee of ten dollars in addition to all other fees required by law.
625 This special fee shall be collected by the division and
626 deposited in the State Road Fund. The design of the plate
627 shall indicate total years of service in the Legislature.

628 (C) An annual fee of fifteen dollars shall be charged for
629 each plate in addition to all other fees required by this
630 chapter.

631 (32) Democratic state or county executive committee
632 member special registration plates:

633 (A) The division shall design and issue special
634 registration plates for use by democratic state or county
635 executive committee members. The design of the plates shall
636 include an insignia of a donkey and shall differentiate by
637 wording on the plate between state and county executive
638 committee members.

639 (B) An annual fee of twenty-five dollars shall be charged
640 for each democratic state or county executive committee
641 member registration plate in addition to all other fees
642 required by this chapter. All annual fees collected for each
643 special plate issued under this subdivision shall be deposited
644 into the State Road Fund.

645 (C) A special application fee of ten dollars shall be
646 charged at the time of initial application as well as upon
647 application for any duplicate or replacement registration
648 plate, in addition to all other fees required by this chapter.
649 All application fees shall be deposited into the State Road
650 Fund.

651 (D) The division shall not begin production of a plate
652 authorized under the provisions of this subdivision until the
653 division receives at least one hundred completed applications
654 from the state or county executive committee members,
655 including all fees required pursuant to this subdivision.

656 (E) Notwithstanding the provisions of subsection (d) of
657 this section, the time period for the democratic executive
658 committee to comply with the minimum one hundred prepaid
659 applications is hereby extended to the fifteenth day of
660 January, two thousand five.

661 (33) The division may issue honorably discharged female
662 veterans special registration plates as follows:

663 (A) Upon appropriate application, there shall be issued to
664 any female honorably discharged veteran, of any branch of
665 the armed services of the United States, a special registration
666 plate for any number of vehicles titled in the name of the
667 qualified applicant with an insignia designed by the
668 Commissioner of the Division of Motor Vehicles to designate
669 the recipient as a woman veteran.

670 (B) A special initial application fee of ten dollars shall be
671 charged in addition to all other fees required by law. This
672 special fee shall be collected by the division and deposited in
673 the State Road Fund: *Provided*, That nothing in this section
674 may be construed to exempt any veteran from any other
675 provision of this chapter.

676 (C) A surviving spouse may continue to use his deceased
677 spouse's honorably discharged veterans license plate until the
678 surviving spouse dies, remarries or does not renew the license
679 plate.

680 (34) The division may issue special registration plates
681 bearing the logo, symbol, insignia, letters or words
682 demonstrating association with West Liberty State College to
683 any resident owner of a motor vehicle. Resident owners may
684 apply for the special license plate for any number of Class A
685 vehicles titled in the name of the applicant. The special
686 registration plates shall be designed by the commissioner.

687 Each application submitted pursuant to this subdivision shall
688 be accompanied by payment of a special initial application
689 fee of fifteen dollars, which is in addition to any other
690 registration or license fee required by this chapter. The
691 division shall charge an annual fee of fifteen dollars for each
692 special educator registration plate in addition to all other fees
693 required by this chapter. All special fees shall be collected
694 by the division and deposited into the State Road Fund.

695 (35) The division may issue special registration plates to
696 members of the Harley Owners Group as follows:

697 (A) Upon appropriate application, the division may issue
698 a special registration plate designed by the commissioner for
699 any number of vehicles titled in the name of the qualified
700 applicant. Persons desiring the special registration plate shall
701 offer sufficient proof of membership in the Harley Owners
702 Group.

703 (B) The division shall charge a special initial application
704 fee of ten dollars in addition to all other fees required by law.
705 This special fee shall be collected by the division and
706 deposited in the State Road Fund.

707 (C) An annual fee of fifteen dollars shall be charged for
708 each plate in addition to all other fees required by this
709 chapter.

710 (36) The division may issue special registration plates for
711 persons retired from any branch of the armed services of the
712 United States as follows:

713 (A) Upon appropriate application, there shall be issued to
714 any person who has retired after service in any branch of the
715 armed services of the United States, a special registration

716 plate for any number of vehicles titled in the name of the
717 qualified applicant with an insignia designed by the
718 Commissioner of the Division of Motor Vehicles to designate
719 the recipient as retired from the armed services of the United
720 States.

721 (B) A special initial application fee of ten dollars shall be
722 charged in addition to all other fees required by law. This
723 special fee shall be collected by the division and deposited in
724 the State Road Fund: *Provided*, That nothing in this section
725 may be construed to exempt any registrants from any other
726 provision of this chapter.

727 (C) A surviving spouse may continue to use his or her
728 deceased spouse's retired military license plate until the
729 surviving spouse dies, remarries or does not renew the license
730 plate.

731 (37) The division may issue special registration plates
732 bearing the logo, symbol, insignia, letters or words
733 demonstrating association with or support for Fairmont State
734 College as follows:

735 (A) Upon appropriate application, the division may issue
736 a special registration plate designed by the commissioner for
737 any number of vehicles titled in the name of the qualified
738 applicant.

739 (B) The division shall charge a special initial application
740 fee of ten dollars in addition to all other fees required by law.
741 This special fee shall be collected by the division and
742 deposited in the State Road Fund.

743 (C) An annual fee of fifteen dollars shall be charged for
744 each plate in addition to all other fees required by this
745 chapter.

746 (38) The division may issue special registration plates
747 honoring the farmers of West Virginia as follows:

748 (A) Any owner of a motor vehicle who is a resident of
749 West Virginia may apply for a special license plate depicting
750 a farming scene or other apt reference to farming, whether in
751 pictures or words, at the discretion of the commissioner.

752 (B) The division shall charge a special initial application
753 fee of ten dollars. This special fee shall be collected by the
754 division and deposited in the State Road Fund.

755 (C) An annual fee of fifteen dollars shall be charged for
756 each plate in addition to all other fees required by this
757 chapter.

758 (39) The division shall issue special registration plates
759 promoting education as follows:

760 (A) Upon appropriate application, the division shall issue
761 a special registration plate displaying a children's
762 education-related theme as prescribed and designated by the
763 commissioner and the State Superintendent of Schools.

764 (B) The division shall charge a special initial application
765 fee of ten dollars in addition to all other fees required by law.
766 This special fee shall be collected by the division and
767 deposited in the State Road Fund.

768 (C) An annual fee of fifteen dollars shall be charged for
769 each plate in addition to all other fees required by this
770 chapter.

771 (40) The division may issue members of the 82nd
772 Airborne Division Association special registration plates as
773 follows:

774 (A) The division may issue a special registration plate for
775 members of the 82nd Airborne Division Association upon
776 receipt of a guarantee from the organization of a minimum of
777 one hundred applicants. The insignia on the plate shall be
778 designed by the commissioner.

779 (B) Upon appropriate application, the division may issue
780 members of the 82nd Airborne Division Association in good
781 standing, as determined by the governing body of the
782 organization, a special registration plate for any number of
783 vehicles titled in the name of the qualified applicant.

784 (C) The division shall charge a special one-time initial
785 application fee of ten dollars for each special license plate in
786 addition to all other fees required by this chapter. All initial
787 application fees collected by the division shall be deposited
788 into the State Road Fund: *Provided*, That nothing in this
789 section may be construed to exempt the applicant from any
790 other provision of this chapter.

791 (D) A surviving spouse may continue to use his or her
792 deceased spouse's special 82nd Airborne Division
793 Association registration plate until the surviving spouse dies,
794 remarries or does not renew the special registration plate.

795 (41) The division may issue special registration plates to
796 survivors of wounds received in the line of duty as a member
797 with a West Virginia law-enforcement agency.

798 (A) Upon appropriate application, the division shall issue
799 to any member of a municipal police department, sheriff's
800 department, the State Police or the law-enforcement division
801 of the Division of Natural Resources who has been wounded
802 in the line of duty and awarded a Purple Heart in recognition
803 thereof by the West Virginia Chiefs of Police Association, the

804 West Virginia Sheriffs' Association, the West Virginia
805 Troopers Association or the Division of Natural Resources a
806 special registration plate for one vehicle titled in the name of
807 the qualified applicant with an insignia appropriately
808 designed by the commissioner.

809 (B) Registration plates issued pursuant to this subdivision
810 are exempt from the registration fees otherwise required by
811 the provisions of this chapter.

812 (C) A surviving spouse may continue to use his or her
813 deceased spouse's special registration plate until the
814 surviving spouse dies, remarries or does not renew the plate.

815 (D) Survivors of wounds received in the line of duty as a
816 member with a West Virginia law-enforcement agency may
817 obtain a license plate as described in this section for use on a
818 passenger vehicle titled in the name of the qualified applicant.
819 The division shall charge a one-time fee of ten dollars to be
820 deposited into the State Road Fund, in addition to all other
821 fees required by this chapter, for the second plate.

822 (42) The division may issue a special registration plate
823 for persons who are Native Americans and residents of this
824 state.

825 (A) Upon appropriate application, the division shall issue
826 to an applicant who is a Native American resident of West
827 Virginia a registration plate for a vehicle titled in the name of
828 the applicant with an insignia designed by the Commissioner
829 of the Division of Motor Vehicles to designate the recipient
830 as a Native American.

831 (B) The division shall charge a special one-time initial
832 application fee of ten dollars in addition to all other fees

833 required by law. This special fee shall be collected by the
834 division and deposited in the State Road Fund.

835 (C) An annual fee of fifteen dollars shall be charged for
836 each plate in addition to all other fees required by this
837 chapter.

838 (43) The division may issue special registration plates
839 commemorating the centennial anniversary of the creation of
840 Davis and Elkins College as follows:

841 (A) Upon appropriate application, the division may issue
842 a special registration plate designed by the commissioner to
843 commemorate the centennial anniversary of Davis and Elkins
844 College for any number of vehicles titled in the name of the
845 applicant.

846 (B) The division shall charge a special initial application
847 fee of ten dollars. This special fee shall be collected by the
848 division and deposited in the State Road Fund.

849 (C) An annual fee of fifteen dollars shall be charged for
850 each plate in addition to all other fees required by this
851 chapter.

852 (44) The division may issue special registration plates
853 recognizing and honoring breast cancer survivors.

854 (A) Upon appropriate application, the division may issue
855 a special registration plate designed by the commissioner to
856 recognize and honor breast cancer survivors, such plate to
857 incorporate somewhere in the design the “pink ribbon
858 emblem”, for any number of vehicles titled in the name of the
859 applicant.

860 (B) The division shall charge a special initial application
861 fee of ten dollars. This special fee shall be deposited in the
862 State Road Fund.

863 (C) An annual fee of fifteen dollars shall be charged for
864 each plate in addition to all other fees required by this
865 chapter.

866 (45) The division may issue special registration plates to
867 members of the Knights of Pythias or Pythian Sisters as
868 follows:

869 (A) Upon appropriate application, the division may issue
870 a special registration plate designed by the commissioner for
871 any number of vehicles titled in the name of the qualified
872 applicant. Persons desiring the special registration plate shall
873 offer sufficient proof of membership in the Knights of Pythias
874 or Pythian Sisters.

875 (B) The division shall charge a special initial application
876 fee of ten dollars in addition to all other fees required by law.
877 This special fee shall be collected by the division and
878 deposited in the State Road Fund.

879 (C) An annual fee of fifteen dollars shall be charged for
880 each plate in addition to all other fees required by this
881 chapter.

882 (46) The commissioner may issue special registration
883 plates for whitewater rafting enthusiasts as follows:

884 (A) Upon appropriate application, the division may issue
885 a special registration plate designed by the commissioner for
886 any number of vehicles titled in the name of the qualified
887 applicant.

888 (B) The division shall charge a special initial application
889 fee of ten dollars in addition to all other fees required by law.
890 This special fee shall be collected by the division and
891 deposited in the State Road Fund.

892 (C) The division shall charge an annual fee of fifteen
893 dollars for each special registration plate in addition to all
894 other fees required by this chapter.

895 (47) The division may issue special registration plates to
896 members of Lions International as follows:

897 (A) Upon appropriate application, the division may issue
898 a special registration plate designed by the commissioner in
899 consultation with Lions International for any number of
900 vehicles titled in the name of the qualified applicant. Persons
901 desiring the special registration plate shall offer sufficient
902 proof of membership in Lions International.

903 (B) The division shall charge a special initial application
904 fee of ten dollars in addition to all other fees required by law.
905 This special fee shall be collected by the division and
906 deposited in the State Road Fund.

907 (C) An annual fee of fifteen dollars shall be charged for
908 each plate in addition to all other fees required by this
909 chapter.

910 (48) The division may issue special registration plates
911 supporting organ donation as follows:

912 (A) Upon appropriate application, the division may issue
913 a special registration plate designed by the commissioner
914 which recognizes, supports and honors organ and tissue
915 donors and includes the words "Donate Life".

916 (B) The division shall charge a special initial application
917 fee of ten dollars in addition to all other fees required by law.
918 This special fee shall be collected by the division and
919 deposited in the State Road Fund.

920 (C) An annual fee of fifteen dollars shall be charged for
921 each plate in addition to all other fees required by this
922 chapter.

923 (49) The division may issue special registration plates to
924 members of the West Virginia Bar Association as follows:

925 (A) Upon appropriate application, the division may issue
926 a special registration plate designed by the commissioner in
927 consultation with the West Virginia Bar Association for any
928 number of vehicles titled in the name of the qualified
929 applicant. Persons desiring the special registration plate shall
930 offer sufficient proof of membership in the West Virginia Bar
931 Association.

932 (B) The division shall charge a special initial application
933 fee of ten dollars in addition to all other fees required by law.
934 This special fee shall be collected by the division and
935 deposited in the State Road Fund.

936 (C) An annual fee of fifteen dollars shall be charged for
937 each plate in addition to all other fees required by this
938 chapter.

939 (50) The division may issue special registration plates
940 bearing an appropriate logo, symbol or insignia combined
941 with the words "SHARE THE ROAD" designed to promote
942 bicycling in the state as follows:

943 (A) Upon appropriate application, the division may issue
944 a special registration plate designed by the commissioner for
945 any number of vehicles titled in the name of the applicant.

946 (B) The division shall charge a special initial application
947 fee of ten dollars in addition to all other fees required by law.
948 This special fee shall be collected by the division and
949 deposited in the State Road Fund.

950 (C) An annual fee of fifteen dollars shall be charged for
951 each plate in addition to all other fees required by this
952 chapter.

953 (51) The division may issue special registration plates
954 honoring coal miners as follows:

955 (A) Upon appropriate application, the division shall issue
956 a special registration plate depicting and displaying coal
957 miners in mining activities as prescribed and designated by
958 the commissioner and the Board of the National Coal
959 Heritage Area Authority.

960 (B) The division shall charge a special initial application
961 fee of ten dollars in addition to all other fees required by
962 law. This special fee shall be collected by the division and
963 deposited in the State Road Fund.

964 (C) An annual fee of fifteen dollars shall be charged for
965 each plate in addition to all other fees required by this
966 chapter.

967 (52) The division may issue special registration plates to
968 present and former Boy Scouts as follows:

969 (A) Upon appropriate application, the division may issue
970 a special registration plate designed by the Commissioner
971 for any number of vehicles titled in the name of the qualified
972 applicant. Persons desiring the special registration plate
973 shall offer sufficient proof of present or past membership in
974 the Boy Scouts as either a member or a leader.

975 (B) The division shall charge a special initial application
976 fee of ten dollars in addition to all other fees required by
977 law. This special fee shall be collected by the division and
978 deposited in the State Road Fund.

979 (C) An annual fee of fifteen dollars shall be charged for
980 each plate in addition to all other fees required by this
981 chapter.

982 (53) The division may issue special registration plates to
983 present and former Boy Scouts who have achieved Eagle
984 Scout status as follows:

985 (A) Upon appropriate application, the division may issue
986 a special registration plate designed by the Commissioner
987 for any number of vehicles titled in the name of the qualified
988 applicant. Persons desiring the special registration plate
989 shall offer sufficient proof of achievement of Eagle Scout
990 status.

991 (B) The division shall charge a special initial application
992 fee of ten dollars in addition to all other fees required by
993 law. This special fee shall be deposited in the State Road
994 Fund.

995 (C) An annual fee of fifteen dollars shall be charged for
996 each plate in addition to all other fees required by this
997 chapter.

998 (54) The division may issue special registration plates
999 recognizing and memorializing victims of domestic
1000 violence.

1001 (A) Upon appropriate application, the division may issue
1002 a special registration plate designed by the commissioner to
1003 recognize and memorialize victims of domestic violence,
1004 such plate to incorporate somewhere in the design the
1005 “purple ribbon emblem”, for any number of vehicles titled
1006 in the name of the applicant.

1007 (B) The division shall charge a special initial application
1008 fee of ten dollars. This special fee shall be deposited in the
1009 State Road Fund.

1010 (C) An annual fee of fifteen dollars shall be charged for
1011 each plate in addition to all other fees required by this
1012 chapter.

1013 (55) The division may issue special registration plates
1014 bearing the logo, symbol, insignia, letters or words
1015 demonstrating association with or support for the University
1016 of Charleston as follows:

1017 (A) Upon appropriate application, the division may issue
1018 a special registration plate designed by the commissioner for
1019 any number of vehicles titled in the name of the qualified
1020 applicant.

1021 (B) The division shall charge a special initial application
1022 fee of ten dollars in addition to all other fees required by
1023 law. This special fee shall be collected by the division and
1024 deposited in the State Road Fund.

1025 (C) An annual fee of fifteen dollars shall be charged for
1026 each plate in addition to all other fees required by this
1027 chapter.

1028 (56) The division may issue special registration plates to
1029 members of the Sons of the American Revolution as follows:

1030 (A) Upon appropriate application, the division may issue
1031 a special registration plate designed by the commissioner in
1032 consultation with the Sons of the American Revolution for
1033 any number of vehicles titled in the name of the qualified
1034 applicant. Persons desiring the special registration plate
1035 shall offer sufficient proof of membership in the Sons of the
1036 American Revolution.

1037 (B) The division shall charge a special initial application
1038 fee of ten dollars in addition to all other fees required by
1039 law. This special fee shall be collected by the division and
1040 deposited in the State Road Fund.

1041 (C) An annual fee of fifteen dollars shall be charged for
1042 each plate in addition to all other fees required by this
1043 chapter.

1044 (57) The commissioner may issue special registration
1045 plates for horse enthusiasts as follows:

1046 (A) Upon appropriate application, the division may issue
1047 a special registration plate designed by the commissioner for
1048 any number of vehicles titled in the name of the qualified
1049 applicant.

1050 (B) The division shall charge a special initial application
1051 fee of ten dollars in addition to all other fees required by
1052 law. This special fee shall be collected by the division and
1053 deposited in the State Road Fund.

1054 (C) The division shall charge an annual fee of fifteen
1055 dollars for each special registration plate in addition to all
1056 other fees required by this chapter.

1057 (58) The commissioner may issue special registration
1058 plates to the next of kin of a member of any branch of the
1059 armed services of the United States killed in combat as
1060 follows:

1061 (A) Upon appropriate application, the division shall
1062 issue a special registration plate for any number of vehicles
1063 titled in the name of a qualified applicant depicting the Gold
1064 Star awarded by the United States Department of Defense as
1065 prescribed and designated by the commissioner.

1066 (B) The next of kin shall provide sufficient proof of
1067 receiving a Gold Star lapel button from the United States
1068 Department of Defense in accordance with Public Law 534,
1069 89th Congress, and criteria established by the United States
1070 Department of Defense, including criteria to determine next
1071 of kin.

1072 (C) The division shall charge a special initial application
1073 fee of ten dollars in addition to all other fees required by
1074 law. This special fee shall be collected by the division and
1075 deposited in the State Road Fund.

1076 (D) The provisions of subsection (d) of this section are
1077 not applicable for the issuance of the special license plates
1078 designated by this subdivision.

1079 (59) The commissioner may issue special registration
1080 plates for retired or former Justices of the Supreme Court of
1081 Appeals of West Virginia as follows:

1082 (A) Upon appropriate application, the division may issue
1083 a special registration plate designed by the commissioner for
1084 any number of vehicles titled in the name of the qualified
1085 applicant.

1086 (B) The division shall charge a special initial application
1087 fee of ten dollars in addition to all other fees required by
1088 law. This special fee shall be collected by the division and
1089 deposited in the State Road Fund.

1090 (C) The division shall charge an annual fee of fifteen
1091 dollars for each special registration plate in addition to all
1092 other fees required by this chapter.

1093 (D) The provisions of subsection (d) of this section are
1094 not applicable for the issuance of the special license plates
1095 designated by this subdivision.

1096 (d) The minimum number of applications required prior
1097 to design and production of a special license plate shall be
1098 as follows:

1099 (1) The commissioner may not begin the design or
1100 production of any license plates for which eligibility is based
1101 on membership or affiliation with a particular private
1102 organization until at least one hundred persons complete an
1103 application and deposit with the organization a check to
1104 cover the first year's basic registration, one-time design and
1105 manufacturing costs and to cover the first year additional
1106 annual fee. If the organization fails to submit the required
1107 number of applications with attached checks within six
1108 months of the effective date of the authorizing legislation,
1109 the plate will not be produced and will require legislative
1110 reauthorization: *Provided*, That an organization or group
1111 that is unsuccessful in obtaining the minimum number of
1112 applications may not request reconsideration of a special
1113 plate until at least two years have passed since the effective
1114 date of the original authorization.

1115 (2) The commissioner may not begin the design or
1116 production of any license plates authorized by this section

1117 for which membership or affiliation with a particular
1118 organization is not required until at least two hundred fifty
1119 registrants complete an application and deposit a fee with
1120 the division to cover the first year's basic registration fee,
1121 one-time design and manufacturing fee and additional
1122 annual fee if applicable. If the commissioner fails to receive
1123 the required number of applications within six months of the
1124 effective date of the authorizing legislation, the plate will
1125 not be produced and will require legislative reauthorization:
1126 *Provided*, That if the minimum number of applications is not
1127 satisfied within the six months of the effective date of the
1128 authorizing legislation, a person may not request
1129 reconsideration of a special plate until at least two years
1130 have passed since the effective date of the original
1131 authorization.

1132 (e)(1) Nothing in this section requires a charge for a free
1133 prisoner of war license plate or a free recipient of the
1134 Congressional Medal of Honor license plate for a vehicle
1135 titled in the name of the qualified applicant as authorized by
1136 other provisions of this code.

1137 (2) A surviving spouse may continue to use his or her
1138 deceased spouse's prisoner of war license plate or
1139 Congressional Medal of Honor license plate until the
1140 surviving spouse dies, remarries or does not renew the
1141 license plate.

1142 (3) Qualified former prisoners of war and recipients of
1143 the Congressional Medal of Honor may obtain a second
1144 special registration plate for use on a passenger vehicle titled
1145 in the name of the qualified applicant. The division shall
1146 charge a one-time fee of ten dollars to be deposited into the
1147 State Road Fund, in addition to all other fees required by
1148 this chapter, for the second special plate.

1149 (f) The division may issue special ten-year registration
1150 plates as follows:

1151 (1) The commissioner may issue or renew for a period
1152 of no more than ten years any registration plate exempted
1153 from registration fees pursuant to any provision of this code
1154 or any restricted use antique motor vehicle license plate
1155 authorized by section three-a, article ten of this chapter:
1156 *Provided*, That the provisions of this subsection do not apply
1157 to any person who has had a special registration suspended
1158 for failure to maintain motor vehicle liability insurance as
1159 required by section three, article two-a, chapter seventeen-d
1160 of this code or failure to pay personal property taxes as
1161 required by section three-a of this article.

1162 (2) An initial nonrefundable fee shall be charged for
1163 each special registration plate issued pursuant to this
1164 subsection, which is the total amount of fees required by
1165 section fifteen, article ten of this chapter, section three,
1166 article three of this chapter or section three-a, article ten of
1167 this chapter for the period requested.

1168 (g) The provisions of this section may not be construed
1169 to exempt any registrant from maintaining motor vehicle
1170 liability insurance as required by section three, article two-a,
1171 chapter seventeen-d of this code or from paying personal
1172 property taxes on any motor vehicle as required by section
1173 three-a of this article.

1174 (h) The commissioner may, in his or her discretion, issue
1175 a registration plate of reflectorized material suitable for
1176 permanent use on motor vehicles, trailers and semitrailers,
1177 together with appropriate devices to be attached to the
1178 registration to indicate the year for which the vehicles have
1179 been properly registered or the date of expiration of the
1180 registration. The design and expiration of the plates shall be

1181 determined by the commissioner. The commissioner shall,
1182 whenever possible and cost effective, implement the latest
1183 technology in the design, production and issuance of
1184 registration plates, indices of registration renewal and
1185 vehicle ownership documents, including, but not limited to,
1186 offering internet renewal of vehicle registration and the use
1187 of bar codes for instant identification of vehicles by
1188 scanning equipment to promote the efficient and effective
1189 coordination and communication of data for improving
1190 highway safety, aiding law enforcement and enhancing
1191 revenue collection.

1192 (i) Any license plate issued or renewed pursuant to this
1193 chapter which is paid for by a check that is returned for
1194 nonsufficient funds is void without further notice to the
1195 applicant. The applicant may not reinstate the registration
1196 until the returned check is paid by the applicant in cash,
1197 money order or certified check and all applicable fees
1198 assessed as a result thereof have been paid.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

***§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.**

1 (a) In the event a motor vehicle is determined to be a
2 total loss or otherwise designated as "totaled" by any
3 insurance company or insurer, and upon payment of a total
4 loss claim to any insured or claimant owner for the purchase
5 of the vehicle, the insurance company or the insurer, as a
6 condition of the payment, shall require the owner to
7 surrender the certificate of title: *Provided*, That an insured
8 or claimant owner may choose to retain physical possession
9 and ownership of a total loss vehicle. If the vehicle owner

*CLERK'S NOTE: This section was also amended by S.B. 169 (Chapter 176), which passed prior to this act.

10 chooses to retain the vehicle and the vehicle has not been
11 determined to be a cosmetic total loss in accordance with
12 subsection (d) of this section, the insurance company or
13 insurer shall also require the owner to surrender the vehicle
14 registration certificate. The term "total loss" means a motor
15 vehicle which has sustained damages equivalent to
16 seventy-five percent or more of the market value as
17 determined by a nationally accepted used car value guide or
18 meets the definition of a flood-damaged vehicle as defined
19 in this section.

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

29 (c) If the insurance company or insurer determines that
30 the vehicle is repairable, the division shall issue a "salvage
31 certificate", on a form prescribed by the commissioner, in
32 the name of the insurance company or the insurer or the
33 vehicle owner if the owner has chosen to retain the vehicle.
34 The certificate shall contain on the reverse thereof spaces for
35 one successive assignment before a new certificate at an
36 additional fee is required.

37 Upon the sale of the vehicle, the insurance company or
38 insurer or the vehicle owner if the owner has chosen to
39 retain the vehicle shall complete the assignment of
40 ownership on the salvage certificate and deliver it to the

41 purchaser. The vehicle shall not be titled or registered for
42 operation on the streets or highways of this state unless there
43 is compliance with subsection (g) of this section. The
44 division shall charge a fee of fifteen dollars for each salvage
45 title issued.

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

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

65 (2) If the insured or claimant owner elects not to take
66 possession of the vehicle and the insurance company or
67 insurer retains possession, the division shall issue a cosmetic
68 total loss salvage certificate to the insurance company or
69 insurer. The division shall charge a fee of fifteen dollars for
70 each cosmetic total loss salvage certificate issued. The
71 division shall, upon surrender of the cosmetic total loss

72 salvage certificate issued under the provisions of this
73 paragraph and payment of the five percent privilege tax on
74 the fair market value of the vehicle as determined by the
75 commissioner, issue a title branded "cosmetic total loss"
76 without further inspection.

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

86 (f) Any owner who scraps, compresses, dismantles or
87 destroys a vehicle for which a certificate of title,
88 nonrepairable motor vehicle certificate or salvage certificate
89 has been issued shall, within twenty days, surrender the
90 certificate of title, nonrepairable motor vehicle certificate or
91 salvage certificate to the division for cancellation. Any
92 person who purchases or acquires a vehicle as salvage or
93 scrap, to be dismantled, compressed or destroyed, shall
94 within twenty days surrender the certificate to the division.

95 (g) If the motor vehicle is a "reconstructed vehicle" as
96 defined in this section or section one, article one of this
97 chapter, it may not be titled or registered for operation until
98 it has been inspected by an official state inspection station
99 and by the Division of Motor Vehicles. Following an
100 approved inspection, an application for a new certificate of
101 title may be submitted to the division; however, the
102 applicant shall be required to retain all receipts for

103 component parts, equipment and materials used in the
104 reconstruction. The salvage certificate shall also be
105 surrendered to the division before a certificate of title may
106 be issued with the appropriate brand.

107 (h) The owner or title holder of any motor vehicle titled
108 in this state which has previously been branded in this state
109 or another state as "salvage", "reconstructed", "cosmetic
110 total loss", "cosmetic total loss salvage", "flood" or "fire" or
111 an equivalent term under another state's laws shall, upon
112 becoming aware of the brand, apply for and receive a title
113 from the Division of Motor Vehicles on which the brand
114 "reconstructed", "salvage", "cosmetic total loss", "cosmetic
115 total loss salvage", "flood" or "fire" is shown. The division
116 shall charge a fee of five dollars for each title so issued.

117 (i) If application is made for title to a motor vehicle, the
118 title to which has previously been branded "reconstructed",
119 "salvage", "cosmetic total loss", "cosmetic total loss
120 salvage", "flood" or "fire" by the Division of Motor Vehicles
121 under this section and said application is accompanied by a
122 title from another state which does not carry the brand, the
123 division shall, before issuing the title, affix the brand
124 "reconstructed", "cosmetic total loss", "cosmetic total loss
125 salvage", "flood" or "fire" to the title. The privilege tax paid
126 on a motor vehicle titled as "reconstructed", "cosmetic total
127 loss", "flood" or "fire" under the provisions of this section
128 shall be based on fifty percent of the fair market value of the
129 vehicle as determined by a nationally accepted used car
130 value guide to be used by the commissioner.

131 (j) The division shall charge a fee of fifteen dollars for
132 the issuance of each salvage certificate or cosmetic total loss
133 salvage certificate but shall not require the payment of the
134 five percent privilege tax. However, upon application for a

135 certificate of title for a reconstructed, cosmetic total loss,
136 flood- or fire-damaged vehicle, the division shall collect the
137 five percent privilege tax on the fair market value of the
138 vehicle as determined by the commissioner unless the
139 applicant is otherwise exempt from the payment of such
140 privilege tax. A wrecker/dismantler/rebuilder licensed by
141 the division is exempt from the payment of the five percent
142 privilege tax upon titling a reconstructed vehicle. The
143 division shall collect a fee of thirty-five dollars per vehicle
144 for inspections of reconstructed vehicles. These fees shall
145 be deposited in a special fund created in the State Treasurer's
146 office and may be expended by the division to carry out the
147 provisions of this article: *Provided*, That on and after the
148 first day of July, two thousand seven, any balance in the
149 special fund and all fees collected pursuant to this section
150 shall be deposited in the State Road Fund. Licensed
151 wreckers/dismantlers/rebuilders may charge a fee not to
152 exceed twenty-five dollars for all vehicles owned by private
153 rebuilders which are inspected at the place of business of a
154 wrecker/dismantler/rebuilder.

155 (k) As used in this section:

156 (1) "Reconstructed vehicle" means the vehicle was
157 totaled under the provisions of this section or by the
158 provisions of another state or jurisdiction and has been
159 rebuilt in accordance with the provisions of this section or in
160 accordance with the provisions of another state or
161 jurisdiction or meets the provisions of subsection (m),
162 section one, article one of this chapter.

163 (2) "Flood-damaged vehicle" means that the vehicle was
164 submerged in water to the extent that water entered the
165 passenger or trunk compartment.

166 (l) Every vehicle owner shall comply with the branding
167 requirements for a totaled vehicle whether or not the owner
168 receives an insurance claim settlement for a totaled vehicle.

169 (m) A certificate of title issued by the division for a
170 reconstructed vehicle shall contain markings in bold print on
171 the face of the title that it is for a reconstructed, flood- or
172 fire-damaged vehicle.

173 (n) Any person who knowingly provides false or
174 fraudulent information to the division that is required by this
175 section in an application for a title, a cosmetic total loss title,
176 a reconstructed vehicle title or a salvage certificate or who
177 knowingly fails to disclose to the division information
178 required by this section to be included in the application or
179 who otherwise violates the provisions of this section shall be
180 guilty of a misdemeanor and, upon conviction thereof, shall
181 for each incident be fined not less than one thousand dollars
182 nor more than two thousand five hundred dollars, or
183 imprisoned in jail for not more than one year, or both fined
184 and imprisoned.

**ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS
AND SUSPENSION OR REVOCATION OF
REGISTRATION.**

***§17A-9-7. Surrender of evidence of registration, etc., upon
cancellation, suspension or revocation; willful
failure or refusal to surrender; fee for
reinstatement.**

1 (a) Whenever the registration of a vehicle, a certificate
2 of title, a registration card, registration plate or plates, a

*CLERK'S NOTE: This section was also amended by S.B. 398 (Chapter 175), which passed prior to this act.

3 temporary registration plate or marker, the right to issue
4 temporary registration plates or markers, any nonresident or
5 other permit or any license certificate or dealer special plates
6 issued under the provisions of article six of this chapter is
7 canceled, suspended or revoked as authorized in this
8 chapter, the owner, holder or other person in possession of
9 the evidences of the registration, title, permit or license or
10 any special dealer plates shall, except as otherwise provided
11 in article six of this chapter, immediately return the
12 evidences of the registration, title, permit or license that was
13 canceled, suspended or revoked, together with any dealer
14 special plates relating to any license certificate, or any dealer
15 special plate or plates if only the dealer special plate is
16 suspended, to the division: *Provided*, That the owner or
17 holder shall, before reinstatement, pay a fee of ten dollars in
18 addition to all other fees, which shall be collected by the
19 division and credited to a special revolving fund in the State
20 Treasury to be appropriated to the division for use in
21 enforcement of the provisions of this code: *Provided*,
22 *however*, That on and after the first day of July, two
23 thousand seven, any balance in the special revolving fund
24 and all fees collected pursuant to this section shall be
25 deposited in the Motor Vehicle Fees Fund created in section
26 twenty-one, article two of this chapter.

27 (b) If any person willfully fails or refuses to return to the
28 division the evidences of the registration, title, permit or
29 license that have been canceled, suspended or revoked, or
30 any dealer special plates, when obligated so to do as
31 provided in this section, the commissioner shall immediately
32 notify the Superintendent of the State Police who shall, as
33 soon as possible, secure possession of the evidence of
34 registration, title, permit or license or any special dealer
35 plates and return it to the division. The Superintendent of
36 the State Police shall make a report in writing to the
37 commissioner, within two weeks after being notified by the
38 commissioner, as to the result of his or her efforts to secure

39 the possession and return of the evidences of registration,
40 title, permit or license, or any dealer special plates.

41 (c) If any commercial motor carrier willfully fails or
42 refuses to return to the division the evidences of the
43 registration that have been suspended or revoked as
44 provided in this section, the commissioner shall immediately
45 notify the Public Service Commission which shall, as soon
46 as possible, secure possession of the evidence of registration
47 and return it to the division. The Public Service
48 Commission shall make a report in writing to the
49 commissioner, within two weeks after being notified by the
50 commissioner, as to the result of its efforts to secure the
51 possession and return of the evidences of registration.

52 (d) For each registration, certificate of title, registration
53 card, registration plate or plates, temporary registration plate
54 or marker, permit, license certificate or dealer special plate,
55 which the owner, holder or other person in possession of the
56 registration, title, permit or license or any special dealer
57 plates shall have willfully failed or refused, as provided in
58 this section, to return to the division within ten days from
59 the time that the cancellation, suspension or revocation
60 becomes effective, and which has been certified to the
61 Superintendent of the State Police as specified in this
62 section, the owner or holder shall, before the registration,
63 title, permit or license or any special dealer plates may be
64 reinstated, if reinstatement is permitted, in addition to all
65 other fees and charges, pay a fee of fifteen dollars, which
66 shall be collected by the Division of Motor Vehicles, paid
67 into the State Treasury and credited to the General Fund to
68 be appropriated to the State Police for application in the
69 enforcement of the road laws.

70 A total of twenty-five dollars may be collected on each
71 reinstatement for each vehicle to which any cancellation,
72 suspension or revocation relates.

73 (e) When any motor vehicle registration is suspended for
74 failure to maintain motor vehicle liability insurance the
75 reinstatement fee is one hundred dollars, and if the vehicle
76 owner fails to surrender the vehicle registration and the
77 orders go to the State Police, an additional fee of fifty
78 dollars shall be required before the motor vehicle
79 registration may be reinstated. A total of one hundred fifty
80 dollars may be collected on each reinstatement of any motor
81 vehicle registration canceled, suspended or revoked for
82 failure to maintain motor vehicle liability insurance.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

1 The following specified vehicles shall be exempt from
2 the payment of any registration fees:

3 (1) Any vehicle owned or operated by the United States
4 government, the State of West Virginia or any of their
5 political subdivisions. The proper representative of the
6 United States government, the State of West Virginia or any
7 of their political subdivisions shall make an application for
8 registration for the vehicle and the registration plate or plates
9 issued for the vehicle shall be displayed as provided in this
10 chapter;

11 (2) Any fire vehicle owned or operated by a volunteer
12 fire department organized for the protection of community
13 property;

14 (3) Any ambulance or any other emergency rescue
15 vehicle owned or operated by a nonprofit, charitable
16 organization and used exclusively for charitable purposes;

17 (4) Any vehicle owned by a disabled veteran as defined
18 by the provisions of Public Law 663 of the 79th Congress of

19 the United States, or Public Law 187 of the 82nd Congress
20 of the United States, or Public Law 77 of the 90th Congress
21 of the United States; except for vehicles used for hire which
22 are owned by disabled veterans;

23 (5) Not more than one vehicle owned by a veteran with
24 a hundred percent total and permanent service-connected
25 disability as certified by the Director of the Department of
26 Veterans' Affairs of West Virginia and not used for
27 commercial purposes;

28 (6) Not more than one Class A or Class G vehicle, as
29 defined in section one of this article, owned by a former
30 prisoner of war and not used for commercial purposes. For
31 purposes of this subdivision, the term "prisoner of war"
32 means any member of the armed forces of the United States,
33 including the United States Coast Guard and National
34 Guard, who was held by any hostile force with which the
35 United States was actually engaged in armed conflict during
36 any period of the incarceration; or any person, military or
37 civilian, assigned to duty on the U. S. S. Pueblo who was
38 captured by the military forces of North Korea on the
39 twenty-third day of January, one thousand nine hundred
40 sixty-eight, and thereafter held prisoner; except any person
41 who, at any time, voluntarily, knowingly and without duress,
42 gave aid to or collaborated with or in any manner served any
43 such hostile force;

44 (7) Not more than one Class A or Class G vehicle, as
45 defined in section one of this article, owned by a recipient of
46 the Congressional Medal of Honor and not used for
47 commercial purposes; and

48 (8) Vehicles registered in the name of community action
49 agencies and used exclusively for a Head Start program.

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S
LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND
RENEWAL.**

§17B-2-7c. Motorcycle license examination fund.

1 On and after the first day of July, two thousand seven,
2 any unexpended balance remaining in the Motorcycle
3 License Examination Fund heretofore created shall be
4 transferred to the Motor Vehicle Fees Fund created under
5 the provisions of section twenty-one, article two, chapter
6 seventeen-a of this code. The fund shall include all moneys
7 received from fees collected for motorcycle instruction
8 permits under this article and any other moneys specifically
9 allocated to the fund.

10 If any person willfully fails or refuses to return to the
11 division the evidences of the registration, title, permit or
12 license that have been canceled, suspended or revoked, or
13 any dealer special plates, when obligated so to do as
14 provided in this section, the commissioner shall immediately
15 notify the Superintendent of the State Police who shall, as
16 soon as possible, secure possession of the evidences of
17 registration, title, permit or license or any special dealer
18 plates and return it to the division. The Superintendent of
19 the State Police shall make a report in writing to the
20 commissioner, within two weeks after being notified by the
21 commissioner, as to the result of his or her efforts to secure
22 the possession and return of the evidences of registration,
23 title, permit or license, or any dealer special plates.

24 For each registration, certificate of title, registration
25 card, registration plate or plates, temporary registration plate
26 or marker, permit, license certificate or dealer special plate,
27 which the owner, holder or other person in possession of the
28 registration, title, permit or license or any special dealer
29 plates shall have willfully failed or refused, as provided in
30 this section, to return to the division within ten days from
31 the time that the cancellation, suspension or revocation
32 becomes effective, and which has been certified to the
33 Superintendent of the State Police as specified in this
34 section, the owner or holder shall, before the registration,
35 title, permit or license or any special dealer plates may be
36 reinstated, if reinstatement is permitted, in addition to all
37 other fees and charges, pay a fee of fifteen dollars, which
38 shall be collected by the Division of Motor Vehicles, paid
39 into the State Treasury and credited to the General Fund to
40 be appropriated to the State Police for application in the
41 enforcement of the road laws.

42 A total of twenty-five dollars may be collected on each
43 reinstatement for each vehicle to which any cancellation,
44 suspension or revocation relates: *Provided*, That when any
45 motor vehicle registration is suspended for failure to
46 maintain motor vehicle liability insurance the reinstatement
47 fee is one hundred dollars and if the vehicle owner fails to
48 surrender the vehicle registration and the orders go to the
49 State Police, an additional fee of fifty dollars shall be
50 required before the motor vehicle registration may be
51 reinstated. A total of one hundred fifty dollars may be
52 collected on each reinstatement of any motor vehicle
53 registration canceled, suspended or revoked for failure to
54 maintain motor vehicle liability insurance.

**CHAPTER 17C. TRAFFIC REGULATIONS AND
LAWS OF THE ROAD.**

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF
LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR
DRUGS.**

§17C-5A-2a. Assessment of costs; special account created.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and
Lock Program.

§17C-5A-2a. Assessment of costs; special account created.

1 The Division of Motor Vehicles is hereby authorized
2 and required to assess witness costs at the same rate as
3 witness fees in circuit court and a docket fee of ten dollars
4 for each hearing request against any person filing a request
5 for a hearing under section two of this article who fails to
6 appear, fails to have said order rescinded or fails to have
7 said order modified to a lesser period of revocation.

8 All fees and costs collected hereunder shall be paid into
9 a special revenue account in the State Treasury: *Provided,*
10 That on and after the first day of July, two thousand seven,
11 any unexpended balance remaining in the special revolving
12 fund shall be transferred to the Motor Vehicle Fees Fund
13 created under the provisions of section twenty-one, article
14 two, chapter seventeen-a of this code and all further fees
15 and costs collected shall be deposited in that fund. A
16 portion of the funds in the Motor Vehicle Fees Fund may

17 be used to pay or reimburse the various law-enforcement
18 agencies at the same rate as witnesses in circuit court for
19 the travel and appearance of its officers before the
20 commissioner or authorized deputy or agent pursuant to a
21 hearing request under the provisions of this article. The
22 department shall authorize payment to the law-enforcement
23 agencies from said account as the fees for a particular
24 hearing request are received from the person against whom
25 the costs were assessed. The department shall authorize
26 transfer to an appropriate agency account from the Motor
27 Vehicle Fees Fund to pay costs of registered and certified
28 mailings and other expenses associated with the conduct of
29 hearings under this article as the docket fee for a particular
30 hearing request is received from the person against whom
31 the costs were assessed.

32 In the event judicial review results in said order being
33 rescinded or modified to a lesser period of revocation the
34 costs assessed shall be discharged.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The Division of Motor Vehicles, in cooperation
2 with the Department of Health and Human Resources,
3 Division of Alcoholism and Drug Abuse, shall propose a
4 legislative rule or rules for promulgation in accordance
5 with the provisions of chapter twenty-nine-a of this code
6 establishing a comprehensive safety and treatment program
7 for persons whose licenses have been revoked under the
8 provisions of this article, or section seven, article five of
9 this chapter, or subsection (6), section five, article three,
10 chapter seventeen-b of this code and shall likewise

11 establish the minimum qualifications for mental health
12 facilities or other public agencies or private entities
13 conducting the safety and treatment program: *Provided,*
14 That the commissioner may establish standards whereby
15 the division will accept or approve participation by
16 violators in another treatment program which provides the
17 same or substantially similar benefits as the safety and
18 treatment program established pursuant to this section. The
19 program shall include, but not be limited to, treatment of
20 alcoholism, alcohol and drug abuse, psychological
21 counseling, educational courses on the dangers of alcohol
22 and drugs as they relate to driving, defensive driving or
23 other safety driving instruction and other programs
24 designed to properly educate, train and rehabilitate the
25 offender.

26 (b) (1) The Division of Motor Vehicles, in cooperation
27 with the Department of Health and Human Resources,
28 Division of Alcoholism and Drug Abuse, shall provide for
29 the preparation of an educational and treatment program for
30 each person whose license has been revoked under the
31 provisions of this article or section seven, article five of this
32 chapter, or subsection (6), section five, article three, chapter
33 seventeen-b of this code, which shall contain the following:
34 (A) A listing and evaluation of the offender's prior traffic
35 record; (B) characteristics and history of alcohol or drug
36 use, if any; (C) his or her amenability to rehabilitation
37 through the alcohol safety program; and (D) a
38 recommendation as to treatment or rehabilitation, and the
39 terms and conditions of the treatment or rehabilitation. The
40 program shall be prepared by persons knowledgeable in the
41 diagnosis of alcohol or drug abuse and treatment. The cost
42 of the program shall be paid out of fees established by the

43 Commissioner of Motor Vehicles in cooperation with the
44 Department of Health and Human Resources, Division of
45 Alcoholism and Drug Abuse. The program provider shall
46 collect the established fee from each participant upon
47 enrollment. The program provider shall also at the time of
48 enrollment remit to the commissioner a portion of the
49 collected fee established by the commissioner in
50 cooperation with the Department of Health and Human
51 Resources, which shall be deposited into an account
52 designated the Driver's Rehabilitation Fund: *Provided*,
53 That on and after the first day of July, two thousand seven,
54 any unexpended balance remaining in the driver's
55 rehabilitation fund shall be transferred to the Motor Vehicle
56 Fees Fund created under the provisions of section twenty-
57 one, article two, chapter seventeen-a of this code and all
58 further fees collected shall be deposited in that fund.

59 (2) The commissioner, after giving due consideration to
60 the program developed for the offender, shall prescribe the
61 necessary terms and conditions for the reissuance of the
62 license to operate a motor vehicle in this state revoked
63 under this article, or section seven, article five of this
64 chapter, or subsection (6), section five, article three, chapter
65 seventeen-b of this code which shall include successful
66 completion of the educational, treatment or rehabilitation
67 program, subject to the following:

68 (A) When the period of revocation is six months, the
69 license to operate a motor vehicle in this state shall not be
70 reissued until: (i) At least ninety days have elapsed from
71 the date of the initial revocation, during which time the
72 revocation was actually in effect; (ii) the offender has
73 successfully completed the program; (iii) all costs of the

74 program and administration have been paid; and (iv) all
75 costs assessed as a result of a revocation hearing have been
76 paid.

77 (B) When the period of revocation is for a period of
78 years, the license to operate a motor vehicle in this state
79 shall not be reissued until: (i) At least one half of such time
80 period has elapsed from the date of the initial revocation,
81 during which time the revocation was actually in effect; (ii)
82 the offender has successfully completed the program; (iii)
83 all costs of the program and administration have been paid;
84 and (iv) all costs assessed as a result of a revocation
85 hearing have been paid.

86 (C) When the period of revocation is for life, the
87 license to operate a motor vehicle in this state shall not be
88 reissued until: (i) At least ten years have elapsed from the
89 date of the initial revocation, during which time the
90 revocation was actually in effect; (ii) the offender has
91 successfully completed the program; (iii) all costs of the
92 program and administration have been paid; and (iv) all
93 costs assessed as a result of a revocation hearing have been
94 paid.

95 (D) Notwithstanding any provision of this code or any
96 rule, any mental health facilities or other public agencies or
97 private entities conducting the safety and treatment
98 program when certifying that a person has successfully
99 completed a safety and treatment program shall only have
100 to certify that such person has successfully completed the
101 program.

102 (c) (1) The Division of Motor Vehicles, in cooperation
103 with the Department of Health and Human Resources,
104 Division of Alcoholism and Drug Abuse, shall provide for
105 the preparation of an educational program for each person
106 whose license has been suspended for sixty days pursuant
107 to the provisions of subsection (l), section two, article
108 five-a of this chapter. The educational program shall
109 consist of not less than twelve nor more than eighteen hours
110 of actual classroom time.

111 (2) When a sixty-day period of suspension has been
112 ordered, the license to operate a motor vehicle shall not be
113 reinstated until: (A) At least sixty days have elapsed from
114 the date of the initial suspension, during which time the
115 suspension was actually in effect; (B) the offender has
116 successfully completed the educational program; (C) all
117 costs of the program and administration have been paid;
118 and (D) all costs assessed as a result of a suspension
119 hearing have been paid.

120 (d) A required component of the rehabilitation program
121 provided for in subsection (b) of this section and the
122 education program provided for in subsection (c) of this
123 section shall be participation by the violator with a victim
124 impact panel program providing a forum for victims of
125 alcohol- and drug-related offenses and offenders to share
126 first-hand experiences on the impact of alcohol- and drug-
127 related offenses in their lives. The commissioner shall
128 propose legislative rules for promulgation in accordance
129 with the provisions of chapter twenty-nine-a of this code to
130 implement victim impact panels where appropriate numbers
131 of victims are available and willing to participate and shall
132 establish guidelines for other innovative programs which

133 may be substituted where such victims are not available so
134 as to assist persons whose licenses have been suspended or
135 revoked for alcohol- and drug-related offenses to gain a full
136 understanding of the severity of their offenses in terms of
137 the impact of such offenses on victims and offenders. The
138 legislative rules proposed for promulgation by the
139 commissioner shall require, at a minimum, discussion and
140 consideration of the following:

141 (A) Economic losses suffered by victims or offenders;

142 (B) Death or physical injuries suffered by victims or
143 offenders;

144 (C) Psychological injuries suffered by victims or
145 offenders;

146 (D) Changes in the personal welfare or familial
147 relationships of victims or offenders; and

148 (E) Other information relating to the impact of alcohol-
149 and drug-related offenses upon victims or offenders.

150 Any rules promulgated pursuant to this subsection shall
151 contain provisions which ensure that any meetings between
152 victims and offenders shall be nonconfrontational and
153 ensure the physical safety of the persons involved.

**§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
2 regulate a Motor Vehicle Alcohol Test and Lock Program

3 for persons whose licenses have been revoked pursuant to
4 this article or the provisions of article five of this chapter or
5 have been convicted under section two, article five of this
6 chapter. The program shall include the establishment of a
7 users fee for persons participating in the program which
8 shall be paid in advance and deposited into the Driver's
9 Rehabilitation Fund: *Provided*, That on and after the first
10 day of July, two thousand seven, any unexpended balance
11 remaining in the Driver's Rehabilitation Fund shall be
12 transferred to the Motor Vehicle Fees Fund created under
13 the provisions of section twenty-one, article two, chapter
14 seventeen-a of this code and all further fees collected shall
15 be deposited in that fund. Except where specified
16 otherwise, the use of the term "program" in this section
17 refers to the Motor Vehicle Alcohol Test and Lock
18 Program. The Commissioner of the Division of Motor
19 Vehicles shall propose legislative rules for promulgation in
20 accordance with the provisions of chapter twenty-nine-a of
21 this code for the purpose of implementing the provisions of
22 this section. The rules shall also prescribe those
23 requirements which, in addition to the requirements
24 specified by this section for eligibility to participate in the
25 program, the commissioner determines must be met to
26 obtain the commissioner's approval to operate a motor
27 vehicle equipped with a motor vehicle alcohol test and lock
28 system. For purposes of this section, a "motor vehicle
29 alcohol test and lock system" means a mechanical or
30 computerized system which, in the opinion of the
31 commissioner, prevents the operation of a motor vehicle
32 when, through the system's assessment of the blood alcohol
33 content of the person operating or attempting to operate the
34 vehicle, the person is determined to be under the influence
35 of alcohol.

36 (b)(1) Any person whose license is revoked for the first
37 time pursuant to this article or the provisions of article five
38 of this chapter is eligible to participate in the program when
39 the person's minimum revocation period as specified by
40 subsection (c) of this section has expired and the person is
41 enrolled in or has successfully completed the safety and
42 treatment program or presents proof to the commissioner
43 within sixty days of receiving approval to participate by the
44 commissioner that he or she is enrolled in a safety and
45 treatment program.

46 (2) Any person whose license has been suspended
47 pursuant to the provisions of subsection (1), section two of
48 this article for driving a motor vehicle while under the age
49 of twenty-one years with an alcohol concentration in his or
50 her blood of two hundredths of one percent or more, by
51 weight, but less than eight hundredths of one percent, by
52 weight, is eligible to participate in the program after thirty
53 days have elapsed from the date of the initial suspension,
54 during which time the suspension was actually in effect:
55 *Provided*, That in the case of a person under the age of
56 eighteen, the person is eligible to participate in the program
57 after thirty days have elapsed from the date of the initial
58 suspension, during which time the suspension was actually
59 in effect or after the person's eighteenth birthday,
60 whichever is later. Before the commissioner approves a
61 person to operate a motor vehicle equipped with a motor
62 vehicle alcohol test and lock system, the person must agree
63 to comply with the following conditions:

64 (A) If not already enrolled, the person will enroll in and
65 complete the educational program provided for in
66 subsection (c), section three of this article at the earliest

67 time that placement in the educational program is available,
68 unless good cause is demonstrated to the commissioner as
69 to why placement should be postponed;

70 (B) The person will pay all costs of the educational
71 program, any administrative costs and all costs assessed for
72 any suspension hearing.

73 (3) Notwithstanding the provisions of this section to the
74 contrary, no person eligible to participate in the program
75 under this subsection may operate a motor vehicle unless
76 approved to do so by the commissioner.

77 (c) A person who participates in the program under
78 subdivision (1), subsection (b) of this section is subject to
79 a minimum revocation period and minimum period for the
80 use of the ignition interlock device as follows:

81 (1) For a person whose license has been revoked for a
82 first offense for six months pursuant to the provisions of
83 section one-a of this article for conviction of an offense
84 defined in subsection (d) or (f), section two, article five of
85 this chapter or pursuant to subsection (i), section two of this
86 article, the minimum period of revocation for participation
87 in the test and lock program is thirty days and the minimum
88 period for the use of the ignition interlock device is five
89 months;

90 (2) For a person whose license has been revoked for a
91 first offense pursuant to section seven, article five of this
92 chapter, refusal to submit to a designated secondary
93 chemical test, the minimum period of revocation for
94 participation in the test and lock program is thirty days and

95 the minimum period for the use of the ignition interlock
96 device is nine months;

97 (3) For a person whose license has been revoked for a
98 first offense pursuant to the provisions of section one-a of
99 this article for conviction of an offense defined in
100 subsection (a), section two, article five of this chapter or
101 pursuant to subsection (f), section two of this article, the
102 minimum period of revocation before the person is eligible
103 for participation in the test and lock program is twelve
104 months and the minimum period for the use of the ignition
105 interlock device is two years;

106 (4) For a person whose license has been revoked for a
107 first offense pursuant to the provisions of section one-a of
108 this article for conviction of an offense defined in
109 subsection (b), section two, article five of this chapter or
110 pursuant to subsection (g), section two of this article, the
111 minimum period of revocation is six months and the
112 minimum period for the use of the ignition interlock device
113 is two years;

114 (5) For a person whose license has been revoked for a
115 first offense pursuant to the provisions of section one-a of
116 this article for conviction of an offense defined in
117 subsection (c), section two, article five of this chapter or
118 pursuant to subsection (h), section two of this article, the
119 minimum period of revocation for participation in the
120 program is two months and the minimum period for the use
121 of the ignition interlock device is one year;

122 (6) For a person whose license has been revoked for a
123 first offense pursuant to the provisions of section one-a of

124 this article for conviction of an offense defined in
125 subsection (i), section two, article five of this chapter or
126 pursuant to subsection (m), section two of this article, the
127 minimum period of revocation for participation in the
128 program is two months and the minimum period for the use
129 of the ignition interlock device is ten months;

130 (d) Notwithstanding any provision of the code to the
131 contrary, a person shall participate in the program if the
132 person is convicted under section two, article five of this
133 chapter or the person's license is revoked under section two
134 of this article or section seven, article five of this chapter
135 and the person was previously either convicted or license
136 was revoked under any provision cited in this subsection
137 within the past ten years. The minimum revocation period
138 for a person required to participate in the program under
139 this subsection is one year and the minimum period for the
140 use of the ignition interlock device is two years, except that
141 the minimum revocation period for a person required to
142 participate because of a violation of subsection (l), section
143 two of this article or subsection (h), section two, article five
144 of this chapter is two months and the minimum period of
145 participation is one year. The division will add one year to
146 the minimum period for the use of the ignition interlock
147 device for each additional previous conviction or
148 revocation within the past ten years. Any person required
149 to participate under this subsection must have an ignition
150 interlock device installed on every vehicle he or she owns
151 or operates.

152 (e) An applicant for the test and lock program may not
153 have been convicted of any violation of section three,
154 article four, chapter seventeen-b of this code for driving

155 while the applicant's driver's license was suspended or
156 revoked within the six-month period preceding the date of
157 application for admission to the test and lock program; such
158 is necessary for employment purposes.

159 (f) Upon permitting an eligible person to participate in
160 the program, the commissioner shall issue to the person,
161 and the person is required to exhibit on demand, a driver's
162 license which shall reflect that the person is restricted to the
163 operation of a motor vehicle which is equipped with an
164 approved motor vehicle alcohol test and lock system.

165 (g) The commissioner may extend the minimum period
166 of revocation and the minimum period of participation in
167 the program for a person who violates the terms and
168 conditions of participation in the program as found in this
169 section, or legislative rule, or any agreement or contract
170 between the participant and the division or program service
171 provider.

172 (h) A person whose license has been suspended
173 pursuant to the provisions of subsection (l), section two of
174 this article who has completed the educational program and
175 who has not violated the terms required by the
176 commissioner of the person's participation in the program
177 is entitled to the reinstatement of his or her driver's license
178 six months from the date the person is permitted to operate
179 a motor vehicle by the commissioner. When a license has
180 been reinstated pursuant to this subsection, the records
181 ordering the suspension, records of any administrative
182 hearing, records of any blood alcohol test results and all

183 other records pertaining to the suspension shall be
184 expunged by operation of law: *Provided*, That a person is
185 entitled to expungement under the provisions of this
186 subsection only once. The expungement shall be
187 accomplished by physically marking the records to show
188 that the records have been expunged and by securely
189 sealing and filing the records. Expungement has the legal
190 effect as if the suspension never occurred. The records may
191 not be disclosed or made available for inspection and in
192 response to a request for record information, the
193 commissioner shall reply that no information is available.
194 Information from the file may be used by the commissioner
195 for research and statistical purposes so long as the use of
196 the information does not divulge the identity of the person.

197 (i) In addition to any other penalty imposed by this
198 code, any person who operates a motor vehicle not
199 equipped with an approved motor vehicle alcohol test and
200 lock system during such person's participation in the motor
201 vehicle alcohol test and lock program is guilty of a
202 misdemeanor and, upon conviction thereof, shall be
203 confined in the county or regional jail for a period not less
204 than one month nor more than six months and fined not less
205 than one hundred dollars nor more than five hundred
206 dollars. Any person who attempts to bypass the alcohol
207 test and lock system is guilty of a misdemeanor and, upon
208 conviction thereof, shall be confined in the county or
209 regional jail not more than six months and fined not less
210 than one hundred dollars nor more than one thousand
211 dollars: *Provided*, That notwithstanding any provision of
212 this code to the contrary, a person enrolled and

213 participating in the test and lock program may operate a
214 motor vehicle solely at his or her job site, if such is a
215 condition of his or her employment. For the purpose of this
216 section, job site does not include any street or highway
217 open to the use of the public for purposes of vehicular
218 traffic.

**CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S
LICENSE ACT.**

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-23. Funding for the commercial driver's license fees.

1 (a) Each application for a commercial driver's license
2 shall be accompanied by the fees provided in this section
3 and the fees shall be deposited in a special revolving fund
4 for the operation by the division of its functions established
5 by this chapter: *Provided*, That on and after the first day of
6 July, two thousand seven, any unexpended balance
7 remaining in the special revolving fund shall be transferred
8 to the Motor Vehicle Fees Fund created under the
9 provisions of section twenty-one, article two, chapter
10 seventeen-a of this code and all further fees collected shall
11 be deposited in that fund.

12 (b) The fee for a commercial driver's license shall be
13 established by the commissioner to cover all necessary
14 costs for program administration. The fees for knowledge
15 and road testing shall also be established by the
16 commissioner to cover all program costs projected to be
17 incurred by the division.

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,
LITTER.****§20-7-12. Motorboat identification numbers required;
application for numbers; fee; displaying;
reciprocity; change of ownership;
conformity with United States regulations;
records; renewal of certificate; transfer of
interest, abandonment, etc.; change of
address; unauthorized numbers;
information to be furnished assessors.**

1 Every motorboat, as defined in this section, operating
2 upon public waters within the territorial limits of this state
3 shall be numbered as provided in this section:

4 (a) The owner of each motorboat requiring numbering
5 by this state shall file an application for a number with the
6 commissioner on forms approved by the Division of Motor
7 Vehicles. The application shall be signed by the owner of
8 the motorboat and shall be accompanied by a fee of fifteen
9 dollars for a three-year registration period if the motorboat
10 is propelled by a motor of three or more horsepower:
11 *Provided*, That beginning on the first day of April, two
12 thousand, the fee for a three-year registration period is as
13 follows:

14 (1) Class A, motorboats less than sixteen feet in length,
15 thirty dollars;

16 (2) Class 1, motorboats sixteen feet or over and less than
17 twenty-six feet in length, forty-five dollars;

18 (3) Class 2, motorboats twenty-six feet or over and less
19 than forty feet in length, sixty dollars; and

20 (4) Class 3, forty feet in length or over, seventy-five
21 dollars.

22 The fee may be prorated by the commissioner for
23 periods of less than three years. There is no fee for
24 motorboats propelled by motors of less than three
25 horsepower. All fees, including those received under
26 subdivision (b) of this section, shall be deposited in the State
27 Treasury. On and after the first day of July, two thousand
28 seven, all moneys deposited pursuant to this section and
29 credited to the Division of Motor Vehicles and fifty percent
30 of all fees collected thereafter shall be credited to the State
31 Road Fund. The remaining fifty percent shall be credited to
32 the Division of Natural Resources and shall be used and paid
33 out upon order of the director solely for the enforcement and
34 safety education of the state boating system. Upon receipt
35 of the application in approved form, the commissioner shall
36 enter the application upon the records of the division and
37 issue to the applicant a number awarded to the motorboat
38 and the name and address of the owner. The owner shall
39 paint on or attach to each side of the bow of the motorboat
40 the identification number in the manner prescribed by rules
41 of the commissioner in order that it is clearly visible. The
42 owner shall maintain the number in legible condition. The
43 certificate of number shall be pocket size and shall be
44 available at all times for inspection on the motorboat for
45 which it is issued, whenever the motorboat is in operation.

46 (b) In order to permit a motorboat sold to a purchaser by
47 a dealer to be operated pending receipt of the certificate of
48 number from the commissioner, the commissioner may
49 deliver temporary certificates of number to in turn be issued

50 to purchasers of motorboats to dealers, upon application by
51 the dealer and payment of one dollar for each temporary
52 certificate. Every person who is issued a temporary
53 certificate by a dealer shall, under the provisions of
54 subdivision (a) of this section, apply for a certificate of
55 number no later than ten days from the date of issuance of
56 the temporary certificate. A temporary certificate expires
57 upon receipt of the certificate, upon rescission of the contract
58 to purchase the motorboat in question or upon the expiration
59 of forty days from the date of issuance, whichever occurs
60 first. It is unlawful for any dealer to issue any temporary
61 certificate knowingly containing any misstatement of fact or
62 knowingly to insert any false information on the face of the
63 temporary certificate. The commissioner may by rule
64 prescribe additional requirements upon the dealers and
65 purchasers that are consistent with the effective
66 administration of this section.

67 (c) The owner of any motorboat already covered by a
68 number in full force and effect which has been awarded to
69 it pursuant to then operative federal law or a federally
70 approved numbering system of another state shall record the
71 number prior to operating the motorboat on the waters of
72 this state in excess of the sixty-day reciprocity period
73 provided for in section fourteen of this article. The
74 recordation shall be in the manner and pursuant to procedure
75 required for the award of a number under subdivision (a) of
76 this section, except that the commissioner shall not issue an
77 additional or substitute number.

78 (d) If the ownership of a motorboat changes, the new
79 owner shall file a new application form with the required fee
80 with the commissioner who shall award a new certificate of
81 number in the same manner as provided for in an original
82 award of number.

83 (e) In the event that an agency of the United States
84 government has in force an overall system of identification
85 numbering for motorboats within the United States, the
86 numbering system employed pursuant to this article by the
87 Division of Motor Vehicles shall be in conformity with the
88 federal system.

89 (f) The license is valid for a maximum period of three
90 years. If at the expiration of that period ownership has
91 remained unchanged, the commissioner shall, upon
92 application and payment of the proper fee, grant the owner
93 a renewal of the certificate of number for an additional
94 three-year period.

95 (g) The owner shall furnish the commissioner notice of
96 the transfer of all or any part of an interest, other than the
97 creation of a security interest, in a motorboat numbered in
98 this state pursuant to subdivisions (a) and (b) of this section
99 or of the destruction or abandonment of the motorboat
100 within fifteen days of the transfer of interest, destruction or
101 abandonment. The transfer, destruction or abandonment
102 shall terminate the certificate of number for the motorboat,
103 except that in the case of a transfer of a part interest which
104 does not affect the owner's right to operate the motorboat,
105 the transfer shall not terminate the certificate of number.

106 (h) Any holder of a certificate of number shall notify the
107 commissioner within fifteen days if his or her address no
108 longer conforms to the address appearing on the certificate
109 and shall, as a part of the notification, furnish the
110 commissioner with his or her new address. The
111 commissioner may provide by rule for the surrender of the
112 certificate bearing the former address and its replacement
113 with a certificate bearing the new address or for the

114 alteration of an outstanding certificate to show the new
115 address of the holder.

116 (i) An owner shall not paint, attach or otherwise display
117 a number other than the number awarded to a motorboat or
118 granted reciprocity pursuant to this article on either side of
119 the bow of the motorboat.

120 (j) The commissioner shall on or before the thirtieth day
121 of August of each year forward to the assessor of each
122 county a list of the names and addresses of all persons, firms
123 and corporations owning vessels and operating the vessels
124 or other boats registered with the commissioner under the
125 provisions of this article. In furnishing this information to
126 each county assessor, the commissioner shall include
127 information on the make and model of the vessels and other
128 equipment required to be registered for use by the owner or
129 operator of the boats under the provisions of this article:
130 *Provided*, That the commissioner is not required to furnish
131 the information to the assessor if the cost price of the vessel
132 does not exceed five hundred dollars or the cost of the motor
133 does not exceed two hundred fifty dollars.

134 (k) No person may operate an unlicensed motorboat
135 upon any waters of this state without first acquiring the
136 certificate of number or license as required by law.

CHAPTER 175

(S.B. 398 - By Senator Kessler)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §17A-3-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-9-5 and §17A-9-7 of said code, all relating to the authority of the Division of Motor Vehicles to refuse to register and to suspend or revoke motor vehicle registrations of motor carriers whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration.

Be it enacted by the Legislature of West Virginia:

That §17A-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-9-5 and §17A-9-7 of said code be amended and reenacted, all to read as follows:

Article

- 3. Original and Renewal of Registration; Issuance of Certificate of Title.**
- 9. Offenses Against Registration Laws and Suspension or Revocation of Registration.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF
CERTIFICATE OF TITLE.**

§17A-3-7. Grounds for refusing registration or certificate of title.

1 The division shall refuse registration or issuance of a
2 certificate of title or any transfer of registration upon any of the
3 following grounds:

4 (1) That the application contains any false or fraudulent
5 statement or that the applicant has failed to furnish required
6 information or reasonable additional information requested by
7 the division or that the applicant is not entitled to the issuance
8 of a certificate of title or registration of the vehicle under this
9 chapter;

10 (2) That the applicant fails to present a statement of
11 insurance or proof of other security as required pursuant to the
12 provisions of section three of this article;

13 (3) That the vehicle is mechanically unfit or unsafe to be
14 operated or moved upon the highways;

15 (4) That the division has reasonable grounds to believe that
16 the vehicle is a stolen or embezzled vehicle or that the granting
17 of registration or the issuance of certificate of title would
18 constitute a fraud against the rightful owner or other person
19 having a valid lien upon such vehicle;

20 (5) That the registration of the vehicle stands suspended or
21 revoked for any reason as provided in the motor vehicle laws
22 of this state;

23 (6) That the required fee has not been paid; or

24 (7) That the vehicle is operated by a commercial motor
25 carrier who has failed to provide a federal motor carrier

26 identification number (USDOT number) or whose authority to
27 operate in interstate commerce has been denied or suspended
28 by the federal Motor Carrier Safety Administration.

**ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS
AND SUSPENSION OR REVOCATION OF
REGISTRATION.**

§17A-9-5. Authority of division to suspend or revoke registration, certificate, etc.

§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or
revocation; willful failure or refusal to surrender; fee for reinstatement.

**§17A-9-5. Authority of division to suspend or revoke
registration, certificate, etc.**

1 The division is hereby authorized to suspend or revoke the
2 registration of a vehicle or a certificate of title, registration card
3 or registration plate or any nonresident or other permit in any
4 of the following events:

5 (1) When the division is satisfied that such registration or
6 that such certificate, card, plate or permit was fraudulently or
7 erroneously issued;

8 (2) When the division determines that a registered vehicle
9 is mechanically unfit or unsafe to be operated or moved upon
10 the highways;

11 (3) When a registered vehicle has been dismantled or
12 wrecked;

13 (4) When a registration card, registration plate or permit is
14 knowingly displayed upon a vehicle other than the one for
15 which issued;

16 (5) When the division determines that the owner has
17 committed any offense under this article involving the
18 registration or the certificate, card, plate or permit to be
19 suspended or revoked;

20 (6) When the vehicle is operated by a commercial motor
21 carrier whose authority to operate in interstate commerce has
22 been denied or suspended by the federal Motor Carrier Safety
23 Administration; or

24 (7) When the division is so authorized under any other
25 provision of law.

***§17A-9-7. Surrender of evidences of registration, etc., upon
cancellation, suspension or revocation; willful
failure or refusal to surrender; fee for
reinstatement.**

1 (a) Whenever the registration of a vehicle, a certificate of
2 title, a registration card, registration plate or plates, a temporary
3 registration plate or marker, the right to issue temporary
4 registration plates or markers, any nonresident or other permit
5 or any license certificate or dealer special plates issued under
6 the provisions of article six of this chapter is canceled,
7 suspended or revoked as authorized in this chapter, the owner,
8 holder or other person in possession of the evidences of the
9 registration, title, permit or license or any special dealer plates
10 shall, except as otherwise provided in article six of this chapter,
11 immediately return the evidences of the registration, title,
12 permit or license that was canceled, suspended or revoked,

*CLERK'S NOTE: This section was also amended by S.B. 523 (Chapter 174), which passed subsequent to this act.

13 together with any dealer special plates relating to any license
14 certificate, or any dealer special plate or plates if only the
15 dealer special plate is suspended, to the division: *Provided,*
16 That the owner or holder shall, before reinstatement, pay a fee
17 of ten dollars in addition to all other fees, which shall be
18 collected by the division and credited to a special revolving
19 fund in the State Treasury to be appropriated to the division for
20 use in enforcement of the provisions of this code.

21 (b) If any person willfully fails or refuses to return to the
22 division the evidences of the registration, title, permit or
23 license that have been canceled, suspended or revoked, or any
24 dealer special plates, when obligated so to do as provided in
25 this section, the commissioner shall immediately notify the
26 Superintendent of the State Police who shall, as soon as
27 possible, secure possession of the evidence of registration, title,
28 permit or license or any special dealer plates and return it to the
29 division. The Superintendent of the State Police shall make a
30 report in writing to the commissioner, within two weeks after
31 being notified by the commissioner, as to the result of his or
32 her efforts to secure the possession and return of the evidences
33 of registration, title, permit or license, or any dealer special
34 plates.

35 (c) If any commercial motor carrier willfully fails or
36 refuses to return to the division the evidences of the
37 registration that have been suspended or revoked as provided
38 in this section, the commissioner shall immediately notify the
39 Public Service Commission which shall, as soon as possible,
40 secure possession of the evidence of registration and return it
41 to the division. The Public Service Commission shall make a
42 report in writing to the commissioner, within two weeks after
43 being notified by the commissioner, as to the result of its

44 efforts to secure the possession and return of the evidences of
45 registration.

46 (d) For each registration, certificate of title, registration
47 card, registration plate or plates, temporary registration plate or
48 marker, permit, license certificate or dealer special plate, which
49 the owner, holder or other person in possession of the
50 registration, title, permit or license or any special dealer plates
51 shall have willfully failed or refused, as provided in this
52 section, to return to the division within ten days from the time
53 that the cancellation, suspension or revocation becomes
54 effective, and which has been certified to the Superintendent of
55 the State Police as specified in this section, the owner or holder
56 shall, before the registration, title, permit or license or any
57 special dealer plates may be reinstated, if reinstatement is
58 permitted, in addition to all other fees and charges, pay a fee of
59 fifteen dollars, which shall be collected by the Division of
60 Motor Vehicles, paid into the State Treasury and credited to the
61 General Fund to be appropriated to the State Police for
62 application in the enforcement of the road laws.

63 A total of twenty-five dollars may be collected on each
64 reinstatement for each vehicle to which any cancellation,
65 suspension or revocation relates.

66 (e) When any motor vehicle registration is suspended for
67 failure to maintain motor vehicle liability insurance the
68 reinstatement fee is one hundred dollars, and if the vehicle
69 owner fails to surrender the vehicle registration and the orders
70 go to the State Police, an additional fee of fifty dollars shall be
71 required before the motor vehicle registration may be
72 reinstated. A total of one hundred fifty dollars may be
73 collected on each reinstatement of any motor vehicle
74 registration canceled, suspended or revoked for failure to
75 maintain motor vehicle liability insurance.

CHAPTER 176

**(Com. Sub. for S.B. 169 - By Senators Bowman, McCabe,
Minard, Jenkins, Plymale and Kessler)**

[Passed February 27, 2007; in effect ninety days from passage.
[Approved by the Governor on March 14, 2007.]

AN ACT to amend and reenact §17A-4-10 of the Code of West Virginia, 1931, as amended, relating to salvage certificates for certain wrecked vehicles; allowing vehicle owners to retain certain vehicles declared totaled; requiring the surrender of title and registration certificate; eliminating the special revenue account; increasing criminal penalties; and clarifying certain definitions.

Be it enacted by the Legislature of West Virginia:

That §17A-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

***§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.**

1 (a) In the event a motor vehicle is determined to be a
2 total loss or otherwise designated as "totaled" by any
3 insurance company or insurer, and upon payment of a total
4 loss claim to any insured or claimant owner for the purchase
5 of the vehicle, the insurance company or the insurer, as a
6 condition of the payment, shall require the owner to
7 surrender the certificate of title: *Provided*, That an insured
8 or claimant owner may choose to retain physical possession
9 and ownership of a total loss vehicle. If the vehicle owner
10 chooses to retain the vehicle and the vehicle has not been

*CLERK'S NOTE: This section was also amended by S.B. 523 (Chapter 174), which passed subsequent to this act.

11 determined to be a cosmetic total loss in accordance with
12 subsection (d) of this section, the insurance company or
13 insurer shall also require the owner to surrender the vehicle
14 registration certificate. The term "total loss" means a motor
15 vehicle which has sustained damages equivalent to
16 seventy-five percent or more of the market value as
17 determined by a nationally accepted used car value guide or
18 meets the definition of a flood-damaged vehicle as defined
19 in this section.

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

29 (c) If the insurance company or insurer determines that
30 the vehicle is repairable, the division shall issue a "salvage
31 certificate", on a form prescribed by the commissioner, in
32 the name of the insurance company or the insurer or the
33 vehicle owner if the owner has chosen to retain the vehicle.
34 The certificate shall contain on the reverse thereof spaces for
35 one successive assignment before a new certificate at an
36 additional fee is required.

37 Upon the sale of the vehicle, the insurance company or
38 insurer or the vehicle owner if the owner has chosen to
39 retain the vehicle shall complete the assignment of
40 ownership on the salvage certificate and deliver it to the
41 purchaser. The vehicle shall not be titled or registered for
42 operation on the streets or highways of this state unless there
43 is compliance with subsection (g) of this section. The
44 division shall charge a fee of fifteen dollars for each salvage
45 title issued.

46 (d) If the insurance company or insurer determines the
47 damage to a totaled vehicle is exclusively cosmetic and no
48 repair is necessary in order to legally and safely operate the

49 motor vehicle on the roads and highways of this state, the
50 insurance company or insurer shall upon payment of the
51 claim submit the certificate of title to the division. Neither
52 the insurance company nor the division may require the
53 vehicle owner to surrender the registration certificate in the
54 event of a cosmetic total loss settlement.

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

65 (2) If the insured or claimant owner elects not to take
66 possession of the vehicle and the insurance company or
67 insurer retains possession, the division shall issue a cosmetic
68 total loss salvage certificate to the insurance company or
69 insurer. The division shall charge a fee of fifteen dollars for
70 each cosmetic total loss salvage certificate issued. The
71 division shall, upon surrender of the cosmetic total loss
72 salvage certificate issued under the provisions of this
73 paragraph and payment of the five percent privilege tax on
74 the fair market value of the vehicle as determined by the
75 commissioner, issue a title branded "cosmetic total loss"
76 without further inspection.

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

86 (f) Any owner who scraps, compresses, dismantles or
87 destroys a vehicle for which a certificate of title,
88 nonrepairable motor vehicle certificate or salvage certificate
89 has been issued shall, within twenty days, surrender the
90 certificate of title, nonrepairable motor vehicle certificate or
91 salvage certificate to the division for cancellation. Any
92 person who purchases or acquires a vehicle as salvage or
93 scrap, to be dismantled, compressed or destroyed, shall
94 within twenty days surrender the certificate to the division.

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

107 (h) The owner or title holder of any motor vehicle titled
108 in this state which has previously been branded in this state
109 or another state as "salvage", "reconstructed", "cosmetic
110 total loss", "cosmetic total loss salvage", "flood" or "fire" or
111 an equivalent term under another state's laws shall, upon
112 becoming aware of the brand, apply for and receive a title
113 from the Division of Motor Vehicles on which the brand
114 "reconstructed", "salvage", "cosmetic total loss", "cosmetic
115 total loss salvage", "flood" or "fire" is shown. The division
116 shall charge a fee of five dollars for each title so issued.

117 (i) If application is made for title to a motor vehicle, the
118 title to which has previously been branded "reconstructed",
119 "salvage", "cosmetic total loss", "cosmetic total loss
120 salvage", "flood" or "fire" by the Division of Motor Vehicles
121 under this section and said application is accompanied by a
122 title from another state which does not carry the brand, the
123 division shall, before issuing the title, affix the brand
124 "reconstructed", "cosmetic total loss", "cosmetic total loss

125 salvage", "flood" or "fire" to the title. The privilege tax paid
126 on a motor vehicle titled as "reconstructed", "cosmetic total
127 loss", "flood" or "fire" under the provisions of this section
128 shall be based on fifty percent of the fair market value of the
129 vehicle as determined by a nationally accepted used car
130 value guide to be used by the commissioner.

131 (j) The division shall charge a fee of fifteen dollars for
132 the issuance of each salvage certificate or cosmetic total loss
133 salvage certificate but shall not require the payment of the
134 five percent privilege tax. However, upon application for a
135 certificate of title for a reconstructed, cosmetic total loss,
136 flood or fire damaged vehicle, the division shall collect the
137 five percent privilege tax on the fair market value of the
138 vehicle as determined by the commissioner unless the
139 applicant is otherwise exempt from the payment of such
140 privilege tax. A wrecker/dismantler/rebuilder licensed by
141 the division is exempt from the payment of the five percent
142 privilege tax upon titling a reconstructed vehicle. The
143 division shall collect a fee of thirty-five dollars per vehicle
144 for inspections of reconstructed vehicles. Licensed
145 wreckers/dismantlers/rebuilders may charge a fee not to
146 exceed twenty-five dollars for all vehicles owned by private
147 rebuilders which are inspected at the place of business of a
148 wrecker/dismantler/rebuilder.

149 (k) As used in this section:

150 (1) "Reconstructed vehicle" means the vehicle was
151 totaled under the provisions of this section or by the
152 provisions of another state or jurisdiction and has been
153 rebuilt in accordance with the provisions of this section or in
154 accordance with the provisions of another state or
155 jurisdiction or meets the provisions of subsection (m),
156 section one, article one of this chapter.

157 (2) "Flood-damaged vehicle" means that the vehicle was
158 submerged in water to the extent that water entered the
159 passenger or trunk compartment.

160 (l) Every vehicle owner shall comply with the branding
161 requirements for a totaled vehicle whether or not the owner
162 receives an insurance claim settlement for a totaled vehicle.

163 (m) A certificate of title issued by the division for a
164 reconstructed vehicle shall contain markings in bold print on
165 the face of the title that it is for a reconstructed, flood- or
166 fire-damaged vehicle.

167 (n) Any person who knowingly provides false or
168 fraudulent information to the division that is required by this
169 section in an application for a title, a cosmetic total loss title,
170 a reconstructed vehicle title or a salvage certificate or who
171 knowingly fails to disclose to the division information
172 required by this section to be included in the application or
173 who otherwise violates the provisions of this section shall be
174 guilty of a misdemeanor and, upon conviction thereof, shall
175 for each incident be fined not less than one thousand dollars
176 nor more than two thousand five hundred dollars or
177 imprisoned in jail for not more than one year, or both fined
178 and imprisoned.

CHAPTER 177

**(Com. Sub. for S.B. 601 - By Senators Jenkins, Plymale,
Kessler, Chafin, Unger, Oliverio, Bailey, Minard, Green, Caruth,
Stollings, Deem, Bowman, Hall, Love, Yoder, Barnes,
Helmick, Fanning, Foster, Hunter, Prezioso, Edgell,
McKenzie, Guills and White)**

[Passed March 10, 2007; in effect from passage.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact § 17A-6A-3, § 17-6A-10 and § 17A-6A-12 of the Code of West Virginia, 1931, as amended, all relating to the establishment or relocation of additional motor vehicle dealers within a relevant market area; redefining “relevant market area”; creating exceptions for certain relocations and transfers; exceptions for purposes of adding

dealerships to an area; and providing notice requirements to existing dealers.

Be it enacted by the Legislature of West Virginia:

That §17A-6A-3, §17A-6A-10 and §17A-6A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.

- §17A-6A-3. Definitions.
- §17A-6A-10. Prohibited practices.
- §17A-6A-12. Establishment and relocation or establishment of additional dealers.

§17A-6A-3. Definitions.

1 For the purposes of this article, the words and phrases
2 defined in this section have the meanings ascribed to them,
3 except where the context clearly indicates a different
4 meaning.

5 (1) “Dealer agreement” means the franchise, agreement
6 or contract in writing between a manufacturer, distributor
7 and a new motor vehicle dealer which purports to establish
8 the legal rights and obligations of the parties to the
9 agreement or contract with regard to the purchase, lease or
10 sale of new motor vehicles, accessories, service and sale of
11 parts for motor vehicles.

12 (2) “Designated family member” means the spouse,
13 child, grandchild, parent, brother or sister of a deceased new
14 motor vehicle dealer who is entitled to inherit the deceased
15 dealer’s ownership interest in the new motor vehicle
16 dealership under the terms of the dealer’s will, or who has
17 otherwise been designated in writing by a deceased dealer to
18 succeed the deceased dealer in the new motor vehicle
19 dealership, or is entitled to inherit under the laws of intestate

20 succession of this state. With respect to an incapacitated new
21 motor vehicle dealer, the term means the person appointed
22 by a court as the legal representative of the new motor
23 vehicle dealer's property. The term also includes the
24 appointed and qualified personal representative and the
25 testamentary trustee of a deceased new motor vehicle dealer.
26 However, the term means only that designated successor
27 nominated by the new motor vehicle dealer in a written
28 document filed by the dealer with the manufacturer or
29 distributor, if such a document is filed.

30 (3) "Distributor" means any person, resident or
31 nonresident, who, in whole or in part, offers for sale, sells or
32 distributes any new motor vehicle to a new motor vehicle
33 dealer or who maintains a factor representative, resident or
34 nonresident, or who controls any person, resident or
35 nonresident, who, in whole or in part, offers for sale, sells or
36 distributes any new motor vehicle to a new motor vehicle
37 dealer.

38 (4) "Established place of business" means a permanent,
39 enclosed commercial building located within this state easily
40 accessible and open to the public at all reasonable times and
41 at which the business of a new motor vehicle dealer,
42 including the display and repair of motor vehicles, may be
43 lawfully carried on in accordance with the terms of all
44 applicable building codes, zoning and other land-use
45 regulatory ordinances and as licensed by the Division of
46 Motor Vehicles.

47 (5) "Factory branch" means an office maintained by a
48 manufacturer or distributor for the purpose of selling or
49 offering for sale vehicles to a distributor, wholesaler or new
50 motor vehicle dealer, or for directing or supervising, in
51 whole or in part, factory or distributor representatives. The
52 term includes any sales promotion organization maintained

53 by a manufacturer or distributor which is engaged in
54 promoting the sale of a particular make of new motor
55 vehicles in this state to new motor vehicle dealers.

56 (6) "Factory representative" means an agent or employee
57 of a manufacturer, distributor or factory branch retained or
58 employed for the purpose of making or promoting the sale
59 of new motor vehicles or for supervising or contracting with
60 new motor vehicle dealers or proposed motor vehicle
61 dealers.

62 (7) "Good faith" means honesty in fact and the
63 observation of reasonable commercial standards of fair
64 dealing in the trade.

65 (8) "Manufacturer" means any person who manufactures
66 or assembles new motor vehicles; or any distributor, factory
67 branch or factory representative.

68 (9) "Motor vehicle" means that term as defined in
69 section one, article one of this chapter, including motorcycle
70 and recreational vehicle as defined in subsections (c) and
71 (nn), respectively, of said section, but not including a tractor
72 or farm equipment.

73 (10) "New motor vehicle" means a motor vehicle which
74 is in the possession of the manufacturer, distributor or
75 wholesaler, or has been sold only to a new motor vehicle
76 dealer and on which the original title has not been issued
77 from the new motor vehicle dealer.

78 (11) "New motor vehicle dealer" means a person who
79 holds a dealer agreement granted by a manufacturer or
80 distributor for the sale of its motor vehicles, who is engaged
81 in the business of purchasing, selling, leasing, exchanging or
82 dealing in new motor vehicles, service of said vehicles,

83 warranty work and sale of parts who has an established
84 place of business in this state and is licensed by the Division
85 of Motor Vehicles.

86 (12) "Person" means a natural person, partnership,
87 corporation, association, trust, estate or other legal entity.

88 (13) "Proposed new motor vehicle dealer" means a
89 person who has an application pending for a new dealer
90 agreement with a manufacturer or distributor. "Proposed
91 motor vehicle dealer" does not include a person whose
92 dealer agreement is being renewed or continued.

93 (14) "Relevant market area" means the area located
94 within a twenty air-mile radius around an existing same line-
95 make new motor vehicle dealership: *Provided*, That a fifteen
96 mile relevant market area as it existed prior to the effective
97 date of this statute shall apply to any proposed new motor
98 vehicle dealership as to which a manufacturer or distributor
99 and the proposed new motor vehicle dealer have executed
100 on or before the effective date of this statute a written
101 agreement, including a letter of intent, performance
102 agreement or commitment letter, concerning the
103 establishment of the proposed new motor vehicle dealership.

§17A-6A-10. Prohibited practices.

1 (1) A manufacturer or distributor may not require any
2 new motor vehicle dealer in this state to do any of the
3 following:

4 (a) Order or accept delivery of any new motor vehicle,
5 part or accessory of the vehicle, equipment or any other
6 commodity not required by law which was not voluntarily
7 ordered by the new motor vehicle dealer. This section does
8 not prevent the manufacturer or distributor from requiring

9 that new motor vehicle dealers carry a reasonable inventory
10 of models offered for sale by the manufacturer or distributor;

11 (b) Order or accept delivery of any new motor vehicle
12 with special features, accessories or equipment not included
13 in the list price of the new motor vehicle as publicly
14 advertised by the manufacturer or distributor;

15 (c) Unreasonably participate monetarily in any
16 advertising campaign or contest, or purchase any
17 promotional materials, display devices, display decorations,
18 brand signs and dealer identification, nondiagnostic
19 computer equipment and displays or other materials at the
20 expense of the new motor vehicle dealer;

21 (d) Enter into any agreement with the manufacturer or
22 distributor or do any other act prejudicial to the new motor
23 vehicle dealer by threatening to terminate a dealer
24 agreement, limit inventory, invoke sales and service
25 warranty or other types of audits or any contractual
26 agreement or understanding existing between the dealer and
27 the manufacturer or distributor. Notice in good faith to any
28 dealer of the dealer's violation of any terms or provisions of
29 the dealer agreement is not a violation of this article;

30 (e) Change the capital structure of the new motor vehicle
31 dealership or the means by or through which the dealer
32 finances the operation of the dealership if the dealership at
33 all times meets any reasonable capital standards determined
34 by the manufacturer in accordance with uniformly applied
35 criteria;

36 (f) Refrain from participation in the management of,
37 investment in or the acquisition of any other line of new
38 motor vehicle or related products, provided that the dealer
39 maintains a reasonable line of credit for each make or line of

40 vehicle, remains in compliance with reasonable facilities
41 requirements and makes no change in the principal
42 management of the dealer. Notwithstanding the terms of any
43 franchise agreement, a manufacturer or distributor may not
44 enforce any requirements, including facility requirements,
45 that a new motor vehicle dealer establish or maintain
46 exclusive facilities, personnel or display space, when the
47 requirements are unreasonable considering current economic
48 conditions and are not otherwise justified by reasonable
49 business considerations. The burden of proving that current
50 economic conditions or reasonable business considerations
51 justify exclusive facilities is on the manufacturer or
52 distributor and must be proven by a preponderance of the
53 evidence;

54 (g) Change the location of the new motor vehicle
55 dealership or make any substantial alterations to the
56 dealership premises, where to do so would be unreasonable;
57 and

58 (h) Prospectively assent to a release, assignment,
59 novation, waiver or estoppel which would relieve any
60 person from liability imposed by this article or require any
61 controversy between a new motor vehicle dealer and a
62 manufacturer or distributor to be referred to a person other
63 than the duly constituted courts of the state or the United
64 States, if the referral would be binding upon the new motor
65 vehicle dealer.

66 (2) A manufacturer or distributor may not do any of the
67 following:

68 (a) Fail to deliver new motor vehicles or new motor
69 vehicle parts or accessories within a reasonable time and in
70 reasonable quantities relative to the new motor vehicle
71 dealer's market area and facilities, unless the failure is

72 caused by acts or occurrences beyond the control of the
73 manufacturer or distributor, or unless the failure results from
74 an order by the new motor vehicle dealer in excess of
75 quantities reasonably and fairly allocated by the
76 manufacturer or distributor. No manufacturer or distributor
77 may penalize a new motor vehicle dealer for an alleged
78 failure to meet sales quotas where the alleged failure is due
79 to actions of the manufacturer or distributor;

80 (b) Refuse to disclose to a new motor vehicle dealer the
81 method and manner of distribution of new motor vehicles by
82 the manufacturer or distributor, including any numerical
83 calculation or formula used, nationally or within the dealer's
84 market, to make the allocations;

85 (c) Refuse to disclose to a new motor vehicle dealer the
86 total number of new motor vehicles of a given model, which
87 the manufacturer or distributor has sold during the current
88 model year within the dealer's marketing district, zone or
89 region, whichever geographical area is the smallest;

90 (d) Increase prices of new motor vehicles which the new
91 motor vehicle dealer had ordered and then eventually
92 delivered to the same retail consumer for whom the vehicle
93 was ordered, if the order was made prior to the dealer's
94 receipt of the written official price increase notification. A
95 sales contract signed by a private retail consumer and
96 binding on the dealer is evidence of each order. In the event
97 of manufacturer or distributor price reductions or cash
98 rebates, the amount of any reduction or rebate received by
99 a dealer shall be passed on to the private retail consumer by
100 the dealer. Any price reduction in excess of five dollars shall
101 apply to all vehicles in the dealer's inventory which were
102 subject to the price reduction. A price difference applicable
103 to new model or series motor vehicles at the time of the
104 introduction of the new models or the series is not a price

105 increase or price decrease. This subdivision does not apply
106 to price changes caused by the following:

107 (i) The addition to a motor vehicle of required or
108 optional equipment pursuant to state or federal law;

109 (ii) In the case of foreign made vehicles or components,
110 revaluation of the United States dollar; or

111 (iii) Any increase in transportation charges due to an
112 increase in rates charged by a common carrier and
113 transporters;

114 (e) Offer any refunds or other types of inducements to
115 any dealer for the purchase of new motor vehicles of a
116 certain line-make to be sold to this state or any political
117 subdivision of this state without making the same offer
118 available upon request to all other new motor vehicle dealers
119 of the same line-make;

120 (f) Release to an outside party, except under subpoena
121 or in an administrative or judicial proceeding to which the
122 new motor vehicle dealer or the manufacturer or distributor
123 are parties, any business, financial or personal information
124 which has been provided by the dealer to the manufacturer
125 or distributor, unless the new motor vehicle dealer gives his
126 or her written consent;

127 (g) Deny a new motor vehicle dealer the right to
128 associate with another new motor vehicle dealer for any
129 lawful purpose;

130 (h) Establish a new motor vehicle dealership which
131 would unfairly compete with a new motor vehicle dealer of
132 the same line-make operating under a dealer agreement with
133 the manufacturer or distributor in the relevant market area.

134 A manufacturer or distributor shall not be considered to be
135 unfairly competing if the manufacturer or distributor is:

136 (i) Operating a dealership temporarily for a reasonable
137 period.

138 (ii) Operating a dealership which is for sale at a
139 reasonable price.

140 (iii) Operating a dealership with another person who has
141 made a significant investment in the dealership and who will
142 acquire full ownership of the dealership under reasonable
143 terms and conditions;

144 (i) A manufacturer may not, except as provided by this
145 section, directly or indirectly:

146 (i) Own an interest in a dealer or dealership;

147 (ii) Operate a dealership; or

148 (iii) Act in the capacity of a new motor vehicle dealer:
149 *Provided*, That a manufacturer may own an interest, other
150 than stock in a publicly held company, solely for investment
151 purposes;

152 (j) A manufacturer or distributor may own an interest in
153 a franchised dealer, or otherwise control a dealership, for a
154 period not to exceed twelve months from the date the
155 manufacturer or distributor acquires the dealership if:

156 (i) The person from whom the manufacturer or
157 distributor acquired the dealership was a franchised dealer;
158 and

159 (ii) The dealership is for sale by the manufacturer or
160 distributor at a reasonable price and on reasonable terms and
161 conditions;

162 (k) The twelve-month period may be extended for an
163 additional twelve months. Notice of any such extension of
164 the original twelve-month period must be given to any
165 dealer of the same line-make whose dealership is located in
166 the same county, or within twenty air miles of, the
167 dealership owned or controlled by the manufacturer or
168 distributor prior to the expiration of the original twelve-
169 month period. Any dealer receiving the notice may protest
170 the proposed extension within thirty days of receiving notice
171 by bringing a declaratory judgment action in the circuit
172 court for the county in which the new motor vehicle dealer
173 is located to determine whether good cause exists for the
174 extension;

175 (l) For the purpose of broadening the diversity of its
176 dealer body and enhancing opportunities for qualified
177 persons who are part of a group who have historically been
178 under represented in its dealer body, or other qualified
179 persons who lack the resources to purchase a dealership
180 outright, but for no other purpose, a manufacturer or
181 distributor may temporarily own an interest in a dealership
182 if the manufacturer's or distributor's participation in the
183 dealership is in a bona fide relationship with a franchised
184 dealer who:

185 (i) Has made a significant investment in the dealership,
186 subject to loss;

187 (ii) Has an ownership interest in the dealership; and

188 (iii) Operates the dealership under a plan to acquire full
189 ownership of the dealership within a reasonable time and
190 under reasonable terms and conditions;

191 (m) Unreasonably withhold consent to the sale, transfer
192 or exchange of the dealership to a qualified buyer capable of
193 being licensed as a new motor vehicle dealer in this state;

194 (n) Fail to respond in writing to a request for consent to
195 a sale, transfer or exchange of a dealership within sixty days
196 after receipt of a written application from the new motor
197 vehicle dealer on the forms generally utilized by the
198 manufacturer or distributor for such purpose and containing
199 the information required therein. Failure to respond to the
200 request within the sixty days is consent;

201 (o) Unfairly prevent a new motor vehicle dealer from
202 receiving reasonable compensation for the value of the new
203 motor vehicle dealership;

204 (p) Audit any motor vehicle dealer in this state for
205 warranty parts or warranty service compensation, service
206 compensation, service incentives, rebates or other forms of
207 sales incentive compensation more than twelve months after
208 the claim for payment or reimbursement has been made by
209 the automobile dealer: *Provided*, That the provisions of this
210 subsection do not apply where a claim is fraudulent. In
211 addition, the manufacturer or distributor is responsible for
212 reimbursing the audited dealer for all copying, postage and
213 administrative costs incurred by the dealer during the audit.
214 Any charges to a dealer as a result of the audit must be
215 separately billed to the dealer;

216 (q) Unreasonably restrict a dealer's ownership of a
217 dealership through noncompetition covenants, site control,
218 sublease, collateral pledge of lease, right of first refusal,

219 option to purchase, or otherwise. A right of first refusal is
220 created when:

221 (i) A manufacturer has a contractual right of first refusal
222 to acquire the new motor vehicle dealer's assets where the
223 dealer owner receives consideration, terms and conditions
224 that are either the same as or better than those they have
225 already contracted to receive under the proposed change of
226 more than fifty percent of the dealer's ownership.

227 (ii) The proposed change of the dealership's ownership
228 or the transfer of the new vehicle dealer's assets does not
229 involve the transfer of assets or the transfer or issuance of
230 stock by the dealer or one of the dealer's owners to one of
231 the following:

232 (A) A designated family member of one or more of the
233 dealer owners;

234 (B) A manager employed by the dealer in the dealership
235 during the previous five years and who is otherwise
236 qualified as a dealer operator;

237 (C) A partnership or corporation controlled by a
238 designated family member of one of the dealers;

239 (D) A trust established or to be established:

240 (i) For the purpose of allowing the new vehicle dealer to
241 continue to qualify as such under the manufacturer's or
242 distributor's standards; or

243 (ii) To provide for the succession of the franchise
244 agreement to designated family members or qualified
245 management in the event of death or incapacity of the dealer
246 or its principle owner or owners.

247 (iii) Upon exercising the right of first refusal by a
248 manufacturer, it eliminates any requirement under its dealer
249 agreement or other applicable provision of this statute that
250 the manufacturer evaluate, process or respond to the
251 underlying proposed transfer by approving or rejecting the
252 proposal, is not subject to challenge as a rejection or denial
253 of the proposed transfer by any party.

254 (iv) Except as otherwise provided in this subsection, the
255 manufacturer or distributor agrees to pay the reasonable
256 expenses, including reasonable out-of-pocket professional
257 fees which shall include, but not be limited to, accounting,
258 legal or appraisal services fees that are incurred by the
259 proposed owner or transferee before the manufacturer's or
260 distributor's exercise of its right of first refusal. Payment of
261 the expenses and fees for professional services are not
262 required if the dealer fails to submit an accounting of those
263 expenses and fees within twenty days of the dealer's receipt
264 of the manufacturer's or distributor's written request for
265 such an accounting. Such a written account of fees and
266 expenses may be requested by a manufacturer or distributor
267 before exercising its right of first refusal;

268 (r) Except for experimental low-volume not-for-retail
269 sale vehicles, cause warranty and recall repair work to be
270 performed by any entity other than a new motor vehicle
271 dealer;

272 (s) Make any material change in any franchise
273 agreement without giving the new motor vehicle dealer
274 written notice by certified mail of the change at least sixty
275 days prior to the effective date of the change;

276 (t) Fail to reimburse a new motor vehicle dealer, at the
277 dealer's regular rate, or the full and actual cost of providing
278 a loaner vehicle to any customer who is having a vehicle
279 serviced at the dealership if the provision of the loaner
280 vehicle is required by the manufacturer;

281 (u) Compel a new motor vehicle dealer through its
282 finance subsidiaries to agree to unreasonable operating
283 requirements or to directly or indirectly terminate a franchise
284 through the actions of a finance subsidiary of the franchisor.
285 This subsection does not limit the right of a finance
286 subsidiary to engage in business practices in accordance
287 with the usage of trade in retail or wholesale vehicle
288 financing;

289 (v) Discriminate directly or indirectly between dealers
290 on vehicles of like grade or quantity where the effect of the
291 discrimination would substantially lessen competition; and

292 (w) Use or employ any performance standard that is not
293 fair and reasonable and based upon accurate and verifiable
294 data made available to the dealer.

295 (3) A manufacturer or distributor, either directly or
296 through any subsidiary, may not terminate, cancel, fail to
297 renew or discontinue any lease of the new motor vehicle
298 dealer's established place of business except for a material
299 breach of the lease.

300 (4) Except as may otherwise be provided in this article,
301 no manufacturer or franchisor shall sell, directly or
302 indirectly, any new motor vehicle to a consumer in this state,
303 except through a new motor vehicle dealer holding a
304 franchise for the line-make covering such new motor
305 vehicle. This subsection shall not apply to manufacturer or
306 franchisor sales of new motor vehicles to charitable
307 organizations, qualified vendors or employees of the
308 manufacturer or franchisor.

309 (5) Except when prevented by an act of God, labor
310 strike, transportation disruption outside the control of the

312 manufacturer or time of war, a manufacturer or distributor
313 may not refuse or fail to deliver, in reasonable quantities and
314 within a reasonable time, to a dealer having a franchise
315 agreement for the retail sale of any motor vehicle sold or
316 distributed by the manufacturer, any new motor vehicle or
317 parts or accessories to new motor vehicles as are covered by
318 the franchise if the vehicles, parts and accessories are
319 publicly advertised as being available for delivery or are
320 actually being delivered. All models offered for sale by the
321 manufacturer, without any enrollment, surcharge,
322 unreasonable facility or building or any other unreasonable
323 type of upgrade requirement or acquisition fee, shall be
324 available to the franchised dealer at no additional cost for
325 that particular model of vehicle.

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

1 (1) As used in this section, “relocate” and “relocation”
2 do not include the relocation of a new motor vehicle dealer
3 within four miles of its established place of business or an
4 existing new motor vehicle dealer sells or transfers the
5 dealership to a new owner and the successor new motor
6 vehicle dealership owner relocates to a location within four
7 miles of the seller’s last open new motor vehicle dealership
8 location. The relocation of a new motor vehicle dealer to a
9 site within the area of sales responsibility assigned to that
10 dealer by the manufacturing branch or distributor may not
11 be within six air miles of another dealer of the same line-
12 make.

13 (2) Before a manufacturer or distributor enters into a
14 dealer agreement establishing or relocating a new motor
15 vehicle dealer within a relevant market area where the same
16 line-make is represented, the manufacturer or distributor

16 shall give written notice to each new motor vehicle dealer of
17 the same line-make in the relevant market area of its
18 intention to establish an additional dealer or to relocate an
19 existing dealer within that relevant market area.

20 (3) Within sixty days after receiving the notice provided
21 in subsection (2) of this section, or within sixty days after
22 the end of any appeal procedure provided by the
23 manufacturer or distributor, a new motor vehicle dealer of
24 the same line-make within the affected relevant market area
25 may bring a declaratory judgment action in the circuit court
26 for the county in which the new motor vehicle dealer is
27 located to determine whether good cause exists for the
28 establishing or relocating of the proposed new motor vehicle
29 dealer: *Provided*, That a new motor vehicle dealer of the
30 same line-make within the affected relevant market area
31 shall not be permitted to bring such an action if the proposed
32 relocation site would be further from the location of the new
33 motor vehicle dealer of the same line-make than the location
34 from which the dealership is being moved. Once an action
35 has been filed, the manufacturer or distributor may not
36 establish or relocate the proposed new motor vehicle dealer
37 until the circuit court has rendered a decision on the matter.
38 An action brought pursuant to this section shall be given
39 precedence over all other civil matters on the court's docket.
40 The manufacturer has the burden of proving that good cause
41 exists for establishing or relocating a proposed new motor
42 vehicle dealer.

43 (4) This section does not apply to the reopening in a
44 relevant market area of a new motor vehicle dealer that has
45 been closed or sold within the preceding two years if the
46 established place of business of the new motor vehicle
47 dealer is within four miles of the established place of
48 business of the closed or sold new motor vehicle dealer.

49 (5) In determining whether good cause exists for
50 establishing or relocating an additional new motor vehicle
51 dealer for the same line-make, the court shall take into
52 consideration the existing circumstances, including, but not
53 limited to, the following:

54 (a) Permanency and amount of the investment, including
55 any obligations incurred by the dealer in making the
56 investment;

57 (b) Effect on the retail new motor vehicle business and
58 the consuming public in the relevant market area;

59 (c) Whether it is injurious or beneficial to the public
60 welfare;

61 (d) Whether the new motor vehicle dealers of the same
62 line-make in the relevant market area are providing adequate
63 competition and convenient consumer care for the motor
64 vehicles of that line-make in the market area, including the
65 adequacy of motor vehicle sales and qualified service
66 personnel;

67 (e) Whether the establishment or relocation of the new
68 motor vehicle dealer would promote competition;

69 (f) Growth or decline of the population and the number
70 of new motor vehicle registrations in the relevant market
71 area; and

72 (g) The effect on the relocating dealer of a denial of its
73 relocation into the relevant market area.

CHAPTER 178

(Com. Sub. for H.B. 2808 - By Delegate Manchin)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §17A-7-2 of the Code of West Virginia, 1931, as amended, relating to one-trip permits issued by the State Police, increasing the fee for issuance and providing for distribution of the fees collected.

Be it enacted by the Legislature of West Virginia:

That §17A-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. SPECIAL STICKERS.

§17A-7-2. Operation of motor vehicles by dealers or other persons under special stickers; application and fees; expiration.

1 (a) A member of the West Virginia State Police may at
2 any detachment office, upon application therefor on a form
3 prescribed by the commissioner, issue to a licensed dealer or
4 any other person other than those specified in section one of
5 this article, a paper sticker or decal to be affixed to the left
6 side of the rear window of a motor vehicle or to the left rear
7 of a vehicle which is not self-propelled. Such sticker or decal
8 shall be of a size to be designated by the commissioner and

9 shall be serially numbered and shall have provision thereon
10 to indicate the date of issuance thereof.

11 (b) A fee of five dollars per sticker shall be collected and
12 dispersed as follows; two dollars and fifty cents shall be
13 deposited in the State Road Fund and two dollars and fifty
14 cents shall be deposited in the special revenue account within
15 the Division of Highways for the maintenance of the West
16 Virginia Welcome Centers and rest areas along interstate
17 highways in this state.

18 (c) Such sticker or decal shall be valid for forty-eight
19 hours after its issuance for the operation of a vehicle, whether
20 under its own power or while being towed, one time only
21 over the streets or highways, and upon being once affixed to
22 a vehicle shall become invalid for subsequent use on that or
23 any other vehicle.

CHAPTER 179

(H.B. 2481 - By Delegates Williams, Boggs and Tabb)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §17A-10-3 of the Code of West Virginia, 1931, as amended, relating to registration fees for vehicles and allowing a registrant to transfer the registration of a Class C vehicle to another Class C type vehicle titled in the name of the registrant.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING,
ETC.**

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

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

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

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

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

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

21 (A) For declared gross weights of eight thousand one
22 pounds to sixteen thousand pounds -- twenty-eight dollars
23 plus five dollars for each one thousand pounds or fraction of
24 one thousand pounds that the gross weight of the vehicle or
25 combination of vehicles exceeds eight thousand pounds.

26
27 (B) For declared gross weights greater than sixteen
28 thousand pounds, but less than fifty-five thousand pounds --
29 seventy-eight dollars and fifty cents plus ten dollars for each

30 one thousand pounds or fraction of one thousand pounds that
31 the gross weight of the vehicle or combination of vehicles
32 exceeds sixteen thousand pounds.

33 (C) For declared gross weights of fifty-five thousand
34 pounds or more -- seven hundred thirty-seven dollars and
35 fifty cents plus fifteen dollars and seventy-five cents for each
36 one thousand pounds or fraction of one thousand pounds that
37 the gross weight of the vehicle or combination of vehicles
38 exceeds fifty-five thousand pounds.

39 (3) *Class G.* -- The registration fee for each motorcycle
40 or parking enforcement vehicle is eight dollars.

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

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

54 (6) *Class M.* -- The registration fee for all vehicles of this
55 class is seventeen dollars and fifty cents.

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

58 (A) For farm trucks of declared gross weights of eight
59 thousand one pounds to sixteen thousand pounds -- thirty
60 dollars.

61 (B) For farm trucks of declared gross weights of sixteen
62 thousand one pounds to twenty-two thousand pounds -- sixty
63 dollars.

64 (C) For farm trucks of declared gross weights of
65 twenty-two thousand one pounds to twenty-eight thousand
66 pounds -- ninety dollars.

67 (D) For farm trucks of declared gross weights of
68 twenty-eight thousand one pounds to thirty-four thousand
69 pounds -- one hundred fifteen dollars.

70 (E) For farm trucks of declared gross weights of
71 thirty-four thousand one pounds to forty-four thousand
72 pounds -- one hundred sixty dollars.

73 (F) For farm trucks of declared gross weights of
74 forty-four thousand one pounds to fifty-four thousand pounds
75 -- two hundred five dollars.

76 (G) For farm trucks of declared gross weights of
77 fifty-four thousand one pounds to eighty thousand pounds --
78 two hundred fifty dollars: *Provided*, That the provisions of
79 subsection (a), section eight, article one, chapter seventeen-e
80 do not apply if the vehicle exceeds sixty-four thousand
81 pounds and is a truck tractor or road tractor.

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

86 (1) *Class R.* -- The annual registration fee for all vehicles
87 of this class is twelve dollars.

88 (2) *Class T.* -- The annual registration fee for all vehicles
89 of this class is eight dollars.

90 (c) The fees paid to the division for a multi-year
91 registration provided by this chapter shall be the same as the
92 annual registration fee established by this section and any
93 other fee required by this chapter multiplied by the number of
94 years for which the registration is issued.

95 (d) The registration fee for all Class C vehicles is fifty
96 dollars. On or before the first day of July, two thousand, all
97 Class C trailers shall be registered for the duration of the
98 owner's interest in the trailer and do not expire until either
99 sold or otherwise permanently removed from the service of
100 the owner: *Provided*, That a registrant may transfer a Class C
101 registration plate from a trailer owned less than thirty days to
102 another Class C trailer titled in the name of the registrant
103 upon payment of the transfer fee prescribed in section ten of
104 this article.

CHAPTER 180

**(S.B. 412 - By Senators Kessler, Oliverio, Foster, Green,
Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes,
Caruth, Hall and McKenzie)**

[Passed February 27, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to providing penalties for violation of prohibited use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two intermediate driver's license.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's licenses.

1 (a) Any person under the age of eighteen may not operate
2 a motor vehicle unless he or she has obtained a graduated

3 driver's license in accordance with the three-level graduated
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless
6 of class or level of licensure, who operates a motor vehicle
7 with any measurable alcohol in his or her system is subject to
8 the provisions of section two, article five, chapter seventeen-c
9 of this code and section two, article five-a of said chapter.
10 Any person under the age of eighteen, regardless of class or
11 licensure level, is subject to the mandatory school attendance
12 provisions of section eleven, article eight, chapter eighteen of
13 this code.

14 (c) *Level one instruction permit.* -- An applicant who is
15 fifteen years or older meeting all other requirements
16 prescribed in this code may be issued a level one instruction
17 permit.

18 (1) *Eligibility.* -- The division shall not issue a level one
19 instruction permit unless the applicant:

20 (A) Presents a completed application, as prescribed by the
21 provisions of section six of this article, and which is
22 accompanied by a writing, duly acknowledged, consenting to
23 the issuance of the graduated driver's license and executed by
24 a parent or guardian entitled to custody of the applicant;

25 (B) Presents a certified birth certificate issued by a state
26 or other governmental entity responsible for vital records,
27 evidencing that the applicant meets the minimum age
28 requirement;

29 (C) Passes the vision and written knowledge examination
30 and completes the driving under the influence awareness
31 program, as prescribed in section seven of this article;

32 (D) Presents a current school enrollment form or
33 otherwise shows compliance with the provisions of section
34 eleven, article eight, chapter eighteen of this code; and

35 (E) Pays a fee of five dollars.

36 (2) *Terms and conditions of instruction permit.* -- A level
37 one instruction permit issued under the provisions of this
38 section is valid until thirty days after the date the applicant
39 attains the age of eighteen and is not renewable. However,
40 any permit holder who allows his or her permit to expire prior
41 to successfully passing the road skills portion of the driver
42 examination, and who has not committed any offense which
43 requires the suspension, revocation or cancellation of the
44 instruction permit, may reapply for a new instruction permit
45 under the provisions of section six of this article. The
46 division shall immediately revoke the permit upon receipt of
47 a second conviction for a moving violation of traffic
48 regulations and laws of the road or violation of the terms and
49 conditions of a level one instruction permit, which
50 convictions have become final unless a greater penalty is
51 required by this section or any other provision of this code.
52 Any person whose instruction permit has been revoked is
53 disqualified from retesting for a period of ninety days.
54 However, after the expiration of ninety days, the person may
55 retest if otherwise eligible. In addition to all other provisions
56 of this code for which a driver's license may be restricted,
57 suspended, revoked or canceled, the holder of a level one
58 instruction permit may only operate a motor vehicle under the
59 following conditions:

60 (A) Under the direct supervision of a licensed driver,
61 twenty-one years of age or older, or a driver's education or
62 driving school instructor who is acting in an official capacity
63 as an instructor, who is fully alert and unimpaired, and the
64 only other occupant of the front seat. The vehicle may be
65 operated with no more than two additional passengers, unless
66 the passengers are family members;

67 (B) Between the hours of five a.m. and eleven p.m.;

68 (C) All occupants must use safety belts in accordance
69 with the provisions of section forty-nine, article fifteen,
70 chapter seventeen-c of this code;

71 (D) Without any measurable blood alcohol content, in
72 accordance with the provisions of subsection (h), section two,
73 article five, chapter seventeen-c of this code; and

74 (E) Maintains current school enrollment or otherwise
75 shows compliance with the provisions of section eleven,
76 article eight, chapter eighteen of this code.

77 (F) A holder of a level one instruction permit who is
78 under the age of eighteen years may not use a wireless
79 communication device while operating a motor vehicle,
80 unless the use of the wireless communication device is for
81 contacting a 9-1-1 system. A law-enforcement officer may
82 enforce the provisions of this paragraph only as a secondary
83 action when a law-enforcement officer with probable cause
84 detains a driver for a suspected violation of another provision
85 of this code. A person violating the provisions of this
86 paragraph is guilty of a misdemeanor and, upon conviction
87 thereof, shall for the first offense be fined twenty-five dollars;
88 for a second offense be fined fifty dollars; and for a third or
89 subsequent offense be fined seventy-five dollars.

90 (d) *Level two intermediate driver's license.* -- An
91 applicant sixteen years of age or older, meeting all other
92 requirements of the code, may be issued a level two
93 intermediate driver's license.

94 (1) *Eligibility.* -- The division shall not issue a level two
95 intermediate driver's license unless the applicant:

96 (A) Presents a completed application as prescribed in
97 section six of this article;

98 (B) Has held the level one instruction permit
99 conviction-free for the one hundred eighty days immediately

100 preceding the date of application for a level two intermediate
101 license;

102 (C) Has completed either a driver's education course
103 approved by the State Department of Education or thirty
104 hours of behind-the-wheel driving experience certified by a
105 parent or legal guardian or other responsible adult over the
106 age of twenty-one as indicated on the form prescribed by the
107 division: *Provided*, That nothing in this paragraph shall be
108 construed to require any school or any county board of
109 education to provide any particular number of driver's
110 education courses or to provide driver's education training to
111 any student;

112 (D) Presents a current school enrollment form or
113 otherwise shows compliance with the provisions of section
114 eleven, article eight, chapter eighteen of this code;

115 (E) Passes the road skills examination as prescribed by
116 section seven of this article; and

117 (F) Pays a fee of five dollars.

118 (2) *Terms and conditions of a level two intermediate*
119 *driver's license.* -- A level two intermediate driver's license
120 issued under the provisions of this section shall expire thirty
121 days after the applicant attains the age of eighteen, or until
122 the licensee qualifies for a level three full Class E license,
123 whichever comes first. In addition to all other provisions of
124 this code for which a driver's license may be restricted,
125 suspended, revoked or canceled, the holder of a level two
126 intermediate driver's license may only operate a motor
127 vehicle under the following conditions:

128 (A) Unsupervised between the hours of five a.m. and
129 eleven p.m.;

130 (B) Only under the direct supervision of a licensed driver,
131 age twenty-one years or older, between the hours of eleven p.
132 m. and five a. m. except when the licensee is going to or
133 returning from:

134 (i) Lawful employment;

135 (ii) A school-sanctioned activity;

136 (iii) A religious event; or

137 (iv) An emergency situation that requires the licensee to
138 operate a motor vehicle to prevent bodily injury or death of
139 another;

140 (C) All occupants shall use safety belts in accordance
141 with the provisions of section forty-nine, article fifteen,
142 chapter seventeen-c of this code;

143 (D) Operates the vehicle with no more than three
144 passengers under the age of nineteen, unless the passengers
145 are family members, in addition to the driver;

146 (E) Without any measurable blood alcohol content in
147 accordance with the provisions of subsection (h), section two,
148 article five, chapter seventeen-c of this code;

149 (F) Maintains current school enrollment or otherwise
150 shows compliance with the provisions of section eleven,
151 article eight, chapter eighteen of this code;

152 (G) A holder of a level two intermediate driver's license
153 who is under the age of eighteen years may not use a wireless
154 communication device while operating a motor vehicle,
155 unless the use of the wireless communication device is for
156 contacting a 9-1-1 system. A law-enforcement officer may
157 enforce the provisions of this paragraph only as a secondary
158 action when a law-enforcement officer with probable cause
159 detains a driver for a suspected violation of another provision

160 of this code. A person violating the provisions of this
161 paragraph is guilty of a misdemeanor and, upon conviction
162 thereof, shall for the first offense be fined twenty-five dollars;
163 for a second offense be fined fifty dollars; and for a third or
164 subsequent offense be fined seventy-five dollars.

165 (H) Upon the first conviction for a moving traffic
166 violation or a violation of paragraph (A), (B), (C), (D) or (G),
167 subdivision (1), subsection (d) of this section of the terms and
168 conditions of a level two intermediate driver's license, the
169 licensee shall enroll in an approved driver improvement
170 program unless a greater penalty is required by this section or
171 by any other provision of this code.

172 At the discretion of the commissioner, completion of an
173 approved driver improvement program may be used to negate
174 the effect of a minor traffic violation as defined by the
175 commissioner against the one year conviction-free driving
176 criteria for early eligibility for a level three driver's license;
177 and

178 (I) Upon the second conviction for a moving traffic
179 violation or a violation of the terms and conditions of the
180 level two intermediate driver's license, the licensee's
181 privilege to operate a motor vehicle shall be revoked or
182 suspended for the applicable statutory period or until the
183 licensee's eighteenth birthday, whichever is longer unless a
184 greater penalty is required by this section or any other
185 provision of this code. Any person whose driver's license
186 has been revoked as a level two intermediate driver, upon
187 reaching the age of eighteen years and if otherwise eligible
188 may reapply for an instruction permit, then a driver's license
189 in accordance with the provisions of sections five, six and
190 seven of this article.

191 (e) *Level three, full Class E license.* -- The level three
192 license is valid until the day designated by the commissioner
193 of the month in which the licensee attains the age of twenty-
194 one. Unless otherwise provided in this section or any other

195 section of this code, the holder of a level three full Class E
196 license is subject to the same terms and conditions as the
197 holder of a regular Class E driver's license.

198 A level two intermediate licensee whose privilege to
199 operate a motor vehicle has not been suspended, revoked or
200 otherwise canceled and who meets all other requirements of
201 the code may be issued a level three full Class E license
202 without further examination or road skills testing if the
203 licensee:

204 (1) Has reached the age of seventeen years; and

205 (A) Presents a completed application as prescribed by the
206 provisions of section six of this article;

207 (B) Has held the level two intermediate license conviction
208 free for the twelve-month period immediately preceding the
209 date of the application;

210 (C) Has completed any driver improvement program
211 required under paragraph (G), subdivision (2), subsection (d)
212 of this section; and

213 (D) Pays a fee of two dollars and fifty cents for each year
214 the license is valid. An additional fee of fifty cents shall be
215 collected to be deposited in the Combined Voter Registration
216 and Driver's Licensing Fund established in section twelve,
217 article two, chapter three of this code; or

218 (2) Reaches the age of eighteen years; and

219 (A) Presents a completed application as prescribed by the
220 provisions of section six of this article; and

Ch. 181]

MOTOR VEHICLES

221 (B) Pays a fee of two dollars and fifty cents for each year
222 the license is valid. An additional fee of fifty cents shall be
223 collected to be deposited in the Combined Voter Registration
224 and Driver's Licensing Fund established in section twelve,
225 article two, chapter three of this code.

CHAPTER 181

(Com. Sub. for H.B. 2051 - By Delegates Webster,
Proudfoot and Ellem)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §17C-6-7 and §17C-6-7a of the
Code of West Virginia, 1931, as amended, all relating to
including lasers as a method of proving the speed of vehicles.

Be it enacted by the Legislature of West Virginia:

That §17C-6-7 and §17C-6-7a of the Code of West Virginia,
1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected
light; placing of signs relative to radar or laser.

§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or
prove traffic law violations.

**§17C-6-7. Prima facie evidence of speed by devices employing
microwaves or reflected light; placing of
signs relative to radar or laser.**

1 The speed of a motor vehicle may be proved by evidence
2 obtained by use of any device designed to measure and
3 indicate or record the speed of a moving object by means of
4 microwaves or reflected light, when such evidence is
5 obtained by members of the department of public safety, by

6 police officers of incorporated municipalities in classes one,
7 two and three, as defined in chapter eight-a of this code, and
8 by the sheriff and his deputies of the several counties of the
9 state. The evidence so obtained shall be accepted as prima
10 facie evidence of the speed of such vehicle.

11 In order to inform and educate the public generally that
12 speed of motor vehicles operating within the state is being
13 tested by radar or laser mechanisms, the division of highways
14 shall locate and place suitable and informative stationary and
15 movable signs at strategic points on and along highways in
16 each county of the state giving notice to the public that such
17 radar or laser mechanisms are in use.

**§17C-6-7a. Prohibition of the use of traffic law
photo-monitoring devices to detect or prove
traffic law violations.**

1 (a) As used in this section "traffic law photo-monitoring
2 device" means an electronic system consisting of a
3 photographic, video, or electronic camera and a means of
4 sensing the presence of a motor vehicle that automatically
5 produces photographs, videotape, or digital images of the
6 vehicle, its operator, or its license plate.

7 (b) No police officer may utilize a traffic law
8 photo-monitoring device to determine compliance with, or to
9 detect a violation of, a municipal or county ordinance or any
10 provision of this code that governs or regulates the operation
11 of motor vehicles.

12 (c) A violation of a municipal or county ordinance or any
13 provision of this code that governs or regulates the operation
14 of motor vehicles may not be proved by evidence obtained by
15 the use of a traffic law photo-monitoring device.

16 (d) The provisions of this section do not prohibit the use
17 of any device designed to measure and indicate the speed of
18 a moving object by means of microwaves or reflected light to
19 obtain evidence to prove the speed of a motor vehicle
20 pursuant to section seven of this article.

21 (e) The provisions of this section do not prohibit use of a
22 traffic law photo-monitoring device for any other lawful
23 purposes other than to obtain evidence to prove violations of
24 municipal or county ordinances or any provision of this code
25 governing or regulating the operation of motor vehicles.

CHAPTER 182

(H.B. 2781 - By Delegate Hrutkay)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §17C-17-4 of the Code of West Virginia, 1931, as amended, relating to modifying the statutory limitation on the length of school buses.

Be it enacted by the Legislature of West Virginia:

That §17C-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle, including any load thereon, may not exceed
2 a height of thirteen feet six inches, but the owner or owners
3 of such vehicles shall be responsible for damage to any
4 bridge or highway structure and to municipalities for any
5 damage to traffic control devices or other highway structures
6 where such bridges, devices or structures have a vehicle
7 clearance of less than thirteen feet six inches.

8 (b) A motor vehicle, including any load thereon, may not
9 exceed a length of forty feet extreme overall dimension,
10 inclusive of front and rear bumper: *Provided*, That a motor
11 home and school bus may not exceed a length of forty-five
12 feet, exclusive of front and rear bumpers.

13 (c) Except as hereinafter provided in this subsection or in
14 subsection (d) of this section, a combination of vehicles
15 coupled together may not consist of more than two units and
16 no combination of vehicles including any load thereon shall
17 have an overall length, inclusive of front and rear bumpers,
18 in excess of fifty-five feet except as provided in section
19 eleven-b of this article and except as otherwise provided in
20 respect to the use of a pole trailer as authorized in section five
21 of this article. The limitation that a combination of vehicles
22 coupled together may not consist of more than two units may
23 not apply to: (1) A combination of vehicles coupled together
24 by a saddle-mount device used to transport motor vehicles in
25 a drive-away service when no more than three saddle mounts
26 are used, if equipment used in the combination meets the
27 requirements of the safety regulations of the United States
28 Department of Transportation and may not exceed an overall
29 length of more than seventy-five feet; or (2) a combination of
30 vehicles coupled together, one of which is a travel trailer or
31 folding camping trailer having an overall length, exclusive of
32 front and rear bumpers, not exceeding sixty-five feet.

33 (d) A combination of two vehicles coupled together, one
34 of which is a motor home, or a combination of vehicles
35 coupled together, one of which is a travel trailer or folding
36 camping trailer, may not exceed an overall length, exclusive
37 of front and rear bumpers of sixty-five feet.

38 (e) Notwithstanding the provisions of subsections (a), (b),
39 (c) and (d) of this section, the commissioner may designate,
40 upon his or her own motion or upon the petition of an
41 interested party, a combination vehicle length not to exceed
42 seventy feet.

43 (f) The length limitations for truck tractor-semitrailer
44 combinations and truck tractor-semitrailer-trailer
45 combinations operating on the national system of interstate
46 and defense highways and those classes of qualifying federal-
47 aid primary system highways so designated by the United
48 States secretary of transportation and those highways
49 providing reasonable access to and from terminals, facilities
50 for food, fuel, repairs and rest and points of loading and
51 unloading for household goods carriers from such highways
52 and further, as to other highways so designated by the West

53 Virginia commissioner of highways, shall be as follows: The
54 maximum length of a semitrailer unit operating in a truck
55 tractor-semitrailer combination shall not exceed forty-eight
56 feet in length except where semitrailers have an axle spacing
57 of not more than thirty-seven feet between the rear axle of the
58 truck tractor and the front axle of the semitrailer, such
59 semitrailer shall be allowed to be not more than fifty-three
60 feet in length and the maximum length of any semitrailer or
61 trailer operating in a truck tractor-semitrailer-trailer
62 combination may not exceed twenty-eight feet in length and
63 in no event shall any combinations exceed three units,
64 including the truck tractor: *Provided*, That nothing herein
65 contained shall impose an overall length limitation as to
66 commercial motor vehicles operating in truck
67 tractor-semitrailer or truck tractor-semitrailer-trailer
68 combinations.

69 (g) The commissioner shall publish annually an official
70 map designating the highways of the state and the various
71 maximum vehicle lengths relating thereto.

CHAPTER 183

**(S.B. 747 - By Senators Bowman, Barnes, Foster, Jenkins,
McCabe, Plymale, Stollings, Sypolt, White and Yoder)**

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-1-5a; and to amend and reenact §8-1-7 of said code, all relating to creating the Municipal Home Rule Pilot Program; legislative findings and intent; eligibility requirements; creating the Municipal Home Rule Board; powers of the board and participating municipalities and metro governments; requiring the municipality to hold a public hearing and adopt a municipal ordinance prior to submission of a written plan; requiring performance review; reporting requirements; terminating pilot

program; certain grandfather provisions; and reaffirming home rule powers for all municipalities.

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 §8-1-5a; and to amend and reenact §8-1-7 of said code, all to read as follows:

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS;
GENERAL PROVISIONS;
CONSTRUCTION.**

§8-1-5a. Pilot program to increase powers of municipal self government.

§8-1-7. Construction of powers and authority granted.

§8-1-5a. Pilot program to increase powers of municipal self government.

1 (a) The Legislature finds and declares that:

2 (1) The future economic progress for the State of West
3 Virginia is directly related to the success of its municipalities
4 in that stronger municipalities will make for a stronger West
5 Virginia;

6 (2) Municipalities face numerous challenges managing
7 their budgets and delivering services required by federal or
8 state law or demanded by their constituents;

9 (3) Municipalities are sometimes restricted by state
10 statutes, policies, rules and responsibilities that prevent them
11 from carrying out their duties and responsibilities in a cost-
12 effective, efficient and timely manner; and

13 (4) Authorizing pilot municipalities and metro
14 governments in West Virginia to exercise broad-based home
15 rule will allow the Legislature the opportunity to evaluate the

16 viability of allowing municipalities to have broad-based state
17 home rule to improve urban and state development.

18 (b) It is the intent of the Legislature in enacting this
19 section to establish a framework for municipalities within
20 which new ideas can be explored to see if they can or should
21 be implemented on a statewide basis.

22 (c) Effective the first day of July, two thousand seven,
23 there is hereby created a pilot program to be known as the
24 Municipal Home Rule Pilot Program authorizing five selected
25 Class I, Class II and/or Class III municipalities and/or metro
26 governments the authority to enact any ordinances, acts,
27 resolutions, rules and regulations not contrary to the
28 constitutions of the United States or West Virginia, federal
29 law or chapters sixty-a, sixty-one and sixty-two of this code.

30 (d) To be eligible to participate in the Municipal Home
31 Rule Pilot Program the applicant shall:

32 (1) Be a Class I, Class II and/or Class III municipality
33 and/or a metro government: *Provided*, That a municipality
34 considering consolidation or establishing a metro government
35 shall have no more than two years from the date it is selected
36 for the pilot program to complete its consolidation or metro
37 government process or its participation in the pilot program
38 will terminate at the end of the two-year period; and

39 (2) Have a written plan stating in detail the following:

40 (A) The specific laws, policies, rules or regulations which
41 prevent the municipality from carrying out its duties in the
42 most cost-efficient, effective and timely manner;

43 (B) The problems created by the laws, policies, rules or
44 regulations; and

45 (C) The proposed solutions to the problems, including all
46 proposed changes to ordinances, acts, resolutions, rules and
47 regulations.

48 (e) Effective the first day of July, two thousand seven,
49 there is hereby created a Municipal Home Rule Board
50 consisting of the following seven members:

51 (1) The Governor, or a designee, who shall serve as chair;

52 (2) The Executive Director of the West Virginia
53 Development Office or a designee;

54 (3) The chair of the Senate Committee on Government
55 Organization or a designee;

56 (4) The chair of the House of Delegates Committee on
57 Government Organization or a designee;

58 (5) One member shall be a representative of the business
59 and Industry Council;

60 (6) One member shall be a representative of the largest
61 labor organization in the state; and

62 (7) One member shall be a representative of the West
63 Virginia Chapter of American Institute of Certified Planners.

64 (f) The board has the powers necessary to implement the
65 provisions of this section, including the following:

66 (1) Reviewing, evaluating and making recommendations
67 to the proposed plans submitted by eligible municipalities
68 and/or metro governments;

69 (2) Consulting with state agencies affected by the
70 proposed plans;

71 (3) Selecting municipalities and/or metro governments to
72 participate in the pilot program;

73 (4) Approving the plans of recommended pilot program
74 participants, as submitted or as modified; and

75 (5) Authorizing amendments to approved plans.

76 (g) On or before the first day of January, two thousand
77 eight, an eligible municipality and/or metro government
78 wanting to participate in the pilot program shall submit a
79 written plan as described in subdivision (2), subsection (d) of
80 this section to the board.

81 (h) Prior to submitting a written plan, the municipality
82 shall:

83 (1) Conduct a public hearing on the proposed written
84 plan;

85 (2) Provide at least thirty days' notice of the public
86 hearing by a Class II legal advertisement;

87 (3) Make a copy of the proposed written plan available
88 for public inspection at least thirty days prior to the public
89 hearing; and

90 (4) After the public hearing, adopt a municipal ordinance
91 authorizing the municipality to submit a proposed written
92 plan to the Municipal Home Rule Board after the proposed
93 municipal ordinance has been read two times.

94 (i) On or before the first day of June, two thousand eight,
95 the board shall select by a majority vote of the board at least
96 one, but not more than five municipalities and/or metro
97 governments to participate in the pilot program.

98 (j) The pilot municipalities and/or metro governments
99 selected to participate in the pilot program shall have the
100 following powers:

101 (1) The authority to pass any ordinances, acts,
102 resolutions, rules and regulations not contrary to the
103 constitutions of the United States or West Virginia, federal
104 law or chapters sixty-a, sixty-one and sixty-two of this code
105 as specified in their written and approved plans: *Provided,*
106 That the pilot municipalities may not adopt any ordinance,
107 rule, regulation or resolution or take any action that would
108 create a defined contribution employee pension or retirement
109 plan for its employees currently covered by a defined benefit
110 pensions plan; and

111 (2) Any other powers necessary to implement the
112 provisions of its approved plan.

113 (k) Before the first day of July, two thousand twelve, the
114 Joint Committee on Government and Finance shall conduct
115 a performance review on the pilot program and the
116 participating municipalities and/or metro governments. The
117 review shall include the following:

118 (1) An evaluation of the effectiveness of expanded home
119 rule on the participating municipalities and/or metro
120 governments;

121 (2) A recommendation as to whether the expanded home
122 rule should be continued, reduced, expanded or terminated;

123 (3) A recommendation as to whether any legislation is
124 necessary; and

125 (4) Any other issues considered relevant.

126 (l) On or before the first day of January, two thousand
127 thirteen, the Joint Committee on Government and Finance
128 shall report to the Joint Committee on Government
129 Organization the findings of the performance review.

130 (m) The pilot program terminates on the first day of July,
131 two thousand thirteen.

132 (n) No ordinances, acts, resolutions, rules or regulations
133 may be enacted by a municipality or metro government after
134 the first day of July, two thousand thirteen, pursuant to the
135 provisions of this section, unless otherwise authorized by the
136 Legislature.

§8-1-7. Construction of powers and authority granted.

1 (a) The enumeration of powers and authority granted in
2 this chapter shall not operate to exclude the exercise of other
3 powers and authority fairly incidental thereto or reasonably
4 implied and within the purposes of this chapter or in
5 accordance with the provisions of the Municipal Home Rule
6 Amendment to the constitution of this state, the powers and
7 authority granted by such constitution, other provisions of
8 this code and any existing charter. The provisions of this
9 chapter shall be given full effect without regard to the
10 common-law rule of strict construction and particularly when
11 the powers and authority are exercised by charter provisions
12 framed and adopted or adopted by revision of a charter as a
13 whole or adopted by charter amendment under the provisions
14 of this chapter.

15 (b) Any charter provision framed and adopted or adopted
16 by revision of a charter as a whole or adopted by charter
17 amendment under provisions of former chapter eight-a of this
18 code or under the provisions of this chapter which is beyond
19 the power and authority of a municipality and any ordinance
20 provision which is beyond the power and authority of a
21 municipality shall be of no force and effect.

CHAPTER 184**(Com. Sub. for H.B. 2120 - By Delegates Boggs and Mahan)**

[Passed February 19, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2007.]

AN ACT to amend and reenact §8-10-2 of the Code of West Virginia, 1931, as amended, relating to prescribing minimum standards for municipal judges; requiring criminal background checks of persons applying for municipal judgeships; excluding persons convicted of certain offenses from serving as municipal judge; and requiring municipal judges receive continuing legal training.

Be it enacted by the Legislature of West Virginia:

That §8-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**§8-10-2. Municipal court for municipalities.**

1 (a) Notwithstanding any charter provision to the contrary,
2 any city may provide by charter provision and any
3 municipality may provide by ordinance for the creation and
4 maintenance of a municipal court, for the appointment or
5 election of an officer to be known as municipal court judge
6 and for his or her compensation, and authorize the exercise
7 by the court or judge of the jurisdiction and the judicial

8 powers, authority and duties set forth in section one of this
9 article and similar or related judicial powers, authority and
10 duties enumerated in any applicable charter provisions, as set
11 forth in the charter or ordinance. Additionally, any city may
12 provide by charter provision and any municipality may
13 provide by ordinance, that in the absence of or in the case of
14 the inability of the municipal court judge to perform his or
15 her duties, the municipal court clerk or other official
16 designated by charter or ordinance may act as municipal
17 court judge: *Provided*, That the municipal court clerk or
18 other official designated by charter or ordinance to act as
19 municipal court judge shall comply with the requirements set
20 forth in subsections (b) and (c) of this section, as well as any
21 other requirements that the city by charter provision or the
22 municipality by ordinance may require.

23 (b) Any person who makes application for appointment
24 to, or who files to become a candidate in any election for
25 municipal judge, shall first submit to a criminal background
26 check, to be conducted by the State Police. The cost of the
27 criminal background check shall be paid by the applicant or
28 candidate. The result of each background check conducted
29 in accordance with this section shall be forwarded to the
30 municipal court clerk or recorder whose duty it is to review
31 the results and confirm the eligibility of the applicant or
32 candidate to serve as a municipal judge. No person convicted
33 of a felony or any misdemeanor crime set forth in articles
34 eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one,
35 of this code is eligible to become a municipal judge.

36 (c) Any person who assumes the duties of municipal
37 court judge who has not been admitted to practice law in this
38 state shall attend and complete the next available course of
39 instruction in rudimentary principles of law and procedure.
40 The course shall be conducted by the municipal league or a

41 like association whose members include more than one half
42 of the chartered cities and municipalities of this state. The
43 instruction must be performed by or with the services of an
44 attorney licensed to practice law in this state for at least three
45 years. Any municipal court judge shall, additionally, be
46 required to attend a course, on an annual basis for the purpose
47 of continuing education: *Provided*, That the forgoing
48 additional education requirement does not apply to municipal
49 judges who are attorneys admitted to practice in this state.
50 The cost of any course referred to in this section shall be paid
51 by the municipality that employs the municipal judge.

52 (d) Only a defendant who has been charged with an
53 offense for which a period of confinement in jail may be
54 imposed is entitled to a trial by jury. If a municipal court
55 judge determines, upon demand of a defendant, to conduct a
56 trial by jury in a criminal matter, it shall follow the
57 procedures set forth in the rules of criminal procedure for
58 magistrate courts promulgated by the Supreme Court of
59 Appeals, except that the jury in municipal court shall consist
60 of twelve members.

CHAPTER 185

(H.B. 2204 - By Delegates Perry, Stemple and Cann)

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §8-14-24 of the Code of West Virginia, 1931, as amended, relating to providing that a retiring municipal police officer may keep his or her service revolver at no charge; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

That §8-14-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-24. Right to receive complete standard uniform; right to acquire badge; and right to keep service revolver.

1 (a) A police officer, upon honorable retirement, is
2 authorized to maintain at his or her own cost a complete
3 standard uniform from the law-enforcement agency of which he
4 or she was a member, and shall be issued an identification card
5 indicating his or her honorable retirement from the law-
6 enforcement agency. The uniform may be worn by the officer
7 in retirement only on the following occasions: Police Officer's
8 Memorial Day, Law-Enforcement Appreciation Day, at the
9 funeral of a law-enforcement officer or during any other police
10 ceremony. The honorably retired officer is authorized to
11 acquire a badge of the law-enforcement agency from which he
12 or she is retired with the word "retired" placed on it.

13 (b) Upon retirement, a police officer is entitled to keep,
14 without charge, his or her service revolver, after a
15 determination by the chief of police:

16 (1) That the police officer is retiring honorably with at least
17 twenty years of recognized law-enforcement service; or

18 (2) That the police officer is retiring with less than twenty
19 years of service and that he or she is totally physically disabled
20 as a result of service as a police officer.

21 (c) Notwithstanding the provisions of subsection (b) of this
22 section, the chief of police may not award a service revolver to
23 any police officer who has been declared mentally incompetent
24 by a licensed physician or a court of law, or who, in the opinion
25 of the chief of police, constitutes a danger to any person or the
26 community.

CHAPTER 186

(S.B. 615 - By Senators Kessler, Edgell and Hunter)

[Passed March 8, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §8-19-2, relating
to authorizing a municipality that owns and operates an electric
power system to enter into certain contracts with other parties
to purchase electric power and energy from certain projects.

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 §8-19-2, to read as
follows:

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS
AND ELECTRIC POWER SYSTEMS.**

PART II. LIMITATIONS ON SALE OR LEASE OF
CERTAIN MUNICIPAL WATERWORKS.

**§8-19-2. Contracts for purchase of electric power or energy by
a municipality; definitions; requirements;
payments; rates and charges.**

1 (a) For the purposes of this section:

2 (1) "Contract" means an agreement entered into by a
3 municipality with any other party for the purchase of electric
4 output, capacity or energy from a project as defined herein.

5 (2) "Any other party" means any other legal entity,
6 including, but not limited to, another municipality, political
7 subdivision, public authority, agency or instrumentality of
8 any state or the United States, a partnership, a limited
9 partnership, a limited liability company, a corporation, an
10 electric cooperative or an investor-owned utility existing
11 under the laws of any state; and

12 (3) "Project" or "projects" means systems or facilities
13 owned by another party and used for the generation,
14 transmission, transformation or supply of electric power, or
15 any interest in them, whether an undivided interest as a tenant
16 in common or otherwise, or any right to the output, capacity
17 or services thereof.

18 (b) In addition to the general authority to purchase
19 electricity on a wholesale basis for resale to its customers,
20 any municipality that owns and operates an electric power
21 system under the provisions of this article may enter into a
22 contract with any other party for the purchase of electricity
23 from one or more projects located in the United States that
24 provide that the contracting municipality is obligated to make
25 payments required by the contract whether or not a project is
26 completed, operable or operating and notwithstanding the
27 suspension, interruption, interference, reduction or
28 curtailment of the output of a project or the power and energy
29 contracted for and that the payments shall not be subject to
30 any reduction, whether by offset or otherwise, and shall not
31 be conditioned upon performance or nonperformance by any
32 other party. The contract may provide that, in the event of a
33 default by the municipality or any other party to the contract
34 in the performance of each entities' obligations under the
35 contract, any nondefaulting municipality or any other party
36 to the contract shall on a pro rata basis succeed to the rights
37 and interests of, and assume the obligations of, the defaulting
38 party.

39 (c) Notwithstanding any other provisions of law,
40 ordinance or charter provision to the contrary, a contract
41 under subsection (b) of this section may extend for more than
42 fifty years or fifty years from the date a project is estimated
43 to be placed into normal continuous operation and the
44 execution and effectiveness of the contract is not subject to
45 any authorizations or approvals by the state or any agency,
46 commission, instrumentality or political subdivision thereof
47 except as otherwise specifically required by law.

48 (d) A contract under subsection (b) of this section may
49 provide that payments by the municipality are made solely
50 from and may be secured by a pledge of and lien upon
51 revenues derived by the municipality from ownership and
52 operation and that payments shall constitute an operating
53 expense of the electric power system. No obligation under
54 the contract shall constitute a legal or equitable pledge,
55 charge, lien or encumbrance upon any property of the
56 municipality or upon any of its income, receipts or revenues,
57 except the revenues of the municipality's electric power
58 system. Neither the faith and credit nor the taxing power of
59 the municipality shall be pledged for the payment of any
60 obligation under the contract.

61 (e) A municipality contracting under the provisions of
62 subsection (b) of this section is obligated to fix, charge and
63 collect rents, rates, fees and charges for electric power and
64 energy and other services it sells, furnishes or supplies
65 through its electric power system in an amount sufficient to
66 provide revenues adequate to meet its obligations under the
67 contract and to pay any and all other amounts payable from
68 or constituting a charge and lien upon the revenues, including
69 the amounts necessary to pay the principal and interest on
70 any municipal bonds issued related to its electric power
71 system: *Provided*, That any change in the rates and charges
72 of the municipality to the customers of the electric power
73 system under the provisions of this section are subject to the
74 provisions and requirements of section four-b, article two,
75 chapter twenty-four of this code and the obligations of the
76 municipality under the contract are costs of providing electric
77 service within the meaning of that section.

CHAPTER 187

(Com. Sub. for H.B. 2709 - By Delegates Varner, Caputo, Fragale, Manchin, Hartman, Yost, Martin, Perry, Wysong, Shaver and Eldridge)

[Amended and again passed March 18, 2007, as a result of the objections of the Governor; in effect ninety days from passage.]
 [Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §8-19-21 of the Code of West Virginia, 1931, as amended, relating to municipal and county waterworks systems and specifications for water mains generally; requiring the installation of fire hydrants on certain water mains; establishing requirements and limitations thereto; requiring a study of the on cost, effect and feasibility of an internal hydrant valve; and requiring authorization from the Department of Health and Human Resources for certain installations.

Be it enacted by the Legislature of West Virginia:

That §8-19-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS
AND ELECTRIC POWER SYSTEMS.**

§8-19-21. Specifications for water mains and water service pipes.

1 Considering the importance of public fire protection, any
 2 state or local government, public service district, public or
 3 private utility which installs or constructs water mains, shall
 4 ensure that all new mains specifically intended to provide fire
 5 protection are not less than six inches in diameter. Effective
 6 the first day of July, two thousand seven, when any state or
 7 local government, public service district, public or private
 8 utility installs or constructs water mains along a platted

9 roadway or a public highway, using a six inch or greater line,
10 that is specifically designed to provide fire protection, the
11 state or local government, public service district, public or
12 private utility shall install fire hydrants at intervals of not
13 more than two thousand feet, unless there are no dwellings or
14 businesses located one thousand feet from such proposed
15 hydrant: *Provided*, That the Legislature shall study the effect,
16 cost and feasibility of the internal hydrant valve and report
17 the findings of that study to the regular session of the
18 Legislature in the year two thousand and eight. A permit or
19 other written approval shall be obtained from the Department
20 of Health and Human Resources for each hydrant or group of
21 hydrants installed in compliance with section nine, article
22 one, chapter sixteen of the West Virginia Code as amended:
23 *Provided, however*, That all newly constructed water
24 distribution systems transferred to a public or private utility
25 shall have mains at least six inches in diameter where fire
26 flows are required by the public or private utility: *Provided*
27 *further*, That the utility providing service has sufficient
28 hydraulic capacity as determined by the Department of
29 Health and Human Resources

CHAPTER 188

**(S.B. 139 - By Senators Kessler, Foster, Green, Jenkins,
Minard, Stollings, Wells, White, Barnes, Caruth, Deem,
Hall, McKenzie and Yoder)**

[Passed February 8, 2007; in effect ninety days from passage.]

[Approved by the Governor on February 20, 2007.]

AN ACT to amend and reenact §48-25-101 and §48-25-103 of the Code of West Virginia, 1931, as amended, all relating to petition for change of name; contents thereof; and when courts may or may not order change of name.

Be it enacted by the Legislature of West Virginia:

That §48-25-101 and §48-25-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

§48-25-103. When court may or may not order change of name.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

1 (a) Any person desiring a change of his or her own name,
2 or that of his or her child, may apply to the circuit court or
3 family court of the county in which he or she resides by a
4 verified petition setting forth and affirming the following:

5 (1) That he or she has been a bona fide resident of the
6 county for at least one year prior to the filing of the petition
7 or that he or she is a nonresident of the county who was born
8 in the county, was married in the county and was previously
9 a resident of the county for a period of at least fifteen years;

10 (2) The cause for which the change of name is sought;

11 (3) The new name desired;

12 (4) The name change is not for purposes of avoiding debt
13 or creditors;

14 (5) The petitioner seeking the name change is not a
15 registered sex offender pursuant to any state or federal law;

16 (6) The name change sought is not for purposes of
17 avoiding any state or federal law regarding identity;

18 (7) The name change sought is not for any improper or
19 illegal purpose;

20 (8) The petitioner is not a convicted felon in any
21 jurisdiction; and

22 (9) The name change sought is not for any purpose of
23 evading detection, identification or arrest by any local, state
24 or federal law-enforcement agency.

25 (b) Prior to filing the petition, the person shall cause a
26 notice of the time and place that the application will be made
27 to be published as a Class I legal advertisement in
28 compliance with the provisions of article three, chapter
29 fifty-nine of this code. The publication area for the
30 publication is the county: *Provided*, That the publication shall
31 contain a provision that the hearing may be rescheduled
32 without further notice or publication.

§48-25-103. When court may or may not order change of name.

1 (a) Upon the filing of the verified petition, and upon
2 proof of the publication of the notice and of the matters set
3 forth in the petition, and being satisfied that no injury will be
4 done to any person by reason of the change, and upon a
5 finding that all representations the applicant has affirmed
6 pursuant to subsection (a), section one hundred one of this
7 article are true and the applicant is not prohibited from
8 obtaining a name change pursuant to this article, that
9 reasonable and proper cause exists for changing the name of
10 petitioner and that the change is not desired because of any
11 fraudulent or evil intent on the part of the petitioner, the court
12 or judge may order a change of name.

13 (b) The court may not grant any change of name for any
14 person convicted of any felony during the time that the
15 person is incarcerated.

16 (c) The court may not grant any change of name for any
17 person required to register with the State Police pursuant to
18 the provisions of article twelve, chapter fifteen of this code
19 during the period that the person is required to register.

20 (d) The court may not grant a change of name for persons
21 convicted of first degree murder in violation of section one,

22 article two, chapter sixty-one of this code for a period of ten
23 years after the person is discharged from imprisonment or is
24 discharged from parole, whichever occurs later.

25 (e) The court may not grant a change of name of any
26 person convicted of violating any provision of section
27 fourteen-a, article two, chapter sixty-one of this code for a
28 period of ten years after the person is discharged from
29 imprisonment or is discharged from parole, whichever occurs
30 later.



CHAPTER 189

**(S.B. 667 - By Senators Sprouse, Foster, McCabe, Wells,
Jenkins, Hunter, Oliverio and Plymale)**

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-10-10, all relating to providing certain student financial aid for certain military service; providing for the payment of tuition and certain fees for members of the West Virginia Army National Guard and West Virginia Air National Guard enrolled in certain graduate study; and providing tuition and certain fee waivers to certain military recipients of the Medal of Honor or a Purple Heart Medal.

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; and that said code be

amended by adding thereto a new section, designated §18B-10-10, all to read as follows:

Chapter

15. **Public Safety.**

18B. **Higher Education.**

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

***§15-1B-21. Tuition and fees for guard members at institutions of higher education.**

1 (a) Any member of the Army National Guard or Air
2 National Guard who is enrolled in a course of undergraduate
3 study or a master's degree program and is attending any
4 accredited college, university, business or trade school
5 located in West Virginia or is attending any aviation school
6 located in West Virginia for the purpose of taking college-
7 credit courses, may be entitled to payment of tuitions and
8 fees at that college, university, business or trade school or
9 aviation school during the period of his or her service in the
10 National Guard. The Adjutant General may prescribe criteria
11 of eligibility for payment of tuition and fees at the college,
12 university, business or trade school or aviation school. The
13 payment is contingent upon appropriations being made by the
14 Legislature for this express purpose. A member may receive
15 payment for only one master's degree pursuant to this
16 section.

17 (b) The amount of the payment for members attending a
18 state-supported school shall be determined by the Adjutant
19 General and may not exceed the actual amount of tuition and
20 fees at the school. The amount of the payment for members
21 attending a private school shall be determined by the

*CLERK'S NOTE: This section was also amended by H.B. 2931 (Chapter 20), which passed prior to this act.

22 Adjutant General, but in any event may not exceed the
23 highest amounts payable at any state-supported school.

24 (c) Any member of the Army National Guard or Air
25 National Guard who is enrolled in a course of undergraduate
26 study or a master's degree program and is attending any
27 accredited college or university located in West Virginia and
28 is receiving payments under a federally funded continuing
29 education system may be entitled to payment of tuition and
30 fees at that college or university during his or her period of
31 service in the Army National Guard or Air National Guard:
32 *Provided*, That the sum of payments received under this
33 subsection and a federally funded continuing education
34 system may not exceed the actual amount of tuition and fees
35 at the school and in no event may exceed the highest amounts
36 payable at any state-supported school. The payments are
37 contingent upon appropriations being made by the
38 Legislature for this express purpose.

39 (d) The Adjutant General may, in lieu of the tuition
40 payment authorized by this section, pay an amount equal to
41 the amount of tuition which otherwise would have been paid
42 directly to members of the West Virginia Army National
43 Guard or West Virginia Air National Guard who are
44 participating in the PROMISE Scholarship program provided
45 in article seven, chapter eighteen-c of this code.

46 (e) A member of the West Virginia Army National Guard
47 or West Virginia Air National Guard who is receiving
48 payments for tuition and fees under this section and is
49 discharged from the military service due to wounds or
50 injuries received in the line of duty may continue to receive
51 payments for tuition and fees under this section as if he or she
52 were still a member.

53 (f) The Adjutant General shall administer the tuition and
54 fee payments authorized under this section and shall propose
55 policies to implement the provisions of this section.

CHAPTER 18B. HIGHER EDUCATION.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.**

**§18B-10-10. The Medal of Honor and Andrew J. Trail Purple
Heart Recipient Tuition Waiver.**

1 (a) This section is known as the Medal of Honor and
2 Andrew J. Trail Purple Heart Recipient Tuition Waiver.

3 (b) A state institution of higher education shall waive
4 undergraduate tuition and mandatory fee charges for a state
5 resident that has been honorably discharged from any branch
6 of the United States armed forces if that resident:

7 (1) Has received the Medal of Honor or a Purple Heart
8 Medal. The waiver pursuant to this subdivision is for the
9 amount of tuition and mandatory fee charges that exceeds the
10 total amount of any state and federal education benefits,
11 grants or scholarships received by the resident;

12 (2) Has received the Medal of Honor or a Purple Heart
13 Medal and sustained wounds during military combat that
14 resulted in either a permanent disability or a loss of limb.
15 The waiver pursuant to this subdivision is for the amount of
16 tuition and mandatory fee charges that exceeds state and
17 federal education benefits, grants or scholarships received by
18 the resident that are designated solely for tuition and
19 mandatory fees.

20 (c) Tuition and mandatory fee waivers provided pursuant
21 to this section are not counted when determining the

22 maximum number of waivers permitted at an institution by
 23 section five of this article.

24 (d) A tuition and mandatory fee waiver is available
 25 pursuant to this section for a maximum of eight semesters.

CHAPTER 190

(S.B. 389 - By Senators Fanning, Bowman and Barnes)

[Passed March 5, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §20-1-2 of the Code of West Virginia, 1931, as amended, relating to including blue catfish in the definition of game fish.

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
 4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United
 6 States.

- 7 "Bag limit" or "creel limit" means the maximum number
8 of wildlife which may be taken, caught, killed or possessed
9 by any person.
- 10 "Big game" means elk, deer, black bears, wild boars and
11 wild turkeys.
- 12 "Bona fide resident, tenant or lessee" means a person who
13 permanently resides on the land.
- 14 "Citizen" means any native-born citizen of the United
15 States and foreign-born persons who have procured their final
16 naturalization papers.
- 17 "Closed season" means the time or period during which
18 it shall be unlawful to take any wildlife as specified and
19 limited by the provisions of this chapter.
- 20 "Commission" means the Natural Resources
21 Commission.
- 22 "Commissioner" means a member of the advisory
23 commission of the Natural Resources Commission.
- 24 "Director" means the Director of the Division of Natural
25 Resources.
- 26 "Fishing" or "to fish" means the taking, by any means, of
27 fish, minnows, frogs or other amphibians, aquatic turtles and
28 other forms of aquatic life used as fish bait.
- 29 "Fur-bearing animals" include: (a) The mink; (b) the
30 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f)
31 the skunk and civet cat, commonly called polecat; (g) the
32 otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat
33 or bay lynx; (k) the raccoon; and (l) the fisher.

34 "Game" means game animals, game birds and game fish
35 as herein defined.

36 "Game animals" include: (a) The elk; (b) the deer; (c) the
37 cottontail rabbits and hares; (d) the fox squirrels, commonly
38 called red squirrels, and gray squirrels and all their color
39 phases - red, gray, black or albino; (e) the raccoon; (f) the
40 black bear; and (g) the wild boar.

41 "Game birds" include: (a) The anatidae, commonly
42 known as swan, geese, brants and river and sea ducks; (b) the
43 rallidae, commonly known as rails, sora, coots, mudhens and
44 gallinule; (c) the limicolae, commonly known as shorebirds,
45 plover, snipe, woodcock, sandpipers, yellow legs and
46 curlews; (d) the galliformes, commonly known as wild
47 turkey, grouse, pheasants, quails and partridges (both native
48 and foreign species); (e) the columbidae, commonly known
49 as doves; (f) the icteridae, commonly known as blackbirds,
50 redwings and grackle; and (g) the corvidae, commonly
51 known as crows.

52 "Game fish" include: (a) Brook trout; (b) brown trout; (c)
53 rainbow trout; (d) golden rainbow trout; (e) largemouth bass;
54 (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i)
55 chain pickerel; (j) muskellunge; (k) walleye; (l) northern
56 pike; (m) rock bass; (n) white bass; (o) white crappie; (p)
57 black crappie; (q) all sunfish species; (r) channel catfish; (s)
58 flathead catfish; (t) blue catfish, (u) sauger; and (v) all game
59 fish hybrids.

60 "Hunt" means to pursue, chase, catch or take any wild
61 birds or wild animals: *Provided*, That the definition of "hunt"
62 does not include an officially sanctioned and properly
63 licensed field trial, water race or wild hunt as long as that
64 field trial is not a shoot-to-retrieve field trial.

65 "Lands" means land, waters and all other appurtenances
66 connected therewith.

67 "Migratory birds" means any migratory game or
68 nongame birds included in the terms of conventions between
69 the United States and Great Britain and between the United
70 States and United Mexican States, known as the Migratory
71 Bird Treaty Act, for the protection of migratory birds and
72 game mammals concluded, respectively, the sixteenth day of
73 August, one thousand nine hundred sixteen, and the seventh
74 day of February, one thousand nine hundred thirty-six.

75 "Nonresident" means any person who is a citizen of the
76 United States and who has not been a domiciled resident of
77 the State of West Virginia for a period of thirty consecutive
78 days immediately prior to the date of his or her application
79 for a license or permit except any full-time student of any
80 college or university of this state, even though he or she is
81 paying a nonresident tuition.

82 "Open season" means the time during which the various
83 species of wildlife may be legally caught, taken, killed or
84 chased in a specified manner and shall include both the first
85 and the last day of the season or period designated by the
86 director.

87 "Person", except as otherwise defined elsewhere in this
88 chapter, means the plural "persons" and shall include
89 individuals, partnerships, corporations or other legal entities.

90 "Preserve" means all duly licensed private game
91 farmlands, or private plants, ponds or areas, where hunting or
92 fishing is permitted under special licenses or seasons other
93 than the regular public hunting or fishing seasons.

94 "Protected birds" means all wild birds not included within
95 the definition of "game birds" and "unprotected birds".

96 "Resident" means any person who is a citizen of the
97 United States and who has been a domiciled resident of the
98 State of West Virginia for a period of thirty consecutive days
99 or more immediately prior to the date of his or her
100 application for license or permit: *Provided*, That a member of
101 the armed forces of the United States who is stationed beyond
102 the territorial limits of this state, but who was a resident of
103 this state at the time of his or her entry into such service and
104 any full-time student of any college or university of this state,
105 even though he or she is paying a nonresident tuition, shall be
106 considered a resident under the provisions of this chapter.

107 "Roadside menagerie" means any place of business, other
108 than a commercial game farm, commercial fish preserve,
109 place or pond, where any wild bird, game bird, unprotected
110 bird, game animal or fur-bearing animal is kept in
111 confinement for the attraction and amusement of the people
112 for commercial purposes.

113 "Small game" includes all game animals, furbearing
114 animals and game birds except elk, deer, black bears, wild
115 boars and wild turkeys.

116 "Take" means to hunt, shoot, pursue, lure, kill, destroy,
117 catch, capture, keep in captivity, gig, spear, trap, ensnare,
118 wound or injure any wildlife, or attempt to do so: *Provided*,
119 That the definition of "take" does not include an officially
120 sanctioned and properly licensed field trial, water race or
121 wild hunt as long as that field trial is not a shoot-to-retrieve
122 field trial.

123 "Unprotected birds" shall include: (a) The English
124 sparrow; (b) the European starling; and (c) the cowbird.

125 "Wild animals" means all mammals native to the State of
126 West Virginia occurring either in a natural state or in
127 captivity, except house mice or rats.

128 "Wild birds" shall include all birds other than: (a)
129 Domestic poultry - chickens, ducks, geese, guinea fowl,
130 peafowls and turkeys; (b) psittacidae, commonly called
131 parrots and parakeets; and (c) other foreign cage birds such
132 as the common canary, exotic finches and ring dove. All
133 wild birds, either: (i) Those occurring in a natural state in
134 West Virginia; or (ii) those imported foreign game birds,
135 such as waterfowl, pheasants, partridges, quail and grouse,
136 regardless of how long raised or held in captivity, shall
137 remain wild birds under the meaning of this chapter.

138 "Wildlife" means wild birds, wild animals, game and
139 fur-bearing animals, fish (including minnows,) reptiles,
140 amphibians, mollusks, crustaceans and all forms of aquatic
141 life used as fish bait, whether dead or alive.

142 "Wildlife refuge" means any land set aside by action of
143 the director as an inviolate refuge or sanctuary for the
144 protection of designated forms of wildlife.

CHAPTER 191

**(Com. Sub. for H.B. 2840 - By Delegates Anderson, Stemple,
Martin, D. Poling, Azinger, Ellem, Border, White, Argento,
Williams and Tabb)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §20-2-12 of the Code of West Virginia, 1931, as amended, relating to transportation of wildlife outside of the state; and allowing residents and nonresidents to take legally killed, taken or captured game out of the state.

Be it enacted by the Legislature of West Virginia:

That §20-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-12. Transportation of wildlife out of state; penalties.

1 (a) A person may not transport or have in his or her
2 possession with the intention of transporting beyond the
3 limits of the state any species of wildlife or any part thereof
4 killed, taken, captured or caught within this state, except as
5 provided in this section.

6 (1) A person legally entitled to hunt and fish in this state
7 may take with him or her personally, when leaving the state,
8 any wildlife that he or she has lawfully taken or killed, not
9 exceeding, during the open season, the number that any
10 person may lawfully possess.

11 (2) Licensed resident hunters and trappers and resident
12 and nonresident fur dealers may transport beyond the limits
13 of the state pelts of game and fur-bearing animals taken
14 during the legal season.

15 (3) A person may transport the hide, head, antlers and
16 feet of a legally killed deer and the hide, head, skull, organs
17 and feet of a legally killed black bear beyond the limits of the
18 state.

19 (4) A person legally entitled to possess an animal
20 according to section four, article two of this chapter may
21 transport that animal beyond the limits of the state.

22 (b) The director shall have authority to promulgate rules
23 in accordance with chapter twenty-nine-a of this code dealing
24 with the transportation and tagging of wildlife and the skins.

25 (c) A person violating the provisions of this section by
26 transporting or possessing with the intention of transporting
27 beyond the limits of this state deer or wild boar shall be
28 deemed to have committed a separate offense for each animal
29 so transported or possessed.

30 (d) A person violating the provisions of this section shall
31 be guilty of a misdemeanor and, upon conviction thereof,
32 shall be fined not less than twenty dollars nor more than three
33 hundred dollars and be imprisoned in jail not less than ten nor
34 more than sixty days.

35 (e) This section does not apply to persons legally entitled
36 to propagate and sell wild animals, wild birds, fish,
37 amphibians and other forms of aquatic life beyond the limits
38 of the state.



CHAPTER 192

**(H.B. 2908 - By Delegates Talbott, Argento, Fragale,
Iaquinta, Caputo and Manchin)**

[Passed March 2, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to removing an outdated reference to the assessed value of livestock used to determine the value of livestock killed by a bear.

Be it enacted by the Legislature of West Virginia:

That §20-2-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.**

1 (a) No person in any county of this state shall hunt,
2 capture, or kill any bear, or have in his or her possession any
3 bear or bear parts, except during the hunting season for bear
4 and in the manner designated by rules promulgated by the
5 Division of Natural Resources and as provided in this section.
6 For the purposes of this section, bear parts include, but are
7 not limited to, the pelt, gallbladder, skull and claws of bear.

8 (b) A person who kills a bear shall, within twenty-four
9 hours after the killing, deliver the bear or fresh skin to a
10 conservation officer or checking station for tagging. A
11 Division of Natural Resources tag shall be affixed to it before
12 any part of the bear may be transported more than
13 seventy-five miles from the point of kill. The Division of
14 Natural Resources tag shall remain on the skin until it is
15 tanned or mounted. Any bear or bear parts not properly
16 tagged shall be forfeited to the state for disposal to a
17 charitable institution, school or as otherwise designated by
18 the Division of Natural Resources.

19 (c) It is unlawful:

20 (1) To hunt bear without a bear damage stamp as
21 prescribed in section forty-four-b of this article, in addition
22 to a hunting license as prescribed in this article;

23 (2) To hunt a bear with: (A) A shotgun using
24 ammunition loaded with more than one solid ball; (B) a rifle
25 of less than twenty-five caliber using rimfire ammunition; or
26 (C) a crossbow;

27 (3) To kill or attempt to kill any bear through the use of
28 poison, explosives, snares, steel traps or deadfalls other than
29 as authorized in this section;

30 (4) To shoot at or kill a bear cub weighing less than one
31 hundred pounds or to kill any bear accompanied by a cub;

32 (5) To possess any part of a bear not tagged in
33 accordance with the provisions of this section;

34 (6) To enter a state game refuge with firearms for the
35 purpose of pursuing or killing a bear except under the direct
36 supervision of division personnel;

37 (7) To hunt bear with dogs or to cause dogs to chase bear
38 during seasons other than those designated by the Division of
39 Natural Resources for the hunting of bear;

40 (8) To pursue a bear with a pack of dogs other than the
41 pack used at the beginning of the hunt once the bear is
42 spotted and the chase has begun;

43 (9) To possess, harvest, sell or purchase bear parts
44 obtained from bear killed in violation of this section;

45 (10) To organize for commercial purposes or to
46 professionally outfit a bear hunt or to give or receive any
47 consideration whatsoever or any donation in money, goods
48 or services in connection with a bear hunt notwithstanding
49 the provisions of sections twenty-three and twenty-four of
50 this article; or

51 (11) For any person who is not a resident of this state to
52 hunt bear with dogs or to use dogs in any fashion for the
53 purpose of hunting bear in this state except in legally
54 authorized hunts.

55 (d) The following provisions apply to bear destroying
56 property:

57 (1) (A) Any property owner or lessee who has suffered
58 damage to real or personal property, including loss
59 occasioned by the death or injury of livestock or the unborn
60 issue of livestock, caused by an act of a bear may complain
61 to any conservation officer of the Division of Natural
62 Resources for protection against the bear.

63 (B) Upon receipt of the complaint, the officer shall
64 immediately investigate the circumstances of the complaint.
65 If the officer is unable to personally investigate the
66 complaint, he or she shall designate a wildlife biologist to
67 investigate on his or her behalf.

68 (C) If the complaint is found to be justified, the officer or
69 designated person may, together with the owner and other
70 residents, proceed to hunt, destroy or capture the bear that
71 caused the property damage: *Provided*, That only the
72 conservation officer or the wildlife biologist shall determine
73 whether to destroy or capture the bear and whether to use
74 dogs to capture or destroy the bear: *Provided, however*, That,
75 in the event out-of-state dogs are used in the hunt, the owners
76 of the dogs are the only nonresidents permitted to participate
77 in hunting the bear.

78 (2) (A) When a property owner has suffered damage to
79 real or personal property as the result of an act by a bear, the
80 owner shall file a report with the Director of the Division of
81 Natural Resources. The report shall state whether or not the
82 bear was hunted and destroyed and, if so, the sex, weight and
83 estimated age of the bear. The report shall also include an
84 appraisal of the property damage occasioned by the bear duly
85 signed by three competent appraisers fixing the value of the
86 property lost.

87 (B) The report shall be ruled upon and the alleged
88 damages examined by a commission comprised of the
89 complaining property owner, an officer of the division and a
90 person to be jointly selected by the officer and the
91 complaining property owner.

92 (C) The division shall establish the procedures to be
93 followed in presenting and deciding claims under this section
94 in accordance with article three, chapter twenty-nine-a of this
95 code.

96 (D) All claims shall be paid in the first instance from the
97 Bear Damage Fund provided in section forty-four-b of this
98 article. In the event the fund is insufficient to pay all claims
99 determined by the commission to be just and proper, the
100 remainder due to owners of lost or destroyed property shall
101 be paid from the special revenue account of the Division of
102 Natural Resources.

103 (3) In all cases where the act of the bear complained of by
104 the property owner is the killing of livestock, the value to be
105 established is the fair market value of the livestock at the date
106 of death. In cases where the livestock killed is pregnant, the
107 total value shall be the sum of the values of the mother and
108 the unborn issue, with the value of the unborn issue to be
109 determined on the basis of the fair market value of the issue
110 had it been born.

111 (e) *Criminal penalties.* -- (1) Any person who commits a
112 violation of the provisions of this section is guilty of a
113 misdemeanor and, upon conviction thereof, shall be fined not
114 less than one thousand dollars nor more than five thousand
115 dollars, which fine is not subject to suspension by the court,
116 imprisoned in jail not less than thirty nor more than one
117 hundred days, or both fined and imprisoned. Further, the

118 person's hunting and fishing licenses shall be suspended for
119 two years.

120 (2) Any person who commits a second violation of the
121 provisions of this section is guilty of a misdemeanor and,
122 upon conviction thereof, shall be fined not less than two
123 thousand dollars nor more than seven thousand five hundred
124 dollars, which fine is not subject to suspension by the court,
125 imprisoned in jail not less than thirty days nor more than one
126 year, or both fined and imprisoned. The person's hunting and
127 fishing licenses shall be suspended for life.

128 (3) Any person who commits a third or subsequent
129 violation of the provisions of this section is guilty of a felony
130 and, upon conviction thereof, shall be fined not less than five
131 thousand dollars nor more than ten thousand dollars, which
132 fine is not subject to suspension by the court, imprisoned in
133 a correctional facility not less than one year nor more than
134 five years, or both fined and imprisoned.

CHAPTER 193

**(H.B. 2703 - By Delegates Campbell, Williams, Eldridge,
Hrutkay, Stemple, Paxton and Martin)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §20-2-28 of the Code of West Virginia, 1931, as amended, relating to authorizing certain students receiving instruction in fly fishing to fly fish while under the supervision of an instructor without obtaining a license; conditions.

Be it enacted by the Legislature of West Virginia:

That §20-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be required
2 to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident
4 children, or resident parents, or bona fide resident tenants of
5 such land may hunt, trap or fish on their own land during
6 open season in accordance with the laws and regulations
7 applying to such hunting, trapping and fishing without
8 obtaining a license to do so unless such lands have been
9 designated as a wildlife refuge or preserve.

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing license
12 to do so. A written statement or certificate from a duly
13 licensed physician of this state showing the resident to be
14 totally blind shall serve in lieu of a fishing license and shall
15 be carried on the person of the resident at all times while he
16 or she is fishing in this state.

17 (c) All residents of West Virginia on active duty in the
18 Armed Forces of the United States of America, while on
19 leave or furlough, shall have the right and privilege to hunt,
20 trap or fish in season in West Virginia without obtaining a
21 license to do so. Leave or furlough papers shall serve in lieu
22 of any such license and shall be carried on the person at all
23 times while trapping, hunting or fishing.

24 (d) In accordance with the provisions of section twenty-
25 seven of this article, any resident sixty-five years of age or
26 older is not required to have a license to hunt, trap or fish
27 during the legal seasons in West Virginia, but in lieu of such
28 license any such person shall at all times while hunting,
29 trapping or fishing carry on his or her person a valid West
30 Virginia driver's license or nondriver identification card
31 issued by the Division of Motor Vehicles.

32 (e) Residents of the state of Maryland who carry hunting
33 or fishing licenses valid in that state may hunt or fish from
34 the West Virginia banks of the Potomac River without
35 obtaining licenses to do so, but the hunting or fishing shall be
36 confined to the fish and waterfowl of the river proper and not
37 on its tributaries: *Provided*, That the state of Maryland shall
38 first enter into a reciprocal agreement with the director
39 extending a like privilege of hunting and fishing on the
40 Potomac River from the Maryland banks of said river to
41 licensed residents of West Virginia without requiring said
42 residents to obtain Maryland hunting and fishing licenses.

43 (f) Residents of the state of Ohio who carry hunting or
44 fishing licenses valid in that state may hunt or fish on the
45 Ohio River or from the West Virginia banks of the river
46 without obtaining licenses to do so, but the hunting or fishing
47 shall be confined to fish and waterfowl of the river proper
48 and to points on West Virginia tributaries and embayments
49 identified by the director: *Provided*, That the state of Ohio
50 shall first enter into a reciprocal agreement with the director
51 extending a like privilege of hunting and fishing from the
52 Ohio banks of the river to licensed residents of West Virginia
53 without requiring the residents to obtain Ohio hunting and
54 fishing licenses.

55 (g) Any resident of West Virginia who was honorably
56 discharged from the Armed Forces of the United States of

57 America and who receives a veteran's pension based on total
58 permanent service-connected disability as certified to by the
59 Veterans Administration shall be permitted to hunt, trap or
60 fish in this state without obtaining a license therefor. The
61 director shall propose rules for legislative approval in
62 accordance with the provisions of article three, chapter
63 twenty-nine-a of this code setting forth the procedure for the
64 certification of the veteran, manner of applying for and
65 receiving the certification and requirements as to
66 identification while said veteran is hunting, trapping or
67 fishing.

68 (h) Any disabled veteran who is a resident of West
69 Virginia and who, as certified to by the Commissioner of
70 Motor Vehicles, is eligible to be exempt from the payment of
71 any fee on account of registration of any motor vehicle
72 owned by such disabled veteran as provided in section eight,
73 article ten, chapter seventeen-a of this code shall be permitted
74 to hunt, trap or fish in this state without obtaining a license
75 therefor. The director shall propose rules for legislative
76 approval in accordance with the provisions of article three,
77 chapter twenty-nine-a of this code setting forth the procedure
78 for the certification of the disabled veteran, manner of
79 applying for and receiving the certification and requirements
80 as to identification while the disabled veteran is hunting,
81 trapping or fishing.

82 (i) Any resident or inpatient in any state mental health,
83 health or benevolent institution or facility may fish in this
84 state, under proper supervision of the institution involved,
85 without obtaining a fishing license to do so. A written
86 statement or certificate signed by the superintendent of the
87 mental health, health or benevolent institution or facility in
88 which the resident or inpatient, as the case may be, is
89 institutionalized shall serve in lieu of a fishing license and

90 shall be carried on the person of the resident or inpatient at all
91 times while he or she is fishing in this state.

92 (j) Any resident who is developmentally disabled, as
93 certified by a physician and the Director of the Division of
94 Health, may fish in this state without obtaining a fishing
95 license to do so. As used in this section, "developmentally
96 disabled" means a person with a severe, chronic disability
97 which:

98 (1) Is attributable to a mental or physical impairment or
99 a combination of mental and physical impairments;

100 (2) Is manifested before the person attains age
101 twenty-two;

102 (3) Results in substantial functional limitations in three or
103 more of the following areas of major life activity: (A) Self-
104 care; (B) receptive and expressive language; (C) learning; (D)
105 mobility; (E) self-direction; (F) capacity for independent
106 living; and (G) economic self-sufficiency; and

107 (4) Reflects the person's need for a combination and
108 sequence of care, treatment or supportive services which are
109 of lifelong or extended duration and are individually planned
110 and coordinated.

111 (k) A student eighteen years of age or younger receiving
112 instruction in fly fishing in a public, private, parochial or
113 Christian school in this state may fly fish in the state for catch
114 and release only without obtaining a fishing license to do so
115 while under the supervision of an instructor authorized by the
116 school.

CHAPTER 194

(S.B. 396 - By Senators Fanning, Bowman and Barnes)

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-29, relating to authorizing the Director of the Division of Natural Resources to exempt site-specific data on certain rare plant or animal species and their habitats from disclosure under the Freedom of Information Act; providing exceptions thereto; and placing limitations on the use of released information.

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 §20-2-29, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-29. Conservation of species and request for public records.

1 (a) The director may exempt from disclosure under the
2 Freedom of Information Act, article one, chapter twenty-
3 nine-b of this code, any record concerning the site-specific
4 location of an animal species protected under the Endangered
5 Species Act of 1973, 7 U. S. C. §136, a plant protected under
6 the Plant Variety Protection Act, 7 U. S. C. §2321:2583 and
7 any plant or animal species native to West Virginia
8 determined by the director to be sensitive and in need of
9 conservation to maintain viability or existence.

10 (b) The director may not deny the release of records
11 under subsection (a) of this section if requested:

12 (1) By the owner of the land upon which the resource is
13 located;

14 (2) By an entity which can take the land through the right
15 of eminent domain; or

16 (3) For scientific purposes which include, but are not
17 limited to, conservation and education, by a person or entity
18 that demonstrates to the director's satisfaction that the request
19 for information is necessary, will not cause harm to the plant
20 or animal species, and that the person or entity will use the
21 information only for the limited purpose which is the basis
22 for the request of information. The director retains the right
23 to provide any such data in a form which in his or her
24 opinion, is of sufficient resolution to satisfy that request and
25 is not obligated to provide exact coordinate data.

26 (c) Persons or entities receiving records under this
27 subsection may not release the information to the public or
28 release the information to another entity for commercial
29 purposes.



CHAPTER 195

(S.B. 376 -By Senators Fanning, Bowman and Barnes)

[Passed February 27, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §20-2-50 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to assess a fee for processing scientific collecting permits.

Be it enacted by the Legislature of West Virginia:

That §20-2-50 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-50. Permit to hunt, kill, etc., wildlife for scientific or propagation purposes.

1 The director may issue a permit to a person to hunt, kill,
2 take, capture or maintain in captivity wildlife exclusively for
3 scientific purposes, but not for any commercial purposes.
4 Any person desiring to collect or procure any wildlife,
5 including any body tissue, organ or other portion thereof,
6 eggs, nesting materials or other materials from the habitat of
7 such wildlife shall be required to make application to the
8 director for a scientific collecting permit. The director shall
9 promulgate rules in accordance with the provisions of
10 chapter twenty-nine-a of this code regarding the issuance of
11 the permits. A permit may be issued only upon written
12 application to the director setting forth at least:

13 (1) The number and kind of wildlife to be taken;

14 (2) The purpose and manner of taking;

15 (3) The name, residence, profession and educational or
16 scientific affiliation of the person applying for the permit;
17 and

18 (4) The geographic location where the collection or
19 procurement is planned to take place.

20 A fee, to be set at the discretion of the director, shall
21 accompany the application. No permit may be issued for the
22 purpose of killing deer and bear.

CHAPTER 196**(S.B. 611 - By Senator Fanning)**

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to enter into long-term contracts with third parties to construct recreational facilities and cabins.

Be it enacted by the Legislature of West Virginia:

That §20-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION**§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.**

1 (a) Notwithstanding any other provision of this code to
2 the contrary, in addition to all other powers and authority
3 vested in the director, he or she is hereby authorized and
4 empowered to:

5 (1) Enter into contracts with third parties for the
6 financing, construction and operation of recreational, lodging

7 and ancillary facilities at Chief Logan State Park, Beech Fork
8 State Park, Tomlinson Run State Park, Stonewall Jackson
9 Lake State Park, Lost River State Park and Canaan Valley
10 Resort State Park. The contracts may allow and recognize
11 both direct and subsidiary investment arrangements. The
12 term of the contracts may not exceed a period of twenty-five
13 years, at which time the full title to the recreational facilities
14 shall vest in the state;

15 (2) Enter into contracts with third parties for the
16 construction, but not the operation, of cabins at any state park
17 or forest. Upon completion of the construction of the cabins,
18 full title to the cabins shall immediately vest in the state and
19 the cabins shall be operated by the parks and recreation
20 section;

21 (3) Authorize the construction of at least five cabins by
22 any single third party in state parks and state forests which do
23 not offer such facilities on the effective date of this
24 subsection; and

25 (4) Propose emergency and legislative rules, in
26 accordance with the provisions of article three, chapter
27 twenty-nine-a of this code, that set the conditions upon which
28 the director may enter into a contract with a single third party
29 proposing to construct cabins.

30 (b) All contracts shall be presented to the Joint
31 Committee on Government and Finance for review and
32 comment prior to execution.

33 (c) A contract may provide for renewal for the purpose of
34 permitting continued operation of the facilities at the option
35 of the director for a term or terms not to exceed ten years.

36 (d) No extension or renewal beyond the original 25-year
37 term may be executed by the director absent the approval of
38 the Joint Committee on Government and Finance.

●

CHAPTER 197

**(Com. Sub. for S.B. 460 - By Senators Foster, McCabe,
Sprouse, Wells and Stollings)**

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-22, relating to providing notice of new road construction and road maintenance for access to gas and oil wells in state forests; requiring a public comment period; establishing notice criteria; and requiring the Director of the Division of Natural Resources to propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-5-22, to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-22. Powers and duties of the director relating to oil and gas access roads on state forests.

- 1 (a) In addition to the requirements of article six,
- 2 chapter twenty-two of this code, a party applying for the

3 well work permit within a state forest shall publish a Class
4 I-O legal advertisement in compliance with the provisions
5 of article three, chapter fifty-nine of this code in a
6 qualified newspaper at least sixty days prior to submitting
7 an application with the Department of Environmental
8 Protection. The notice shall state that the Division of
9 Natural Resources will accept public comments prior to
10 the party's application to the Department of Environmental
11 Protection and shall give a postal address and an email
12 address where the public may file comments.

13 (b) For all new oil and gas road construction proposed
14 in subsection (a) of this section within state forests, written
15 notice shall be provided to the Director, the Division of
16 Forestry and the State Forest Superintendent by the party
17 applying for the well work permit forty-five days before
18 the application of the well work permit is filed with the
19 Department of Environmental Protection.

20 (c) For routine maintenance of the access roads within
21 the state forest, notice shall be provided to the Director,
22 the Director of the Division of Forestry and the State
23 Forest Superintendent by the well operator for
24 maintenance of the well access road five days before the
25 motorized equipment is to enter the state forest except in
26 the event of an emergency.

27 (d) The Director of the Division of Natural Resources
28 shall propose emergency and legislative rules in
29 accordance with article three, chapter twenty-nine of this
30 code in consultation with the Department of
31 Environmental Protection and the Division of Forestry that
32 set forth the conditions upon which the permittee may
33 access the land for the purpose of well work in a state
34 forest as permitted by law.

CHAPTER 198

(Com. Sub. for H.B. 2436 - By Delegates Hatfield, Hrutkay,
Martin, Brown, Perdue and Caputo)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the Nurse Overtime and Patient Safety Act; requiring posting of notice of nurse's rights; requiring Commissioner of Labor to establish by rule a notification procedure, including signs that must be posted; and requiring commissioner to keep complaints anonymous until a finding of merit.

Be it enacted by the Legislature of West Virginia:

That §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-3. Hospital nursing overtime limitations and requirements.

§21-5F-4. Enforcement; offenses and penalties.

§21-5F-3. Hospital nursing overtime limitations and requirements.

- 1 (a) Except as provided in subsections (b), (c), (d), (e) and
2 (f) of this section, a hospital is prohibited from mandating a
3 nurse, directly or through coercion, to accept an assignment
4 of overtime and is prohibited from taking action against a
5 nurse solely on the grounds that the nurse refuses to accept an
6 assignment of overtime at the facility if the nurse declines to
7 work additional hours because doing so may, in the nurse's
8 judgment, jeopardize patient or employee safety.

Ch. 198] NURSE OVERTIME AND PATIENT SAFETY ACT

9 (b) Notwithstanding subsections (a) and (g) of this
10 section, a nurse may be scheduled for duty or mandated to
11 continue on duty in overtime status in an unforeseen
12 emergent situation that jeopardizes patient safety.

13 (c) Subsections (a) and (g) of this section do not apply
14 when a nurse may be required to fulfill prescheduled on-call
15 time, but nothing in this article shall be construed to permit
16 an employer to use on-call time as a substitute for mandatory
17 overtime.

18 (d) Notwithstanding subsections (a) and (g) of this
19 section, a nurse may be required to work overtime to
20 complete a single patient care procedure already in progress,
21 but nothing in this article shall be construed to permit an
22 employer to use a staffing pattern as a means to require a
23 nurse to complete a procedure as a substitute for mandatory
24 overtime.

25 (e) Subsection (a) of this section does not apply when a
26 collective bargaining agreement is in place between nurses
27 and the hospital which is intended to substitute for the
28 provisions of this article by incorporating a procedure for the
29 hospital to require overtime.

30 (f) Subsection (a) of this section does not apply to
31 voluntary overtime.

32 (g) In the interest of patient safety, any nurse who works
33 twelve or more consecutive hours, as permitted by this
34 section, shall be allowed at least eight consecutive hours of
35 off-duty time immediately following the completion of the
36 shift. Except as provided in subsections (b), (c) and (d) of
37 this section, no nurse shall work more than sixteen hours in
38 a twenty-four hour period. The nurse is responsible for
39 informing the employer hospital of other employment
40 experience during the twenty-four hour period in question if
41 this provision is to be invoked. To the extent that an on-call
42 nurse has actually worked sixteen hours in a hospital, efforts

NURSE OVERTIME AND PATIENT SAFETY ACT [Ch. 198

43 shall be made by the hospital to find a replacement nurse to
44 work.

45 Each hospital shall designate an anonymous process for
46 patients and nurses to make staffing complaints related to
47 patient safety.

48 (h) Each hospital shall post, in one or more conspicuous
49 place or places where notices to employee nurses are
50 customarily posted, a notice in a form approved by the
51 commissioner setting forth a nurse's rights under this article.

§21-5F-4. Enforcement; offenses and penalties.

1 (a) Pursuant to the powers set forth in article one of this
2 chapter, the Commissioner of Labor is charged with the
3 enforcement of this article. The commissioner shall propose
4 legislative and procedural rules in accordance with the
5 provisions of article three, chapter twenty-nine-a of this code
6 to establish procedures for enforcement of this article. These
7 rules shall include, but are not limited to, provisions to
8 protect due process requirements, a hearings procedure, an
9 appeals procedure, and a notification procedure, including
10 any signs that must be posted by the facility.

11 (b) Any complaint must be filed with the commissioner
12 regarding an alleged violation of the provisions of this article
13 must be made within thirty days following the occurrence of
14 the incident giving rise to the alleged violation. The
15 commissioner shall keep each complaint anonymous until the
16 commissioner finds that the complaint has merit. The
17 commissioner shall establish a process for notifying a
18 hospital of a complaint.

19 (c) The administrative penalty for the first violation of
20 this article is a reprimand.

Ch. 198] NURSE OVERTIME AND PATIENT SAFETY ACT

21 (d) The administrative penalty for the second offense of
22 this article is a reprimand and a fine not to exceed five
23 hundred dollars.

24 (e) The administrative penalty for the third and
25 subsequent offenses is a fine of not less than two thousand
26 five hundred dollars and not more than five thousand dollars
27 for each violation.

28 (f) To be eligible to be charged of a second offense or
29 third offense under this section, the subsequent offense must
30 occur within twelve months of the prior offense.

31 (g)(1) All moneys paid as administrative penalties
32 pursuant to this section shall be deposited into the Health
33 Care Cost Review Fund provided by section eight, article
34 twenty-nine-b, chapter sixteen of this code.

35 (2) In addition to other purposes for which funds may be
36 expended from the Health Care Cost Review Fund, the West
37 Virginia Health Care Authority shall expend moneys from
38 the fund, in amounts up to but not exceeding amounts
39 received pursuant to subdivision (1) of this subsection, for the
40 following activities in this state:

41 (A) Establishment of scholarships in medical schools;

42 (B) Establishment of scholarships for nurses training;

43 (C) Establishment of scholarships in the public health
44 field;

45 (D) Grants to finance research in the field of drug
46 addiction and development of cures therefor;

47 (E) Grants to public institutions devoted to the care and
48 treatment of narcotic addicts; and

49 (F) Grants for public health research, education and care.

CHAPTER 199

(Com. Sub. for H.B. 2714 - By Delegates Mahan, Brown, Ennis, Long, Marshall, Perdue, Romine and Schadler)

[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2007.]

AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to parking areas designated for use by persons with a mobility impairment; removing the requirement that certain parking areas be provided without cost; authorizing chiropractor, advanced nurse practitioner or physician's assistant to verify impairment for the purpose of the issuing of license plates or place cards; removing certain persons from eligibility for placards and plates; amending and adding definitions; limiting the ability of certain organizations from parking in designated spaces; requiring certain markings in designated parking areas; increasing the fine for first offense parking violation; and removing certain rule-making requirements.

Be it enacted by the Legislature of West Virginia:

That §17C-13-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

1 (a) (1) The commissioner may issue up to two special
2 registration plates or removable windshield placards to a
3 person with a mobility impairment or a West Virginia
4 organization which transports persons with disabilities and
5 facilitates the mobility of its customers, patients, students or
6 persons otherwise placed under its responsibility.

7 (2) Special registration plates or placards may only be
8 issued for placement on a Class A or Class G motor vehicle
9 registered under the provisions of article three, chapter
10 seventeen-a of this code.

11 (3) The applicant shall specify whether he or she is
12 applying for a special registration plate, a removable
13 windshield placard or both on the application form prescribed
14 and furnished by the commissioner.

15 (4) The applicant shall submit, with the application, a
16 certificate issued by any physician, chiropractor, advanced
17 nurse practitioner or physician's assistant who is licensed in
18 this state, stating that the applicant has a mobility impairment
19 or that the applicant is an organization which regularly
20 transports a person with a mobility impairment as defined in
21 this section. The physician, chiropractor, advanced nurse
22 practitioner or physician's assistant shall specify in the
23 certificate whether the disability is temporary or permanent.
24 A disability which is temporary shall not exceed six months.
25 A disability which is permanent is one which is one to five
26 years or more in expected duration.

27 (5) Upon receipt of the completed application, the
28 physician's certificate and the regular registration fee for the
29 applicant's vehicle class, if the commissioner finds that the
30 applicant qualifies for the special registration plate or a
31 removable windshield placard as provided in this section, he
32 or she shall issue to the applicant a special registration plate
33 (upon remittance of the regular registration fee) or a
34 removable windshield placard (red for temporary and blue for

35 permanent), or both. Upon request, the commissioner shall
36 also issue to any otherwise qualified applicant one additional
37 placard having the same expiration date as the applicant's
38 original placard. The placard shall be displayed by hanging
39 it from the interior rearview mirror of the motor vehicle so
40 that it is conspicuously visible from outside the vehicle when
41 parked in a designated accessible parking space. The placard
42 may be removed from the rearview mirror whenever the
43 vehicle is being operated to ensure clear vision and safe
44 driving. Only in the event that there is no suitable rearview
45 mirror in the vehicle may the placard be displayed on the
46 dashboard of the vehicle.

47 (6) Organization which transport people with disabilities
48 will be provided with a placard which will permit them to
49 park in a designate area for the length of time necessary to
50 load and unload passengers. These vehicles must be moved
51 to a nondesignated space once the loading or unloading
52 process is complete.

53 (b) As used in this section, the following terms have the
54 meanings ascribed to them in this subsection:

55 (1) A person or applicant with a "mobility impairment"
56 means a person who is a citizen of West Virginia and as
57 determined by a physician, allopath or osteopath,
58 chiropractor, advanced nurse practitioner or physician's
59 assistant licensed to practice in West Virginia:

60 (A) Cannot walk two hundred feet without stopping to
61 rest;

62 (B) Cannot walk without the use of or assistance from a
63 brace, cane, crutch, prosthetic device, wheelchair, other
64 assistive device or another person;

65 (C) Is restricted by lung disease to such an extent that the
66 person's force (respiratory) expiratory volume for one

67 second, when measured by spirometry, is less than one liter
68 or the arterial oxygen tension is less than sixty mm/hg on
69 room air at rest;

70 (D) Uses portable oxygen;

71 (E) Has a cardiac condition to such an extent that the
72 person's functional limitations are classified in severity as
73 Class III or Class IV according to standards established by
74 the American Heart Association; or

75 (F) Is severely limited in his or her ability to walk
76 because of an arthritic, neurological or other orthopedic
77 condition;

78 (2) "Special registration plate" means a registration plate
79 that displays the international symbol of access, as adopted
80 by the Rehabilitation International Organization in nineteen
81 hundred sixty-nine at its Eleventh World Congress on
82 Rehabilitation of the Disabled, in a color that contrasts with
83 the background, in letters and numbers the same size as those
84 on the plate, and which may be used in lieu of a regular
85 registration plate;

86 (3) "Removable windshield placard" (permanent or
87 temporary) means a two-sided, hanger-style placard
88 measuring three inches by nine and one-half inches, with all
89 of the following on each side:

90 (A) The international symbol of access, measuring at
91 least three inches in height, centered on the placard, in white
92 on a blue background for permanent designations and in
93 white on a red background for temporary designations;

94 (B) An identification number measuring one inch in
95 height;

96 (C) An expiration date in numbers measuring one inch in
97 height; and

98 (D) The seal or other identifying symbol of the issuing
99 authority;

100 (4) "Regular registration fee" means the standard
101 registration fee for a vehicle of the same class as the
102 applicant's vehicle;

103 (5) "Public entity" means state or local government or
104 any department, agency, special purpose district or other
105 instrumentality of a state or local government;

106 (6) "Public facility" means all or any part of any
107 buildings, structures, sites, complexes, roads, parking lots or
108 other real or personal property, including the site where the
109 facility is located;

110 (7) "Place or places of public accommodation" means a
111 facility or facilities operated by a private entity whose
112 operations affect commerce and fall within at least one of the
113 following categories:

114 (A) Inns, hotels, motels and other places of lodging;

115 (B) Restaurants, bars or other establishments serving
116 food or drink;

117 (C) Motion picture houses, theaters, concert halls,
118 stadiums or other places of exhibition or entertainment;

119 (D) Auditoriums, convention centers, lecture halls or
120 other places of public gatherings;

121 (E) Bakeries, grocery stores, clothing stores, hardware
122 stores, shopping centers or other sales or rental
123 establishments;

124 (F) Laundromats, dry cleaners, banks, barber and beauty
125 shops, travel agencies, shoe repair shops, funeral parlors, gas
126 or service stations, offices of accountants and attorneys,
127 pharmacies, insurance offices, offices of professional health
128 care providers, hospitals or other service establishments;

129 (G) Terminals, depots or other stations used for public
130 transportation;

131 (H) Museums, libraries, galleries or other places of public
132 display or collection;

133 (I) Parks, zoos, amusement parks or other places of
134 recreation;

135 (J) Public or private nursery, elementary, secondary,
136 undergraduate or post-graduate schools or other places of
137 learning and day care centers, senior citizen centers,
138 homeless shelters, food banks, adoption agencies or other
139 social services establishments; and

140 (K) Gymnasiums, health spas, bowling alleys, golf
141 courses or other places of exercise or recreation;

142 (8) "Commercial facility" means a facility whose
143 operations affect commerce and which are intended for
144 nonresidential use by a private entity;

145 (9) "Accessible parking" formerly known as
146 "handicapped parking" is the present phrase consistent with
147 language within the Americans with Disabilities Act (ADA).

148 (10) "Parking enforcement personnel" includes any law-
149 enforcement officer as defined by section one, article twenty-
150 nine, chapter thirty of this code, and private security guards,
151 parking personnel and other personnel authorized by a city,
152 county or the state to issue parking citations.

153 Any person who falsely or fraudulently obtains or seeks
154 to obtain the special plate or the removable windshield
155 placard provided for in this section and any person who
156 falsely certifies that a person is mobility impaired in order
157 that an applicant may be issued the special registration plate
158 or windshield placard under this section is guilty of a
159 misdemeanor and, upon conviction thereof, in addition to any
160 other penalty he or she may otherwise incur, shall be fined
161 five hundred dollars. Any person who fabricates, uses or sells
162 unofficially issued windshield placards to any person or
163 organization is committing a fraudulent act and is guilty of a
164 misdemeanor and, upon conviction thereof, in addition to any
165 other penalty he or she may otherwise incur, shall be fined
166 five hundred dollars per placard fabricated, used or sold.
167 Any person who fabricates, uses or sells unofficially issued
168 identification cards to any person or organization is
169 committing a fraudulent act and is guilty of a misdemeanor
170 and, upon conviction thereof, in addition to any other penalty
171 he or she may otherwise incur, shall be fined seven hundred
172 dollars per identification card fabricated, used or sold. Any
173 person who fabricates, uses or sells unofficially issued labels
174 imprinted with a future expiration date to any person or
175 organization is committing a fraudulent act and is guilty of a
176 misdemeanor and, upon conviction thereof, in addition to any
177 other penalty he or she may otherwise incur, shall be fined
178 seven hundred dollars. Any person covered by this section
179 who sells or gives away their officially issued windshield
180 placard to any person or organization not qualified to apply
181 or receive the placard and then reapplies for a new placard on
182 the basis it was stolen is committing a fraudulent act and is
183 guilty of a misdemeanor and, upon conviction thereof, in
184 addition to any other penalty he, she or they may otherwise
185 incur, shall lose their right to receive or use a special placard
186 or special license plate for a period of not less than five years.

187 (c) The commissioner shall set the expiration date for
188 special registration plates and permanent removable
189 windshield placards on the last day of a given month and

190 year, to be valid for a minimum of one year but not more than
191 five years, after which time a new application must be
192 submitted to the commissioner. After the commissioner
193 receives the new application, signed by a certified physician,
194 chiropractor, advanced nurse practitioner or physician's
195 assistant, the commissioner shall issue: (i) A new special
196 registration plate or new permanent removable windshield
197 placard; or (ii) official labels imprinted with the new
198 expiration date and designed so as to be placed over the old
199 dates on the original registration plate or windshield placard.

200 (d) The commissioner shall set the expiration date of
201 temporary removable windshield placards to be valid for a
202 period of approximately six months after the application was
203 received and approved by the commissioner.

204 (e) The commissioner shall issue to each applicant who
205 is granted a special registration plate or windshield placard an
206 identification card bearing the applicant's name, assigned
207 identification number and expiration date. The applicant
208 shall thereafter carry this identification card on his or her
209 person whenever parking in an accessible parking space. The
210 identification card shall be identical in design for both
211 registration plates and removable windshield placards.

212 (f) An accessible parking space should comply with the
213 provisions of the Americans with Disabilities Act
214 accessibility guidelines, contained in 28 C.F.R. 36,
215 Appendix A, Section 4.6. In particular, the parking space
216 should be a minimum of eight feet wide with an adjacent
217 eight-foot access aisle for vans having side mounted
218 hydraulic lifts or ramps or a five-foot access aisle for
219 standard vehicles. Access aisles should be marked using
220 diagonal two- to four-inch-wide stripes spaced every twelve
221 or twenty-four inches apart along with the words "no
222 parking" in painted letters which are at least twelve inches in
223 height. All accessible parking spaces must have a signpost in
224 front or adjacent to the accessible parking space displaying

225 the international symbol of access sign mounted at a
226 minimum of eight feet above the pavement or sidewalk and
227 the top of the sign. Lines or markings on the pavement or
228 curbs for parking spaces and access aisles may be in any
229 color, although blue is the generally accepted color for
230 accessible parking.

231 (g) A vehicle from any other state, United States territory
232 or foreign country displaying an officially issued special
233 registration plate, placard or decal bearing the international
234 symbol of access shall be recognized and accepted as
235 meeting the requirements of this section, regardless of where
236 the plate, placard or decal is mounted or displayed on the
237 vehicle.

238 (h) Stopping, standing or parking places marked with the
239 international symbol of access shall be designated in close
240 proximity to all public entities, including state, county and
241 municipal buildings and facilities, places of public
242 accommodation and commercial facilities. These parking
243 places shall be reserved solely for persons with a mobility
244 impairment at all times.

245 (i) Any person whose vehicle properly displays a valid,
246 unexpired special registration plate or removable windshield
247 placard may park the vehicle for unlimited periods of time in
248 parking zones unrestricted as to length of parking time
249 permitted: *Provided*, That this privilege does not mean that
250 the vehicle may park in any zone where stopping, standing or
251 parking is prohibited or which creates parking zones for
252 special types of vehicles or which prohibits parking during
253 heavy traffic periods during specified rush hours or where
254 parking would clearly present a traffic hazard. To the extent
255 any provision of any ordinance of any political subdivision
256 of this state is contrary to the provisions of this section, the
257 provisions of this section take precedence and apply.

258 The parking privileges provided for in this subsection
259 apply only during those times when the vehicle is being used
260 for the loading or unloading of a person with a mobility
261 impairment. Any person who knowingly exercises, or
262 attempts to exercise, these privileges at a time when the
263 vehicle is not being used for the loading or unloading of a
264 person with a mobility impairment is guilty of a
265 misdemeanor and, upon first conviction thereof, in addition
266 to any other penalty he or she may otherwise incur, shall be
267 fined two hundred dollars; upon second conviction thereof,
268 in addition to any other penalty he or she may otherwise
269 incur, shall be fined three hundred dollars; and upon third and
270 subsequent convictions thereof, in addition to any other
271 penalty he or she may otherwise incur, shall be fined five
272 hundred dollars.

273 (j) Any person whose vehicle does not display a valid,
274 special registration plate or removable windshield placard
275 may not stop, stand or park a motor vehicle in an area
276 designated, zoned or marked for accessible parking with
277 signs or instructions displaying the international symbol of
278 access, either by itself or with explanatory text. The signs
279 may be mounted on a post or a wall in front of the accessible
280 parking space and instructions may appear on the ground or
281 pavement, but use of both methods is preferred. Accessible
282 parking spaces for vans having an eight-foot adjacent access
283 aisle should be designated as "van accessible" but may be
284 used by any vehicle displaying a valid special registration
285 plate or removable windshield placard.

286 Any person who violates the provisions of this subsection
287 is guilty of a misdemeanor and, upon conviction thereof,
288 shall be fined two hundred dollars; upon second conviction
289 thereof, in addition to any other penalty he or she may
290 otherwise incur, shall be fined three hundred dollars; and
291 upon third and subsequent convictions thereof, in addition to
292 any other penalty he or she may otherwise incur, shall be
293 fined five hundred dollars.

294 (k) All signs that designate areas as " accessible parking"
295 or that display the international symbol of access shall also
296 include the words "Up to \$500 fine".

297 (l) No person may stop, stand or park a motor vehicle in
298 an area designated or marked off as an access aisle adjacent
299 to a van-accessible parking space or regular accessible
300 parking space. Any person, including a driver of a vehicle
301 displaying a valid removable windshield placard or special
302 registration plate, who violates the provisions of this
303 subsection is guilty of a misdemeanor and, upon conviction
304 thereof, shall be fined two hundred dollars; upon second
305 conviction thereof, in addition to any other penalty he or she
306 may otherwise incur, shall be fined three hundred dollars; and
307 upon third and subsequent convictions thereof, in addition to
308 any other penalty he or she may otherwise incur, shall be
309 fined five hundred dollars.

310 (m) Parking enforcement personnel who otherwise
311 enforce parking violations may issue citations for violations
312 of this section and shall reference the number on the vehicle's
313 license plate, since the driver normally will not be present.

314 (n) Law-enforcement agencies may establish a program
315 to use trained volunteers to collect information necessary to
316 issue citations to persons who illegally park in designated
317 accessible parking spaces. Any law-enforcement agency
318 choosing to establish a program shall provide for workers'
319 compensation and liability coverage. The volunteers shall
320 photograph the illegally parked vehicle and complete a form,
321 to be developed by supervising law-enforcement agencies,
322 that includes the vehicle's license plate number, date, time
323 and location of the illegally parked vehicle. The photographs
324 must show the vehicle in the accessible space and a readable
325 view of the license plate. Within the discretion of the
326 supervising law-enforcement agency, the volunteers may

327 issue citations or the volunteers may submit the photographs
328 of the illegally parked vehicle and the form to the supervising
329 law-enforcement agency, who may issue a citation, which
330 includes the photographs and the form, to the owner of the
331 illegally parked vehicle. Volunteers shall be trained on the
332 requirements for citations for vehicles parked in marked,
333 zoned or designated accessible parking areas by the
334 supervising law-enforcement agency.

335 (o) Local authorities who adopt the basic enforcement
336 provisions of this section and issue their own local
337 ordinances shall retain all fines and associated late fees.
338 These revenues shall be used first to fund the provisions of
339 subsection (n) of this section, if adopted by local authorities,
340 or otherwise shall go into the local authorities' general
341 revenue fund. Otherwise, any moneys collected as fines shall
342 be collected for and remitted to the state.

343 (p) The commissioner shall prepare and issue a document
344 to applicants describing the privileges accorded a vehicle
345 having a special registration plate and removable windshield
346 placard as well as the penalties when the vehicle is being
347 inappropriately used as described in this section and shall
348 include the document along with the issued special
349 registration plate or windshield placard. In addition, the
350 commissioner shall issue a separate document informing the
351 general public regarding the new provisions and increased
352 fines being imposed either by way of newspaper
353 announcements or other appropriate means across the state.

354 (q) The commissioner shall adopt and promulgate rules
355 in accordance with the provisions of article three, chapter
356 twenty-nine-a of this code.

CHAPTER 200

**(Com. Sub. for S.B. 187 - By Senators Bowman, Bailey,
Jenkins, Plymale, Kessler, White and Minard)**

[Passed March 7, 2007; in effect from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to repeal §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended; and to amend and reenact §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code, all relating to the West Virginia Performance Review Act; updating legislative findings and definitions; continuing the Joint Committee on Government Operations; updating powers and duties of the Joint Committee on Government Operations and the Joint Committee on Government Organization; requiring department presentations; establishing a new agency review procedure and schedule; establishing a new regulatory board review procedure and schedule; authorizing compliance reviews; clarifying termination procedures; and providing that agencies and boards do not terminate pursuant to prior enactments.

Be it enacted by the Legislature of West Virginia:

That §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended, be repealed; and that §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. PERFORMANCE REVIEW ACT.

- §4-10-1. Short title.
- §4-10-2. Legislative findings; performance review process authorized.
- §4-10-3. Definitions.
- §4-10-4. Joint Committee on Government Operations.
- §4-10-5. Powers and duties of the committee and joint standing committee.
- §4-10-6. Department presentation and schedule.
- §4-10-7. Agency review.
- §4-10-8. Schedule of departments for agency review.
- §4-10-9. Regulatory board review.
- §4-10-10. Regulatory board review schedule.
- §4-10-11. Compliance review.
- §4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.
- §4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.
- §4-10-14. Nullifying agency and regulatory board termination under prior law.

§4-10-1. Short title.

This article shall be known as and may be cited as the West Virginia Performance Review Act.

§4-10-2. Legislative findings; performance review process authorized.

- 1 (a) The Legislature finds that:
 - 2 (1) State government has created many state agencies
3 without sufficient legislative oversight, regulatory
4 accountability or an effective system of checks and balances;
 - 5 (2) State agencies have been created without
6 demonstrable evidence that their benefits to the public clearly
7 justify their creation;
 - 8 (3) Once established, state agencies tend to acquire
9 permanent status, often without regard for the condition that
10 gave rise to their establishment;

11 (4) State agencies have been allowed to establish rules
12 and at times may acquire autonomy and authority
13 inconsistent with principles of accountability;

14 (5) Employees of state agencies are often beyond the
15 effective control of elected officials and efforts to encourage
16 modernization or to review performance become difficult;

17 (6) Regulatory boards established pursuant to chapter
18 thirty of this code need periodic review to ascertain the need
19 for their continuation; and

20 (7) By establishing a process for the objective review of
21 state agencies and regulatory boards, their programs,
22 functions and activities, the Legislature may evaluate the
23 need for their continued existence, consolidation or
24 termination and improve government efficiency,
25 effectiveness and accountability.

26 (b) The Legislature hereby authorizes a process to review
27 the operation and performance of state agencies and
28 regulatory boards to determine the need for their continued
29 existence, consolidation or termination.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 a different meaning:

3 (a) “Agency” or “state agency” means a state
4 governmental entity, including any bureau, department,
5 division, commission, agency, committee, office, board,
6 authority, subdivision, program, council, advisory body,
7 cabinet, panel, system, task force, fund, compact, institution,

8 survey, position, coalition or other entity in the State of West
9 Virginia.

10 (b) "Agency review" means a review performed on
11 agencies of a department pursuant to the provisions of this
12 article.

13 (c) "Committee" means the Joint Committee on
14 Government Operations.

15 (d) "Compliance review" means a review for compliance
16 with recommendations contained in a previous agency review
17 or regulatory board review conducted pursuant to the
18 provisions of this article and may include further inquiry of
19 other issues as directed by the President, the Speaker, the
20 Legislative Auditor, the committee or the joint standing
21 committee.

22 (e) "Department" means the departments created within
23 the executive branch, headed by a secretary appointed by the
24 Governor, as authorized by the Code of West Virginia.

25 (f) "Department presentation" means a presentation by a
26 department pursuant to the provisions of this article.

27 (g) "Division" means the Performance Evaluation and
28 Research Division of the Legislative Auditor.

29 (h) "Joint standing committee" means the Joint Standing
30 Committee on Government Organization.

31 (i) "Privatize" means a contract to procure the services of
32 a private vendor to provide a service that is similar to, and/or
33 in lieu of, a service provided by a state agency.

34 (j) “Regulatory Board” means a board that regulates
35 professions and occupations, created under the provisions of
36 chapter thirty of this code.

37 (k) “Regulatory Board Review” means a review
38 performed on a regulatory board pursuant to the provisions
39 of this article.

§4-10-4. Joint Committee on Government Operations.

1 (a) The Joint Committee on Government Operations
2 created by prior enactment of this article is hereby continued.

3 (b) The committee is composed of fifteen members as
4 follows:

5 (1) Five members of the Senate, to be appointed by the
6 President, with no more than three being from the same
7 political party;

8 (2) Five members of the House of Delegates, to be
9 appointed by the Speaker, with no more than three being
10 from the same political party; and

11 (3) Five citizen members from this state who are not
12 legislators, public officials or public employees, to be
13 appointed by the Speaker of the House and the President of
14 the Senate, with no more than three being from the same
15 political party and at least one of whom shall reside in each
16 congressional district of this state.

17 (c) The committee has two cochairs, one selected by the
18 President of the Senate from the members appointed from the
19 Senate and one selected by the Speaker of the House of
20 Delegates from the members appointed from the House of
21 Delegates.

22 (d) All members of the committee serve until their
23 successors have been appointed.

24 (e) All members of the committee are entitled to
25 compensation and reimbursement for expenses as authorized
26 for members of the Legislature in accordance with the
27 performance of their interim duties.

§4-10-5. Powers and duties of the committee and joint standing committee.

1 (a) To carry out the duties set forth in this article, the
2 committee or the joint standing committee, any authorized
3 employee of the committee, the joint standing committee, the
4 Legislative Auditor or any employee of the division working
5 at the direction of the committee or the joint standing
6 committee, shall have access, including copying, to all
7 records of every state agency in West Virginia.

8 (b) When furnishing information, agencies shall provide
9 the information in the format in which it is requested, if the
10 request is specific as to a preferred format.

11 (c) The committee or the joint standing committee may
12 hold public hearings in furtherance of the purposes of this
13 article, at such times and places within the state as desired.
14 A member of the committee or the joint standing committee
15 may administer oaths to persons testifying at such hearings
16 or meetings.

17 (d) The committee or the joint standing committee may
18 issue a subpoena, with the signature of either cochair of the
19 committee or the joint standing committee and served in the
20 manner provided by law, to summon and compel the
21 attendance of witnesses and their examination under oath and
22 the production of all books, papers, documents and records
23 necessary or convenient to be examined and used by the
24 committee or joint standing committee in the performance of
25 its duties.

26 (e) If any witness subpoenaed to appear at any hearing or
27 meeting refuses or fails to appear or to answer questions put
28 to him or her, or refuses or fails to produce books, papers,
29 documents or records within his or her control when the same

30 are demanded, the committee or the joint standing committee,
31 in its discretion, may enforce obedience to its subpoena by
32 attachment, fine or imprisonment, as provided in article one
33 of this chapter, or may report the facts to the circuit court of
34 Kanawha County or any other court of competent jurisdiction
35 and the court shall compel obedience to the subpoena as
36 though it had been issued by the court.

37 (f) Witnesses subpoenaed to attend hearings or meetings
38 pursuant to the provisions of this article, except officers or
39 employees of the state, shall be allowed the same mileage and
40 per diem as is allowed witnesses before any petit jury.

41 (g) The committee or the joint standing committee,
42 subject to the approval of the Joint Committee on
43 Government and Finance, may employ such persons as it
44 considers necessary to carry out the duties and
45 responsibilities under this article and may contract for outside
46 expertise in conducting reviews.

47 (h) The committee or the joint standing committee may
48 collect, and the agency or regulatory board shall promptly
49 pay, the costs associated with conducting the reviews
50 performed under this article, upon presentation of a statement
51 for the costs incurred. All money received by the committee
52 or the joint standing committee from this source shall be
53 expended only for the purpose of covering the costs
54 associated with such services, unless otherwise directed by
55 the Legislature.

§4-10-6. Department presentation and schedule.

1 (a) During the two thousand seven legislative interim
2 period, each department shall make a presentation pursuant
3 to the provisions of this section to the joint standing
4 committee and the committee.

5 (b) The department shall provide to the joint standing
6 committee and the committee a written copy of the
7 presentation. The presentation shall include:

8 (1) A departmental chart designating each agency under
9 the purview of the department;

10 (2) An analysis of the department's internal performance
11 measures and self-assessment systems; and

12 (3) For each agency under the purview of the department,
13 the following:

14 (A) The mission, goals and functions of the agency;

15 (B) The statutory or other legal authority under which the
16 agency operates;

17 (C) The number of employees of the agency for the
18 immediate past ten years;

19 (D) The budget for the agency for the immediate past ten
20 years;

21 (E) Any potential or actual loss of revenue due to
22 operations, changes in law or any other reason;

23 (F) The extent to which the agency has operated in the
24 public interest;

25 (G) The extent to which the agency has complied with
26 state personnel practices, including affirmative action
27 requirements;

28 (H) The extent to which the agency has encouraged
29 public participation in the making of its rules and decisions
30 and has encouraged interested persons to report to it on the
31 impact of its rules and decisions on the effectiveness,
32 economy and availability of services that it has provided;

33 (I) The efficiency with which public inquiries or
34 complaints regarding the activities of the agency have been
35 processed and resolved;

36 (J) The extent to which statutory, regulatory, budgeting
37 or other changes are necessary to enable the agency to better
38 serve the interests of the public and to comply with the
39 factors enumerated in this subsection; and

40 (K) A recommendation as to whether the agency should
41 be continued, consolidated or terminated.

42 (c) The schedule for the presentations by the departments
43 shall be as follows:

44 (1) May, two thousand seven, Department of
45 Administration;

46 (2) June, two thousand seven, Department of Education
47 and the Arts;

48 (3) July, two thousand seven, Department of Education,
49 including the Higher Education Policy Commission and the
50 West Virginia Council for Community and Technical College
51 Education;

52 (4) August, two thousand seven, Department of Revenue;

53 (5) September, two thousand seven, Department of
54 Environmental Protection;

55 (6) October, two thousand seven, Department of Health
56 and Human Resources, including the Bureau of Senior
57 Services;

58 (7) November, two thousand seven, Department of
59 Commerce;

60 (8) December, two thousand seven, Department of
61 Military Affairs and Public Safety; and

62 (9) January, two thousand eight, Department of
63 Transportation.

§4-10-7. Agency review.

1 (a) The committee and the joint standing committee shall
2 conduct agency reviews, or authorize the division to conduct
3 agency reviews as one of its duties in addition to its other
4 duties prescribed by law, in accordance with generally
5 accepted government auditing standards (GAGAS) as
6 promulgated by the U. S. Government Accountability
7 Office, on one or more of the agencies under the purview of
8 a department, during the year in which the department is
9 scheduled for review under the provisions of this article.

10 (b) The agency review may include, but is not limited to:

11 (1) An identification and description of the agency under
12 review;

13 (2) The number of employees of the agency for the
14 immediate past ten years;

15 (3) The budget for the agency for the immediate past ten
16 years;

17 (4) Whether the agency is effectively and efficiently
18 carrying out its statutory duties or legal authority;

19 (5) Whether the activities of the agency duplicate or
20 overlap with those of other agencies and, if so, how these
21 activities could be consolidated;

22 (6) A cost-benefit analysis, as described in subsection (e)
23 of this section, on state services that are privatized or
24 contemplated to be privatized;

25 (7) An analysis of the extent to which agency websites
26 are accurate, updated and user friendly;

27 (8) An assessment of the utilization of information
28 technology systems within the agency, including interagency
29 and intra-agency communications;

30 (9) An analysis of any issues raised by the presentation
31 made by the department pursuant to the provisions of this
32 article;

33 (10) An analysis of any other issues as the committee or
34 the joint standing committee may direct; and

35 (11) A recommendation as to whether the agency under
36 review should be continued, consolidated or terminated.

37 (c) The committee or the joint standing committee may
38 vote on the recommendation as to whether the agency under
39 review should be continued, consolidated or terminated.
40 Recommendations of the committee or the joint standing
41 committee shall be given considerable weight in determining
42 if an agency should be continued, consolidated or terminated.

43 (d) An agency may be subject to a compliance review
44 pursuant to the provisions of this article.

45 (e) A cost-benefit analysis authorized by this section may
46 include:

47 (1) The tangible benefits of privatizing the service;

48 (2) Any legal impediments that may limit or prevent
49 privatization of the service;

50 (3) The availability of multiple qualified and competitive
51 private vendors; and

52 (4) A cost comparison, including total fixed and variable,
53 direct and indirect, costs of the current governmental
54 operation and the private vendor contract.

§4-10-8. Schedule of departments for agency review.

1 (a) Each department shall make a presentation pursuant
2 to the provisions of this article, to the joint standing
3 committee and the committee during the first interim meeting
4 after the regular session of the year in which the department

5 is to be reviewed pursuant to the schedule set forth in
6 subsection (b) of this section.

7 (b) An agency review shall be performed on one or more
8 agencies under the purview of each department at least once
9 every six years, commencing as follows:

10 (1) Two thousand eight, the Department of
11 Administration;

12 (2) Two thousand nine, the Department of Education and
13 the Arts, and the Department of Education, including the
14 Higher Education Policy Commission and the West Virginia
15 Council for Community and Technical College Education;

16 (3) Two thousand ten, the Department of Revenue and
17 the Department of Commerce;

18 (4) Two thousand eleven, the Department of
19 Environmental Protection and the Department of Military
20 Affairs and Public Safety;

21 (5) Two thousand twelve, the Department of Health and
22 Human Resources, including the Bureau of Senior Services;
23 and

24 (6) Two thousand thirteen, the Department of
25 Transportation.

§4-10-9. Regulatory board review.

1 (a) The committee and the joint standing committee shall
2 conduct regulatory board reviews, or authorize the division
3 to conduct regulatory board reviews as one of its duties in
4 addition to its other duties prescribed by law, in accordance
5 with generally accepted government auditing standards
6 (GAGAS) as promulgated by the U. S. Government
7 Accountability Office, on each regulatory board to ascertain
8 if there is a need for the continuation, consolidation or
9 termination of the regulatory board.

10 (b) A regulatory board review shall be performed on each
11 regulatory board at least once every twelve years. A
12 regulatory board may be subject to a compliance review
13 pursuant to the provisions of this article.

14 (c) When a new regulatory board is created, a date for a
15 regulatory board review shall be included in the act that
16 creates the board, within twelve years of the effective date of
17 the act.

18 (d) The regulatory board review may include:

19 (1) Whether the board complies with the policies and
20 provisions of chapter thirty of this code and other applicable
21 laws and rules;

22 (2) Whether the board follows a disciplinary procedure
23 which observes due process rights and protects the public
24 interest;

25 (3) Whether the basis or facts that necessitated the initial
26 licensing or regulation of a profession or occupation have
27 changed, or other conditions have arisen that would warrant
28 increased, decreased or the same degree of regulation;

29 (4) Whether the composition of the board adequately
30 represents the public interest and whether the board
31 encourages public participation in its decisions rather than
32 participation only by the industry and individuals it regulates;

33 (5) Whether statutory changes are necessary to improve
34 board operations to enhance the public interest;

35 (6) An analysis of any other issues the committee or the
36 joint standing committee may direct; and

37 (7) A recommendation as to whether the regulatory board
38 under review should be continued, consolidated or
39 terminated.

40 (e) The committee or the joint standing committee may
41 vote on the recommendation as to whether the regulatory
42 board under review should be continued, consolidated or
43 terminated. Recommendations of the committee or the joint
44 standing committee shall be given considerable weight in
45 determining if an regulatory board should be continued,
46 consolidated or terminated.

§4-10-10. Regulatory board review schedule.

1 (a) A regulatory board review is required for all
2 regulatory boards.

3 (b) A regulatory board review shall be performed on each
4 regulatory board at least once every twelve years,
5 commencing as follows:

6 (1) Two thousand eight: Board of Acupuncture; Board of
7 Barbers and Cosmetologists; and Board of Examiners in
8 Counseling.

9 (2) Two thousand nine: Board of Hearing Aid Dealers;
10 Board of Licensed Dietitians; and Nursing Home
11 Administrators Board.

12 (3) Two thousand ten: Board of Dental Examiners; Board
13 of Medicine; and Board of Pharmacy.

14 (4) Two thousand eleven: Board of Chiropractic
15 Examiners; Board of Osteopathy; and Board of Physical
16 Therapy.

17 (5) Two thousand twelve: Board of Occupational
18 Therapy; Board of Examiners for Speech-Language
19 Pathology and Audiology; and Medical Imaging and
20 Radiation Therapy Board of Examiners.

21 (6) Two thousand thirteen: Board of Professional
22 Surveyors; Board of Registration for Foresters; and Board of
23 Registration for Professional Engineers.

24 (7) Two thousand fourteen: Board of Examiners for
25 Licensed Practical Nurses; Board of Examiners for
26 Registered Professional Nurses; and Massage Therapy
27 Licensure Board.

28 (8) Two thousand fifteen: Board of Architects; Board of
29 Embalmers and Funeral Directors; and Board of Landscape
30 Architects.

31 (9) Two thousand sixteen: Board of Registration for
32 Sanitarians; Real Estate Appraiser Licensure and
33 Certification Board; and Real Estate Commission.

34 (10) Two thousand seventeen: Board of Accountancy;
35 Board of Respiratory Care Practitioners; and Board of Social
36 Work Examiners.

37 (11) Two thousand eighteen: Board of Examiners of
38 Psychologists; Board of Optometry; and Board of Veterinary
39 Medicine.

§4-10-11. Compliance review.

1 (a) After an agency review or a regulatory board review,
2 if the committee or the joint standing committee finds that an
3 agency or a regulatory board needs further review, then the
4 committee or the joint standing committee may request a
5 compliance review.

6 (b) If the committee or the joint standing committee
7 requests a compliance review for an agency or a regulatory
8 board, then it must state, in writing, the specific reasons for
9 the compliance review and its expected completion date.

§4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.

1 (a) If the Legislature terminates an agency or regulatory
2 board, then the agency or regulatory board shall continue in
3 existence until the first day of July of the next succeeding
4 year for the purpose of winding up its affairs. Upon the
5 expiration of one year after termination, the agency or
6 regulatory board shall cease all activities.

7 (b) During the wind-up year, the impending termination
8 may not reduce nor otherwise limit the powers or authority of
9 that terminated agency or regulatory board.

10 (c) An agency that has been terminated pursuant to the
11 provisions of this article may be reestablished by the
12 Legislature. If the agency is reestablished by the Legislature
13 during the wind-up year with substantially the same powers,
14 duties or functions, then the agency is considered continued.

15 (d) If a regulatory board is reestablished by the
16 Legislature during the wind-up year with substantially the
17 same powers, duties or functions, then the regulatory board
18 is considered continued. If a regulatory board is not
19 reestablished by the Legislature during the wind-up year,
20 then the regulatory board is considered terminated and the
21 profession or occupation must apply for regulation through
22 the sunrise process, under the provisions of this code, to be
23 reestablished.

§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

1 (a) On or before the thirtieth day of June of the wind-up
2 year, the terminated agency or regulatory board shall file a
3 written statement with the Secretary of the Department of
4 Administration and the division describing the disposition of
5 its funds, assets, equipment and records.

6 (b) The division shall review the statement of the
7 terminated agency or regulatory board and report the results
8 of its review to the committee and the joint standing
9 committee.

10 (c) Any unexpended funds of the terminated agency or
11 regulatory board shall revert to the fund from which they
12 were appropriated or, if that fund is abolished, to the General
13 Revenue Fund.

14 (d) All remaining assets and equipment of a terminated
15 agency or regulatory board shall be transferred to the
16 secretary of the department of which it was a part or to the
17 state agency for surplus property in the Department of
18 Administration.

19 (e) The records of a terminated agency or regulatory
20 board shall be deposited with the Department of
21 Administration.

§4-10-14. Nullifying agency and regulatory board termination under prior law.

1 No agency or regulatory board terminates pursuant to
2 references to this article.

CHAPTER 201

(S.B. 589 - By Senators Kessler and McKenzie)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §29-6-7 of the Code of West Virginia, 1931, as amended, relating to expanding the powers and duties of the Director of Personnel to allow monetary incentives in programs developed to improve the efficiency and effectiveness of public service.

Be it enacted by the Legislature of West Virginia:

That §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

1 (a) The Secretary of the Department of Administration
2 shall appoint the director. The director shall be a person
3 knowledgeable of the application of the merit principles in
4 public employment as evidenced by the obtainment of a
5 degree in business administration, personnel administration,
6 public administration or the equivalent and at least five years
7 of administrative experience in personnel administration.

8 (b) The director shall:

9 (1) Consistent with the provisions of this article,
10 administer the operations of the division, allocating the
11 functions and activities of the division among sections as the
12 director may establish;

13 (2) Maintain a personnel management information system
14 necessary to carry out the provisions of this article;

15 (3) Supervise payrolls and audit payrolls, reports or
16 transactions for conformity with the provisions of this article;

17 (4) Plan, evaluate, administer and implement personnel
18 programs and policies in state government and to political
19 subdivisions after agreement by the parties;

20 (5) Supervise the employee selection process and employ
21 performance evaluation procedures;

22 (6) Develop programs to improve efficiency and
23 effectiveness of the public service, including, but not limited
24 to, employee training, development, assistance and
25 incentives, which, notwithstanding any provision of this code
26 to the contrary, may include a one-time monetary incentive
27 for recruitment and retention of employees in critically
28 understaffed classifications. The director, in consultation
29 with the board, shall determine which classifications are
30 critically understaffed. The one-time monetary incentive
31 program shall continue until the thirtieth day of June, two
32 thousand nine. The director shall report annually on or
33 before the thirty-first day of December, commencing in the
34 year two thousand seven, to the Joint Committee on
35 Government and Finance. The annual report shall provide all
36 relevant information on the one-time monetary incentive

37 program and the understaffed classifications in state
38 agencies;

39 (7) Establish pilot programs and other projects for a
40 maximum of one year outside of the provisions of this article,
41 subject to approval by the board, to be included in the annual
42 report;

43 (8) Establish and provide for a public employee
44 interchange program and may provide for a voluntary
45 employee interchange program between public and private
46 sector employees;

47 (9) Establish an internship program;

48 (10) Assist the Governor and Secretary of the Department
49 of Administration in general workforce planning and other
50 personnel matters;

51 (11) Make an annual report to the Governor and
52 Legislature and all other special or periodic reports as may be
53 required;

54 (12) Assess cost for special or other services;

55 (13) Recommend rules to the board for implementation
56 of this article; and

57 (14) Conduct schools, seminars or classes for supervisory
58 employees of the state regarding handling of complaints and
59 disciplinary matters and the operation of the state personnel
60 system.

CHAPTER 202

**(S.B. 746 - By Senators Bowman, Barnes, Boley, Foster,
Jenkins, McCabe, Plymale, Stollings, Sypolt, White and Yoder)**

[Passed March 9, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §29-6-7a, relating
to Division of Personnel; and requiring the director to report on
a centralized personnel system.

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 §29-6-7a, to read as
follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7a. Report on a centralized personnel system.

1 Before the thirtieth day of September, two thousand
2 seven, the director of the Division of Personnel shall report
3 to the Joint Committee on Government Organization on the
4 following:

5 (1) A centralized personnel/human relations system for
6 the state;

Ch. 203] PROFESSIONS AND OCCUPATIONS

- 7 (2) The benefits, cost effect and drawbacks of a
8 centralized system;
- 9 (3) The structure for the system, including a
10 recommendation on the number of satellite offices; and
- 11 (4) Any other recommendations the director finds
12 beneficial to satisfy the personnel/human relations needs of
13 the state.

●

CHAPTER 203

**(Com. Sub. for H.B. 2527 - By Delegates Hatfield, Iaquina,
Miley, Swartzmiller, Talbott, Yost, Schoen and Walters)**

[Passed March 10, 2007; in effect from passage.]

[Approved by the Governor on March 23, 2007.]

AN ACT to repeal §30-1A-2a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of said code, all relating to sunrise law; requiring applications for substantial revision or expansion of the scope of practice of regulated professions and occupations; modifying the criteria to be considered in the decision to regulate a profession or occupation; requiring certain findings in the sunrise report; requiring re-application if the Joint Standing Committee on Government Organization does not approve the application; and requiring that weight be given to the recommendations of the Joint Standing Committee on Government Organization.

Be it enacted by the Legislature of West Virginia:

That §30-1A-2a of the Code of West Virginia, 1931, as amended, be repealed; and that §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

§30-1A-3. Analysis and evaluation of application.

§30-1A-5. Reapplication requirements.

§30-1A-6. Article construction.

§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

1 (a) Any professional or occupational group or
2 organization, any individual or any other interested party
3 which proposes the regulation of any unregulated
4 professional or occupational group or organization, or who
5 proposes to substantially revise or expand the scope of
6 practice of a regulated profession or occupation, shall submit
7 an application to the Joint Standing Committee on
8 Government Organization, as set out in this article.

9 (b) The Joint Standing Committee on Government
10 Organization may only accept an application for regulation
11 of a professional or occupational group or organization, or
12 substantial revision or expansion of the scope of practice of
13 a regulated profession or occupation, when the party
14 submitting an application files with the committee a
15 statement of support for the proposed regulation which has
16 been signed by at least ten residents or citizens of the State of
17 West Virginia who are members of the professional or

18 occupational group or organization for which regulation is
19 being sought, or for which substantial revision or expansion
20 of the scope of practice of a regulated profession or
21 occupation is being sought.

22 (c) The completed application shall contain:

23 (1) A description of the occupational or professional
24 group or organization for which regulation is proposed, or for
25 which a substantial revision or expansion of the scope of
26 practice of a regulated profession or occupation is proposed,
27 including a list of associations, organizations and other
28 groups currently representing the practitioners in this state,
29 and an estimate of the number of practitioners in each group;

30 (2) A definition of the problem and the reasons why
31 regulation or a substantial revision or expansion of the scope
32 of practice is necessary;

33 (3) The reasons why certification, registration, licensure
34 or other type of regulation is being requested and why that
35 regulatory alternative was chosen;

36 (4) A detailed statement of the proposed funding
37 mechanism to pay the administrative costs of the regulation
38 or the substantial revision or expansion of the scope of
39 practice, or of the fee structure conforming with the statutory
40 requirements of financial autonomy as set out in this chapter;

41 (5) A detailed statement of the location and manner in
42 which the group plans to maintain records which are
43 accessible to the public as set out in this chapter;

44 (6) The benefit to the public that would result from the
45 proposed regulation or substantial revision or expansion of
46 the scope of practice; and

47 (7) The cost of the proposed regulation or substantial
48 revision or expansion of the scope of practice.

§30-1A-3. Analysis and evaluation of application.

1 (a) The Joint Committee on Government Organization
2 shall refer the completed application of the professional or
3 occupational group or organization to the Performance
4 Evaluation and Research Division of the Office of the
5 Legislative Auditor.

6 (b) The Performance Evaluation and Research Division
7 of the Office of the Legislative Auditor shall conduct an
8 analysis and evaluation of the application. The analysis and
9 evaluation shall be based upon the criteria listed in subsection
10 (c) of this section. The Performance Evaluation and
11 Research Division of the Office of the Legislative Auditor
12 shall submit a report, and such supporting materials as may
13 be required, to the Joint Standing Committee on Government
14 Organization, as set out in this section

15 (c) For an application proposing the regulation of an
16 unregulated professional or occupational group or
17 organization, the report shall include evaluation, analysis and
18 findings as to:

19 (1) Whether the unregulated practice of the occupation or
20 profession clearly harms or endangers the health, safety or
21 welfare of the public, and whether the potential for the harm
22 is easily recognizable and not remote or dependent upon
23 tenuous argument;

24 (2) Whether the practice of the profession or occupation
25 requires specialized skill or training which is readily
26 measurable or quantifiable so that examination or training
27 requirements would reasonably assure initial and continuing
28 professional or occupational competence;

29 (3) Whether the public can be adequately protected by
30 other means in a more cost-effective manner; and

31 (4) Whether the professional or occupational group or
32 organization should be regulated as proposed in the
33 application.

34 (d) For an application proposing the substantial revision
35 or expansion of the scope of practice of a regulated
36 profession or occupation, the report shall include the
37 evaluation, analysis and findings as set forth in subsection (c)
38 of this section inasmuch as applicable, and a clear
39 recommendation as to whether the scope of practice should
40 be substantially revised or expanded as proposed in the
41 application.

42 (e) For an application received after the first day of
43 December and on or before the first day of June, the
44 Performance Evaluation and Research Division of the Office
45 of the Legislative Auditor shall present a report to the Joint
46 Committee on Government Organization by the thirty-first
47 day of December of that year.

48 (f) For an application received after the first day of June
49 and on or before the first day of December, the Performance
50 Evaluation and Research Division of the Office of the
51 Legislative Auditor shall present a report to the Joint
52 Committee on Government Organization by the thirtieth day
53 of June of the next year.

§30-1A-5. Reapplication requirements.

1 (a) If the Joint Standing Committee on Government
2 Organization approves an application for regulation of a
3 professional or occupational group or organization, but the
4 legislation incorporating its recommendations does not
5 become law in the year in which it is first introduced, the
6 applicants for regulation may introduce legislation during
7 each of the two successive regular sessions without having to
8 make reapplication.

9 (b) If the Joint Standing Committee on Government
10 Organization does not approve an application for regulation,
11 revision or expansion of the scope of practice of a
12 professional or occupational group or organization, any party
13 who continues to propose the regulation, revision or
14 expansion must reapply in accordance with the provisions of
15 this article.

§30-1A-6. Article construction.

1 (a) Nothing in this article shall be construed as limiting
2 or interfering with the right of any member of the Legislature
3 to introduce or of the Legislature to consider any bill that
4 would create a new state governmental department or agency
5 or amend the law with respect to an existing one.

6 (b) Notwithstanding the provisions of subsection (a) of
7 this section, the recommendations of the Joint Standing
8 Committee on Government Organization are to be given
9 considerable weight in determining if a profession or
10 occupation should be regulated, or if the scope of practice of
11 a regulated profession or occupation should be revised or
12 expanded.

CHAPTER 204

**(S.B. 573 - By Senators Prezioso, McKenzie, Foster,
Stollings, Kessler and Jenkins)**

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend and reenact §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3; and to amend said code by adding thereto a new section, designated §30-14-11a, all relating to authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathy; designating programs in which physicians, podiatrists and physician assistants may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary action if the person complies with the goals and restrictions of the program; and requiring licenses for physicians, podiatrists and physician assistants to expire rather than being suspended if required continuing education is not documented.

Be it enacted by the Legislature of West Virginia:

That §30-3-9, §30-3-12 and 30-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3, and that said code be amended by adding thereto a new section, designated §30-14-11a, all to read as follows:

Article

- 3. West Virginia Medical Practice Act.**
- 3D. Physician Health Programs.**
- 14. Osteopathic Physicians and Surgeons.**

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

- §30-3-9. Records of board; expungement; examination; notice; public information voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.
- §30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.
- §30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

1 (a) The board shall maintain a permanent record of the
2 names of all physicians, podiatrists, and physician assistants,
3 licensed, certified or otherwise lawfully practicing in this
4 state and of all persons applying to be so licensed to practice,
5 along with an individual historical record for each such
6 individual containing reports and all other information
7 furnished the board under this article or otherwise. Such
8 record may include, in accordance with rules established by
9 the board, additional items relating to the individual's record
10 of professional practice that will facilitate proper review of
11 such individual's professional competence.

12 (b) Upon a determination by the board that any report
13 submitted to it is without merit, the report shall be expunged
14 from the individual's historical record.

15 (c) A physician, podiatrist, physician assistant or
16 applicant, or authorized representative thereof, has the right,
17 upon request, to examine his or her own individual historical

18 record maintained by the board pursuant to this article and to
19 place into such record a statement of reasonable length of his
20 or her own view of the correctness or relevance of any
21 information existing in such record. Such statement shall at
22 all times accompany that part of the record in contention.

23 (d) A physician, podiatrist, physician assistant or
24 applicant has the right to seek through court action the
25 amendment or expungement of any part of his or her
26 historical record.

27 (e) A physician, podiatrist, physician assistant or
28 applicant shall be provided written notice within thirty days
29 of the placement and substance of any information in his or
30 her individual historical record that pertains to him or her and
31 that was not submitted to the board by him or her.

32 (f) Except for information relating to biographical
33 background, education, professional training and practice, a
34 voluntary agreement entered into pursuant to subsection (h)
35 of this section and which has been disclosed to the board,
36 prior disciplinary action by any entity, or information
37 contained on the licensure application, the board shall
38 expunge information in an individual's historical record
39 unless it has initiated a proceeding for a hearing upon such
40 information within two years of the placing of the
41 information into the historical record.

42 (g) Orders of the board relating to disciplinary action
43 against a physician, podiatrist or physician assistant are
44 public information.

45 (h) (1) In order to encourage voluntary participation in
46 monitored alcohol chemical dependency or major mental
47 illness programs and in recognition of the fact that major

48 mental illness, alcoholism and chemical dependency are
 49 illnesses, a physician, podiatrist or physician assistant
 50 licensed, certified or otherwise lawfully practicing in this
 51 state or applying for a license to practice in this state may
 52 enter into a voluntary agreement with the physician health
 53 program as defined in section two, article three-d of this
 54 chapter. The agreement between the physician, podiatrist or
 55 physician assistant and the physician health program shall
 56 include a jointly agreed upon treatment program and
 57 mandatory conditions and procedures to monitor compliance
 58 with the program of recovery.

59 (2) Any voluntary agreement entered into pursuant to this
 60 subsection shall not be considered a disciplinary action or
 61 order by the board, shall not be disclosed to the board and
 62 shall not be public information if:

63 (A) Such voluntary agreement is the result of the
 64 physician, podiatrist or physician assistant self-enrolling or
 65 voluntarily participating in the board-designated physician
 66 health program;

67 (B) The board has not received nor filed any written
 68 complaints regarding said physician, podiatrist or physician
 69 assistant relating to an alcohol, chemical dependency or
 70 major mental illness affecting the care and treatment of
 71 patients, nor received any reports pursuant to subsection (b),
 72 section fourteen of this article relating to an alcohol or
 73 chemical dependency impairment; and

74 (C) The physician, podiatrist or physician assistant is in
 75 compliance with the voluntary treatment program and the
 76 conditions and procedures to monitor compliance.

77 (3) If any physician, podiatrist or physician assistant
78 enters into a voluntary agreement with the board-approved
79 physician health program, pursuant to this subsection and
80 then fails to comply with or fulfill the terms of said
81 agreement, the physician health program shall report the
82 noncompliance to the board within twenty-four hours. The
83 board may initiate disciplinary proceedings pursuant to
84 subsection (a), section fourteen of this article or may permit
85 continued participation in the physician health program or
86 both.

87 (4) If the board has not instituted any disciplinary
88 proceeding as provided for in this article, any information
89 received, maintained or developed by the board relating to
90 the alcohol or chemical dependency impairment of any
91 physician, podiatrist or physician assistant and any voluntary
92 agreement made pursuant to this subsection shall be
93 confidential and not available for public information,
94 discovery or court subpoena, nor for introduction into
95 evidence in any medical professional liability action or other
96 action for damages arising out of the provision of or failure
97 to provide health care services.

98 In the board's annual report of its activities to the
99 Legislature required under section seven of this article, the
100 board shall include information regarding the success of the
101 voluntary agreement mechanism established therein:
102 *Provided*, That in making such report, the board shall not
103 disclose any personally identifiable information relating to
104 any physician, podiatrist or physician assistant participating
105 in a voluntary agreement as provided herein.

106 Notwithstanding any of the foregoing provisions, the
107 board may cooperate with and provide documentation of any

108 voluntary agreement entered into pursuant to this subsection
 109 to licensing boards in other jurisdictions of which the board
 110 has become aware and may be appropriate.

111 (i) Any physician-patient privilege does not apply in any
 112 investigation or proceeding by the board or by a medical peer
 113 review committee or by a hospital governing board with
 114 respect to relevant hospital medical records, while any of the
 115 aforesaid are acting within the scope of their authority:
 116 *Provided*, That the disclosure of any information pursuant to
 117 this provision shall not be considered a waiver of any such
 118 privilege in any other proceeding.

**§30-3-12. Biennial renewal of license to practice medicine and
 surgery or podiatry; continuing education; rules;
 fee; inactive license.**

1 (a) A license to practice medicine and surgery or podiatry
 2 in this state is valid for a term of two years.

3 (b) The license shall be renewed:

4 (1) Upon receipt of a reasonable fee, as set by the board;

5 (2) Submission of an application on forms provided by
 6 the board; and

7 (3) A certification of participation in and successful
 8 completion of a minimum of fifty hours of continuing
 9 medical or podiatric education satisfactory to the board, as
 10 appropriate to the particular license, during the preceding
 11 two-year period.

12 (c) The application may not require disclosure of a
13 voluntary agreement entered into pursuant to subsection (h),
14 section nine of this article.

15 (d) Continuing medical education satisfactory to the
16 board is continuing medical education designated as
17 Category I by the American Medical Association or the
18 Academy of Family Physicians and alternate categories
19 approved by the board.

20 (e) Continuing podiatric education satisfactory to the
21 board is continuing podiatric education approved by the
22 Council on Podiatric Education and alternate categories
23 approved by the board.

24 (f) Notwithstanding any provision of this chapter to the
25 contrary, beginning the first day of July, two thousand seven,
26 failure to timely submit to the board a certification of
27 successful completion of a minimum of fifty hours of
28 continuing medical or podiatric education satisfactory to the
29 board, as appropriate to the particular license, shall result in
30 the automatic expiration of any license to practice medicine
31 and surgery or podiatry until such time as the certification,
32 with all supporting written documentation, is submitted to
33 and approved by the board.

34 (g) If a license is automatically expired and reinstatement
35 is sought within one year of the automatic expiration, the
36 former licensee shall:

37 (1) Provide certification with supporting written
38 documentation of the successful completion of the required
39 continuing education;

40 (2) Pay a renewal fee; and

41 (3) Pay a reinstatement fee equal to fifty percent of the
42 renewal fee.

43 (h) If a license is automatically expired and more than
44 one year has passed since the automatic expiration, the
45 former licensee shall:

46 (1) Apply for a new license;

47 (2) Provide certification with supporting written
48 documentation of the successful completion of the required
49 continuing education; and

50 (3) Pay such fees as determined by the board.

51 (i) Any individual who accepts the privilege of practicing
52 medicine and surgery or podiatry in this state is required to
53 provide supporting written documentation of the continuing
54 education represented as received within thirty days of
55 receipt of a written request to do so by the board. If a licensee
56 fails or refuses to provide supporting written documentation
57 of the continuing education represented as received as
58 required in this section, such failure or refusal to provide
59 supporting written documentation is prima facie evidence of
60 renewing a license to practice medicine and surgery or
61 podiatry by fraudulent misrepresentation.

62 (j) The board may renew, on an inactive basis, the license
63 of a physician or podiatrist who is currently licensed to
64 practice medicine and surgery or podiatry in, but is not
65 actually practicing, medicine and surgery or podiatry in this
66 state. A physician or podiatrist holding an inactive license
67 shall not practice medicine and surgery or podiatry in this
68 state.

69 (k) An inactive license may be converted by the board to
70 an active license upon a written request by the licensee to the
71 board that:

72 (1) Accounts for his or her period of inactivity to the
73 satisfaction of the board; and

74 (2) Submits written documentation of participation in and
75 successful completion of a minimum of fifty hours of
76 continuing medical or podiatric education satisfactory to the
77 board, as appropriate to the particular license, during each
78 preceding two-year period.

79 (1) An inactive license may be obtained upon receipt of a
80 reasonable fee, as set by the board, and submission of an
81 application on forms provided by the board on a biennial
82 basis.

83 (m) The board may not require any physician or
84 podiatrist who is retired or retiring from the active practice of
85 medicine and surgery or the practice of podiatry and who is
86 voluntarily surrendering their license to return to the board
87 the license certificate issued to them by the board.

§30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Approved program" means an educational program
3 for physician assistants approved and accredited by the
4 committee on allied health education and accreditation on
5 behalf of the American Medical Association or its successor;

6 (2) "Health care facility" means any licensed hospital,
7 nursing home, extended care facility, state health or mental
8 institution, clinic or physician's office;

9 (3) "Physician assistant" means an assistant to a physician
10 who is a graduate of an approved program of instruction in
11 primary health care or surgery, has attained a baccalaureate
12 or master's degree, has passed the national certification
13 examination and is qualified to perform direct patient care
14 services under the supervision of a physician;

15 (4) "Physician assistant-midwife" means a physician
16 assistant who meets all qualifications set forth under
17 subdivision (3) of this subsection and fulfills the
18 requirements set forth in subsection (d) of this section, is
19 subject to all provisions of this section and assists in the
20 management and care of a woman and her infant during the
21 prenatal, delivery and postnatal periods; and

22 (5) "Supervising physician" means a doctor or doctors of
23 medicine or podiatry permanently licensed in this state who
24 assume legal and supervisory responsibility for the work or
25 training of any physician assistant under his or her
26 supervision.

27 (b) The board shall promulgate rules pursuant to the
28 provisions of article three, chapter twenty-nine-a of this code
29 governing the extent to which physician assistants may
30 function in this state. The rules shall provide that the
31 physician assistant is limited to the performance of those
32 services for which he or she is trained and that he or she
33 performs only under the supervision and control of a
34 physician permanently licensed in this state, but that
35 supervision and control does not require the personal
36 presence of the supervising physician at the place or places
37 where services are rendered if the physician assistant's
38 normal place of employment is on the premises of the

39 supervising physician. The supervising physician may send
40 the physician assistant off the premises to perform duties
41 under his or her direction, but a separate place of work for the
42 physician assistant may not be established. In promulgating
43 the rules, the board shall allow the physician assistant to
44 perform those procedures and examinations and in the case
45 of certain authorized physician assistants to prescribe at the
46 direction of his or her supervising physician in accordance
47 with subsection (n) of this section those categories of drugs
48 submitted to it in the job description required by this section.
49 Certain authorized physician assistants may pronounce death
50 in accordance with the rules proposed by the board which
51 receive legislative approval. The board shall compile and
52 publish an annual report that includes a list of currently
53 licensed physician assistants and their employers and location
54 in the state.

55 (c) The board shall license as a physician assistant any
56 person who files an application together with a proposed job
57 description and furnishes satisfactory evidence to it that he or
58 she has met the following standards:

59 (1) Is a graduate of an approved program of instruction in
60 primary health care or surgery;

61 (2) Has passed the certifying examination for a primary
62 care physician assistant administered by the national
63 commission on certification of physician assistants and has
64 maintained certification by that commission so as to be
65 currently certified;

66 (3) Is of good moral character; and

67 (4) Has attained a baccalaureate or master's degree.

68 (d) The board shall license as a physician assistant-
69 midwife any person who meets the standards set forth under

70 subsection (d) of this section and, in addition thereto, the
71 following standards:

72 (1) Is a graduate of a school of midwifery accredited by
73 the American college of nurse-midwives;

74 (2) Has passed an examination approved by the board;
75 and

76 (3) Practices midwifery under the supervision of a board-
77 certified obstetrician, gynecologist or a board-certified family
78 practice physician who routinely practices obstetrics.

79 (e) The board may license as a physician assistant any
80 person who files an application together with a proposed job
81 description and furnishes satisfactory evidence that he or she
82 is of good moral character and meets either of the following
83 standards:

84 (1) He or she is a graduate of an approved program of
85 instruction in primary health care or surgery prior to the first
86 day of July, one thousand nine hundred ninety-four, and has
87 passed the certifying examination for a physician assistant
88 administered by the national commission on certification of
89 physician assistants and has maintained certification by that
90 commission so as to be currently certified; or

91 (2) He or she had been certified by the board as a
92 physician assistant then classified as "Type B" prior to the
93 first day of July, one thousand nine hundred eighty-three.

94 (f) Licensure of an assistant to a physician practicing the
95 specialty of ophthalmology is permitted under this section:
96 *Provided*, That a physician assistant may not dispense a
97 prescription for a refraction.

98 (g) When any graduate of an approved program submits
99 an application to the board for a physician assistant license,

100 accompanied by a job description as referenced by this
101 section, the board shall issue to that applicant a temporary
102 license allowing that applicant to function as a physician
103 assistant until the applicant successfully passes the national
104 commission on certification of physician assistants' certifying
105 examination: *Provided*, That the applicant shall sit for and
106 obtain a passing score on the examination next offered
107 following graduation from the approved program. No
108 applicant shall receive a temporary license who, following
109 graduation from an approved program, has sat for and not
110 obtained a passing score on the examination. A physician
111 assistant who has not been certified by the National Board of
112 Medical Examiners on behalf of the national commission on
113 certification of physician assistants will be restricted to work
114 under the direct supervision of the supervising physician.

115 (h) A physician assistant who has been issued a
116 temporary license shall, within thirty days of receipt of
117 written notice from the national commission on certification
118 of physician assistants of his or her performance on the
119 certifying examination, notify the board in writing of his or
120 her results. In the event of failure of that examination, the
121 temporary license shall expire and terminate automatically
122 and the board shall so notify the physician assistant in
123 writing.

124 (i) Any physician applying to the board to supervise a
125 physician assistant shall affirm that the range of medical
126 services set forth in the physician assistant's job description
127 are consistent with the skills and training of the supervising
128 physician and the physician assistant. Before a physician
129 assistant can be employed or otherwise use his or her skills,
130 the supervising physician and the physician assistant must
131 obtain approval of the job description from the board. The
132 board may revoke or suspend any license of an assistant to a
133 physician for cause, after giving that assistant an opportunity
134 to be heard in the manner provided by article five, chapter

135 twenty-nine-a of this code and as set forth in rules duly
136 adopted by the board.

137 (j) The supervising physician is responsible for
138 observing, directing and evaluating the work, records and
139 practices of each physician assistant performing under his or
140 her supervision. He or she shall notify the board in writing of
141 any termination of his or her supervisory relationship with a
142 physician assistant within ten days of the termination. The
143 legal responsibility for any physician assistant remains with
144 the supervising physician at all times, including occasions
145 when the assistant under his or her direction and supervision,
146 aids in the care and treatment of a patient in a health care
147 facility. In his or her absence, a supervising physician must
148 designate an alternate supervising physician, however, the
149 legal responsibility remains with the supervising physician at
150 all times. A health care facility is not legally responsible for
151 the actions or omissions of the physician assistant unless the
152 physician assistant is an employee of the facility.

153 (k) The acts or omissions of a physician assistant
154 employed by health care facilities providing inpatient or
155 outpatient services shall be the legal responsibility of the
156 facilities. Physician assistants employed by facilities in staff
157 positions shall be supervised by a permanently licensed
158 physician.

159 (l) A health care facility shall report in writing to the
160 board within sixty days after the completion of the facility's
161 formal disciplinary procedure, and also after the
162 commencement, and again after the conclusion, of any
163 resulting legal action, the name of any physician assistant
164 practicing in the facility whose privileges at the facility have
165 been revoked, restricted, reduced or terminated for any cause
166 including resignation, together with all pertinent information
167 relating to the action. The health care facility shall also report
168 any other formal disciplinary action taken against any
169 physician assistant by the facility relating to professional

170 ethics, medical incompetence, medical malpractice, moral
171 turpitude or drug or alcohol abuse. Temporary suspension for
172 failure to maintain records on a timely basis or failure to
173 attend staff or section meetings need not be reported.

174 (m) When functioning as a physician assistant, the
175 physician assistant shall wear a name tag that identifies him
176 or her as a physician assistant. A two and one-half by three
177 and one-half inch card of identification shall be furnished by
178 the board upon licensure of the physician assistant.

179 (n) A physician assistant may write or sign prescriptions
180 or transmit prescriptions by word of mouth, telephone or
181 other means of communication at the direction of his or her
182 supervising physician. The board shall promulgate rules
183 pursuant to the provisions of article three, chapter twenty-
184 nine-a of this code governing the eligibility and extent to
185 which a physician assistant may prescribe at the direction of
186 the supervising physician. The rules shall include, but not be
187 limited to, the following:

188 (1) Provisions for approving a state formulary classifying
189 pharmacologic categories of drugs that may be prescribed by
190 a physician assistant:

191 (A) The following categories of drugs shall be excluded
192 from the formulary: Schedules I and II of the Uniform
193 Controlled Substances Act, anticoagulants, antineoplastic,
194 radiopharmaceuticals, general anesthetics and radiographic
195 contrast materials;

196 (B) Drugs listed under Schedule III shall be limited to a
197 72-hour supply without refill; and

198 (C) Categories of other drugs may be excluded as
199 determined by the board.

200 (2) All pharmacological categories of drugs to be
201 prescribed by a physician assistant shall be listed in each job
202 description submitted to the board as required in subsection
203 (i) of this section;

204 (3) The maximum dosage a physician assistant may
205 prescribe;

206 (4) A requirement that to be eligible for prescription
207 privileges, a physician assistant shall have performed patient
208 care services for a minimum of two years immediately
209 preceding the submission to the board of the job description
210 containing prescription privileges and shall have successfully
211 completed an accredited course of instruction in clinical
212 pharmacology approved by the board; and

213 (5) A requirement that to maintain prescription privileges,
214 a physician assistant shall continue to maintain national
215 certification as a physician assistant and, in meeting the
216 national certification requirements, shall complete a
217 minimum of ten hours of continuing education in rational
218 drug therapy in each certification period. Nothing in this
219 subsection shall be construed to permit a physician assistant
220 to independently prescribe or dispense drugs.

221 (o) A supervising physician may not supervise at any one
222 time more than three full-time physician assistants or their
223 equivalent, except that a physician may supervise up to four
224 hospital-employed physician assistants. No physician shall
225 supervise more than four physician assistants at any one time.

226 (p) A physician assistant may not sign any prescription,
227 except in the case of an authorized physician assistant at the
228 direction of his or her supervising physician in accordance
229 with the provisions of subsection (n) of this section. A
230 physician assistant may not perform any service that his or
231 her supervising physician is not qualified to perform. A
232 physician assistant may not perform any service that is not

233 included in his or her job description and approved by the
234 board as provided for in this section.

235 (q) The provisions of this section do not authorize any
236 physician assistant to perform any specific function or duty
237 delegated by this code to those persons licensed as
238 chiropractors, dentists, dental hygienists, optometrists or
239 pharmacists or certified as nurse anesthetists.

240 (r) Each application for licensure submitted by a licensed
241 supervising physician under this section is to be accompanied
242 by a fee of one hundred dollars. A fee of fifty dollars is to be
243 charged for the biennial renewal of the license. A fee of
244 twenty-five dollars is to be charged for any change of
245 supervising physician.

246 (s) As a condition of renewal of physician assistant
247 license, each physician assistant shall provide written
248 documentation of participation in and successful completion
249 during the preceding two-year period of continuing
250 education, in the number of hours specified by the board by
251 rule, designated as Category I by the American Medical
252 Association, American Academy of Physician Assistants or
253 the Academy of Family Physicians and continuing education,
254 in the number of hours specified by the board by rule,
255 designated as Category II by the association or either
256 academy.

257 (t) Notwithstanding any provision of this chapter to the
258 contrary, beginning the first day of July, two thousand seven,
259 failure to timely submit the required written documentation
260 shall result in the automatic expiration of any license as a
261 physician assistant until the written documentation is
262 submitted to and approved by the board.

263 (u) If a license is automatically expired and reinstatement
264 is sought within one year of the automatic expiration, the
265 former licensee shall:

PROFESSIONS AND OCCUPATIONS [Ch. 204

266 (1) Provide certification with supporting written
267 documentation of the successful completion of the required
268 continuing education;

269 (2) Pay a renewal fee; and

270 (3) Pay a reinstatement fee equal to fifty percent of the
271 renewal fee.

272 (v) If a license is automatically expired and more than
273 one year has passed since the automatic expiration, the
274 former licensee shall:

275 (1) Apply for a new license;

276 (2) Provide certification with supporting written
277 documentation of the successful completion of the required
278 continuing education; and

279 (3) Pay such fees as determined by the board.

280 (w) It is unlawful for any physician assistant to represent
281 to any person that he or she is a physician, surgeon or
282 podiatrist. Any person who violates the provisions of this
283 subsection is guilty of a felony and, upon conviction thereof,
284 shall be imprisoned in the penitentiary for not less than one
285 nor more than two years, or be fined not more than two
286 thousand dollars, or both fined and imprisoned.

287 (x) All physician assistants holding valid certificates
288 issued by the board prior to the first day of July, one
289 thousand nine hundred ninety-two, shall be considered to be
290 licensed under this section.

ARTICLE 3D. PHYSICIAN HEALTH PROGRAMS.

§30-3D-1. Definitions.

§30-3D-2. Physician health program.

§30-3D-3. Discretionary authority of boards to designate programs.

§30-3D-1. Definitions.

1 For the purposes of this article, the following words and
2 terms have the meanings ascribed to them, unless the context
3 clearly indicates otherwise.

4 (1) “Boards” mean the West Virginia Board of Medicine
5 and Board of Osteopathy.

6 (2) “Major mental illness” means a diagnosis of a mental
7 disorder within the axis of psychotic or affective or mood, or
8 alcohol or chemical abuse, or alcohol or chemical
9 dependency, as stipulated in the International Code of
10 Diagnosis.

11 (3) “Physician and physician assistant” mean those health
12 care professionals licensed by the West Virginia Board of
13 Medicine or the West Virginia Board of Osteopathy.

14 (4) “Podiatrist” means those individuals licensed by the
15 West Virginia Board of Medicine to undertake the practice of
16 podiatry.

17 (5) “Qualifying illness” means the diagnosis of alcohol or
18 substance abuse or alcohol or substance dependency or major
19 mental illness.

§30-3D-2. Physician health program.

1 (a) The boards are authorized to designate one or more
2 physician health programs. To be eligible for designation by
3 the boards, a physician health program shall:

4 (1) Agree to make their services available to all licensed
5 West Virginia physicians, podiatrists and physicians’
6 assistants with a qualifying illness;

7 (2) Provide for the education of physicians, podiatrists
8 and physicians’ assistants with respect to the recognition and
9 treatment of alcohol, chemical dependency and mental illness
10 and the availability of the physician health program for
11 qualifying illnesses;

12 (3) Offer assistance to any person in referring a
13 physician, podiatrist or physicians' assistant for purposes of
14 assessment or treatment or both for a qualifying illness;

15 (4) Monitor the status of a physician, podiatrist or
16 physicians' assistant who enters treatment for a qualifying
17 illness pursuant to a written, voluntary agreement during
18 treatment;

19 (5) Monitor the compliance of a physician, podiatrist or
20 physicians' assistant who enters into a written, voluntary
21 agreement for a qualifying illness with the physician health
22 program setting forth a course for recovery;

23 (6) Agree to accept referrals from the boards to provide
24 monitoring services pursuant to a board order; and

25 (7) Include such other requirements as the boards deem
26 necessary.

27 (b) A designated physician health program shall:

28 (1) Set and collect reasonable fees, grants and donations
29 for administration and services provided;

30 (2) Work collaboratively with the boards to develop
31 model compliance agreements;

32 (3) Work collaboratively with the boards to identify
33 qualified providers of services as may be needed by the
34 individuals participating in the physician health program;

35 (4) Report to the boards no less than annually, statistics
36 including the number of individuals served by license held;
37 the number of compliant individuals; the number of
38 individuals who have successfully completed their agreement
39 period; and the number of individuals reported to a particular
40 board for suspected noncompliance: *Provided*, That in
41 making such report the physician health program shall not
42 disclose any personally identifiable information relating to
43 any physician, podiatrist or physician assistant participating
44 in a voluntary agreement as provided herein.

45 (c) The fact that a physician, physician's assistant or
46 podiatrist is participating in a designated physician health
47 program is confidential, as is all physicians, podiatrists or
48 physicians assistants patient information, acquired, created or
49 used by the physician health program, and it shall remain
50 confidential and may not be subject to discovery or subpoena
51 in a civil case. The disclosure of participation and
52 noncompliance to the appropriate board, as required by a
53 compliance agreement, waives the confidentiality as to the
54 appropriate board for disciplinary purposes.

55 (d) The physician health program and all persons engaged
56 in physician health program activities are immune from civil
57 liability and no civil action may be brought or maintained
58 while the physician health program and all persons engaged
59 in physician health program activities are acting in good faith
60 and within the scope of their duties.

61 (e) The boards are immune from civil liability and no
62 civil action may be brought or maintained against the boards
63 or the state for an injury alleged to have been the result of the
64 activities of the physician health program or the boards
65 referral of an individual to the physician health program
66 when they are acting in good faith and within the scope of
67 their duties.

§30-3D-3. Discretionary authority of boards to designate programs.

1 The West Virginia Board of Medicine and the West
2 Virginia Board of Osteopathy have the sole discretion to
3 designate physician health programs for licensees of the
4 respective boards and no provision of this article may be
5 construed to entitle any physician, podiatrist or physician
6 assistant to the creation or designation of a physician health
7 program for any individual qualifying illness or group of
8 qualifying illnesses.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**§30-14-11a. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.**

1 (a) The board shall maintain a permanent record of the
2 names of all osteopathic physicians and osteopathic physician
3 assistants, licensed, certified or otherwise lawfully practicing
4 in this state and of all persons applying to be so licensed to
5 practice, along with an individual historical record for each
6 such individual containing reports and all other information
7 furnished the board under this article or otherwise. When the
8 board receives a report submitted pursuant to the provisions
9 of section twelve-a of this article, or when the board receives
10 or initiates a complaint regarding the conduct of anyone
11 practicing osteopathic medicine or surgery, the board shall
12 create a separate complaint file in which the board shall
13 maintain all documents relating to the investigation and
14 action upon the alleged conduct.

15 (b) Upon a determination by the board that any report
16 submitted to it is without merit, the report shall be expunged
17 from the individual's historical record.

18 (c) An osteopathic physician, osteopathic physician
19 assistant, or applicant, or authorized representative thereof,
20 has the right, upon request, to examine his or her own
21 individual records maintained by the board pursuant to this
22 article and to place into such record a statement of reasonable
23 length of his or her own view of the correctness or relevance
24 of any information existing in such record. Such statement
25 shall at all times accompany that part of the record in
26 contention.

27 (d) An osteopathic physician, osteopathic physician
28 assistant or applicant has the right to seek through court
29 action the amendment or expungement of any part of his or
30 her historical record.

31 (e) An osteopathic physician, osteopathic physician
32 assistant or applicant shall be provided written notice within
33 thirty days of the placement and substance of any information
34 in his or her individual historical record that pertains to him
35 or her and that was not submitted to the board by him or her,
36 other than requests for verification of the status of the
37 individual's license and the board's responses thereto.

38 (f) Except for information relating to biographical
39 background, education, professional training and practice, a
40 voluntary agreement entered into pursuant to subsection (h)
41 of this section and which has been disclosed to the board,
42 prior disciplinary action by any entity, or information
43 contained on the licensure application, the board shall
44 expunge information in an individual's complaint file unless
45 it has initiated a proceeding for a hearing upon such
46 information within two years of the placing of the
47 information into the complaint file.

48 (g) Orders of the board relating to disciplinary action
49 against a physician, or physician assistant are public
50 information.

51 (h) (1) In order to encourage voluntary participation in
52 monitored alcohol, chemical dependency or major mental
53 illness programs and in recognition of the fact that major
54 mental illness, alcoholism and chemical dependency are
55 illnesses, an osteopathic physician or osteopathic physician
56 assistant licensed, certified, or otherwise lawfully practicing
57 in this state or applying for a license to practice in this state
58 may enter into a voluntary agreement with the

59 board-designated physician health program. The agreement
60 between the physician or physician assistant and the
61 physician health program shall include a jointly agreed upon
62 treatment program and mandatory conditions and procedures
63 to monitor compliance with the program of recovery.

64 (2) Any voluntary agreement entered into pursuant to this
65 subsection shall not be considered a disciplinary action or
66 order by the board, shall not be disclosed to the board and
67 shall not be public information if:

68 (A) Such voluntary agreement is the result of the
69 physician or physician assistant self-enrolling or voluntarily
70 participating in the board-designated physician health
71 program;

72 (B) The board has not received nor filed any written
73 complaints regarding said physician or physician assistant
74 relating to an alcohol, chemical dependency or major mental
75 illness affecting the care and treatment of patients, nor
76 received any written reports pursuant to subsection (b),
77 section fourteen of this article relating to an alcohol or
78 chemical dependency impairment; and

79 (C) The physician or physician assistant is in compliance
80 with the voluntary treatment program and the conditions and
81 procedures to monitor compliance.

82 (3) If any osteopathic physician or osteopathic physician
83 assistant enters into a voluntary agreement with the
84 board-approved physician health program, pursuant to this
85 subsection and then fails to comply with, or fulfill the terms
86 of said agreement the physician health program shall report
87 the noncompliance to the board within twenty-four hours.
88 The board may initiate disciplinary proceedings pursuant to

89 section eleven of this article or may permit continued
90 participation in the physician health program or both.

91 (4) If the board has not instituted any disciplinary
92 proceeding as provided in this article, any information
93 received, maintained, or developed by the board relating to
94 the alcohol or chemical dependency impairment of any
95 osteopathic physician or osteopathic physician assistant and
96 any voluntary agreement made pursuant to this subsection
97 shall be confidential and not available for public information,
98 discovery or court subpoena, nor for introduction into
99 evidence in any medical professional liability action or other
100 action for damages arising out of the provision of or failure
101 to provide health care services.

102 In the board's annual report of its activities to the
103 Governor and the Legislature required under section twelve,
104 article one of this chapter, the board shall include information
105 regarding the success of the voluntary agreement mechanism
106 established therein: *Provided*, That in making such report the
107 board shall not disclose any personally identifiable
108 information relating to any osteopathic physician or
109 osteopathic physician assistant participating in a voluntary
110 agreement as provided herein.

111 Notwithstanding any of the foregoing provisions, the
112 board may cooperate with and provide documentation of any
113 voluntary agreement entered into pursuant to this subsection
114 to licensing boards in other jurisdictions of which the board
115 has become aware and as may be appropriate.

116 (i) Any physician-patient privilege does not apply in any
117 investigation or proceeding by the board or by a medical peer
118 review committee or by a hospital governing board with
119 respect to relevant hospital medical records, while any of the
120 aforesaid are acting within the scope of their authority:
121 *Provided*, That the disclosure of any information pursuant to
122 this provision shall not be considered a waiver of any such
123 privilege in any other proceeding.

CHAPTER 205**(H.B. 3006 - By Delegate Morgan)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §30-20-4 of the Code of West Virginia, 1931, as amended, relating to limiting the number of terms a member of the Board of Physical Therapy may serve.

Be it enacted by the Legislature of West Virginia:

That §30-20-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.**§30-20-4. West Virginia Board of Physical Therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.**

- 1 (a) The West Virginia Board of Physical Therapy is
2 continued and consists of five members appointed by the
3 Governor by and with the advice and consent of the Senate.
- 4 (b) The members of the board in office on the first day of
5 January, two thousand seven, shall, unless sooner removed,
6 continue to serve until their terms expire and until their
7 successors have been appointed and have qualified.
- 8 (c) Members shall be appointed for staggered terms of
9 five years or until their successors have been appointed and
10 have qualified. Any vacancy shall be filled by appointment
11 by the Governor for the unexpired term of the member whose

12 office is vacant and the appointment shall be made within
13 sixty days of the occurrence of the vacancy. The Governor
14 may remove any member of the board for incompetency,
15 neglect of duty, gross immorality or malfeasance in office.

16 (d) Each member of the board is required to:

17 (1) Be licensed under the provisions of this article or
18 under the former provisions of this article;

19 (2) Have at least three years' experience as a physical
20 therapist; and

21 (3) Be actively engaged in the practice of physical
22 therapy.

23 (e) Members may only serve for two consecutive full
24 terms. A member completing a term on and after the thirtieth
25 day of June, two thousand seven, may not be reappointed if
26 the term the member has just completed is the second of two
27 consecutive full terms. A member who has served two
28 consecutive terms may be appointed to another term only
29 after at least two years have passed since the member's last
30 term.

31 (f) Before entering upon the performance of his or her
32 duty, each member shall take and subscribe to the oath
33 prescribed by section five, article IV of the constitution of
34 this state.

35 (g) The board shall elect from its membership a
36 chairperson and secretary who serve at the will and pleasure
37 of the board.

38 (h) A majority of the members of the board is a quorum.

39 (i) The board shall meet at least once annually to transact
40 business. Meetings shall be held at the call of the chairperson

41 or upon the written request of three members at the time and
42 place as designated in the call or request.

43 (j) Members may be paid compensation and reimbursed
44 for actual and necessary expenses as provided in section
45 eleven, article one of this chapter, which compensation and
46 expenses shall be paid in accordance with the provisions of
47 this article.

CHAPTER 206

**(Com. Sub. for H.B. 2800 - By Delegates Barker, Iauinta,
Manchin, Miley, Yost, Porter, Romine, Rowan, Schoen
and Walters)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to repeal §30-23-6a and §30-23-6b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3-7a; and to amend and reenact §30-23-1, §30-23-2, §30-23-3, §30-23-4, §30-23-5, §30-23-6, §30-23-7, §30-23-8, §30-23-9, §30-23-10, §30-23-11, §30-23-12, §30-23-13 and §30-23-14 of said code; and to amend said code by adding thereto sixteen new sections, designated §30-23-15, §30-23-16, §30-23-17, §30-23-18, §30-23-19, §30-23-20, §30-23-21, §30-23-22, §30-23-23, §30-23-24, §30-23-25, §30-23-26, §30-23-27, §30-23-28, §30-23-29 and §30-23-30, all relating to the practice of medical imaging and radiation therapy; authorizing rule-making for the Board of Medicine to regulate Radiologist Assistants; changing the name of the board; increasing the membership of the board; clarifying license and permit requirements; defining scopes of practice; hearing requirements; penalties; and continuation of the board.

Be it enacted by the Legislature of West Virginia:

That §30-23-6a and §30-23-6b of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §30-3-7a; and that §30-23-1, §30-23-2, §30-23-3, §30-23-4, §30-23-5, §30-23-6, §30-23-7, §30-23-8, §30-23-9, §30-23-10, §30-23-11, §30-23-12, §30-23-13 and §30-23-14 of said code be amended and reenacted; and that said code be amended by adding thereto sixteen new sections, designated §30-23-15, §30-23-16, §30-23-17, §30-23-18, §30-23-19, §30-23-20, §30-23-21, §30-23-22, §30-23-23, §30-23-24, §30-23-25, §30-23-26, §30-23-27, §30-23-28, §30-23-29 and §30-23-30, all to read as follows:

Article

3. West Virginia Medical Practice Act.

23. Medical Imaging and Radiation Therapy Technology.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**§30-3-7a. Findings and Rule-making authority.**

1 (a) The Legislature finds that it is appropriate and in the
2 public interest to require the Board of Medicine to regulate
3 the practice of Radiologist Assistants.

4 (b) The West Virginia Board of Medicine, with the
5 advice of the West Virginia Medical Imaging and Radiation
6 Therapy Technology Board of Examiners, shall propose rules
7 for legislative approval, in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code, to:

9 (1) Establish the scope of practice of a Radiologist
10 Assistant;

11 (2) Develop the education and training requirements for
12 a Radiologist Assistant; and

13 (3) Regulate Radiologist Assistants.

ARTICLE 23. MEDICAL IMAGING AND RADIATION THERAPY TECHNOLOGY.

§30-23-1. License required to practice.

§30-23-2. Unlawful acts.

§30-23-3. Applicable law.

§30-23-4. Definitions.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

§30-23-6. Powers and duties of the board.

- §30-23-7. Rule making.
- §30-23-8. Fees; special revenue account; administrative fines.
- §30-23-9. Requirements for Radiologic Technology license.
- §30-23-10. Scope of Practice for a Radiologic Technologist.
- §30-23-11. Scope of Practice for a Radiation Therapist.
- §30-23-12. Exemptions from Radiologic Technology license.
- §30-23-13. Requirements for temporary Radiologic Technology license.
- §30-23-14. Radiologic Technology license from another state; license to practice in this state.
- §30-23-15. Requirements for Nuclear Medicine Technologist license.
- §30-23-16. Scope of Practice for Nuclear Medicine Technologist.
- §30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.
- §30-23-18. Scope of Practice for Magnetic Resonance Imaging Technologist.
- §30-23-19. Requirements for an apprentice license for Nuclear Medicine Technologists and Magnetic Resonance Imaging Technologists.
- §30-23-20. Requirements for Podiatric Medical Assistant permit.
- §30-23-21. Scope of practice for Podiatric Medical Assistants.
- §30-23-22. License and permit renewal requirements.
- §30-23-23. Display of license.
- §30-23-24. Refusal to issue or renew, suspension or revocation; disciplinary action.
- §30-23-25. Complaints; investigations; notice.
- §30-23-26. Hearing and judicial review.
- §30-23-27. Injunctions.
- §30-23-28. Criminal proceedings; penalties.
- §30-23-29. Single act evidence of practice.
- §30-23-30. Continuation of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

§30-23-1. License required to practice.

1 The Legislature finds that in the interest of public health
2 that:

3 (1) The people of this state should be protected from
4 excessive and improper exposure to ionizing radiation,
5 radioactive isotopes, radio waves, and magnetic fields
6 energy; and

7 (2) A person performing medical imaging or radiation
8 therapy technology in this state shall be licensed.

9 Therefore, it is the purpose of this article to regulate the
10 practice of medical imaging or radiation therapy in this state
11 by requiring that a person have a license, apprentice license
12 or permit when practicing medical imaging or radiation
13 therapy technology.

§30-23-2. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice medical imaging or radiation therapy technology in
3 this state without a license, apprentice license or permit

4 issued under the provisions of this article, or advertise or use
5 any title or description tending to convey the impression that
6 the person is a licensed Medical Imaging Technologist or
7 Radiation Therapy Technologist, unless such person has been
8 duly licensed under the provisions of this article, and such
9 license, apprentice license or permit has not expired, been
10 suspended or revoked.

11 (b) Without a licensee, it is unlawful for any business
12 entity to render any service or engage in any activity which
13 if rendered or engaged in by an individual, would constitute
14 the practice of medical imaging or radiation therapy
15 technology.

§30-23-3. Applicable law.

1 The practice of medical imaging or radiation therapy
2 technology and the Medical Imaging and Radiation Therapy
3 Technology Board of Examiners are subject to the provisions
4 of article one of this chapter and the provisions of this article
5 and any rules promulgated thereunder.

§30-23-4. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “ASPMA” means the American Society of Podiatric
5 Medical Assistants.

6 (b) “Board” means the West Virginia Medical Imaging
7 and Radiation Therapy Technology Board of Examiners.

8 (c) “Business entity” means any firm, partnership,
9 association, company, corporation, limited partnership,
10 limited liability company or other entity providing medical
11 imaging or radiation therapy technology.

12 (d) “Dental X-rays” means X-rays taken of the oral cavity
13 with x-ray units designed for this specific performance.

14 (e) “License” means a medical imaging and radiation
15 therapy technology license issued under the provisions of this
16 article.

17 (f) “Licensed practitioner” means a person licensed in
18 West Virginia to practice medicine, chiropractic, podiatry,
19 osteopathy or dentistry.

20 (g) “Licensee” means a person holding a license issued
21 under the provisions of this article.

22 (h) “Magnetic Resonance Imaging or MRI” means the
23 performance of medical imaging using radio waves, magnetic
24 fields and a computer to produce images of the body tissues.

25 (i) “Medical Imaging” means the use of ionizing
26 radiation, electromagnetic radiation, or radioactivity for
27 evaluation of body tissue in order to diagnose injury and
28 disease by means of image production.

29 (j) “NMTCB” means the Nuclear Medicine Technology
30 Certification Board.

31 (k) “Nuclear Medicine Technologist” means a person
32 holding a nuclear medicine license issued under the
33 provisions of this article.

34 (l) “Nuclear Medicine Technology” means the
35 compounding, calibrating, dispensing and administrating of
36 radio-pharmaceuticals, pharmaceuticals and radio-nuclides
37 under the direction of an individual listed as an authorized
38 user by the U.S. Nuclear Regulatory Commission for the
39 production of images for diagnosis and/or treatment of
40 various disorders.

41 (m) “Permittee” means any person holding a podiatric
42 medical assistant permit issued pursuant to the provisions of
43 this article.

44 (n) “PET/CT Technologist” means an individual
45 recognized by the board as qualified to operate a PET/CT
46 scanner.

47 (o) “PET/CT Technology” means the operation of a
48 Positron Emission Tomography/Computerized Tomography
49 scanner to view internal images of the body.

50 (p) "Podiatric medical assistant" means a person who has
51 been issued a permit under the provisions of this article, to
52 perform podiatric radiographs.

53 (q) "Podiatric radiographs" means radiographs confined
54 to the foot and ankle performed on dedicated podiatric X-ray
55 equipment.

56 (r) "Practice of Medical Imaging and Radiation Therapy
57 Technology" means the practice of Radiologic Technology,
58 Radiation Therapy, Nuclear Medicine Technology and
59 Magnetic Resonance Imaging Technology.

60 (s) "Radiologic technologist" means a person, other than
61 a licensed practitioner, who applies medical imaging or
62 assists in the application of ionizing radiation to human
63 beings for diagnostic or therapeutic purposes as prescribed by
64 a licensed practitioner.

65 (t) "Radiologic technology" means the application of
66 ionizing radiation or assisting in the application of medical
67 imaging to human beings for diagnostic or therapeutic
68 purposes as prescribed by a licensed practitioner.

69 (u) "Radiologist" means a licensed practitioner who has
70 successfully completed a residency in the field of Radiology
71 and specializes in the use of medical imaging for the
72 diagnosis or treatment of disease.

73 (v) "Radiologist Assistant or RA" means an individual
74 who is licensed under the rules of the West Virginia Board of
75 Medicine and has completed specialized training from an
76 accredited program in the profession and passed a written
77 examination as recognized by the West Virginia Board of
78 Medicine.

79 (w) "Radiology resident" means a licensed practitioner
80 who is in training to become a Radiologist and who uses
81 medical imaging in the diagnosis or treatment of disease,
82 under the supervision of a Radiologist.

83 (x) "Supervision" means responsibility for and control of
84 quality, safety and technical aspects in the application of
85 medical imaging technology on human beings for diagnostic
86 or therapeutic purposes.

87 (y) "Technology" means Medical Imaging Technology or
88 Radiation Therapy Technology.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

1 (a) The West Virginia Radiologic Technology Board of
2 Examiners is hereby continued and commencing the first day
3 of July, two thousand seven, shall be known as the West
4 Virginia Medical Imaging and Radiation Therapy
5 Technology Board of Examiners. The members of the board
6 in office on the first day of July, two thousand seven, shall,
7 unless sooner removed, continue to serve until their
8 respective terms expire and until their successors have been
9 appointed and qualified.

10 (b) Commencing the first day of July, two thousand
11 seven, the board shall consist of the following eleven
12 members:

13 (1) One Radiologic Health Specialist from the Radiation,
14 Toxics and Indoor Air Division of the West Virginia
15 Department of Health and Human Resources;

16 (2) Three licensed practitioners, two of whom shall be
17 Radiologists;

18 (3) Three licensed Radiologic Technologists, one of
19 whom shall be an active medical imaging educator;

20 (4) One licensed Nuclear Medicine Technologist,
21 appointed prior to the first day of July, two thousand seven,
22 by the Governor with the advice and consent of the Senate;

23 (5) One licensed Magnetic Resonance Imaging
24 technologist, appointed prior to the first day of July, two
25 thousand seven, by the Governor with the advice and consent
26 of the Senate; and

27 (6) Two citizen members who are not licensed under the
28 provisions of this article and do not perform any services
29 related to the practice licensed under the provisions of this
30 article.

31 (c) Each member shall be appointed for a term of three
32 years and may not serve more than two consecutive full
33 terms. A member having served two consecutive full terms
34 may not be appointed for one year after completion of his or
35 her second full term. A member shall continue to serve until
36 a successor has been appointed and has qualified. The terms
37 shall be staggered in accordance with the initial appointments
38 under prior enactments of this article. Any member serving
39 on the board on the effective date of this article may be
40 reappointed in accordance with the provisions of this section.

41 (d) Each member of the board shall be a resident of West
42 Virginia during the appointment term.

43 (e) The Radiologic Technologists, Nuclear Medicine
44 Technologists and the Magnetic Resonance Imaging
45 Technologists serving on the board shall maintain an active
46 license with the board.

47 (f) A vacancy on the board shall be filled by appointment
48 by the Governor for the unexpired term of the member whose
49 office is vacant.

50 (g) The Governor may remove any member from the
51 board for neglect of duty, incompetency or official
52 misconduct.

53 (h) A licensed member of the board immediately and
54 automatically forfeits membership to the board if his or her
55 license to practice has been suspended or revoked. A
56 member of the board immediately and automatically forfeits
57 membership to the board if he or she is convicted of a felony
58 under the laws of any state or the United States, or becomes
59 a nonresident of this state.

60 (i) The board shall designate one of its members as
61 Chairperson and one member as Secretary who shall serve at
62 the will of the board.

63 (j) Each member of the board shall receive compensation
64 and expense reimbursement in accordance with article one of
65 this chapter.

66 (k) A majority of the members of the board shall
67 constitute a quorum.

68 (l) The board shall hold at least two annual meetings.
 69 Other meetings shall be held at the call of the Chairperson or
 70 upon the written request of two members, at such time and
 71 place as designated in the call or request.

72 (m) Prior to commencing his or her duties as a member
 73 of the board, each member shall take and subscribe to the
 74 oath required by section five, article four of the Constitution
 75 of this state.

§30-23-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
 2 this article, by rule, in article one of this chapter, and
 3 elsewhere in law.

4 (b) The board's powers and duties include:

5 (1) Holding meetings, conducting hearings and
 6 administering examinations and reexaminations;

7 (2) Setting the requirements for a license, apprentice
 8 license and permit to practice Medical Imaging or Radiation
 9 Therapy Technology;

10 (3) Establishing procedures for submitting, approving and
 11 rejecting applications for a license, apprentice license and
 12 permit;

13 (4) Determining the qualifications of any applicant for a
 14 license, apprentice license and permit;

15 (5) Providing standards for approved schools of Medical
 16 Imaging and Radiation Therapy Technology, procedures for
 17 obtaining and maintaining approval, and procedures of
 18 revocation of approval where standards are not maintained:
 19 *Provided*, That the standards for approved schools meet at
 20 least the minimal requirements of the American Registry of
 21 Radiologic Technologist;

22 (6) Working with the West Virginia Board of Medicine
 23 to determine the scope of practice, the required education and
 24 training, and the type of regulations necessary for Radiologist
 25 Assistants;

26 (7) Preparing, conducting, administering and grading
27 written, examinations and reexaminations for a license,
28 apprentice license and permit;

29 (8) Contracting with third parties to prepare and/or
30 administer the examinations and reexaminations required
31 under the provisions of this article;

32 (9) Determining the passing grade for the examinations;

33 (10) Maintaining records of the examinations and
34 reexaminations the board or a third party administers,
35 including the number of persons taking the examination or
36 reexamination and the pass and fail rate;

37 (11) Maintaining an accurate registry of names and
38 addresses of all persons regulated by the board;

39 (12) Defining, by legislative rule, the fees charged under
40 the provisions of this article;

41 (13) Issuing, renewing, denying, suspending, revoking or
42 reinstating licenses, apprentice licenses and permits;

43 (14) Establishing, by legislative rule, the continuing
44 education requirements for licensees;

45 (15) Suing and being sued in its official name as an
46 agency of this state;

47 (16) Maintaining an office, and hiring, discharging,
48 setting the job requirements and fixing the compensation of
49 employees and investigators necessary to enforce the
50 provisions of this article;

51 (17) Investigating alleged violations of the provisions of
52 this article, the rules promulgated hereunder, and orders and
53 final decisions of the board;

54 (18) Conducting disciplinary hearings of all persons
55 regulated by the board;

56 (19) Setting disciplinary action and issuing orders;

57 (20) Instituting appropriate legal action for the
58 enforcement of the provisions of this article;

59 (21) Keeping accurate and complete records of its
60 proceedings, and certifying the same as may be appropriate;

61 (22) Proposing rules in accordance with the provisions of
62 article three, chapter twenty-nine-a of this code to implement
63 the provisions of this article;

64 (23) Conferring with the Attorney General or his or her
65 assistants in connection with all legal matters and questions;
66 and

67 (24) Taking all other actions necessary and proper to
68 effectuate the purposes of this article.

§30-23-7. Rule making.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of
4 this article, including:

5 (1) Standards and requirements for licensure, apprentice
6 licensure and permits to practice medical imaging or
7 radiation therapy technology;

8 (2) Procedures for examinations and reexaminations;

9 (3) Requirements for third parties to prepare and/or
10 administer examinations and reexaminations;

11 (4) Educational and experience requirements, and the
12 passing grade on the examination;

13 (5) Standards for approval of courses;

14 (6) Procedures for the issuance and renewal of a license,
15 apprentice license and permit;

16 (7) A fee schedule;

17 (8) Continuing education requirements for licensees;

18 (9) The procedures for denying, suspending, revoking,
19 reinstating or limiting the practice of a licensee or permittee;

Ch. 206] PROFESSIONS AND OCCUPATIONS

20 (10) Requirements for inactive or revoked licenses,
21 apprentice licenses and permits; and

22 (11) Any other rules necessary to effectuate the
23 provisions of this article.

24 (b) All rules in effect on the effective date of this article
25 shall remain in effect until they are amended or repealed, and
26 references to provisions of former enactments of this act are
27 interpreted to mean provisions of this article.

§30-23-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 “Board of Examiners of Medical Imaging Technology fund”,
5 which fund is hereby continued. The fund shall be used by
6 the board for the administration of this article. Except as may
7 be provided in article one of this chapter, the board shall
8 retain the amounts in the special revenue account from year
9 to year. No compensation or expense incurred under this
10 article is a charge against the general revenue fund.

11 (b) Any amounts received as fines imposed pursuant to
12 this article shall be deposited into the general revenue fund of
13 the State Treasury.

§30-23-9. Requirements for Radiologic Technology license.

1 (a) To be eligible for a license to practice Radiologic
2 Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have successfully completed an accredited course in
6 Radiologic study technology, as determined by an
7 accreditation body recognized by the board, from a school of
8 Radiologic Technology that has been approved by the board;

9 (4) Have passed the examination prescribed by the board,
10 which examination shall cover the basic subject matter of
11 Radiologic Technology, skills and techniques; and

12 (5) Not have been convicted of a felony under the laws of
13 any state or the United States within five years preceding the
14 date of application for licensure, which conviction remains
15 unreversed; and

16 (6) Not have been convicted of a misdemeanor or a
17 felony under the laws of any state or the United States at any
18 time if the offense for which the applicant was convicted
19 related to the practice of Medical Imaging, which conviction
20 remains unreversed.

21 (b) A person seeking a Radiologic Technology license
22 shall submit an application on a form prescribed by the board
23 and pay the license fee, which fee shall be returned to the
24 applicant if the license application is denied.

25 (c) A Radiologic Technology license issued by the board
26 prior to the first day of July, two thousand seven, shall for all
27 purposes be considered a license issued under this article.

§30-23-10. Scope of Practice for a Radiologic Technologist.

1 The scope of practice of a Radiologic Technologist
2 includes the following:

3 (1) Analysis and correlation of procedure requests and
4 clinical information provided by a physician or patient, or
5 both, for pre-procedure determination of the appropriate
6 exam, its extent, and its scope;

7 (2) Evaluation of the physical, mental and emotional
8 status of the patient with respect to the ability to understand
9 the risk versus benefit of the procedure and to undergo the
10 procedure requested;

11 (3) Selection, preparation, and operation of radiography
12 equipment and accessories to perform procedures;

Ch. 206] PROFESSIONS AND OCCUPATIONS

13 (4) Positioning patient to best demonstrate anatomy of
14 interest, while respecting patient's physical limitations and
15 comfort;

16 (5) Determination of radiographic exposure factors,
17 setting of factors on control panel, and application of x-ray
18 exposures;

19 (6) Application of radiation protection principles to
20 minimize radiation exposure to patient, self, and others;

21 (7) Evaluation of images for technical quality;

22 (8) Performance of noninterpretive fluoroscopic
23 procedures according to institutional policy;

24 (9) Oversight of image processing standards and the
25 appropriate labeling of images;

26 (10) Administering contrast media after consultation
27 with, and under the supervision of, a physician who is
28 immediately and physically available;

29 (11) Maintaining values congruent with the profession's
30 Code of Ethics and scope of practice as well as adhering to
31 national, institutional and/or departmental standards, policies
32 and procedures regarding delivery of services and patient
33 care; and

34 (12) Performing any other duties that the board authorizes
35 for a Radiologic Technologist.

§30-23-11. Scope of Practice for a Radiation Therapist.

1 The scope of practice for a Radiation Therapist includes
2 the following:

3 (1) Providing Radiation Therapy services by contributing
4 as an essential member of the radiation oncology treatment

5 team through provision of total quality care of each patient
6 undergoing a prescribed course of treatment;

7 (2) Evaluating and assessing treatment delivery
8 components;

9 (3) Providing Radiation Therapy treatment delivery
10 services to cure or improve the quality of life of patients by
11 accurately delivering a prescribed course of treatment;

12 (4) Evaluating and assessing daily, the physical and
13 emotional status of each patient to treatment delivery;

14 (5) Maintaining values congruent with the profession's
15 Code of Ethics and scope of practice as well as adhering to
16 national, institutional and/or departmental standards, policies
17 and procedures regarding treatment delivery and patient care;
18 and

19 (6) Performing any other duties that the board authorizes
20 for a Radiation Therapist.

§30-23-12. Exemptions from Radiologic Technology license.

1 The following persons are not required to obtain a
2 Radiologic Technology license in accordance with the
3 provisions of this article:

4 (1) A Medical Imaging Technology student enrolled in
5 and attending an approved school of Medical Imaging
6 Technology who as part of his or her course of study applies
7 medical imaging technology to a human being under the
8 supervision of a licensed Medical Imaging Technologist;

9 (2) A person acting as a dental assistant or dental
10 hygienist who under the supervision of a licensed dentist
11 operates only radiographic dental equipment for the sole
12 purpose of dental radiography of the oral cavity;

13 (3) A person engaged in performing the duties of a
14 Medical Imaging Technologist in the person's employment

Ch. 206] PROFESSIONS AND OCCUPATIONS

15 by an agency, bureau or division of the government of the
16 United States;

17 (4) A licensed practitioner, Radiologist or Radiology
18 resident;

19 (5) A person licensed as a Radiologist Assistant under the
20 West Virginia Board of Medicine; and

21 (6) A person who demonstrated to the board, prior to the
22 first day of July, one thousand nine hundred ninety-nine, that
23 he or she:

24 (A) Had engaged in the practice of Radiologic
25 Technology for the limited purpose of performing bone
26 densitometry in this state for five or more years;

27 (B) Practiced under the supervision of a licensed
28 practitioner; and

29 (C) Received a densitometry technologist degree certified
30 by the International Society for Clinical Densitometry.

**§30-23-13. Requirements for temporary Radiologic Technology
license.**

1 (a) The board may issue a temporary Radiologic
2 Technology license to engage in the practice of Radiologic
3 Technology in this state to an applicant who meets the
4 qualifications for a Radiologic Technology license, but has
5 not passed the examination.

6 (b) Temporary licenses expire as provided by rule.

**§30-23-14. Radiologic Technology license from another state;
license to practice in this state.**

1 (a) The board may issue a license to practice Radiologic
2 Technology in this state, without requiring an examination,
3 to an applicant from another jurisdiction who:

- 4 (1) Is not a resident of this state;
- 5 (2) Is of good moral character:
- 6 (3) Holds a valid Radiologic Technology license,
7 certificate or other authorization, including the American
8 Registry of Radiologic Technologists, to practice Radiologic
9 Technology in another jurisdiction and meets requirements
10 which are substantially equivalent to the Radiologic
11 Technology licensure requirements set forth in this article;
- 12 (4) Is not currently being investigated by a disciplinary
13 authority of this state or another jurisdiction, does not have
14 charges pending against his or her license or other
15 authorization to practice Radiologic Technology, and has
16 never had a license or other authorization to practice
17 Radiologic Technology revoked;
- 18 (5) Has not previously failed an examination for licensure
19 in this state;
- 20 (6) Has paid all the applicable fees; and
- 21 (7) Has completed such other action as required by the
22 board.
- 23 (b) A license, apprentice license or permit is not required
24 for a Medical Imaging or Radiation Therapy Technologist
25 from another jurisdiction, if that person:
- 26 (1) Is not a resident of this state;
- 27 (2) Holds a valid Medical Imaging or Radiation Therapy
28 Technology license, certificate or other authorization, to
29 practice Medical Imaging or Radiation Therapy Technology
30 in another jurisdiction and meets requirements which are
31 substantially equivalent to the Medical Imaging or Radiation
32 Therapy Technology licensure requirements set forth in this
33 article;
- 34 (3) Has no regular place of practice in this state; and

35 (4) Engages in the practice of Medical Imaging or
36 Radiation Therapy Technology in this state for a period of
37 not more than ten days in any calendar year.

§30-23-15. Requirements for Nuclear Medicine Technologist license.

1 (a) To be eligible for a license to practice Nuclear
2 Medicine Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Not have been convicted of a felony under the laws of
6 any state or the United States within five years preceding the
7 date of application for licensure, which conviction remains
8 unreversed;

9 (4) Not have been convicted of a misdemeanor or a
10 felony under the laws of any state or the United States at any
11 time if the offense for which the applicant was convicted
12 related to the practice of Medical Imaging, which conviction
13 remains unreversed.

14 (5) Meet one of the following qualifications:

15 (A) Have a baccalaureate or associate degree in one of
16 the physical or biological sciences pertaining to the Medical
17 Imaging or Radiation Therapy profession;

18 (B) Have a baccalaureate or associate degree in other
19 disciplines of Medical Imaging with successful completion of
20 courses in the following areas: college algebra, physics or
21 chemistry, human anatomy, physiology, and radiation safety;

22 (C) National certification as a certified Nuclear Medicine
23 Technologist (CNMT);

24 (D) National certification as a Registered Radiographer
25 (ARRT (R));

26 (E) National certification as a Registered Radiographer
27 specializing in Nuclear Medicine (ARRT (N)); or

28 (F) National certification as a Radiation Therapist
29 (ARRT(T)); and

30 (6) Pass an examination which has been approved by the
31 board, with a minimum passing score of seventy-five percent,
32 which examination shall cover the basic subject matter of
33 medical imaging, radiation safety, skills and techniques as it
34 pertains to Nuclear Medicine.

35 (b) A person seeking a Nuclear Medicine Technology
36 license shall submit an application on a form prescribed by
37 the board and pay the license fee, which fee shall be returned
38 to the applicant if the license application is denied.

39 (c) A Nuclear Medicine Technology license issued by the
40 board prior to the first day of July, two thousand seven, shall
41 for all purposes be considered a license issued under this
42 article: *Provided*, That a person holding a Nuclear Medicine
43 Technology license issued prior to the first day of July, two
44 thousand seven, must renew the license pursuant to the
45 provisions of this article.

§30-23-16. Scope of Practice for Nuclear Medicine Technologist.

1 The scope of practice for Nuclear Medicine Technology
2 includes the following:

3 (1) The practice of diagnostic in-vivo procedures and in-
4 vitro procedures which include:

5 (A) Analysis and correlation of procedure request and
6 clinical information provided by the referring physician or
7 patient, or both, for determination of appropriate exam,
8 extent, and scope;

9 (B) Evaluation of the physical and emotional status of the
10 patient with respect to the ability to undergo the procedure
11 requested;

12 (C) Immediate pre-dose review of patient's identification,
13 prescribed dose quantity and route of administration, and
14 identification of the test agent designed to prevent dose
15 mis-administration;

16 (D) Preparation of the appropriate radiopharmaceutical
17 with measurement of dose activity;

18 (E) Administration of appropriate diagnostic dose levels
19 of radiopharmaceuticals;

20 (F) Administration of non-radioactive pharmaceuticals
21 utilized in conjunction with a nuclear medicine imaging or in-
22 vivo procedure, for example, cholecystokinin, furosemide,
23 vitamin B12, in accordance with hospital or facility
24 procedures, excluding narcotic and sedating medication;

25 (G) Selection of appropriate imaging or test parameters,
26 or both;

27 (H) Obtaining images according to established protocols
28 and any special views to optimize information as appropriate;

29 (I) Placement of patient in proper position using
30 supportive materials and immobilizer as necessary;

31 (J) Assuring appropriate image labeling as to patient;

32 (K) Monitoring of patient and equipment during
33 procedure for determination and application of any corrective
34 actions necessary;

35 (L) Monitoring of data collection and processing and
36 performance of technical analysis of test results;

37 (M) Preparation and performance of laboratory in-vivo
38 nuclear medicine procedures, inclusive of the selection and

39 operation of laboratory counting equipment, performance of
40 calculations and data processing necessary for completion of
41 lab procedures and the submission of results to the physician
42 or licensee;

43 (N) Oversight and application of image development; and

44 (O) Performance of in-vitro testing of serum, plasma, or
45 other body fluids using radio immunoassay, or similar ligand
46 assay methods.

47 (2) The practice for handling radiopharmaceuticals which
48 includes:

49 (A) Preparation, by means of tagging, compounding, etc.,
50 in accordance with manufacturer's specifications;

51 (B) Measurement and calculation of activity of
52 radionuclides with a dose calibrator;

53 (C) Application of radioactive decay calculations to
54 determine required volume or unit form necessary to deliver
55 the prescribed radioactive dose; and

56 (D) Recording of radiopharmaceutical information on a
57 patient's permanent record.

58 (3) The practice for radionuclide therapy which includes:

59 (A) Assisting licensee in the preparation and applications
60 of therapeutic radionuclides;

61 (B) Oversight of radiation safety practices related to the
62 handling and administration of radiopharmaceuticals for
63 therapy of patients;

64 (C) Maintenance of records of radioactive material
65 receipt, use, storage, and disposal in accordance with
66 regulatory requirements;

67 (D) Oversight and enforcement of radiation safety
68 policies, practices, and regulations regarding the possession
69 and use of radioactive materials;

70 (E) Performance of radiation safety procedures such as
71 radiation survey and wipe testing of incoming radioactive
72 shipments and facility fixtures;

73 (F) Maintaining values congruent with the profession's
74 code of ethics and scope of practice as well as adhering to
75 national, institutional and/or departmental standards, policies
76 and procedures regarding delivery of services and patient
77 care; and

78 (G) Performing any other duties that the board determines
79 may be performed by a Nuclear Medicine Technologist.

80 (4) The scope of practice for a Nuclear Medicine
81 Technologist to operate a PET/CT unit requires that:

82 (A) The operation of a PET/CT unit that is only capable
83 of producing "nondiagnostic" CT images solely for the
84 purpose of fusion with PET images may be performed by an
85 individual licensed by the board as a Nuclear Medicine
86 Technologist, provided the licensee has obtained proper
87 documented training that has been approved by the board in
88 the radiation safety aspect of the operation of these units; and

89 (B) The operation of a PET/CT unit with the capability of
90 producing "diagnostic" CT images shall require the Nuclear
91 Medicine Technologist dual certification in Nuclear
92 Medicine (ARRT(N) or NMTCB) and Radiologic Technology
93 (ARRT (R)).

§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.

1 (a) To be eligible for a license to practice Magnetic
2 Resonance Imaging Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Not have been convicted of a felony under the laws of
6 any state or the United States within five years preceding the
7 date of application for licensure, which conviction remains
8 unreversed;

9 (4) Not have been convicted of a misdemeanor or a
10 felony under the laws of any state or the United States at any
11 time if the offense for which the applicant was convicted
12 related to the practice of Medical Imaging, which conviction
13 remains unreversed.

14 (5) Meet one of the following qualifications:

15 (A) Have a baccalaureate or associate degree in one of
16 the physical or biological sciences pertaining to the Medical
17 Imaging or Radiation Therapy profession;

18 (B) Have a baccalaureate or associate degree in other
19 disciplines of Medical Imaging with successful completion of
20 courses in the following areas: college algebra, physics or
21 chemistry, human anatomy, physiology, and radiation safety;

22 (C) National certification as a certified Nuclear Medicine
23 Technologist (CNMT);

24 (D) National certification as a registered Radiographer
25 (ARRT (R));

26 (E) National certification as a registered Radiographer
27 specializing in Nuclear Medicine (ARRT (N)); or

28 (F) National certification as a Radiation Therapist
29 (ARRT(T); and

30 (6) Pass an examination which has been approved by the
31 board, with a minimum passing score of seventy-five percent,
32 which examination shall cover the basic subject matter of
33 Medical Imaging, radiation safety, skills and techniques as it
34 pertains to Magnetic Resonance Imaging.

35 (b) A person seeking a Magnetic Resonance Imaging
36 Technology license shall submit an application on a form
37 prescribed by the board and pay the license fee, which fee
38 shall be returned to the applicant if the license application is
39 denied.

40 (c) A Magnetic Resonance Imaging Technology license
41 issued by the board prior to the first day of July, two
42 thousand seven, shall for all purposes be considered a license
43 issued under this article: *Provided*, That a person holding a
44 Magnetic Resonance Imaging Technology license issued
45 prior to the first day of July, two thousand seven, must renew
46 the license pursuant to the provisions of this article.

**§30-23-18. Scope of Practice for Magnetic Resonance Imaging
Technologist.**

1 The scope of practice for Magnetic Resonance Imaging
2 Technology includes the following:

3 (1) Make arrangements with other departments for
4 ancillary patient services (e.g. transportation, anesthesia);

5 (2) Orient patient and family to requirements necessary
6 for the exam and instruct patient regarding preparation prior
7 to imaging procedures;

8 (3) Assist with scheduling patients and coordinating
9 exams to assure smooth work flow and review patient's chart
10 to verify physician's orders;

11 (4) Assist patient on and off the scanning table and
12 maintain communication and provide reassurance to patient
13 throughout scanning procedure;

14 (5) Obtain patient's medical history prior to scan and
15 observe patient's vital signs, O2 saturation, patient's level of
16 consciousness during scanning procedure, and observe
17 patient's physical status prior to discharge from the scanning
18 procedure;

19 (6) Maintain controlled access to restricted area of strong
20 magnetic field to ensure safety of patients, visitors, and
21 hospital personnel and screen patient for ferrous and RF-
22 sensitive material prior to entrance into magnetic field;

23 (7) Evacuate patient in emergency situation (e.g., quench,
24 code, metallic object);

25 (8) Provide hearing protection to patient and others;

26 (9) Inspect equipment to make sure it is operable and safe
27 (e.g., coils, cables, door seals), perform document and
28 interpret the results of daily QC tests (center frequency,
29 signal to noise, image quality and artifacts);

30 (10) Monitor specific absorption rate (SAR) and cryogen
31 levels;

32 (11) Position patient according to type of study indicated
33 and enter patient's data needed to initiate scan;

34 (12) Explain the risks of contrast media injections, obtain
35 signed consent form, determine appropriate dose required,

36 program or activate the power injector and administer the
37 contrast media;

38 (13) Select all parameters needed to obtain a highly
39 diagnostic image;

40 (14) Archive images to or retrieve images from data
41 storage devices;

42 (15) Evaluate quality of filmed images and reformat
43 images;

44 (16) Perform automatic or manual frequency tuning;

45 (17) Differentiate between normal and abnormal images
46 to assess completion of procedure;

47 (18) Monitor image production and discriminate between
48 technically acceptable and unacceptable images;

49 (19) Maintaining values congruent with the profession's
50 code of ethics and scope of practice as well as adhering to
51 national, institutional and/or departmental standards, policies
52 and procedures regarding delivery of services and patient
53 care; and

54 (20) Perform any other duties that the board authorizes.

**§30-23-19. Requirements for an apprentice license for Nuclear
Medicine Technologists and Magnetic
Resonance Imaging Technologists.**

1 (a) The board may issue an apprentice license to an
2 individual who is practicing as a Nuclear Medicine
3 Technologist or a Magnetic Resonance Imaging Technologist
4 prior to the first day of July, two thousand seven but has not
5 obtained certification in the discipline. A notarized letter,
6 signed by the individual's supervising licensed physician,

7 must be submitted with the individual's application, stating
8 that the individual has performed the duties of a Nuclear
9 Medicine Technologist or Magnetic Resonance Imaging
10 Technologist prior to the first day of July, two thousand
11 seven.

12 (b) The apprentice license is valid for one year. An
13 apprentice license may be renewed annually for an additional
14 four years, giving the individual a total of five years to
15 complete the requirements and successfully pass the
16 certification examination for a Nuclear Medicine
17 Technologist license or a Magnetic Resonance Imaging
18 Technologist license. All individuals possessing an
19 apprentice license must work under the direct supervision of
20 a licensed practitioner or a technologist who is licensed in
21 that discipline.

22 (c) Any individual possessing a valid Medical Imaging
23 license issued by the Board and seeks to cross-train in the
24 discipline of Nuclear Medicine Technology or Magnetic
25 Resonance Imaging Technology, may obtain an apprentice
26 license in that discipline for the purpose of obtaining the
27 necessary clinical experience requirements in order to qualify
28 to sit for the required examination. This apprentice license
29 will be valid for one year and renewable for one year, giving
30 a cross-trained individual two years to obtain certification in
31 the discipline.

32 (d) Any individual not meeting the certification
33 requirements by the first day of July, two thousand twelve,
34 will not be permitted to work as a Nuclear Medicine or
35 Magnetic Resonance Imaging Technologist.

**§30-23-20. Requirements for Podiatric Medical Assistant
permit.**

1 (a) To be eligible for a Podiatric Medical Assistant permit
2 to perform podiatric radiographs, the applicant must:

Ch. 206] PROFESSIONS AND OCCUPATIONS

- 3 (1) Be of good moral character;
- 4 (2) Have a high school diploma or its equivalent;
- 5 (3) Pass a written examination for certification from the
6 American Society of Podiatric Medical Assistants (ASPMA);

7 (4) Maintain an active certification in the American
8 Society of Podiatric Medical Assistants (ASPMA) and meet
9 all requirements of that organization including the continuing
10 education requirements;

11 (5) Not have been convicted of a felony under the laws of
12 any state or the United States within five years preceding the
13 date of application for licensure, which conviction remains
14 unreversed; and

15 (6) Not have been convicted of a misdemeanor or felony
16 under the laws of any state or the United States at any time if
17 the offense for which the applicant was convicted related to
18 the practice of Radiologic Technology, which conviction
19 remains unreversed.

20 (b) A person seeking a Podiatric Medical Assistant permit
21 shall submit an application on a form prescribed by the board
22 and pay the permit fee, which fee shall be returned to the
23 applicant if the permit application is denied.

24 Upon application for renewal, the permittee shall submit
25 documentation of an active certification in ASPMA and
26 payment of a renewal fee.

27 (c) A Podiatric Medical Assistant permit issued by the
28 board prior to the first day of July, two thousand seven, shall
29 for all purposes be considered a permit issued under this

30 article: *Provided*, That a person holding a Podiatric Medical
31 Assistant permit issued prior to the first day of July, two
32 thousand seven, must renew the permit pursuant to the
33 provisions of this article.

§30-23-21. Scope of practice for Podiatric Medical Assistants.

1 The scope of practice for a Podiatric Medical Assistant
2 includes the following:

3 (a) The use of equipment specifically designed for the
4 performance of foot or ankle podiatric radiographs, as
5 approved by the board; and

6 (b) Performed under the supervision of a licensed
7 Podiatrist.

§30-23-22. License and permit renewal requirements.

1 (a) A licensee and permittee shall annually renew his or
2 her license or permit by completing a form prescribed by the
3 board, paying a renewal fee, and submitting any other
4 information required by the board.

5 (b) The board shall charge a fee for each renewal of a
6 license or permit and a late fee for any renewal not paid in a
7 timely manner.

8 (c) The board shall require as a condition for the renewal
9 of a license and permit that each licensee or permittee
10 complete continuing education requirements.

11 (d) The board may deny an application for renewal for
12 any reason which would justify the denial of an original
13 application for a license or permit.

§30-23-23. Display of license.

1 (a) The board shall prescribe the form for a license and
2 permit and may issue a duplicate license or permit, upon
3 payment of a fee.

4 (b) A licensee shall conspicuously display his or her
5 license at his or her principal place of practice. A photocopy
6 of the original license shall be conspicuously displayed at his
7 or her secondary place of employment.

8 (c) A permittee shall conspicuously display his or her
9 permit at his or her principal place of practice. A photocopy
10 of the original permit shall be conspicuously displayed at his
11 or her secondary place of employment.

**§30-23-24. Refusal to issue or renew, suspension or revocation;
disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew,
2 suspend, revoke or limit any license, apprentice license,
3 permit or practice privilege and may take disciplinary action
4 against a licensee or permittee who, after notice and a
5 hearing, has been adjudged by the board as unqualified for
6 any of the following reasons:

7 (1) Fraud, misrepresentation or deceit in obtaining or
8 maintaining a license or permit;

9 (2) Failure by any licensee or permittee to maintain
10 compliance with the requirements for the issuance or renewal
11 of a license, apprentice license or permit;

12 (3) Dishonesty, fraud, professional negligence in the
13 performance of medical imaging or radiation therapy
14 technology, or a willful departure from the accepted
15 standards of practice and professional conduct;

16 (4) Violation of any provision of this article or any rule
17 promulgated hereunder;

18 (5) Violation of any professional standard or rule of
19 professional conduct;

20 (6) Failure to comply with the provisions of this article or
21 any rule promulgated hereunder;

22 (7) Failure to comply with any order or final decision of
23 the board;

24 (8) Failure to respond to a request or action of the board;

25 (9) Conviction of a crime involving moral turpitude;

26 (10) Conviction of a felony or a crime involving
27 dishonesty or fraud or any similar crime under the laws of the
28 United States, this state or another jurisdiction, if the
29 underlying act or omission involved would have constituted
30 a crime under the laws of this state;

31 (11) Knowingly using any false or deceptive statements
32 in advertising;

33 (12) Any conduct adversely affecting the licensee's or
34 permittee's fitness to perform Medical Imaging or Radiation
35 Therapy Technology; or

36 (13) Except in emergency situations, failed to obtain
37 written authorization from the attending licensed practitioner
38 or from the patient and if the patient is a minor, from a parent
39 or a person having custody of the minor.

40 (b) The board shall suspend or revoke any license or
41 permit if it finds the existence of any grounds which would
42 justify the denial of an application for such license or permit
43 if application were then being made for it.

44 (c) If the board suspends, revokes, refuses to issue,
45 refuses to renew or limits any license, permit or practice
46 privilege, the board shall make and enter an order to that

47 effect and give written notice of the order to the person by
48 certified mail, return receipt requested, which order shall
49 include a statement of the charges setting forth the reasons
50 for the action, and notice of the date, time and place of the
51 hearing. If a license or permit is ordered suspended or
52 revoked, then the licensee or permittee shall, within twenty
53 days after receipt of the order, return the license, apprentice
54 license or permit to the board. The hearing shall be held in
55 accordance with the provisions of this article.

56 (d) Disciplinary action includes, but is not limited to, a
57 reprimand, censure, probation, administrative fines, and
58 mandatory attendance at continuing education seminars.

§30-23-25. Complaints; investigations; notice.

1 (a) The board may, on its own motion, conduct an
2 investigation to determine whether there are any grounds for
3 disciplinary action against a licensee or permittee. The board
4 shall, upon the verified written complaint of any person,
5 conduct an investigation to determine whether there are any
6 grounds for disciplinary action against a licensee or
7 permittee. For the purposes of an investigation, a member of
8 the board or the executive director of the board may issue
9 subpoenas and subpoenas duces tecum to obtain testimony
10 and documents to aid in the investigation.

11 (b) Upon receipt of a written complaint filed against any
12 licensee or permittee, the board shall provide a copy of the
13 complaint to the licensee or permittee.

14 (c) If the board finds, upon investigation, that probable
15 cause exists that the licensee or permittee has violated any
16 provision of this article or the rules promulgated hereunder,
17 then the board shall serve the licensee or permittee with a
18 written statement of charges and a notice specifying the date,
19 time and place of the hearing. The hearing shall be held in
20 accordance with the provisions of this article.

§30-23-26. Hearing and judicial review.

1 (a) Any person adversely affected by an order entered by
2 the board is entitled to a hearing. A hearing on a statement
3 of the charges shall be held in accordance with the provisions
4 for hearings set forth in article one of this chapter and the
5 procedures specified by the board by rule.

6 (b) Either party may elect to have an administrative law
7 judge or hearing examiner conduct the hearing and must
8 notify the other party of the election. The administrative law
9 judge or hearing examiner, at the conclusion of a hearing,
10 shall prepare a proposed order which shall contain findings
11 of fact and conclusions of law. Disciplinary action may be a
12 part of the proposed order, or the board may reserve this
13 obligation for its consideration. The board may accept, reject
14 or modify the decision of the administrative law judge or
15 hearing examiner.

16 (c) For the purpose of conducting a hearing, a member of
17 the board or the executive director of the board may issue
18 subpoenas and subpoenas duces tecum which shall be issued,
19 served, and enforced as specified in section one, article five,
20 chapter twenty-nine-a of this code, and all of the said section
21 one provisions dealing with subpoenas and subpoenas duces
22 tecum shall apply to subpoenas and subpoenas duces tecum
23 issued for the purpose of a hearing hereunder.

24 (d) If, after a hearing, the board determines the licensee
25 or permittee has violated any provision of this article, or the
26 board's rules, a formal decision shall be prepared and signed
27 by a member of the board or the executive director of the
28 board, which contains findings of fact, conclusions of law
29 and specifically lists the disciplinary actions imposed.

30 (e) Any licensee or permittee adversely affected by any
31 decision of the board entered after a hearing, may obtain
32 judicial review of the decision in accordance with section
33 four, article five, chapter twenty-nine-a of this code, and may
34 appeal any ruling resulting from judicial review in
35 accordance with article five, chapter twenty-nine-a of this
36 code.

37 (f) In addition to any other sanction imposed, the board
38 may require a licensee or permittee to pay the costs of the
39 proceeding.

§30-23-27. Injunctions.

1 (a) When, by reason of an investigation under this article
2 or otherwise, the board or any other interested person
3 believes that a person has violated or is about to violate any
4 provision of this article, any rule promulgated hereunder, any
5 order of the board or any final decision of the board, the
6 board or any other interested person may apply to any court
7 of competent jurisdiction for an injunction against such
8 person enjoining such person from the violation. Upon a
9 showing that the person has engaged in or is about to engage
10 in any prohibited act or practice, an injunction, restraining
11 order or other appropriate order may be granted by the court
12 without bond.

13 (b) The board may fine and/or issue cease and desist
14 orders against individuals and/or firms found to be in
15 violation of the provisions of this article or any rule adopted
16 thereunder.

17 (c) A cause of action by the board may be brought in the
18 Circuit Court of Kanawha County or in the Circuit Court of
19 the county where the cause of action took place.

§30-23-28. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a person has
3 knowingly violated the provisions of this article, the board
4 may bring its information to the attention of the Attorney
5 General or other appropriate law-enforcement officer who
6 may cause appropriate criminal proceedings to be brought.

7 (b) If a court of law finds that a person knowingly
8 violated any provision of this article, any rule promulgated
9 hereunder, any order of the board or any final decision of the
10 board, then the person is guilty of a misdemeanor and, upon
11 conviction thereof, shall be fined not less than one hundred

12 dollars and no more than one thousand dollars for each
 13 violation, imprisoned for up to six months for each violation,
 14 or both fined and imprisoned.

§30-23-29. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
 2 this article, evidence of the commission of a single act
 3 prohibited by this article is sufficient to justify a penalty,
 4 injunction, restraining order or conviction without evidence
 5 of a general course of conduct.

**§30-23-30. Continuation of the West Virginia Medical Imaging
 and Radiation Therapy Technology Board of
 Examiners.**

1 Pursuant to the provisions of article ten, chapter four of
 2 this code, the West Virginia Medical Imaging and Radiation
 3 Therapy Technology Board of Examiners shall continue to
 4 exist until the first day of July, two thousand twelve, unless
 5 sooner terminated, continued or reestablished.

CHAPTER 207

**(Com. Sub. for S.B. 442 - By Senators Bowman, Jenkins,
 Plymale, Minard, McKenzie, White and Hunter)**

[Passed March 7, 2007; in effect from passage.]
 [Approved by the Governor on April 4, 2007.]

AN ACT to repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended; to repeal §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code; to amend and reenact §5-5-4 and §5-5-5 of said code; to amend and reenact §5B-2-5 of said code; to amend and reenact §5F-2-1 of said code; to amend said code by adding thereto a new article, designated §6C-2-1,

§6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; to amend said code by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; to amend and reenact §11-10A-8 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-7-4 of said code; to amend and reenact §21-5E-4 of said code; to amend and reenact §22C-7-2 of said code; to amend and reenact §31-20-27 of said code; to amend and reenact §33-48-2 of said code; and to amend and reenact §49-5E-5a of said code, all relating to state employees grievance procedures; establishing a new West Virginia public employees grievance procedure; discontinuing the Education and State Employees Grievance Board; creating the West Virginia Public Employees Grievance Board with five members appointed by the Governor; giving the board new powers, duties, rule-making authority and data collection responsibilities; creating a uniform grievance procedure with three levels for certain public employees; clarifying definitions and general grievance procedures; prohibiting supervisors from representing employees they evaluate; clarifying and reorganizing general provisions; increasing time frames in grievance procedure; defining default provisions; eliminating laches and defining back pay; establishing that employees may be represented at conferences, hearings and meetings at any step of the procedure; clarifying the procedure for conferences and hearings; removing hearing examiners from the grievance procedure; and making technical corrections to affected sections of the code.

Be it enacted by the Legislature of West Virginia:

That §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended, be repealed; that §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code be repealed; that §5-5-4 and §5-5-5 of said code be amended and reenacted; that §5B-2-5 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; that said code be amended by adding thereto a new article,

designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; that §11-10A-8 of said code be amended and reenacted; that §18A-2-8 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-7-4 of said code be amended and reenacted; that §21-5E-4 of said code be amended and reenacted; that §22C-7-2 of said code be amended and reenacted; that §31-20-27 of said code be amended and reenacted; that §33-48-2 of said code be amended and reenacted; and that §49-5E-5a 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.**
- 5B. Economic Development Act of 1985.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 6C. Public Employees.**
- 11. Taxation.**
- 18A. School Personnel.**
- 18B. Higher Education.**
- 21. Labor.**
- 22C. Environmental Resources; Boards.**
- 31. Corporations.**
- 33. Insurance.**
- 49. Child Welfare.**

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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.
§5-5-5. Pay equity adjustment.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.

1 The Legislature hereby directs that a pay equity salary
2 adjustment be provided for employees of the various agencies
3 of the Department of Health and Human Resources. This
4 salary adjustment shall be provided from the funding
5 appropriated to the department in the fiscal year two

6 thousand and may not be construed to require additional
7 appropriations from the Legislature. In the event any
8 provision of this section conflicts with any rule, policy or
9 provision of this code, the provisions of this section control.
10 In determining the pay equity salary adjustments, the
11 department may give consideration to employee tenure,
12 relevant average salaries and such other factors as may be
13 determined relevant by the secretary. Due to the limits of
14 funding, the results of the pay equity salary adjustments shall
15 not be subject to the provisions of article two, chapter six-c
16 of this code. The provisions of this section are rehabilitative
17 in nature and it is the specific intent of the Legislature that no
18 private cause of action, either express or implied, shall arise
19 pursuant to the provisions or implementation of this section.

§5-5-5. Pay equity adjustment.

1 The Legislature hereby directs that a gender-based pay
2 equity salary adjustment be provided to public employees as
3 determined by the Secretary of the Department of
4 Administration, based on recommendations of the equal pay
5 commission, within the limitations provided by this section.
6 This salary adjustment shall be provided from the funding
7 appropriated to the Department of Administration, office of
8 the secretary, for purposes of a “pay equity reserve” in the
9 fiscal year two thousand two and may not be construed to
10 require additional appropriations from the Legislature. If any
11 provision of this section conflicts with any rule, policy or
12 provision of this code, the provisions of this section control.
13 Because the provisions of this section are rehabilitative in
14 nature, the results of the pay equity salary adjustments are not
15 subject to the provisions of article two, chapter six-c of this
16 code. Further, it is the specific intent of the Legislature that
17 no private cause of action, either express or implied, is
18 created by or otherwise arises from the enactment, provisions
19 or implementation of this section.

**CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.**

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

5B-2-5. Economic development representatives.

1 (a) The director may employ economic development
2 representatives to be paid a base salary within legislative
3 appropriations to the West Virginia Development Office,
4 subject to provisions set forth by the council in its
5 reorganization plan and applicable contract provisions
6 pursuant to section four of this article. Economic
7 development representatives may receive performance-based
8 incentives and expenses paid from private funds from a
9 nonprofit corporation contracting with the West Virginia
10 Development Office pursuant to the provisions of section
11 four of this article. The director shall establish job
12 descriptions and responsibilities of economic development
13 representatives, subject to the provisions of any contract with
14 a nonprofit corporation entered into pursuant to section four
15 of this article.

16 (b) Notwithstanding any provision of this code to the
17 contrary, economic development representatives employed
18 within the West Virginia Development Office are not subject
19 to the procedures and protections provided by articles six and
20 six-a, chapter twenty-nine of this code. Any employee of the
21 West Virginia Development Office on the effective date of
22 this article who applies for employment as an economic
23 development representative is not entitled to the protections
24 of article six, chapter twenty-nine with respect to hiring
25 procedures and qualifications; and upon accepting
26 employment as an economic development representative, the
27 employee relinquishes the protections provided for in article
28 two, chapter six-c and article six, chapter twenty-nine of this
29 code.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

***§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter
6 five of this code;

7 (2) Public Employees Insurance Agency and Public
8 Employees Insurance Agency Advisory Board provided in
9 article sixteen, chapter five of this code;

10 (3) Governor's Mansion Advisory Committee provided
11 for in article five, chapter five-a of this code;

12 (4) Commission on Uniform State Laws provided in
13 article one-a, chapter twenty-nine of this code;

14 (5) West Virginia Public Employees Grievance Board
15 provided for in article three, chapter six-c of this code;

16 (6) Board of Risk and Insurance Management provided
17 for in article twelve, chapter twenty-nine of this code;

18 (7) Boundary Commission provided in article twenty-
19 three, chapter twenty-nine of this code;

20 (8) Public Defender Services provided in article twenty-
21 one, chapter twenty-nine of this code;

22 (9) Division of Personnel provided in article six, chapter
23 twenty-nine of this code;

*CLERK’S NOTE: This section was also amended by S.B. 582 (Chapter 214), S.B. 177 (Chapter 111) and S.B. 454 (Chapter 27) which passed subsequent to this act.

24 (10) The West Virginia Ethics Commission provided in
25 article two, chapter six-b of this code;

26 (11) Consolidated Public Retirement Board provided in
27 article ten-d, chapter five of this code; and

28 (12) Real Estate Division provided in article ten, chapter
29 five-a of this code.

30 (b) The following agencies and boards, including all of
31 the allied, advisory, affiliated or related entities and funds
32 associated with any agency or board, are incorporated in and
33 administered as a part of the Department of Commerce:

34 (1) Division of Labor provided in article one, chapter
35 twenty-one of this code, which includes:

36 (A) Occupational Safety and Health Review Commission
37 provided in article three-a, chapter twenty-one of this code;
38 and

39 (B) Board of Manufactured Housing Construction and
40 Safety provided in article nine, chapter twenty-one of this
41 code;

42 (2) Office of Miners' Health, Safety and Training
43 provided in article one, chapter twenty-two-a of this code.
44 The following boards are transferred to the Office of Miners'
45 Health, Safety and Training for purposes of administrative
46 support and liaison with the Office of the Governor:

47 (A) Board of Coal Mine Health and Safety and Coal
48 Mine Safety and Technical Review Committee provided in
49 article six, chapter twenty-two-a of this code;

Ch. 207]

PUBLIC EMPLOYEES GRIEVANCE

50 (B) Board of Miner Training, Education and Certification
51 provided in article seven, chapter twenty-two-a of this code;
52 and

53 (C) Mine Inspectors' Examining Board provided in article
54 nine, chapter twenty-two-a of this code;

55 (3) The West Virginia Development Office, which
56 includes the Division of Tourism and the Tourism
57 Commission provided in article two, chapter five-b of this
58 code;

59 (4) Division of Natural Resources and Natural Resources
60 Commission provided in article one, chapter twenty of this
61 code;

62 (5) Division of Forestry provided in article one-a, chapter
63 nineteen of this code;

64 (6) Geological and Economic Survey provided in article
65 two, chapter twenty-nine of this code; and

66 (7) Workforce West Virginia provided in chapter twenty-
67 one-a of this code, which includes:

68 (A) Division of Unemployment Compensation;

69 (B) Division of Employment Service;

70 (C) Division of Workforce Development; and

71 (D) Division of Research, Information and Analysis; and

72 (8) Division of Energy provided in article two-f, chapter
73 five-b of this code.

74 (c) The Economic Development Authority provided in
75 article fifteen, chapter thirty-one of this code is continued as
76 an independent agency within the executive branch.

77 (d) The Water Development Authority and Board
78 provided in article one, chapter twenty-two-c of this code is
79 continued as an independent agency within the executive
80 branch.

81 (e) The following agencies and boards, including all of
82 the allied, advisory and affiliated entities, are transferred to
83 the Department of Environmental Protection for purposes of
84 administrative support and liaison with the office of the
85 Governor:

86 (1) Air Quality Board provided in article two, chapter
87 twenty-two-b of this code;

88 (2) Solid Waste Management Board provided in article
89 three, chapter twenty-two-c of this code;

90 (3) Environmental Quality Board, or its successor board,
91 provided in article three, chapter twenty-two-b of this code;

92 (4) Surface Mine Board provided in article four, chapter
93 twenty-two-b of this code;

94 (5) Oil and Gas Inspectors' Examining Board provided in
95 article seven, chapter twenty-two-c of this code;

96 (6) Shallow Gas Well Review Board provided in article
97 eight, chapter twenty-two-c of this code; and

98 (7) Oil and Gas Conservation Commission provided in
99 article nine, chapter twenty-two-c of this code.

Ch. 207]

PUBLIC EMPLOYEES GRIEVANCE

100 (f) The following agencies and boards, including all of
101 the allied, advisory, affiliated or related entities and funds
102 associated with any agency or board, are incorporated in and
103 administered as a part of the Department of Education and
104 the Arts:

105 (1) Library Commission provided in article one, chapter
106 ten of this code;

107 (2) Educational Broadcasting Authority provided in
108 article five, chapter ten of this code;

109 (3) Division of Culture and History provided in article
110 one, chapter twenty-nine of this code;

111 (4) Division of Rehabilitation Services provided in
112 section two, article ten-a, chapter eighteen of this code.

113 (g) The following agencies and boards, including all of
114 the allied, advisory, affiliated or related entities and funds
115 associated with any agency or board, are incorporated in and
116 administered as a part of the Department of Health and
117 Human Resources:

118 (1) Human Rights Commission provided in article eleven,
119 chapter five of this code;

120 (2) Division of Human Services provided in article two,
121 chapter nine of this code;

122 (3) Bureau for Public Health provided in article one,
123 chapter sixteen of this code;

124 (4) Office of Emergency Medical Services and Advisory
125 Council provided in article four-c, chapter sixteen of this
126 code;

127 (5) Health Care Authority provided in article twenty-
128 nine-b, chapter sixteen of this code;

129 (6) Commission on Mental Retardation provided in
130 article fifteen, chapter twenty-nine of this code;

131 (7) Women's Commission provided in article twenty,
132 chapter twenty-nine of this code; and

133 (8) The Child Support Enforcement Division provided in
134 chapter forty-eight of this code.

135 (h) The following agencies and boards, including all of
136 the allied, advisory, affiliated or related entities and funds
137 associated with any agency or board, are incorporated in and
138 administered as a part of the Department of Military Affairs
139 and Public Safety:

140 (1) Adjutant General's Department provided in article
141 one-a, chapter fifteen of this code;

142 (2) Armory Board provided in article six, chapter fifteen
143 of this code;

144 (3) Military Awards Board provided in article one-g,
145 chapter fifteen of this code;

146 (4) West Virginia State Police provided in article two,
147 chapter fifteen of this code;

148 (5) Division of Homeland Security and Emergency
149 Management and Disaster Recovery Board provided in
150 article five, chapter fifteen of this code and Emergency
151 Response Commission provided in article five-a of said
152 chapter;

Ch. 207] PUBLIC EMPLOYEES GRIEVANCE

153 (6) Sheriffs' Bureau provided in article eight, chapter
154 fifteen of this code;

155 (7) Division of Corrections provided in chapter twenty-
156 five of this code;

157 (8) Fire Commission provided in article three, chapter
158 twenty-nine of this code;

159 (9) Regional Jail and Correctional Facility Authority
160 provided in article twenty, chapter thirty-one of this code;

161 (10) Board of Probation and Parole provided in article
162 twelve, chapter sixty-two of this code; and

163 (11) Division of Veterans' Affairs and Veterans' Council
164 provided in article one, chapter nine-a of this code.

165 (i) The following agencies and boards, including all of
166 the allied, advisory, affiliated or related entities and funds
167 associated with any agency or board, are incorporated in and
168 administered as a part of the Department of Revenue:

169 (1) Tax Division provided in article one, chapter eleven
170 of this code;

171 (2) Racing Commission provided in article twenty-three,
172 chapter nineteen of this code;

173 (3) Lottery Commission and position of Lottery Director
174 provided in article twenty-two, chapter twenty-nine of this
175 code;

176 (4) Agency of Insurance Commissioner provided in
177 article two, chapter thirty-three of this code;

178 (5) Office of Alcohol Beverage Control Commissioner
179 provided in article sixteen, chapter eleven of this code and
180 article two, chapter sixty of this code;

181 (6) Board of Banking and Financial Institutions provided
182 in article three, chapter thirty-one-a of this code;

183 (7) Lending and Credit Rate Board provided in chapter
184 forty-seven-a of this code;

185 (8) Division of Banking provided in article two, chapter
186 thirty-one-a of this code;

187 (9) The State Budget Office provided in article two of
188 this chapter;

189 (10) The Municipal Bond Commission provided in article
190 three, chapter thirteen of this code;

191 (11) The Office of Tax Appeals provided in article ten-a,
192 chapter eleven of this code; and

193 (12) The State Athletic Commission provided in article
194 five-a, chapter twenty-nine of this code.

195 (j) The following agencies and boards, including all of
196 the allied, advisory, affiliated or related entities and funds
197 associated with any agency or board, are incorporated in and
198 administered as a part of the Department of Transportation:

199 (1) Division of Highways provided in article two-a,
200 chapter seventeen of this code;

201 (2) Parkways, Economic Development and Tourism
202 Authority provided in article sixteen-a, chapter seventeen of
203 this code;

Ch. 207] PUBLIC EMPLOYEES GRIEVANCE

204 (3) Division of Motor Vehicles provided in article two,
205 chapter seventeen-a of this code;

206 (4) Driver's Licensing Advisory Board provided in article
207 two, chapter seventeen-b of this code;

208 (5) Aeronautics Commission provided in article two-a,
209 chapter twenty-nine of this code;

210 (6) State Rail Authority provided in article eighteen,
211 chapter twenty-nine of this code; and

212 (7) Port Authority provided in article sixteen-b, chapter
213 seventeen of this code.

214 (k) Except for powers, authority and duties that have been
215 delegated to the secretaries of the departments by the
216 provisions of section two of this article, the position of
217 administrator and the powers, authority and duties of each
218 administrator and agency are not affected by the enactment
219 of this chapter.

220 (l) Except for powers, authority and duties that have been
221 delegated to the secretaries of the departments by the
222 provisions of section two of this article, the existence,
223 powers, authority and duties of boards and the membership,
224 terms and qualifications of members of the boards are not
225 affected by the enactment of this chapter. All boards that are
226 appellate bodies or are independent decisionmakers shall not
227 have their appellate or independent decision-making status
228 affected by the enactment of this chapter.

229 (m) Any department previously transferred to and
230 incorporated in a department by prior enactment of this
231 section means a division of the appropriate department.
232 Wherever reference is made to any department transferred to

233 and incorporated in a department created in section two,
234 article one of this chapter, the reference means a division of
235 the appropriate department and any reference to a division of
236 a department so transferred and incorporated means a section
237 of the appropriate division of the department.

238 (n) When an agency, board or commission is transferred
239 under a bureau or agency other than a department headed by
240 a secretary pursuant to this section, that transfer is solely for
241 purposes of administrative support and liaison with the Office
242 of the Governor, a department secretary or a bureau. Nothing
243 in this section extends the powers of department secretaries
244 under section two of this article to any person other than a
245 department secretary and nothing limits or abridges the
246 statutory powers and duties of statutory commissioners or
247 officers pursuant to this code.

CHAPTER 6C. PUBLIC EMPLOYEES.

Article

2. West Virginia Public Employees Grievance Procedure.
3. West Virginia Public Employees Grievance Board.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

- §6C-2-1. Purpose.
- §6C-2-2. Definitions.
- §6C-2-3. Grievance procedure generally.
- §6C-2-4. Grievance procedural levels.
- §6C-2-5. Enforcement and appeal.
- §6C-2-6. Allocation of expenses and attorney's fees.
- §6C-2-7. Mandamus proceeding.

§6C-2-1. Purpose.

- 1 (a) The purpose of this article is to provide a procedure
- 2 for the resolution of employment grievances raised by the

3 public employees of the State of West Virginia, except as
4 otherwise excluded in this article.

5 (b) Resolving grievances in a fair, efficient, cost-effective
6 and consistent manner will maintain good employee morale,
7 enhance employee job performance and better serve the
8 citizens of the State of West Virginia.

9 (c) Nothing in this article prohibits the informal
10 disposition of grievances by stipulation or settlement agreed
11 to in writing by the parties, nor the exercise of any hearing
12 right provided in chapter eighteen or eighteen-a of this code.

13 (d) Effective the first day of July, two thousand seven,
14 any reference in this code to the education grievance
15 procedure, the state grievance procedure, article twenty-nine,
16 chapter eighteen of this code or article six-a, chapter twenty-
17 nine of this code, or any subsection thereof, shall be
18 considered to refer to the appropriate grievance procedure
19 pursuant to this article.

20 (e) Any grievance proceeding which is in process on the
21 effective date of the enactment of this article will be
22 completed as expeditiously as possible, and all outstanding
23 orders for hearings must be completed by the first day of
24 July, two thousand seven. Parties to grievances for which a
25 hearing has not been held may, by agreement, proceed to
26 either level two or level three.

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this
2 chapter:

3 (a) "Board" means the West Virginia Public Employees
4 Grievance Board created in article three of this chapter.

5 (b) "Chief administrator" means, in the appropriate
6 context, the commissioner, chancellor, director, president or
7 head of any state department, board, commission, agency,
8 state institution of higher education, commission or council,
9 the state superintendent, the county superintendent, the
10 executive director of a regional educational service agency or
11 the director of a multicounty vocational center who is vested
12 with the authority to resolve a grievance. A "chief
13 administrator" includes a designee, with the authority
14 delegated by the chief administrator, appointed to handle any
15 aspect of the grievance procedure as established by this
16 article.

17 (c) "Days" means working days exclusive of Saturday,
18 Sunday, official holidays and any day in which the
19 employee's workplace is legally closed under the authority of
20 the chief administrator due to weather or other cause
21 provided for by statute, rule, policy or practice.

22 (d) (1) "Employee" means any person hired for
23 permanent employment by an employer for a probationary,
24 full- or part-time position.

25 (2) A substitute education employee is considered an
26 "employee" only on matters related to days worked or when
27 there is a violation, misapplication or misinterpretation of a
28 statute, policy, rule or written agreement relating to the
29 substitute.

30 (3) "Employee" does not mean a member of the West
31 Virginia State Police employed pursuant to article two,
32 chapter fifteen of this code, but does include civilian
33 employees hired by the Superintendent of the State Police.
34 "Employee" does not mean an employee of a constitutional
35 officer unless he or she is covered under the civil service

36 system, an employee of the Legislature, or a patient or inmate
37 employed by a state institution.

38 (e) "Employee organization" means an employee
39 advocacy organization with employee members that has filed
40 with the board the name, address, chief officer and
41 membership criteria of the organization.

42 (f) "Employer" means a state agency, department, board,
43 commission, college, university, institution, state board of
44 education, department of education, county board of
45 education, regional educational service agency or
46 multicounty vocational center, or agent thereof, using the
47 services of an employee as defined in this section.

48 (g) (1) "Grievance" means a claim by an employee
49 alleging a violation, a misapplication or a misinterpretation
50 of the statutes, policies, rules or written agreements
51 applicable to the employee including:

52 (i) Any violation, misapplication or misinterpretation
53 regarding compensation, hours, terms and conditions of
54 employment, employment status or discrimination, unless the
55 discrimination is related to the actual job responsibilities of
56 the employee or agreed to in writing by the employee;

57 (ii) Any discriminatory or otherwise aggrieved
58 application of unwritten policies or practices of his or her
59 employer;

60 (iii) Any specifically identified incident of harassment,
61 including repeated or continual disturbance, irritation or
62 annoyance of an employee that is contrary to the demeanor
63 expected by law, policy and profession, or favoritism,
64 including unfair treatment of an employee as demonstrated

65 by preferential, exceptional or advantageous treatment of
66 another similarly situated employee; or

67 (iv) Any action, policy or practice constituting a
68 substantial detriment to or interference with the effective job
69 performance of the employee, or the health and safety of the
70 employee.

71 (2) "Grievance" does not mean any pension matter or
72 other issue relating to public employees insurance in
73 accordance with article sixteen, chapter five of this code,
74 retirement or any other matter in which the authority to act is
75 not vested with the employer.

76 (h) "Grievant" means an employee or group of similarly
77 situated employees filing a grievance.

78 (i) "Party" and "parties" mean the grievant, employer and
79 the Director of the Division of Personnel for state
80 government employee grievances. The Division of Personnel
81 shall not be a party to grievances involving higher education
82 employees.

83 (j) "Representative" means any employee organization,
84 fellow employee, legal counselor or other person designated
85 by the grievant as the grievant's representative and may not
86 include a supervisor who evaluates the grievant.

§6C-2-3. Grievance procedure generally.

1 (a) *Time limits.* --

2 (1) An employee shall file a grievance within the time
3 limits specified in this article.

4 (2) The specified time limits may be extended to a date
5 certain by mutual written agreement, and shall be extended
6 whenever a grievant is not working because of accident,
7 sickness, death in the immediate family or other cause for
8 which the grievant has approved leave from his or her
9 employment.

10 (b) *Default.* --

11 (1) The grievant prevails by default if a required response
12 is not made by the employer within the time limits
13 established in this article, unless the employer is prevented
14 from doing so directly as a result of injury, illness or a
15 justified delay not caused by negligence or intent to delay the
16 grievance process.

17 (2) Within ten days of the default, the grievant may file
18 with the chief administrator a written notice of intent to
19 proceed directly to the next level or to enforce the default. If
20 the chief administrator objects to the default, then the chief
21 administrator may request a hearing before an administrative
22 law judge for the purpose of stating a defense to the default,
23 as permitted by subdivision one of this subsection, or
24 showing that the remedy requested by the prevailing grievant
25 is contrary to law or contrary to proper and available
26 remedies. In making a determination regarding the remedy,
27 the administrative law judge shall determine whether the
28 remedy is proper, available and not contrary to law.

29 (3) If the administrative law judge finds that the employer
30 has a defense to the default as permitted by subdivision (1) of
31 this subsection, or that the remedy is contrary to law or not
32 proper or available at law, the administrative law judge may
33 deny the default, or modify the remedy to be granted to
34 comply with the law or otherwise make the grievant whole.

35 (c) *Defenses and limitations.* –

36 (1) *Untimeliness.* -- Any assertion by the employer that
37 the filing of the grievance at level one was untimely shall be
38 asserted by the employer at or before level two.

39 (2) *Back Pay.* -- A one-year statute of limitations applies
40 to the recovery of back pay. In the case of a willful violation
41 by the employer in which it can be shown by a
42 preponderance of the evidence that the employer acted in bad
43 faith in concealing the facts giving rise to the claim for back
44 pay, an eighteen-month statute of limitations applies.
45 Further, a grievant's right to back pay tolls from the time that
46 the grievant has actual or constructive knowledge of his or
47 her right to back pay.

48 (3) *Statutory defense.* -- If the employer intends to assert
49 the application of any statute, policy, rule or written
50 agreement as a defense at any level, then a copy of the
51 materials shall be forwarded to the grievant and his or her
52 representative.

53 (d) *Withdrawal and reinstatement of grievance.* -- An
54 employee may withdraw a grievance at any time by filing a
55 written notice of withdrawal with the chief administrator or
56 the board. The grievance may not be reinstated by the
57 grievant unless reinstatement is granted by the chief
58 administrator or the board. If more than one employee is
59 named as a grievant, the withdrawal of one employee does
60 not prejudice the rights of any other employee named in the
61 grievance.

62 (e) *Consolidation and Groups of Similarly Situated*
63 *Employees.* --

64 (1) Grievances may be consolidated at any level by
65 agreement of all parties, or at the discretion of the
66 administrative law judge.

67 (2) Class actions are not permitted. However, a
68 grievance may be filed by one or more employees on behalf
69 of a group of similarly situated employees, but any similarly
70 situated employee shall indicate in writing his or her intent to
71 join the group of similarly situated employees. Only one
72 employee filing a grievance on behalf of similarly situated
73 employees shall be required to participate in the level one
74 hearing required in section four of this article.

75 (f) *Intervention.* -- Upon a timely request, any employee
76 may intervene and become a party to a grievance at any level
77 when the employee demonstrates that the disposition of the
78 action may substantially and adversely affect his or her rights
79 or property and that his or her interest is not adequately
80 represented by the existing parties.

81 (g) *Representation.* -- An employee may designate a
82 representative who may be present at any step of the
83 procedure as well as at any meeting that is held with the
84 employee for the purpose of discussing or considering
85 disciplinary action.

86 (h) *Reprisal.* -- No reprisal or retaliation of any kind may
87 be taken by an employer against a grievant or any other
88 participant in the grievance procedure by reason of his or her
89 participation. Reprisal or retaliation constitutes a grievance,
90 and any person held responsible is subject to disciplinary
91 action for insubordination. Further, any supervisor or
92 administrator responsible for a willful act of bad faith toward
93 an employee or who intentionally works an employee out of
94 classification may be subject to disciplinary action, including
95 demotion or discharge.

96 (i) *Forms.* -- The board shall create the forms for filing
97 grievances, giving notice, taking appeals, making reports and
98 recommendations, and all other necessary documents provide
99 them to chief administrators to make available to any
100 employee upon request.

101 (j) *Discovery.* -- The parties are entitled to copies of all
102 material submitted to the chief administrator or the
103 administrative law judge by any party. All documents
104 submitted become part of the record.

105 (k) *Conferences and Hearings.* --

106 (1) *Impartiality.* -- The administrative law judge shall
107 conduct all level three hearings in an impartial manner and
108 shall ensure that all parties are accorded procedural and
109 substantive due process.

110 (2) *Closed Conferences and Hearings.* -- All conferences
111 and hearings shall be conducted in private. Hearings may be
112 public at level three at the discretion of the administrative law
113 judge.

114 (3) *Evidence.* -- All parties may present supportive or
115 corroborative evidence and argument with respect to the
116 grievance at a conference or hearing. Formal rules of
117 evidence do not apply, but parties are bound by the rules of
118 privilege recognized by law, and the rules and procedures
119 established by the board.

120 (4) *Witnesses.* -- At level one, the chief administrator may
121 call witnesses and may allow parties to call witnesses during
122 a conference or hearing upon request. The parties have the
123 right to call, examine and cross-examine witnesses during
124 any hearing. Administrative law judges may issue subpoenas
125 for witnesses, limit witnesses, administer oaths and may

126 exercise other powers granted by rule or law. No employee
127 may be compelled to testify against himself or herself in a
128 grievance hearing.

129 (5) *Notice.* -- Reasonable notice of a conference or
130 hearing shall be sent at least five days prior to the hearing to
131 all parties and their representatives and shall include the date,
132 time and place of the hearing. If an employer causes a
133 conference or hearing to be postponed without adequate
134 notice to employees who are scheduled to appear during their
135 normal work day, the employees may not suffer any loss in
136 pay for work time lost.

137 (6) *Location.* -- All proceedings shall be at a convenient
138 place accessible to all parties and the location of the level
139 three hearing shall be set by the administrative law judge.

140 (7) *Date and Time.* -- Conferences and hearings shall be
141 scheduled within the time frames established at a reasonable
142 time of day in accommodation to the parties' work schedules.
143 Disagreements shall be decided by the board or the
144 administrative law judge.

145 (8) *Record.* -- Conferences are not required to be
146 recorded, but all evidence submitted and the decision become
147 part of the record. All the testimony and evidence at a
148 hearing shall be recorded by mechanical means, and a copy
149 of the recording provided to any party upon request. The
150 board is responsible for paying for and promptly providing a
151 certified transcript of a hearing to a requesting party or the
152 court for a mandamus or appellate proceeding.

153 (1) *Grievance decisions.* --

154 (1) Prior to a decision, any party may propose findings of
155 fact and conclusions of law.

156 (2) Decisions rendered at all levels of the grievance
157 procedure shall be dated, in writing, setting forth the decision
158 or decisions and the reasons for the decision, and transmitted
159 to the board, the employer and the grievant within the time
160 limits prescribed. If the grievant is denied the relief sought,
161 the decision shall include the procedure for the next level of
162 appeal for the grievant.

163 (m) *Preparation time.* –

164 (1) The grievance shall be processed during regular
165 working hours with minimal interference with the normal
166 operations of the employer and schedule of the employee.

167 (2) The grievant, witnesses and an employee
168 representative shall be granted reasonable and necessary time
169 off during working hours for grievance proceedings without
170 loss of pay and without charge to annual or compensatory
171 leave credits.

172 (3) In addition to actual time spent in grievance
173 conferences and hearings, the grievant and an employee
174 representative shall be granted time off during working
175 hours, not to exceed four hours per grievance, for the
176 preparation of the grievance without loss of pay and without
177 charge to annual or compensatory leave credits. However,
178 the first responsibility of any employee is the work assigned
179 to the employee. An employee may not allow grievance
180 preparation and representation activities to seriously affect
181 the overall productivity of the employee.

182 (4) The grievant and an employee representative shall
183 have access to the employer's equipment for purposes of
184 preparing grievance documents subject to the reasonable
185 rules of the employer governing the use of the equipment for
186 non-work purposes.

Ch. 207] PUBLIC EMPLOYEES GRIEVANCE

187 (5) Disagreements regarding preparation time shall be
188 decided by the board or the presiding administrative law
189 judge.

190 (n) *Grievance files.* –

191 (1) All grievance forms and reports shall be kept in a file
192 separate from the personnel file of the employee and may not
193 become a part of the personnel file, but shall remain
194 confidential except by mutual written agreement of the
195 parties.

196 (2) The grievant may file a written request to have the
197 grievant's identity removed from any files kept by the
198 employer one year following the conclusion of the grievance.

199 (o) *Number of Grievances.* -- The number of grievances
200 filed against an employer by an employee is not, per se, an
201 indication of the employer's or the employee's job
202 performance.

203 (p) *Procedures and Rules.* -- The board shall prescribe
204 rules and procedures in compliance with this article, article
205 three of this chapter and the State Administrative Procedures
206 Act under chapter twenty-nine-a of this code for all matters
207 relating to the grievance procedure.

§6C-2-4. Grievance procedural levels.

1 (a) *Level one: Chief Administrator.* –

2 (1) Within fifteen days following the occurrence of the
3 event upon which the grievance is based, or within fifteen
4 days of the date upon which the event became known to the
5 employee, or within fifteen days of the most recent
6 occurrence of a continuing practice giving rise to a grievance,

7 an employee may file a written grievance with the chief
8 administrator stating the nature of the grievance and the relief
9 requested and request either a conference or a hearing. The
10 employee shall also file a copy of the grievance with the
11 board. State government employees shall further file a copy
12 of the grievance with the Director of the Division of
13 Personnel, who may participate at any level in person or by
14 a designee.

15 (2) The chief administrator shall hold the conference or
16 hearing, as requested by the grievant, within ten days of
17 receiving the grievance and issue a written decision within
18 fifteen days of the conference or hearing.

19 (3) An employee may proceed directly to level three upon
20 the agreement of the employee and the chief administrator or
21 when discharged, suspended without pay or demoted or
22 reclassified resulting in a loss of compensation or benefits.

23 (b) *Level two: Alternative dispute resolution.* –

24 (1) Within ten days of receiving an adverse written
25 decision at level one, the grievant shall file a written request
26 for mediation, private mediation or mediation-arbitration with
27 the board if the grievant desires to continue the grievance
28 process.

29 (A) *Mediation.* -- The board shall schedule the mediation
30 between the parties within twenty days of the request.
31 Mediation shall be conducted by an administrative law judge
32 pursuant to standard mediation practices and board
33 procedures at no cost to the parties. Parties may be
34 represented and shall have the authority to resolve the
35 dispute. Agreements reached through mediation shall be
36 documented in writing within fifteen days. Agreements are
37 binding and enforceable in this state by a writ of mandamus.

38 (B) *Private Mediation.* -- The parties may agree in
39 writing to retain their choice of a private mediator and share
40 the cost. The mediator shall schedule the mediation within
41 twenty days of the written request and shall follow standard
42 mediation practices and any applicable board procedures.
43 Parties may be represented and shall have the authority to
44 resolve the dispute. Agreements reached through mediation
45 shall be documented in writing within fifteen days.
46 Agreements are binding and enforceable in this state by a
47 writ of mandamus.

48 (C) *Mediation-arbitration.* -- The parties may agree in
49 writing to participate in mediation-arbitration. The board
50 shall schedule the mediation-arbitration between the parties
51 within twenty days of the request. Mediation-arbitration shall
52 be conducted by an administrative law judge pursuant to
53 standard mediation and arbitration practices and board
54 procedures, at no cost to the parties. In the event the
55 mediation does not result in a resolution, the mediator may
56 become an arbitrator and proceed to decide the matter. The
57 parties may be represented and may resolve the dispute.
58 Agreements reached through mediation and decisions issued
59 through arbitration are to be documented in writing within
60 fifteen days, and are binding and enforceable in this state by
61 a writ of mandamus.

62 (2) *Neutral Evaluation.* -- Within fifteen days of the
63 conclusion of an unsuccessful mediation or mediation-
64 arbitration, the administrative law judge serving as the
65 mediator or mediator-arbitrator may provide a written
66 summary to the parties as a neutral evaluator stating the
67 issues presented, and issue a scheduling and discovery order
68 that is binding upon the parties in preparation for level three.

69 (c) *Level three: Adjudication.* --

70 (1) Within ten days of receiving a written report stating
71 that alternative dispute resolution at level two was
72 unsuccessful, the grievant may file a written appeal with the
73 employer and the board requesting a hearing and adjudication
74 on the grievance. The administrative law judge shall
75 schedule the hearing, and any other proceedings or deadlines,
76 within a reasonable time in consultation with the parties.
77 State government employees shall also serve a copy of the
78 appeal upon the Director of the Division of Personnel, or his
79 or her designee, who may appear at the hearing and submit
80 oral or written evidence upon matters at issue.

81 (2) Both the employer and the employee shall at all times
82 act in good faith and make every possible effort to resolve
83 disputes at the lowest level of the grievance procedure. The
84 administrative law judge may make a determination of bad
85 faith and in extreme instances allocate the cost of the hearing
86 to the party found to be acting in bad faith. The allocation of
87 costs shall be based on the relative ability of the party to pay
88 the costs.

89 (3) Within thirty days following the hearing, the
90 administrative law judge shall render a decision in writing to
91 all parties setting forth findings of fact and conclusions of
92 law on the issues submitted.

§6C-2-5. Enforcement and appeal.

1 (a) The decision of the administrative law judge is final
2 upon the parties and is enforceable in the circuit court of
3 Kanawha County.

4 (b) A party may appeal the decision of the administrative
5 law judge on the grounds that the decision:

6 (1) Is contrary to law or a lawfully adopted rule or written
7 policy of the employer;

8 (2) Exceeds the administrative law judge's statutory
9 authority;

10 (3) Is the result of fraud or deceit;

11 (4) Is clearly wrong in view of the reliable, probative and
12 substantial evidence on the whole record; or

13 (5) Is arbitrary or capricious or characterized by abuse of
14 discretion or clearly unwarranted exercise of discretion.

15 (c) A party shall file the appeal in the circuit court of
16 Kanawha County within thirty days of receipt of the
17 administrative law judge's decision. The decision of the
18 administrative law judge is not automatically stayed upon the
19 filing of an appeal, but a stay may be granted by the circuit
20 court upon a separate motion for a stay.

21 (d) The court shall review the entire record that was
22 before the administrative law judge, and the court may hear
23 oral arguments and require written briefs. The court may
24 reverse, vacate or modify the decision of the administrative
25 law judge, or may remand the grievance to the administrative
26 law judge or the chief administrator for further proceedings.

§6C-2-6. Allocation of expenses and attorney's fees.

1 (a) Any expenses incurred relative to the grievance
2 procedure at levels one, two or three shall be borne by the
3 party incurring the expenses.

4 (b) In the event a grievant or employer appeals an adverse
5 level three decision to the circuit court of Kanawha County,

6 or an adverse circuit court decision to the Supreme Court of
7 Appeals of West Virginia, and the grievant substantially
8 prevails upon the appeal, the grievant may recover from the
9 employer court costs and reasonable attorney's fees for the
10 appeal to be set by the court.

§6C-2-7. Mandamus proceeding.

1 Any employer failing to comply with the provisions of
2 this article may be compelled to do so by a mandamus
3 proceeding and may be liable to a prevailing party for court
4 costs and reasonable attorney's fees to be set by the court.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.

§6C-3-1. West Virginia Public Employees Grievance Board.

§6C-3-2. Powers and duties of the board.

§6C-3-3. Data collection and reporting requirements.

§6C-3-4. Rule-making authority.

§6C-3-5. Continuation of the West Virginia Public Employees Grievance Board.

§6C-3-6. Review of the grievance procedure.

§6C-3-1. West Virginia Public Employees Grievance Board.

1 (a) Effective the thirtieth day of June, two thousand
2 seven, the Education and State Employees Grievance Board,
3 and the employment of the hearing examiners and
4 administrative law judges under the board, terminate.

5 (b) Effective the first day of July, two thousand seven, the
6 West Virginia Public Employees Grievance Board is created
7 as an independent entity under the Department of
8 Administration and all references to the Education and State
9 Employees Grievance Board in the code shall be considered
10 to refer to the West Virginia Public Employees Grievance
11 Board.

12 (c) On or before the first day of July, two thousand seven,
13 the Governor, by and with the advice and consent of the
14 Senate, shall appoint the following five members to the board
15 for the following terms:

16 (1) One person representing the largest labor organization
17 in the state for a term of three years;

18 (2) One person representing an education employee
19 organization in the state for a term of two years;

20 (3) One employer representative from the executive
21 branch for a term of two years;

22 (4) One employer representative from secondary or
23 higher education for a term of three years; and

24 (5) One citizen member, who is not a current employee,
25 employer or a representative of employees in a workplace in
26 the public, educational or higher educational sector of this
27 state, for a term of one year.

28 (d) After the initial appointment, the board term shall be
29 three years.

30 (e) No member may serve more than two consecutive full
31 terms and any member having served two consecutive full
32 terms may not be appointed for one year after completion of
33 his or her second full term. A member shall continue to serve
34 until his or her successor has been appointed and qualified.

35 (f) A vacancy on the board shall be filled by the
36 Governor by appointment of a like member for the unexpired
37 term of the member whose office is vacant.

38 (g) The membership of the board shall represent each
39 congressional district, with no more than two members from
40 any one district and no more than three members may be
41 from the same political party.

42 (h) Each member of the board, at the time of his or her
43 appointment, must have been a resident of this state for a
44 period of not less than one year immediately preceding the
45 appointment and each member of the board shall remain a
46 resident of this state during the appointment term.

47 (i) The Governor may remove any member from the
48 board for neglect of duty, incompetency, criminal convictions
49 or official misconduct.

50 (j) Any member of the board immediately and
51 automatically forfeits his or her membership if he or she is
52 convicted of a felony under the laws of any state or the
53 United States, or becomes a nonresident of this state.

54 (k) The board shall hold at least four meetings per year.
55 Other meetings shall be held at the call of the chairperson or
56 upon the written request of two members, at such time and
57 place as designated in the call or request.

58 (l) The board shall designate one of its members as
59 chairperson and one member as secretary-treasurer who shall
60 serve at the will of the board.

61 (m) A majority of the members of the board constitute a
62 quorum.

63 (n) Each member of the board is entitled to receive
64 compensation and expense reimbursement as is accorded
65 legislators in the performance of their duties.

§6C-3-2. Powers and duties of the board.

1 The board shall:

2 (1) Maintain jurisdiction over procedural matters in the
3 grievance process;

4 (2) Employ competent administrative law judges and a
5 chief administrative law judge and pay them commensurately
6 with other administrative law judges in the state, who shall
7 be:

8 (A) Residents of the State of West Virginia;

9 (B) Members in good standing of the West Virginia State
10 Bar; and

11 (C) Persons who have knowledge and legal experience
12 regarding public and education employment law and
13 alternative dispute resolution;

14 (3) Provide suitable office space for the board and the
15 administrative law judges separate from any workplace in the
16 public, educational and higher educational sectors, so that the
17 administrative law judges are accessible statewide;

18 (4) Hire, discharge, set the job requirements for and fix
19 the compensation of the director, employees and
20 administrative law judges, who serve at the will and pleasure
21 of the board, necessary to enforce the provisions of this
22 article and article two of this chapter;

23 (5) Prepare and submit an annual budget;

24 (6) Establish and provide all forms necessary for the
25 grievance process and make them easily accessible;

26 (7) Establish procedures to obtain and maintain records,
27 outcomes and costs at each level of the grievance process;

28 (8) Keep accurate and complete records of its
29 proceedings and hearings and certify the records as may be
30 appropriate;

31 (9) Evaluate, on an annual basis, the grievance process,
32 including written comment from employers, employees and
33 employee organizations that participate in the process;

34 (10) Submit an annual report to the Joint Committee on
35 Government and Finance, the Legislature and the Governor
36 that includes a compilation of all data received regarding
37 outcomes and costs at each level of the grievance process;

38 (11) File a mandamus proceeding against any employer
39 failing to comply with the reporting requirements of this
40 article; and

41 (12) Take all other actions necessary and proper to
42 effectuate the purposes of this article.

§6C-3-3. Data collection and reporting requirements.

1 (a) Each employer involved in a grievance matter shall
2 maintain the forms and all records created in the grievance
3 process, and shall provide this information to the board in the
4 form and manner prescribed by the board.

5 (b) The board shall obtain and maintain all records of
6 grievance matters.

7 (c) The board shall annually report to the Joint
8 Committee on Government and Finance, the Legislature and
9 the Governor. The report shall contain the following:

10 (1) An overview of grievance-related issues;

- 11 (2) The number of grievances against each employer;
- 12 (3) Identification of each grievance by type of grievance,
13 level of resolution and cost of the grievance, including the
14 estimated cost of employee time to handle the grievance and
15 actual cost of any legal time or damages paid in the
16 resolution of the grievance;
- 17 (4) The number and type of grievances granted, denied or
18 resolved by other means, including informal resolutions and
19 alternative dispute resolution, and the actual or estimated cost
20 of handling the grievance at each level of the grievance
21 process;
- 22 (5) Any legislative recommendations for changes to the
23 grievance process as a result of the data collected; and
- 24 (6) The caseload of each administrative law judge, the
25 type of grievance, the number of grievances resolved and the
26 number of decisions issued.
- 27 (d) Nothing contained in the annual report may breach
28 the confidentiality of a party to the dispute, nor may any
29 matter be disclosed if the disclosure may violate any
30 provision of law.

§6C-3-4. Rule-making authority.

- 1 (a) The rules established by the Education and State
2 Employees Grievance Board in effect on the effective date of
3 this article that are consistent with the provisions of this
4 article and article two of this chapter remain in effect until
5 they are amended, modified or repealed.
- 6 (b) The board may adopt, modify, amend and repeal
7 procedural rules promulgated in accordance with article
8 three, chapter twenty-nine-a of this code, necessary to
9 effectuate the provisions of this article and article two of this
10 chapter including, but not limited to, procedures to create and

11 distribute forms, obtain and maintain records and collect and
12 report data.

13 (c) The board shall adopt, modify, amend, repeal and
14 enforce rules for legislative approval necessary to effectuate
15 the provisions of this article and article two of this chapter,
16 including any emergency rules, pursuant to article three,
17 chapter twenty-nine-a of this code.

**§6C-3-5. Continuation of the West Virginia Public Employees
Grievance Board.**

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia Public Employees Grievance
3 Board shall continue to exist until the first day of July, two
4 thousand ten, unless sooner terminated, continued or
5 reestablished.

§6C-3-6. Review of the grievance procedure.

1 On or before the first day of January, two thousand ten,
2 the Joint Committee on Government and Finance shall
3 review the grievance procedure and the board, evaluate its
4 usefulness and make recommendations concerning its
5 continuation or termination.

CHAPTER 11. TAXATION.

**ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX
APPEALS.**

§11-10A-8. Jurisdiction of Office of Tax Appeals.

1 The Office of Tax Appeals has exclusive and original
2 jurisdiction to hear and determine all:

- 3 (1) Appeals from tax assessments issued by the Tax
4 Commissioner pursuant to article ten of this chapter;
- 5 (2) Appeals from decisions or orders of the Tax
6 Commissioner denying refunds or credits for all taxes
7 administered in accordance with the provisions of article ten
8 of this chapter;
- 9 (3) Appeals from orders of the Tax Commissioner
10 denying, suspending, revoking, refusing to renew any license
11 or imposing any civil money penalty for violating the
12 provisions of any licensing law administered by the Tax
13 Commissioner;
- 14 (4) Questions presented when a hearing is requested
15 pursuant to the provisions of any article of this chapter which
16 is administered by the provisions of article ten of this chapter;
- 17 (5) Matters which the Tax Division is required by statute
18 or legislatively approved rules to hear, except employee
19 grievances filed pursuant to article two, chapter six-c of this
20 code; and
- 21 (6) Other matters which may be conferred on the office
22 of tax appeals by statute or legislatively approved rules.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

- 1 (a) Notwithstanding any other provisions of law, a board
2 may suspend or dismiss any person in its employment at any
3 time for: Immorality, incompetency, cruelty, insubordination,
4 intemperance, willful neglect of duty, unsatisfactory
5 performance, the conviction of a felony or a guilty plea or a
6 plea of nolo contendere to a felony charge.

7 (b) A charge of unsatisfactory performance shall not be
8 made except as the result of an employee performance
9 evaluation pursuant to section twelve of this article. The
10 charges shall be stated in writing served upon the employee
11 within two days of presentation of the charges to the board.

12 (c) The affected employee shall be given an opportunity,
13 within five days of receiving the written notice, to request, in
14 writing, a level three hearing and appeals pursuant to the
15 provisions of article two, chapter six-c of this code, except
16 that dismissal for the conviction of a felony or guilty plea or
17 plea of nolo contendere to a felony charge is not by itself a
18 grounds for a grievance proceeding. An employee charged
19 with the commission of a felony may be reassigned to duties
20 which do not involve direct interaction with pupils pending
21 final disposition of the charges.

CHAPTER 18B. HIGHER EDUCATION.

Article

- 2A. Institutional Boards of Governors.**
- 7. Personnel Generally.**

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the power and duty
2 to:

3 (a) Determine, control, supervise and manage the
4 financial, business and education policies and affairs of the
5 state institutions of higher education under its jurisdiction;

6 (b) Develop a master plan for the institutions under its
7 jurisdiction, except the administratively linked community
8 and technical colleges which retain an institutional board of
9 advisors shall develop their master plans subject to the
10 provisions of section one, article six of this chapter.

11 (1) The ultimate responsibility for developing and
12 updating the master plans at the institutional level resides
13 with the board of governors, or board of advisors, as
14 applicable, but the ultimate responsibility for approving the
15 final version of the institutional master plans, including
16 periodic updates, resides with the commission or council, as
17 appropriate.

18 (2) Each master plan shall include, but not be limited to,
19 the following:

20 (A) A detailed demonstration of how the master plan will
21 be used to meet the goals and objectives of the institutional
22 compact;

23 (B) A well-developed set of goals outlining missions,
24 degree offerings, resource requirements, physical plant needs,
25 personnel needs, enrollment levels and other planning
26 determinates and projections necessary in a plan to assure
27 that the needs of the institution's area of responsibility for a
28 quality system of higher education are addressed;

29 (C) Document the involvement of the commission or
30 council, as appropriate, institutional constituency groups,
31 clientele of the institution and the general public in the
32 development of all segments of the institutional master plan.

33 (3) The plan shall be established for periods of not less
34 than three nor more than six years and shall be revised
35 periodically as necessary, including the addition or deletion
36 of degree programs as, in the discretion of the appropriate
37 governing board, may be necessary;

38 (c) Prescribe for the institutions under its jurisdiction, in
39 accordance with its master plan and the compact for each
40 institution, specific functions and responsibilities to meet the
41 higher education needs of its area of responsibility and to
42 avoid unnecessary duplication;

43 (d) Direct the preparation of a budget request for the
44 institutions under its jurisdiction, which relates directly to
45 missions, goals and projections as found in the institutional
46 master plans and the institutional compacts;

47 (e) Consider, revise and submit to the commission or
48 council, as appropriate, a budget request on behalf of the
49 institutions under its jurisdiction;

50 (f) Review, at least every five years, all academic
51 programs offered at the institutions under its jurisdiction.
52 The review shall address the viability, adequacy and
53 necessity of the programs in relation to its institutional master
54 plan, the institutional compact and the education and
55 workforce needs of its responsibility district. As a part of the
56 review, each governing board shall require the institutions
57 under its jurisdiction to conduct periodic studies of its
58 graduates and their employers to determine placement
59 patterns and the effectiveness of the education experience.
60 Where appropriate, these studies should coincide with the
61 studies required of many academic disciplines by their
62 accrediting bodies;

63 (g) Ensure that the sequence and availability of academic
64 programs and courses offered by the institutions under their
65 jurisdiction is such that students have the maximum
66 opportunity to complete programs in the time frame normally
67 associated with program completion. Each governing board
68 is responsible to see that the needs of nontraditional
69 college-age students are appropriately addressed and, to the
70 extent it is possible for the individual governing board to
71 control, to assure core course work completed at institutions
72 under its jurisdiction is transferable to any other state
73 institution of higher education for credit with the grade
74 earned;

75 (h) Subject to the provisions of article one-b of this
76 chapter, approve the teacher education programs offered in
77 the institution under its control. In order to permit graduates
78 of teacher education programs to receive a degree from a
79 nationally accredited program and in order to prevent
80 expensive duplication of program accreditation, the
81 Commission may select and use one nationally recognized
82 teacher education program accreditation standard as the
83 appropriate standard for program evaluation;

84 (i) Use faculty, students and classified employees in
85 institutional-level planning and decisionmaking when those
86 groups are affected;

87 (j) Subject to the provisions of federal law and pursuant
88 to the provisions of article nine of this chapter and to rules
89 adopted by the commission and the council, administer a
90 system for the management of personnel matters, including,
91 but not limited to, personnel classification, compensation and
92 discipline for employees at the institutions under their
93 jurisdiction;

94 (k) Administer a system for hearing employee grievances
95 and appeals. Notwithstanding any other provision of this
96 code to the contrary, the procedure established in article two,
97 chapter six-c of this code is the exclusive mechanism for
98 hearing prospective employee grievances and appeals;

99 (l) Solicit and use or expend voluntary support, including
100 financial contributions and support services, for the
101 institutions under its jurisdiction;

102 (m) Appoint a president for the institutions under its
103 jurisdiction subject to the provisions of section six, article
104 one-b of this chapter;

105 (n) Conduct written performance evaluations of the
106 president pursuant to section six, article one-b of this chapter;

107 (o) Employ all faculty and staff at the institution under its
108 jurisdiction. The employees operate under the supervision of
109 the president, but are employees of the governing board;

110 (p) Submit to the commission or council, as appropriate,
111 no later than the first day of November of each year an
112 annual report of the performance of the institution under its
113 jurisdiction during the previous fiscal year as compared to
114 stated goals in its master plan and institutional compact;

115 (q) Enter into contracts or consortium agreements with
116 the public schools, private schools or private industry to
117 provide technical, vocational, college preparatory, remedial
118 and customized training courses at locations either on

119 campuses of the public institution of higher education or at
120 off-campus locations in the institution's responsibility
121 district. To accomplish this goal, the boards may share
122 resources among the various groups in the community;

123 (r) Provide and transfer funding and property to certain
124 corporations pursuant to section ten, article twelve of this
125 chapter;

126 (s) Delegate, with prescribed standards and limitations,
127 the part of its power and control over the business affairs of
128 the institution to the president in any case where it considers
129 the delegation necessary and prudent in order to enable the
130 institution to function in a proper and expeditious manner and
131 to meet the requirements of its institutional compact. If a
132 governing board elects to delegate any of its power and
133 control under the provisions of this subsection, it shall enter
134 the delegation in the minutes of the meeting when the
135 decision was made and shall notify the commission or
136 council, as appropriate. Any delegation of power and control
137 may be rescinded by the appropriate governing board, the
138 commission or council, as appropriate, at any time, in whole
139 or in part, except that the commission may not revoke
140 delegations of authority made by the governing boards of
141 Marshall University or West Virginia University as they
142 relate to the state institutions of higher education known as
143 Marshall University and West Virginia University;

144 (t) Unless changed by the commission or the council, as
145 appropriate, continue to abide by existing rules setting forth
146 standards for acceptance of advanced placement credit for
147 their respective institutions. Individual departments at
148 institutions of higher education may, upon approval of the
149 institutional faculty senate, require higher scores on the
150 advanced placement test than scores designated by the
151 appropriate governing board when the credit is to be used
152 toward meeting a requirement of the core curriculum for a
153 major in that department;

154 (u) Consult, cooperate and work with the State Treasurer
155 and the State Auditor to update as necessary and maintain an
156 efficient and cost-effective system for the financial

157 management and expenditure of special revenue and
158 appropriated state funds at the institutions under its
159 jurisdiction that ensures that properly submitted requests for
160 payment be paid on or before due date but, in any event,
161 within fifteen days of receipt in the State Auditor's office;

162 (v) In consultation with the appropriate chancellor and
163 the Secretary of the Department of Administration, develop,
164 update as necessary and maintain a plan to administer a
165 consistent method of conducting personnel transactions,
166 including, but not limited to, hiring, dismissal, promotions
167 and transfers at the institutions under their jurisdiction. Each
168 personnel transaction shall be accompanied by the
169 appropriate standardized system or forms which shall be
170 submitted to the respective governing board and the
171 Department of Finance and Administration;

172 (w) Notwithstanding any other provision of this code to
173 the contrary, transfer funds from any account specifically
174 appropriated for their use to any corresponding line item in
175 a general revenue account at any agency or institution under
176 their jurisdiction as long as such transferred funds are used
177 for the purposes appropriated;

178 (x) Transfer funds from appropriated special revenue
179 accounts for capital improvements under their jurisdiction to
180 special revenue accounts at agencies or institutions under
181 their jurisdiction as long as such transferred funds are used
182 for the purposes appropriated;

183 (y) Notwithstanding any other provision of this code to
184 the contrary, acquire legal services that are necessary,
185 including representation of the governing boards, their
186 institutions, employees and officers before any court or
187 administrative body. The counsel may be employed either on
188 a salaried basis or on a reasonable fee basis. In addition, the
189 governing boards may, but are not required to, call upon the
190 Attorney General for legal assistance and representation as
191 provided by law;

192 (z) For each governing board which has under its
193 jurisdiction an administratively linked community and
194 technical college or a regional campus offering community
195 and technical college education programs, create within the
196 administrative structure of its governing board a
197 subcommittee for community and technical college
198 education. The subcommittee shall have at least four
199 members, one of whom is the chairperson of the board of
200 advisors of the community and technical college or, in the
201 case of the Governing Board of West Virginia University,
202 both the member representing the community and technical
203 college and the member representing the regional campus;
204 and

205 (aa) Contract and pay for disability insurance for a class
206 or classes of employees at a state institution of higher
207 education under its jurisdiction.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) For any probationary faculty the president or other
2 administrative head of each institution shall give written
3 notice concerning retention or nonretention for the ensuing
4 academic year not later than the first day of March.

5 (b) If a request is made by the probationary faculty
6 member not retained, the president or other administrative
7 head of the institution shall inform the probationary faculty
8 member by certified mail within ten days of the reasons for
9 nonretention. Any probationary faculty member who desires
10 to appeal the decision may proceed to level three of the
11 grievance procedure established in article two, chapter six-c
12 of this code. If the administrative law judge decides that the
13 reasons for nonretention are arbitrary or capricious or without
14 a factual basis, the faculty member shall be retained for the
15 ensuing academic year.

16 (c) The term "probationary faculty member" shall be
17 defined according to rules promulgated by the governing
18 boards. The rights provided to probationary faculty members
19 by this section are in addition to, and not in lieu of, other
20 rights afforded them by other rules and other provisions of
21 law.

CHAPTER 21. LABOR.

**ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR
STATE EMPLOYEES.**

§21-5E-4. Employee's right of action against employer.

1 (a) Any employee whose compensation is at a rate that is
2 in violation of section three of this article has the right to file
3 a grievance pursuant to the provisions of article two, chapter
4 six-c of this code.

5 (b) No agreement for compensation at a rate of less than
6 the rate to which the employee is entitled under this article is
7 a defense to any action under this article.

8 (c) The rights and procedures provided under this section
9 are subject to the provisions of the rules promulgated by the
10 Equal Pay Commission in accordance with section six of this
11 article.

12 (d) Except as otherwise provided in subsection (d),
13 section six of this article, the provisions of this section shall
14 not become effective until the Legislature approves for
15 promulgation the rules proposed by the Equal Pay
16 Commission under the provisions of subsection (c) of said
17 section.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS.****ARTICLE 7. ENVIRONMENTAL RESOURCES.****§22C-7-2. Oil and gas inspectors; eligibility for appointment;
qualifications; salary; expenses; removal.**

1 (a) No person is eligible for appointment as an oil and gas
2 inspector or supervising inspector unless, at the time of his or
3 her probationary appointment, the person: (1) Is a citizen of
4 West Virginia, in good health and of good character,
5 reputation and temperate habits; (2) has had at least six years'
6 actual relevant experience in the oil and gas industry:
7 *Provided*, That not exceeding three years of the experience
8 shall be satisfied by any combination of: (i) A bachelor of
9 science degree in science or engineering which shall be
10 considered the equivalent of three years' actual relevant
11 experience in the oil and gas industry; (ii) an associate degree
12 in petroleum technology which shall be considered the
13 equivalent of two years actual relevant experience in the oil
14 and gas industry; and (iii) actual relevant environmental
15 experience including, without limitation, experience in
16 wastewater, solid waste or reclamation each full year of
17 which shall be considered as a year of actual relevant
18 experience in the oil and gas industry; and (3) has good
19 theoretical and practical knowledge of oil and gas drilling and
20 production methods, practices and techniques, sound safety
21 practices and applicable mining laws.

22 (b) In order to qualify for appointment as an oil and gas
23 inspector or supervising inspector, an eligible applicant shall
24 submit to a written and oral examination by the Oil and Gas
25 Inspectors' Examining Board and shall furnish any evidence
26 of good health, character and other facts establishing
27 eligibility required by the board. If the board finds after
28 investigation and examination that an applicant: (1) Is
29 eligible for appointment; and (2) has passed all written and
30 oral examinations, the board shall add the applicant's name

31 and grade to the register of qualified eligible candidates and
32 certify its action to the director of the Division of
33 Environmental Protection. No candidate's name may remain
34 on the register for more than three years without requalifying.

35 (c) Within the limits provided by law, the salary of each
36 inspector and of the supervising inspector shall be fixed by
37 the director and the Oil and Gas Inspectors' Examining Board
38 may make recommendations for salary determinations. In
39 fixing salaries of the oil and gas inspectors and of the
40 supervising inspector, the director shall consider ability,
41 performance of duty and experience. Inspectors and
42 supervising inspectors are entitled to mileage expense
43 reimbursement at the rate established for in-state travel of
44 public employees, in the Governor's travel rules, as
45 administered by the Department of Administration. No
46 reimbursement for traveling expenses may be made except
47 upon an itemized account of the expenses submitted by the
48 inspector or supervising inspector, as the case may be, who
49 shall verify, upon oath, that the expenses were actually
50 incurred in the discharge of official duties.

51 (d) (1) For grievances concerning matters other than
52 suspension or dismissal, inspectors may file written
53 grievances in accordance with the procedures set forth in
54 article two, chapter six-c of this code. For a level one
55 grievance, the inspector shall file the grievance with the
56 supervising inspector. For a level two grievance, the
57 inspector shall file the grievance with the chief of the Office
58 of Oil and Gas.

59 (2) An inspector or the supervising inspector, after having
60 received a permanent appointment, shall be suspended or
61 dismissed by the chief of the Office of Oil and Gas only for
62 physical or mental impairment, incompetency, neglect of
63 duty, drunkenness, malfeasance in office or other good cause.

64 (3) Not less than twenty reputable citizens engaged in oil
65 and gas drilling and production operations in the state may

66 petition the chief of the office of oil and gas for the dismissal
67 of an inspector or the supervising inspector. If the petition is
68 verified by at least one of the petitioners, based on actual
69 knowledge of the affiant, and alleges facts which, if true,
70 warrant the removal of the inspector or supervising inspector,
71 the chief shall cause an investigation of the facts to be made.
72 If, after investigation, the chief finds that there is substantial
73 evidence which, if true, warrants dismissal of the inspector or
74 supervising inspector, the chief shall bring the petition before
75 the Oil and Gas Inspectors' Examining Board requesting
76 dismissal of the inspector or supervising inspector.

77 (4) A level three grievance is a hearing before the board
78 to consider the appeal of a level two grievance, the appeal of
79 suspension or dismissal by the chief or a citizens' petition
80 seeking dismissal of an inspector or supervising inspector.
81 For any level three grievance, the chief may not preside over
82 the hearing and may not vote. The remaining members of the
83 board shall select a member of the board to serve as acting
84 chair, who may not vote.

85 (5) An appeal of an inspector from a suspension or
86 dismissal by the chief may be filed by the end of the tenth
87 day following the suspension or dismissal notwithstanding
88 the time limits and requirements set forth in article two,
89 chapter six-c of this code.

90 (6) On receipt of an appeal of a level two grievance, an
91 appeal of suspension or dismissal by the chief or a citizens'
92 petition seeking dismissal of an inspector or the supervising
93 inspector, the Oil and Gas Inspectors' Examining Board shall
94 promptly notify the inspector or supervising inspector, as the
95 case may be, to appear before it at a time and place
96 designated in the notice, which time shall be not less than
97 fifteen days nor more than thirty days thereafter
98 notwithstanding the time limits and requirements set forth in
99 article two, chapter six-c of this code. There shall be attached
100 to the copy of the notice served upon the inspector or

101 supervising inspector a copy of the appeal or petition filed
102 with the board.

103 (7) At the time and place designated in the notice, the Oil
104 and Gas Inspectors' Examining Board shall conduct a level
105 three grievance proceeding in which the testimony shall be
106 recorded to enable a transcript to be prepared for any further
107 appeal. The board shall hear all evidence offered in support
108 of the appeal or petition and on behalf of the inspector or
109 supervising inspector. Each witness shall be sworn and a
110 transcript shall be made of all evidence taken and
111 proceedings had at any hearing. No continuance may be
112 granted except for good cause shown.

113 (8) The acting chair of the board may administer oaths
114 and subpoena witnesses.

115 (9) An inspector or supervising inspector who willfully
116 refuses or fails to appear before the board, or having
117 appeared, refuses to answer under oath any relevant question
118 on the ground that the inspector's testimony or answer might
119 incriminate the inspector, or refuses to accept a grant of
120 immunity from prosecution on account of any relevant matter
121 about which the inspector may be asked to testify at the
122 hearing before the board, forfeits the inspector's position
123 notwithstanding any provisions to the contrary in article two,
124 chapter six-c of this code.

125 (10) If, after hearing, the Oil and Gas Inspectors'
126 Examining Board finds that the inspector or supervising
127 inspector should be suspended, dismissed or otherwise
128 disciplined, it shall enter an order to that effect. An appeal of
129 the decision of the board shall proceed as a level three
130 proceeding under the provisions of article two, chapter six-c
131 of this code.

CHAPTER 31. CORPORATIONS.**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY
AUTHORITY.*****§31-20-27. Correctional officers; regional jails; priority of
hiring.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the authority, when employing correctional officers
3 to complete the approved staffing plan of a regional jail
4 completed after the effective date of this section, shall
5 employ any correctional officer applying for a position as a
6 correctional officer at a regional jail who was employed in
7 good standing at a county jail facility in the region at the time
8 of its closing or at a prison facility operated by the Division
9 of Corrections: *Provided*, That the regional jail is located
10 within the same region as the prison facility that was closed
11 due to relocation of the prison facility to a site outside the
12 region. Only those correctional officers who are employees
13 in good standing at the time the prison facility is closed are
14 eligible for transfer under the provisions of this subsection.
15 Correctional officers, employed under the provisions of this
16 subsection, shall be employed at a salary and with benefits
17 consistent with the approved plan of compensation of the
18 Division of Personnel, created under section five, article six,
19 chapter twenty-nine of this code. All correctional officers
20 employed under this subsection shall also be covered by the
21 policies and procedures of the West Virginia Public
22 Employees Grievance Board, created under article two,
23 chapter six-c of this code and the classified-exempt service
24 protection policies of the Division of Personnel.

25 (b) The authority shall, when employing correctional
26 officers to fill positions within the approved staffing plan of

*CLERK'S NOTE: This section was also amended by H.B. 2253 (Chapter 51), which passed subsequent to this act.

27 any regional jail, employ any correctional officer applying
28 for a position as a correctional officer at a regional jail who
29 was previously employed as a correctional officer in good
30 standing at any local jail facility: *Provided*, That the local jail
31 facility is located within the same region as the regional jail
32 at the time of the local jail facility's closing or reduction in
33 size and was reduced in size or closed prior to or due to the
34 completion of the regional jail within the region.
35 Correctional officers, employed under the provisions of this
36 subsection, shall be employed at a salary and with benefits
37 consistent with the approved plan of compensation of the
38 Division of Personnel, created under section five, article six,
39 chapter twenty-nine of this code. Only those county
40 correctional officers who are employees in good standing at
41 the time the local jail facility is closed are eligible for transfer
42 under the provisions of this subsection. All correctional
43 officers employed under this subsection shall also be covered
44 by the policies and procedures of the West Virginia Public
45 Employees Grievance Board created under article two,
46 chapter five-c of this code and the classified-exempt service
47 protection of the Division of Personnel.

CHAPTER 33. INSURANCE.

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-2. Operation of the plan.

1 (a) There is continued within the department a body
2 corporate and politic to be known as the West Virginia
3 Health Insurance Plan which shall be considered to be an
4 instrumentality of the state and a public corporation. The
5 plan shall have perpetual existence and any change in the
6 name or composition of the plan shall in no way impair the
7 obligations of any contracts existing under this article.

8 (b) The plan shall operate subject to the supervision and
9 control of the board. The board shall consist of the

10 commissioner or his or her designated representative, who
11 shall serve as an ex officio member of the board and shall be
12 its chairperson, and six members appointed by the Governor.
13 At least two board members shall be individuals, or the
14 parent, spouse or child of individuals, reasonably expected to
15 qualify for coverage by the plan. At least two board
16 members shall be representatives of insurers. At least one
17 board member shall be a hospital administrator. A majority
18 of the board shall be composed of individuals who are not
19 representatives of insurers or health care providers.

20 (c) Board members shall serve for a term of three years.
21 A board member's term shall continue until his or her
22 successor is appointed.

23 (d) Vacancies in the board shall be filled by the
24 Governor. Board members may be removed by the Governor
25 for cause.

26 (e) Board members shall not be compensated in their
27 capacity as board members but shall be reimbursed for
28 reasonable expenses incurred in the necessary performance
29 of their duties.

30 (f) The board shall submit to the commissioner a plan of
31 operation for the plan and any amendments to the plan
32 necessary or suitable to assure the fair, reasonable and
33 equitable administration of the plan. The plan of operation
34 shall become effective upon approval in writing by the
35 commissioner consistent with the date on which the coverage
36 under this article must be made available. If the board fails
37 to submit a suitable plan of operation within one hundred
38 eighty days after the appointment of the board of directors, or
39 at any time thereafter fails to submit suitable amendments to
40 the plan of operation, the commissioner shall adopt and
41 promulgate any rules necessary or advisable to effectuate the
42 provisions of this section. The rules shall continue in force
43 until modified by the commissioner or superseded by a plan

44 of operation submitted by the board and approved by the
45 commissioner.

46 (g) The plan of operation shall:

47 (1) Establish procedures for operation of the plan:
48 *Provided*, That the plan shall be operated so as to qualify as
49 an acceptable alternative mechanism under the federal Health
50 Insurance Portability and Accountability Act and as an option
51 to provide health insurance coverage for individuals eligible
52 for the federal health care tax credit established by the federal
53 Trade Adjustment Assistance Reform Act of 2002 (Section
54 35 of the Internal Revenue Code of 1986);

55 (2) Establish procedures for selecting an administrator in
56 accordance with section six of this article;

57 (3) Establish procedures for the handling, accounting and
58 auditing of assets, moneys and claims of the plan and the plan
59 administrator;

60 (4) Develop and implement a program to publicize the
61 existence of the plan, the eligibility requirements and
62 procedures for enrollment;

63 (5) Establish procedures under which applicants and
64 participants may have grievances reviewed by a grievance
65 committee appointed by the board. The grievances shall be
66 reported to the board after completion of the review. The
67 board shall retain all written complaints regarding the plan
68 for at least three years; and

69 (6) Provide for other matters that are necessary and
70 proper for the execution of the board's powers, duties and
71 obligations under this article.

72 (h) The plan shall have the general powers and authority
73 granted under the laws of this state to health insurers and, in
74 addition thereto, the specific authority to:

75 (1) Enter into contracts that are necessary or proper to
76 carry out the provisions and purposes of this article, including
77 the authority, with the approval of the commissioner, to enter
78 into contracts with similar plans of other states for the joint
79 performance of common administrative functions or with
80 persons or other organizations for the performance of
81 administrative functions: *Provided*, That the provisions of
82 article three, chapter five-a of this code relating to the
83 Division of Purchasing of the Department of Administration
84 do not apply to any contracts executed by or on behalf of the
85 plan under this article;

86 (2) Sue or be sued, including taking any legal actions
87 necessary or proper to recover or collect assessments due the
88 plan;

89 (3) Take any necessary legal action:

90 (A) To avoid the payment of improper claims against the
91 plan or the coverage provided by or through the plan;

92 (B) To recover any amounts erroneously or improperly
93 paid by the plan;

94 (C) To recover any amounts paid by the plan as a result
95 of mistake of fact or law; or

96 (D) To recover other amounts due the plan;

97 (4) Establish and modify, from time to time, as
98 appropriate, rates, rate schedules, rate adjustments, expense
99 allowances, agents' referral fees, claim reserve formulas and
100 any other actuarial function appropriate to the operation of
101 the plan. Rates and rate schedules may be adjusted for
102 appropriate factors such as age, sex and geographic variation
103 in claim cost and shall take into consideration appropriate
104 factors in accordance with established actuarial and
105 underwriting practices;

106 (5) Issue policies of insurance in accordance with the
107 requirements of this article;

108 (6) Appoint appropriate legal, actuarial and other
109 committees as necessary to provide technical assistance in the
110 operation of the plan, policy and other contract design and
111 any other function within the authority of the pool;

112 (7) Borrow money to effect the purposes of the plan.
113 Any notes or other evidence of indebtedness of the plan not
114 in default shall be legal investments for insurers and may be
115 carried as admitted assets;

116 (8) Establish rules, conditions and procedures for
117 reinsuring risks of participating insurers desiring to issue plan
118 coverages in their own name. Provision of reinsurance shall
119 not subject the plan to any of the capital or surplus
120 requirements, if any, otherwise applicable to reinsurers;

121 (9) Employ and fix the compensation of employees,
122 including an executive director of the plan. The executive
123 director shall have overall management responsibility for the
124 plan and is exempt from the classified service and not subject
125 to the procedures and protections provided by article two,
126 chapter six-c of this code and article six, chapter twenty-nine
127 of this code;

128 (10) Prepare and distribute certificate of eligibility forms
129 and enrollment instruction forms to insurance producers and
130 to the general public;

131 (11) Provide for reinsurance of risks incurred by the plan;

132 (12) Issue additional types of health insurance policies to
133 provide optional coverages, including medicare supplemental
134 insurance;

135 (13) Provide for and employ cost containment measures
136 and requirements, including, but not limited to, preadmission
137 screening, second surgical opinion, concurrent utilization

138 review and individual case management for the purpose of
139 making the benefit plan more cost effective;

140 (14) Design, use, contract or otherwise arrange for the
141 delivery of cost-effective health care services, including
142 establishing or contracting with preferred provider
143 organizations, health maintenance organizations and other
144 limited network provider arrangements: *Provided*, That all
145 contracts with preferred provider organizations, health
146 maintenance organizations, other network providers or other
147 health care providers shall provide that plan participants are
148 not personally liable for the cost of services covered by the
149 plan other than applicable deductibles or copayments,
150 including any balance claimed by the provider to be owed as
151 being the difference between that provider's charge or
152 charges and the amount payable by the plan; and

153 (15) Adopt bylaws, policies and procedures that are
154 necessary or convenient for the implementation of this article
155 and the operation of the plan.

156 (i) The board shall make an annual report to the Governor
157 which shall also be filed with the Legislature. The report
158 shall summarize the activities of the plan in the preceding
159 calendar year, including the net written and earned premiums,
160 plan enrollment, the expense of administration and the paid
161 and incurred losses.

162 (j) Neither the board nor its employees are liable for any
163 obligations of the plan. No member or employee of the board
164 shall be liable and no cause of action of any nature may arise
165 against them for any act or omission related to the
166 performance of their powers and duties under this article
167 unless the act or omission constitutes willful or wanton
168 misconduct. The board may provide in its bylaws or rules for
169 indemnification of, and legal representation for, its members
170 and employees.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the division, when employing any persons to
3 complete the approved staffing plan of any of its juvenile
4 detention or corrections facilities, shall employ any person
5 otherwise qualified who applies for a position at the juvenile
6 detention or corrections facility who was also employed in
7 good standing at a county or local jail facility, at the time of
8 its closing, that was closed due to the completion of a
9 regional jail.

10 (b) All persons employed at a juvenile detention or
11 corrections facility shall be employed at a salary and with
12 benefits consistent with the approved plan of compensation
13 of the Division of Personnel, created under section five,
14 article six, chapter twenty-nine of this code; all employees
15 shall also be covered by the policies and procedures of the
16 West Virginia Public Employees Grievance Board, created
17 under article two, chapter six-c of this code and the classified
18 service protection policies of the Division of Personnel.

CHAPTER 208

**(Com. Sub. for S.B. 129 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §5-16-2, §5-16-5, §5-16-7 and §5-16-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16D-1 and §5-16D-6 of said code; and to amend and reenact §18A-1-1 of said code, all relating to

Public Employees Insurance Agency; expanding insurance coverage eligibility to include certain substitute employees; expanding coverage to include certain procedures; clarifying certain eligibility provision; requiring continued insurance coverage for Medicare-eligible retired employees; modifying treatment of reserve fund balances; modifying treatment of certain portions of required employer annual payments; modifying certain employer annual required contribution provisions; making technical corrections; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §5-16-2, §5-16-5, §5-16-7 and §5-16-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16D-1 and §5-16D-6 of said code be amended and reenacted; and that §18A-1-1 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.**
- 18A. School Personnel.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article

- 16. West Virginia Public Employees Insurance Act.**
- 16D. West Virginia Retirement Health Benefit Trust.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

- §5-16-2. Definitions.
- §5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
- §5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.
- §5-16-25. Reserve fund.

***§5-16-2. Definitions.**

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "Agency" means the Public Employees Insurance
5 Agency created by this article.

6 (2) "Director" means the Director of the Public
7 Employees Insurance Agency created by this article.

8 (3) "Employee" means any person, including an elected
9 officer, who works regularly full time in the service of the
10 State of West Virginia and, for the purpose of this article
11 only, the term "employee" also means any person, including
12 an elected officer, who works regularly full time in the
13 service of a county board of education; a county, city or town
14 in the state; any separate corporation or instrumentality
15 established by one or more counties, cities or towns, as
16 permitted by law; any corporation or instrumentality
17 supported in most part by counties, cities or towns; any
18 public corporation charged by law with the performance of a
19 governmental function and whose jurisdiction is coextensive
20 with one or more counties, cities or towns; any
21 comprehensive community mental health center or
22 comprehensive mental retardation facility established,
23 operated or licensed by the Secretary of Health and Human
24 Resources pursuant to section one, article two-a, chapter
25 twenty-seven of this code and which is supported in part by
26 state, county or municipal funds; any person who works
27 regularly full time in the service of the Higher Education
28 Policy Commission, the West Virginia Council for
29 Community and Technical College Education or a governing
30 board, as defined in section two, article one, chapter
31 eighteen-b of this code; any person who works regularly full
32 time in the service of a combined city-county health
33 department created pursuant to article two, chapter sixteen of
34 this code; and any person who works as a long-term
35 substitute as defined in section one, article one, chapter

*CLERK'S NOTE: This section was also amended by H.B. 2585 (Chapter 85), which passed subsequent to this act.

36 eighteen-a of this code, in the service of a county board of
37 education: *Provided*, That a long-term substitute who is
38 continuously employed for at least one hundred thirty-three
39 instructional days during an instructional term, and until the
40 end of that instructional term, is eligible for the benefits
41 provided in this article until the first day of September
42 following that instructional term: *Provided, however*, That a
43 long-term substitute employed fewer than one hundred thirty-
44 three instructional days during an instructional term is
45 eligible for the benefits provided in this article only during
46 such time as he or she is actually employed as a long-term
47 substitute. On and after the first day of January, one
48 thousand nine hundred ninety-four, and upon election by a
49 county board of education to allow elected board members to
50 participate in the Public Employees Insurance Program
51 pursuant to this article, any person elected to a county board
52 of education shall be considered to be an "employee" during
53 the term of office of the elected member: *Provided further*,
54 That the elected member shall pay the entire cost of the
55 premium if he or she elects to be covered under this article.
56 Any matters of doubt as to who is an employee within the
57 meaning of this article shall be decided by the director.

58 On or after the first day of July, one thousand nine
59 hundred ninety-seven, a person shall be considered an
60 "employee" if that person meets the following criteria:

61 (i) Participates in a job-sharing arrangement as defined in
62 section one, article one, chapter eighteen-a of this code;

63 (ii) Has been designated, in writing, by all other
64 participants in that job-sharing arrangement as the
65 "employee" for purposes of this section; and

66 (iii) Works at least one third of the time required for a
67 full-time employee.

68 (4) "Employer" means the State of West Virginia, its
69 boards, agencies, commissions, departments, institutions or
70 spending units; a county board of education; a county, city or
71 town in the state; any separate corporation or instrumentality
72 established by one or more counties, cities or towns, as
73 permitted by law; any corporation or instrumentality

74 supported in most part by counties, cities or towns; any
75 public corporation charged by law with the performance of a
76 governmental function and whose jurisdiction is coextensive
77 with one or more counties, cities or towns; any
78 comprehensive community mental health center or
79 comprehensive mental retardation facility established,
80 operated or licensed by the Secretary of Health and Human
81 Resources pursuant to section one, article two-a, chapter
82 twenty-seven of this code and which is supported in part by
83 state, county or municipal funds; and a combined city-county
84 health department created pursuant to article two, chapter
85 sixteen of this code. Any matters of doubt as to who is an
86 "employer" within the meaning of this article shall be decided
87 by the director. The term "employer" does not include within
88 its meaning the National Guard.

89 (5) "Finance board" means the Public Employees
90 Insurance Agency finance board created by this article.

91 (6) "Person" means any individual, company, association,
92 organization, corporation or other legal entity, including, but
93 not limited to, hospital, medical or dental service
94 corporations; health maintenance organizations or similar
95 organization providing prepaid health benefits; or individuals
96 entitled to benefits under the provisions of this article.

97 (7) "Plan", unless the context indicates otherwise, means
98 the medical indemnity plan, the managed care plan option or
99 the group life insurance plan offered by the agency.

100 (8) "Retired employee" means an employee of the state
101 who retired after the twenty-ninth day of April, one thousand
102 nine hundred seventy-one, and an employee of the University
103 of West Virginia Board of Trustees or the Board of Directors
104 of the State College System or a county board of education
105 who retires on or after the twenty-first day of April, one
106 thousand nine hundred seventy-two, and all additional
107 eligible employees who retire on or after the effective date of
108 this article, meet the minimum eligibility requirements for
109 their respective state retirement system and whose last
110 employer immediately prior to retirement under the state
111 retirement system is a participating employer: *Provided*, That
112 for the purposes of this article, the employees who are not

113 covered by a state retirement system but who are covered by
114 a state-approved or a state-contracted retirement system shall,
115 in the case of education employees, meet the minimum
116 eligibility requirements of the State Teachers Retirement
117 System and in all other cases, meet the minimum eligibility
118 requirements of the Public Employees Retirement System.

**§5-16-5. Purpose, powers and duties of the finance board;
initial financial plan; financial plan for following
year; and annual financial plans.**

1 (a) The purpose of the finance board created by this
2 article is to bring fiscal stability to the Public Employees
3 Insurance Agency through development of annual financial
4 plans and long-range plans designed to meet the agency's
5 estimated total financial requirements, taking into account all
6 revenues projected to be made available to the agency and
7 apportioning necessary costs equitably among participating
8 employers, employees and retired employees and providers
9 of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated experience
12 in analysis of large group health insurance plans, to estimate
13 the total financial requirements of the Public Employees
14 Insurance Agency for each fiscal year and to review and
15 render written professional opinions as to financial plans
16 proposed by the finance board. The actuary shall also assist
17 in the development of alternative financing options and
18 perform any other services requested by the finance board or
19 the director. All reasonable fees and expenses for actuarial
20 services shall be paid by the Public Employees Insurance
21 Agency. Any financial plan or modifications to a financial
22 plan approved or proposed by the finance board pursuant to
23 this section shall be submitted to and reviewed by the actuary
24 and may not be finally approved and submitted to the
25 Governor and to the Legislature without the actuary's written
26 professional opinion that the plan may be reasonably
27 expected to generate sufficient revenues to meet all estimated
28 program and administrative costs of the agency, including
29 incurred but unreported claims, for the fiscal year for which
30 the plan is proposed. The actuary's opinion on the financial
31 plan for each fiscal year shall allow for no more than thirty

32 days of accounts payable to be carried over into the next
33 fiscal year. The actuary's opinion for any fiscal year shall not
34 include a requirement for establishment of a reserve fund.

35 (c) All financial plans required by this section shall
36 establish:

37 (1) Maximum levels of reimbursement which the Public
38 Employees Insurance Agency makes to categories of health
39 care providers;

40 (2) Any necessary cost-containment measures for
41 implementation by the director;

42 (3) The levels of premium costs to participating
43 employers; and

44 (4) The types and levels of cost to participating
45 employees and retired employees.

46 The financial plans may provide for different levels of
47 costs based on the insureds' ability to pay. The finance board
48 may establish different levels of costs to retired employees
49 based upon length of employment with a participating
50 employer, ability to pay or other relevant factors. The
51 financial plans may also include optional alternative benefit
52 plans with alternative types and levels of cost. The finance
53 board may develop policies which encourage the use of West
54 Virginia health care providers.

55 In addition, the finance board may allocate a portion of
56 the premium costs charged to participating employers to
57 subsidize the cost of coverage for participating retired
58 employees, on such terms as the finance board determines are
59 equitable and financially responsible.

60 (d)(1) The finance board shall prepare an annual financial
61 plan for each fiscal year during which the finance board
62 remains in existence. The finance board chairman shall
63 request the actuary to estimate the total financial
64 requirements of the Public Employees Insurance Agency for
65 the fiscal year.

66 (2) The finance board shall prepare a proposed financial
67 plan designed to generate revenues sufficient to meet all
68 estimated program and administrative costs of the Public
69 Employees Insurance Agency for the fiscal year. The
70 proposed financial plan shall allow for no more than thirty
71 days of accounts payable to be carried over into the next
72 fiscal year. Before final adoption of the proposed financial
73 plan, the finance board shall request the actuary to review the
74 plan and to render a written professional opinion stating
75 whether the plan will generate sufficient revenues to meet all
76 estimated program and administrative costs of the Public
77 Employees Insurance Agency for the fiscal year. The
78 actuary's report shall explain the basis of its opinion. If the
79 actuary concludes that the proposed financial plan will not
80 generate sufficient revenues to meet all anticipated costs, then
81 the finance board shall make necessary modifications to the
82 proposed plan to ensure that all actuarially determined
83 financial requirements of the agency will be met.

84 (3) Upon obtaining the actuary's opinion, the finance
85 board shall conduct one or more public hearings in each
86 congressional district to receive public comment on the
87 proposed financial plan, shall review the comments and shall
88 finalize and approve the financial plan.

89 (4) Any financial plan shall be designed to allow thirty
90 days or less of accounts payable to be carried over into the
91 next fiscal year. For each fiscal year, the Governor shall
92 provide his or her estimate of total revenues to the finance
93 board no later than the fifteenth day of October of the
94 preceding fiscal year: *Provided*, That, for the prospective
95 financial plans required by this section, the Governor shall
96 estimate the revenues available for each fiscal year of the
97 plans based on the estimated percentage of growth in general
98 fund revenues. The finance board shall submit its final,
99 approved financial plan, after obtaining the necessary
100 actuary's opinion and conducting one or more public hearings
101 in each congressional district, to the Governor and to the
102 Legislature no later than the first day of January preceding
103 the fiscal year. The financial plan for a fiscal year becomes
104 effective and shall be implemented by the director on the first
105 day of July of the fiscal year. In addition to each final,
106 approved financial plan required under this section, the

107 finance board shall also simultaneously submit financial
108 statements based on generally accepted accounting practices
109 (GAAP) and the final, approved plan restated on an accrual
110 basis of accounting, which shall include allowances for
111 incurred but not reported claims: *Provided, however,* That the
112 financial statements and the accrual-based financial plan
113 restatement shall not affect the approved financial plan.

114 (e) The provisions of chapter twenty-nine-a of this code
115 shall not apply to the preparation, approval and
116 implementation of the financial plans required by this
117 section.

118 (f) By the first day of January of each year the finance
119 board shall submit to the Governor and the Legislature a
120 prospective financial plan, for a period not to exceed five
121 years, for the programs provided in this article. Factors that
122 the board shall consider include, but are not limited to, the
123 trends for the program and the industry; the medical rate of
124 inflation; utilization patterns; cost of services; and specific
125 information such as average age of employee population,
126 active to retiree ratios, the service delivery system and health
127 status of the population.

128 (g) The prospective financial plans shall be based on the
129 estimated revenues submitted in accordance with subdivision
130 (4), subsection (d) of this section and shall include an average
131 of the projected cost-sharing percentages of premiums and an
132 average of the projected deductibles and copays for the
133 various programs. Beginning in the plan year which
134 commences on the first day of July, two thousand two, and in
135 each plan year thereafter, until and including the plan year
136 which commences on the first day of July, two thousand six,
137 the prospective plans shall include incremental adjustments
138 toward the ultimate level required in this subsection, in the
139 aggregate cost-sharing percentages of premium between
140 employers and employees, including the amounts of any
141 subsidization of retired employee benefits. Effective in the
142 plan year commencing on the first day of July, two thousand
143 six, and in each plan year thereafter, the aggregate premium

144 cost-sharing percentages between employers and employees,
145 including the amounts of any subsidization of retired
146 employee benefits, shall be at a level of eighty percent for the
147 employer and twenty percent for employees, except for the
148 employers provided in subsection (d), section eighteen of this
149 article whose premium cost-sharing percentages shall be
150 governed by that subsection. After the submission of the
151 initial prospective plan, the board may not increase costs to
152 the participating employers or change the average of the
153 premiums, deductibles and copays for employees, except in
154 the event of a true emergency as provided in this section:
155 *Provided*, That if the board invokes the emergency
156 provisions, the cost shall be borne between the employers and
157 employees in proportion to the cost-sharing ratio for that plan
158 year: *Provided, however*, That for purposes of this section,
159 "emergency" means that the most recent projections
160 demonstrate that plan expenses will exceed plan revenues by
161 more than one percent in any plan year: *Provided further*,
162 That the aggregate premium cost-sharing percentages
163 between employers and employees, including the amounts of
164 any subsidization of retired employee benefits, may be offset,
165 in part, by a legislative appropriation for that purpose.

166 (h) The finance board shall meet on at least a quarterly
167 basis to review implementation of its current financial plan in
168 light of the actual experience of the Public Employees
169 Insurance Agency. The board shall review actual costs
170 incurred, any revised cost estimates provided by the actuary,
171 expenditures and any other factors affecting the fiscal
172 stability of the plan and may make any additional
173 modifications to the plan necessary to ensure that the total
174 financial requirements of the agency for the current fiscal
175 year are met. The finance board may not increase the types
176 and levels of cost to employees during its quarterly review
177 except in the event of a true emergency.

178 (i) For any fiscal year in which legislative appropriations
179 differ from the Governor's estimate of general and special

180 revenues available to the agency, the finance board shall,
181 within thirty days after passage of the budget bill, make any
182 modifications to the plan necessary to ensure that the total
183 financial requirements of the agency for the current fiscal
184 year are met.

***§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance
4 plan or plans and a group life and accidental death insurance
5 plan or plans for those employees herein made eligible and
6 establish and promulgate rules for the administration of these
7 plans, subject to the limitations contained in this article.
8 Those plans shall include:

9 (1) Coverages and benefits for X-ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is
14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer

*CLERK'S NOTE: This section was also amended by S.B. 18 (Chapter 133), which passed prior to this act.

22 screening or diagnostic services on a woman age eighteen or
23 over;

24 (2) Annual checkups for prostate cancer in men age fifty
25 and over;

26 (3) Annual screening for kidney disease as determined to
27 be medically necessary by a physician using any combination
28 of blood pressure testing, urine albumin or urine protein
29 testing and serum creatinine testing as recommended by the
30 National Kidney Foundation;

31 (4) For plans that include maternity benefits, coverage for
32 inpatient care in a duly licensed health care facility for a
33 mother and her newly born infant for the length of time
34 which the attending physician considers medically necessary
35 for the mother or her newly born child: *Provided*, That a plan
36 may not deny payment for a mother or her newborn child
37 prior to forty-eight hours following a vaginal delivery, or
38 prior to ninety-six hours following a caesarean section
39 delivery, if the attending physician considers discharge
40 medically inappropriate;

41 (5) For plans which provide coverages for post-delivery
42 care to a mother and her newly born child in the home,
43 coverage for inpatient care following childbirth as provided
44 in subdivision (4) of this subsection if inpatient care is
45 determined to be medically necessary by the attending
46 physician. Those plans may also include, among other
47 things, medicines, medical equipment, prosthetic appliances,
48 and any other inpatient and outpatient services and expenses
49 considered appropriate and desirable by the agency; and

50 (6) Coverage for treatment of serious mental illness.

51 (A) The coverage does not include custodial care,
52 residential care or schooling. For purposes of this section,
53 "serious mental illness" means an illness included in the
54 American Psychiatric Association's diagnostic and statistical

55 manual of mental disorders, as periodically revised, under the
56 diagnostic categories or subclassifications of: (i)
57 Schizophrenia and other psychotic disorders; (ii) bipolar
58 disorders; (iii) depressive disorders; (iv) substance-related
59 disorders with the exception of caffeine-related disorders and
60 nicotine-related disorders; (v) anxiety disorders; and (vi)
61 anorexia and bulimia. With regard to any covered individual
62 who has not yet attained the age of nineteen years, "serious
63 mental illness" also includes attention deficit hyperactivity
64 disorder, separation anxiety disorder and conduct disorder.

65 (B) Notwithstanding any other provision in this section
66 to the contrary, in the event that the agency can demonstrate
67 actuarially that its total anticipated costs for the treatment of
68 mental illness for any plan will exceed or have exceeded two
69 percent of the total costs for such plan in any experience
70 period, then the agency may apply whatever cost-
71 containment measures may be necessary, including, but not
72 limited to, limitations on inpatient and outpatient benefits, to
73 maintain costs below two percent of the total costs for the
74 plan.

75 (C) The agency shall not discriminate between medical-
76 surgical benefits and mental health benefits in the
77 administration of its plan. With regard to both medical-
78 surgical and mental health benefits, it may make
79 determinations of medical necessity and appropriateness, and
80 it may use recognized health care quality and cost
81 management tools, including, but not limited to, limitations
82 on inpatient and outpatient benefits, utilization review,
83 implementation of cost-containment measures,
84 preauthorization for certain treatments, setting coverage
85 levels, setting maximum number of visits within certain time
86 periods, using capitated benefit arrangements, using fee-for-
87 service arrangements, using third-party administrators, using
88 provider networks and using patient cost sharing in the form
89 of copayments, deductibles and coinsurance.

90 (b) The agency shall make available to each eligible
91 employee, at full cost to the employee, the opportunity to
92 purchase optional group life and accidental death insurance
93 as established under the rules of the agency. In addition,
94 each employee is entitled to have his or her spouse and
95 dependents, as defined by the rules of the agency, included in
96 the optional coverage, at full cost to the employee, for each
97 eligible dependent; and with full authorization to the agency
98 to make the optional coverage available and provide an
99 opportunity of purchase to each employee.

100 (c) The finance board may cause to be separately rated
101 for claims experience purposes:

102 (1) All employees of the State of West Virginia;

103 (2) All teaching and professional employees of state
104 public institutions of higher education and county boards of
105 education;

106 (3) All nonteaching employees of the Higher Education
107 Policy Commission, West Virginia Council for Community
108 and Technical College Education and county boards of
109 education; or

110 (4) Any other categorization which would ensure the
111 stability of the overall program.

112 (d) The agency shall maintain the medical and
113 prescription drug coverage for Medicare-eligible retirees by
114 providing coverage through one of the existing plans or by
115 enrolling the Medicare-eligible retired employees into a
116 Medicare-specific plan, including, but not limited to, the
117 Medicare/Advantage Prescription Drug Plan. In the event
118 that a Medicare-specific plan would no longer be available or
119 advantageous for the agency and the retirees, the retirees
120 shall remain eligible for coverage through the agency.

§5-16-25. Reserve fund.

1 Upon the effective date of this section, the finance board
2 shall establish and maintain a reserve fund for the purposes
3 of offsetting unanticipated claim losses in any fiscal year.
4 Beginning with the fiscal year two thousand two plan and for
5 each succeeding fiscal year plan, the finance board shall
6 transfer ten percent of the projected total plan costs for that
7 year into the reserve fund, which is to be certified by the
8 actuary and included in the final, approved financial plan
9 submitted to the Governor and Legislature in accordance with
10 the provisions of this article. Any moneys saved in a plan
11 year shall be transferred into the reserve fund. At the close
12 of any fiscal year in which the balance in the reserve fund
13 exceeds the recommended reserve amount by fifteen percent,
14 the executive director shall transfer that amount to the West
15 Virginia Retiree Health Benefit Trust Fund created in section
16 two, article sixteen-d of this chapter.

**ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH
BENEFIT TRUST FUND.**

§5-16D-1. Definitions.

§5-16D-6. Mandatory employer contributions.

§5-16D-1. Definitions.

1 As used in this article, the term:

2 (a) “Actuarial accrued liability” means that portion, as
3 determined by a particular actuarial cost method, of the
4 actuarial present value of fund obligations and administrative
5 expenses which is not provided by future normal costs.

6 (b) “Actuarial cost method” means a method for
7 determining the actuarial present value of the obligations and
8 administrative expenses of the fund and for developing an
9 actuarially equivalent allocation of the value to time periods,
10 usually in the form of a normal cost and an actuarial accrued

11 liability. Acceptable actuarial methods are the aggregate,
12 attained age, entry age, frozen attained age, frozen entry age
13 and projected unit credit methods.

14 (c) “Actuarially sound” means that calculated
15 contributions to the fund are sufficient to pay the full
16 actuarial cost of the fund. The full actuarial cost includes
17 both the normal cost of providing for fund obligations as they
18 accrue in the future and the cost of amortizing the unfunded
19 actuarial accrued liability over a period of no more than thirty
20 years.

21 (d) “Actuarial present value of total projected benefits”
22 means the present value, at the valuation date, of the cost to
23 finance benefits payable in the future, discounted to reflect
24 the expected effects of the time value of money and the
25 probability of payment.

26 (e) “Actuarial assumptions” means assumptions
27 regarding the occurrence of future events affecting the fund
28 such as mortality, withdrawal, disability and retirement;
29 changes in compensation and offered post-employment
30 benefits; rates of investment earnings and other asset
31 appreciation or depreciation; procedures used to determine
32 the actuarial value of assets; and other relevant items.

33 (f) “Actuarial valuation” means the determination, as of
34 a valuation date, of the normal cost, actuarial accrued
35 liability, actuarial value of assets and related actuarial present
36 values for the fund.

37 (g) “Administrative expenses” means all expenses
38 incurred in the operation of the fund, including all investment
39 expenses.

40 (h) “Annual required contribution” means the amount
41 employers must contribute in a given year to fully fund the
42 trust, as determined by the actuarial valuation in accordance
43 with requirements of generally accepted accounting

44 principles. This amount shall represent a level of funding
45 that if paid on an ongoing basis is projected to cover the
46 normal cost each year and amortize any unfunded actuarial
47 liabilities of the plan over a period not to exceed thirty years.

48 (i) “Board” means the Public Employees Insurance
49 Agency Finance Board created in section four, article sixteen
50 of this chapter.

51 (j) “Cost-sharing multiple employer plan” means a single
52 plan with pooling (cost-sharing) arrangements for the
53 participating employers. All risk, rewards, and costs,
54 including benefit costs, are shared and not attributed
55 individually to the employers. A single actuarial valuation
56 covers all plan members and the same contribution rate
57 applies for each employer.

58 (k) “Covered health care expenses” means all actual
59 health care expenses paid by the health plan on behalf of fund
60 beneficiaries. Actual health care expenses include claims
61 payments to providers and premiums paid to intermediary
62 entities and health care providers by the health plan.

63 (l) “Employer” means any employer as defined by section
64 two, article sixteen of this chapter which has or will have
65 retired employees in any Public Employees Insurance
66 Agency health plan.

67 (m) “Employer annual required contribution” means the
68 portion of the annual required contribution which is the
69 responsibility of that particular employer.

70 (n) “Fund” means the West Virginia Retiree Health
71 Benefit Trust Fund established under this article.

72 (o) "Fund beneficiaries" means all persons receiving
73 post-employment health care benefits through the health plan.

74 (p) "Health plan" means the health insurance plan or
75 plans established under article sixteen of this chapter.

76 (q) "Minimum annual employer payment" means the
77 annual amount paid by employers which, when combined
78 with the retirees' contributions on their premiums that year,
79 provide sufficient funds to cover all projected retiree covered
80 health care expenses and related administrative costs for that
81 year. The finance board shall develop the minimum annual
82 employer payment as part of its financial plan each year as
83 addressed in section five, article sixteen of this chapter.

84 (r) "Normal cost" means that portion of the actuarial
85 present value of the fund obligations and expenses which is
86 allocated to a valuation year by the actuarial cost method
87 used for the fund.

88 (s) "Obligations" means the administrative expenses of
89 the fund and the cost of covered health care expenses
90 incurred on behalf of fund beneficiaries.

91 (t) "Other post-employment benefits" or "retiree post-
92 employment health care benefits" means those benefits as
93 addressed by governmental accounting standards board
94 statement no. 43 or any subsequent governmental standards
95 board statement that may be applicable to the fund.

96 (u) "Plan for other post-employment benefits" means the
97 fiscal funding plan for retiree post-employment health care
98 benefits as it relates to governmental accounting standards
99 board statement no. 43 or any subsequent governmental
100 accounting standards board statements that may be applicable
101 to the fund.

102 (v) "Retiree" means retired employee as defined by
103 section two, article sixteen of this chapter.

104 (w) "Retirement system" or "system" means the West
105 Virginia Consolidated Public Retirement Board created and
106 established by article ten of this chapter and includes any
107 retirement systems or funds administered or overseen by the
108 Consolidated Public Retirement Board.

109 (x) "Unfunded actuarial accrued liability" means for any
110 actuarial valuation the excess of the actuarial accrued liability
111 over the actuarial value of the assets of the fund under an
112 actuarial cost method used by the fund for funding purposes.

§5-16D-6. Mandatory employer contributions.

1 (a) The board shall annually set the total annual required
2 contribution sufficient to maintain the fund in an actuarially
3 sound manner in accordance with generally accepted
4 accounting principles.

5 (b) The board shall annually allocate to the respective
6 employers the employer's portion of the annual required
7 contribution, which allocated amount is the "employer annual
8 required contribution".

9 (c) The board may apportion the annual required
10 contribution into various components. These components
11 may include the amortized unfunded actuarial accrued
12 liability, the total normal cost, the employer annual required
13 contribution and the lesser included minimum annual
14 employer payment. In the board's annual apportionment of
15 the annual required contribution, any amounts of the
16 minimum annual employer payment apportioned to reduce
17 the amortized unfunded actuarial accrued liability shall not be
18 treated as premium by the board in the finance plan but,

19 rather, shall be treated as contributions to prefund other post-
20 employment benefits.

21 (d) Employers shall make annual contributions to the
22 fund in, at least, the amount of the minimum annual employer
23 payment rates established by the board.

24 (e) The Public Employees Insurance Agency shall bill
25 each employer for the employer annual required contribution
26 and the included minimum annual employer payment. The
27 Public Employees Insurance Agency shall annually collect
28 the minimum annual employer payment. The Public
29 Employees Insurance Agency shall, in addition to the
30 minimum annual employer payment, collect any amounts the
31 employer elects to pay toward the employer annual required
32 contribution. Any employer annual required contribution
33 amount not satisfied by the respective employer shall remain
34 the liability of that employer until fully paid.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

***§18A-1-1. Definitions.**

1 The definitions contained in section one, article one,
2 chapter eighteen of this code apply to this chapter. In
3 addition, the following words used in this chapter and in any
4 proceedings pursuant to this chapter shall, unless the context
5 clearly indicates a different meaning, be construed as
6 follows:

7 (a) "School personnel" means all personnel employed by
8 a county board whether employed on a regular full-time
9 basis, an hourly basis or otherwise. School personnel shall be

***CLERK'S NOTE:** This section was also amended by H.B. 2189 (Chapter 86) which passed subsequent to this act.

10 comprised of two categories: Professional personnel and
11 service personnel;

12 (b) "Professional personnel" means persons who meet the
13 certification requirements of the state, licensing requirements
14 of the state or both and includes the professional educator and
15 other professional employees;

16 (c) "Professional educator" has the same meaning as
17 "teacher" as defined in section one, article one, chapter
18 eighteen of this code. Professional educators shall be
19 classified as:

20 (1) "Classroom teacher" means a professional educator
21 who has direct instructional or counseling relationship with
22 pupils, spending the majority of his or her time in this
23 capacity;

24 (2) "Principal" means a professional educator who, as
25 agent of the county board, has responsibility for the
26 supervision, management and control of a school or schools
27 within the guidelines established by the county board. The
28 major area of the responsibility shall be the general
29 supervision of all the schools and all school activities
30 involving pupils, teachers and other school personnel;

31 (3) "Supervisor" means a professional educator who,
32 whether by this or other appropriate title, is responsible for
33 working primarily in the field with professional and other
34 personnel in instructional and other school improvement; and

35 (4) "Central office administrator" means a superintendent,
36 associate superintendent, assistant superintendent and other
37 professional educators, whether by these or other appropriate
38 titles, who are charged with the administering and
39 supervising of the whole or some assigned part of the total
40 program of the countywide school system;

41 (d) "Other professional employee" means that person
42 from another profession who is properly licensed and is
43 employed to serve the public schools and includes a
44 registered professional nurse, licensed by the West Virginia
45 Board of Examiners for Registered Professional Nurses and
46 employed by a county board, who has completed either a
47 two-year (sixty-four semester hours) or a three-year (ninety-
48 six semester hours) nursing program;

49 (e) "Service personnel" means those who serve the school
50 or schools as a whole, in a nonprofessional capacity,
51 including such areas as secretarial, custodial, maintenance,
52 transportation, school lunch and as aides;

53 (f) "Principals Academy" or "academy" means the
54 academy created pursuant to section two-b, article three-a of
55 this chapter;

56 (g) "Center for Professional Development" means the
57 center created pursuant to section one, article three-a of this
58 chapter;

59 (h) "Job-sharing arrangement" means a formal, written
60 agreement voluntarily entered into by a county board with
61 two or more of its employees who wish to divide between
62 them the duties and responsibilities of one authorized full-
63 time position;

64 (i) "Prospective employable professional personnel"
65 means certified professional educators who:

66 (1) Have been recruited on a reserve list of a county
67 board;

68 (2) Have been recruited at a job fair or as a result of
69 contact made at a job fair;

70 (3) Have not obtained regular employee status through
71 the job posting process provided for in section seven-a,
72 article four of this chapter; and

73 (4) Have obtained a baccalaureate degree from an
74 accredited institution of higher education within the past
75 year;

76 (j) "Dangerous student" means a pupil who is
77 substantially likely to cause serious bodily injury to himself,
78 herself or another individual within that pupil's educational
79 environment, which may include any alternative education
80 environment, as evidenced by a pattern or series of violent
81 behavior exhibited by the pupil and documented in writing by
82 the school, with the documentation provided to the student
83 and parent or guardian at the time of any offense; and

84 (k) "Alternative education" means an authorized
85 departure from the regular school program designed to
86 provide educational and social development for students
87 whose disruptive behavior places them at risk of not
88 succeeding in the traditional school structures and in adult
89 life without positive interventions.

90 (l) "Long-term substitute" means a substitute employee
91 who fills a vacant position:

92 That the county superintendent expects to extend for at
93 least ninety consecutive days and is either:

94 (A) Listed in the job posting as a long-term substitute
95 position of over ninety days; or

96 (B) Listed in a job posting as a regular, full-time position
97 and:

98 (i) Is not filled by a regular, full-time employee; and

99 (ii) Is filled by a substitute employee.

100 For the purposes of section two, article sixteen, chapter
101 five of this code, long-term substitute does not include a
102 retired employee hired to fill the vacant position.

CHAPTER 209

**(S.B. 438 - By Senators Foster, McCabe, Edgell, Plymale,
Hall and McKenzie)**

[Amended and again passed March 18, 2007, as a result of
the objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §12-6-18, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the type and amount of bonds or insurance coverage that may be obtained and maintained by the Investment Management Board; authorizing the establishment and maintenance of a self-insurance account in connection with the procurement and maintenance of insurance coverage by the Investment Management Board; clarifying powers of the board; modifying provisions relating to authority of the board to make certain investments in investment companies or investment trusts registered under the Investment Company Act of 1940; modifying restrictions and limitations on permissible investments by the West Virginia Investment Management Board; authorizing investment in real estate investment funds and alternative investment funds and establishing conditions and limitations on the same; providing an exemption from disclosure under the Freedom of Information Act with respect to

information concerning which disclosure is prohibited, restricted or limited by standard confidentiality agreements, policies or procedures of firms, companies or organizations through which the West Virginia Investment Management Board invests, to the extent of the prohibitions, restrictions or limitations; requiring certain additional information be part of the Investment Management Board's annual report; providing authority for the Legislature to commission or direct audits, reviews and studies as it considers necessary; and specifying that the provisions of the article are to be liberally construed to effect the public purposes of the article.

Be it enacted by the Legislature of West Virginia:

That §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 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 §12-6-18, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

- §12-6-2. Definitions.
- §12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.
- §12-6-5. Powers of the board.
- §12-6-9c. Authorization of additional investments.
- §12-6-12. Investment restrictions.
- §12-6-14. Reports of board; legislative audits, reviews and studies.
- §12-6-18. Liberal construction.

§12-6-2. Definitions.

- 1 As used in this article, unless a different meaning clearly
- 2 appears from the context:

3 (1) "Beneficiaries" means those individuals entitled to
4 benefits from the participant plans;

5 (2) "Board" means the governing body for the West
6 Virginia Investment Management Board and any reference
7 elsewhere in this code to board of investments or West
8 Virginia Trust Fund means the board as defined in this
9 subdivision;

10 (3) "401(a) plan" means a plan which is described in
11 section 401(a) of the Internal Revenue Code of 1986, as
12 amended, and with respect to which the board has been
13 designated to hold assets of the plan in trust pursuant to the
14 provisions of section nine-a of this article;

15 (4) "Local government funds" means the moneys of a
16 political subdivision, including policemen's pension and
17 relief funds, firemen's pension and relief funds and volunteer
18 fire departments, transferred to the board for deposit;

19 (5) "Participant plan" means any plan or fund subject
20 now or hereafter to subsection (a), section nine-a of this
21 article;

22 (6) "Political subdivision" means and includes a county,
23 municipality or any agency, authority, board, county board of
24 education, commission or instrumentality of a county or
25 municipality and regional councils created pursuant to the
26 provisions of section five, article twenty-five, chapter eight
27 of this code;

28 (7) "Trustee" means any member serving on the West
29 Virginia Investment Management Board: *Provided*, That in
30 section nine-a of this article in which the terms of the trusts
31 are set forth, "trustee" means the West Virginia Investment
32 Management Board;

33 (8) "Securities" means all bonds, notes, debentures or

34 other evidences of indebtedness and other lawful investment
35 instruments; and

36 (9) "State funds" means all moneys of the state which
37 may be lawfully invested except the "school fund"
38 established by section four, article XII of the state
39 constitution.

**§12-6-4. Management and control of fund; officers; staff;
fiduciary or surety bonds for trustees; liability
of trustees.**

1 (a) The management and control of the board shall be
2 vested solely in the trustees in accordance with the provisions
3 of this article.

4 (b) The Governor shall be the chairman of the board and
5 the trustees shall elect a vice chairman who may not be a
6 constitutional officer or his or her designee to serve for a term
7 of two years. Effective with any vacancy in the vice
8 chairmanship, the board shall elect a vice chairman to a new
9 two-year term. The vice chairman shall preside at all
10 meetings in the absence of the chairman. Annually, the
11 trustees shall elect a secretary, who need not be a member of
12 the board, to keep a record of the proceedings of the board.

13 (c) The trustees shall appoint a chief executive officer of
14 the board and shall fix his or her duties and compensation.
15 The chief executive officer shall have five years' experience
16 in investment management with public or private funds
17 within the ten years next preceding the date of appointment.
18 The chief executive officer additionally shall have academic
19 degrees, professional designations and other investment
20 management or investment oversight or institutional
21 investment experience in a combination the trustees consider
22 necessary to carry out the responsibilities of the chief
23 executive officer position as defined by the trustees.

24 (d) The trustees shall retain an internal auditor to report
25 directly to the trustees and shall fix his or her compensation.
26 The internal auditor shall be a certified public accountant
27 with at least three years' experience as an auditor. The
28 internal auditor shall develop an internal audit plan, with
29 board approval, for the testing of procedures and the security
30 of transactions.

31 (e) The board shall procure and maintain in effect
32 commercially customary property, liability, crime and other
33 insurance to cover risks of loss from its operations. The
34 types and amounts of the insurance coverages shall be
35 determined by the board, from time to time, in its reasonable
36 discretion, with reference to the types and amounts of
37 insurance coverages purchased or maintained by other public
38 institutions performing functions similar to those performed
39 by the board: *Provided*, That the board shall purchase a
40 blanket bond for the faithful performance of its duties in the
41 amount of at least ten million dollars. The board may require
42 that appropriate types and amounts of insurance be procured
43 and maintained by, or a fiduciary or surety bond from a
44 surety company qualified to do business in this state for, any
45 person who has charge of, or access to, any securities, funds
46 or other moneys held by the board and the amount of the
47 fiduciary or surety bond shall be fixed by the board. The
48 premiums payable on any insurance or fiduciary or surety
49 bonds that the board may require, from time to time, shall be
50 an expense of the board. In connection with the duties of the
51 board under this subsection, the board may establish, fund
52 and maintain a self-insurance account. If established, the
53 board shall deposit and maintain moneys in the self-insurance
54 account in amounts as may be determined by the board in
55 consultation with one or more qualified insurance or actuarial
56 consultants, and all moneys in any self-insurance account
57 may be used only for the purpose of providing self-insurance,
58 establishing reserves in connection with insurance
59 deductibles, self-insured retentions or self-insurance, or
60 helping to defray the costs of insurance procured under this

61 subsection, and for no other purpose. The board may procure
62 any and all insurance coverages and bonds deemed
63 appropriate by the board or required by the provisions of this
64 article, either through the state Board of Risk and Insurance
65 Management or in the commercial markets, in the discretion
66 of the board.

67 (f) The trustees and employees of the board are not liable
68 personally, either jointly or severally, for any debt or
69 obligation created by the board: *Provided*, That the trustees
70 and employees of the board are liable for acts of misfeasance
71 or gross negligence.

72 (g) The board is exempt from the provisions of sections
73 seven and eleven, article three of this chapter and article
74 three, chapter five-a of this code: *Provided*, That the trustees
75 and employees of the board are subject to purchasing policies
76 and procedures which shall be promulgated by the board.
77 The purchasing policies and procedures may be promulgated
78 as emergency rules pursuant to section fifteen, article three,
79 chapter twenty-nine-a of this code.

80 (h) Any employee of the West Virginia Trust Fund who
81 previously was an employee of another state agency may
82 return to the Public Employees Retirement System pursuant
83 to section eighteen, article ten, chapter five of this code and
84 may elect to either: (1) Transfer to the Public Employees
85 Retirement System his or her employee contributions, with
86 accrued interest and, if vested, his or her employer
87 contributions, with accrued interest and retain as credited
88 state service all time served as an employee of the West
89 Virginia Trust Fund; or (2) retain all employee contributions
90 with accrued interest and, if vested, his or her employer
91 contributions with interest and forfeit all service credit for the
92 time served as an employee of the West Virginia Trust Fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate, in accordance with the provisions of the West
3 Virginia Uniform Prudent Investor Act, codified as article
4 six-c, chapter forty-four of this code and section eleven of
5 this article, to carry out and effectuate its corporate purposes,
6 including, but not limited to, the power to:

7 (1) Adopt and use a common seal and alter it at pleasure;

8 (2) Sue and be sued;

9 (3) Enter into contracts and execute and deliver
10 instruments;

11 (4) Acquire (by purchase, gift or otherwise), hold, use
12 and dispose of real and personal property, deeds, mortgages
13 and other instruments;

14 (5) Promulgate and enforce bylaws and rules for the
15 management and conduct of its affairs;

16 (6) Notwithstanding any other provision of law, retain
17 and employ legal, accounting, financial and investment
18 advisors and consultants;

19 (7) Acquire (by purchase, gift or otherwise), hold,
20 exchange, pledge, lend and sell or otherwise dispose of
21 securities and invest funds in interest earning deposits and in
22 any other lawful investments;

23 (8) Maintain accounts with banks, securities dealers and
24 financial institutions both within and outside this state;

25 (9) Engage in financial transactions whereby securities
26 are purchased by the board under an agreement providing for
27 the resale of the securities to the original seller at a stated
28 price;

29 (10) Engage in financial transactions whereby securities
30 held by the board are sold under an agreement providing for
31 the repurchase of the securities by the board at a stated price;

32 (11) Consolidate and manage moneys, securities and
33 other assets of the other funds and accounts of the state and
34 the moneys of political subdivisions which may be made
35 available to it under the provisions of this article;

36 (12) Enter into agreements with political subdivisions of
37 the state whereby moneys of the political subdivisions are
38 invested on their behalf by the board;

39 (13) Charge and collect administrative fees from political
40 subdivisions for its services;

41 (14) Exercise all powers generally granted to and
42 exercised by the holders of investment securities with respect
43 to management of the investment securities;

44 (15) Contract with one or more banking institutions in or
45 outside the state for the custody, safekeeping and
46 management of securities held by the board;

47 (16) Make and, from time to time, amend and repeal
48 bylaws, rules and procedures consistent with the provisions
49 of this article;

50 (17) Hire its own employees, consultants, managers and
51 advisors as it considers necessary and fix their compensation
52 and prescribe their duties;

53 (18) Develop, implement and maintain its own banking
54 accounts and investments;

55 (19) Do all things necessary to implement and operate the
56 board and carry out the intent of this article;

57 (20) Upon request of the State Treasurer, transmit funds
58 for deposit in the State Treasury to meet the daily obligations
59 of state government;

60 (21) Establish one or more investment funds for the
61 purpose of investing the funds for which it is trustee,
62 custodian or otherwise authorized to invest pursuant to this
63 article. Interests in each fund shall be designated as units and
64 the board shall adopt industry standard accounting procedures
65 to determine each fund's unit value. The securities in each
66 investment fund are the property of the board and each fund
67 shall be considered an investment pool or fund and may not
68 be considered a trust nor may the securities of the various
69 investment funds be considered held in trust. However, units
70 in an investment fund established by or sold by the board and
71 the proceeds from the sale or redemption of any unit may be
72 held by the board in its role as trustee of the participant plans;
73 and

74 (22) Notwithstanding any other provision of the code to
75 the contrary, conduct investment transactions, including
76 purchases, sales, redemptions and income collections, which
77 shall not be treated by the State Auditor as recordable
78 transactions on the state's accounting system.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise be
2 provided by law with respect to the investment of funds, all
3 administrators, custodians or trustees of pension funds other
4 than the board, each political subdivision of this state and
5 each county board of education may invest funds in the
6 securities of or any other interest in any investment company
7 or investment trust registered under the Investment Company
8 Act of 1940, 15 U. S. C. §80a, the portfolio of which is
9 limited: (i) To obligations issued by or guaranteed as to the
10 payment of both principal and interest by the United States of
11 America or its agencies or instrumentalities; and (ii) to
12 repurchase agreements fully collateralized by obligations of
13 the United States government or its agencies or
14 instrumentalities: *Provided*, That the investment company or
15 investment trust takes delivery of the collateral either directly
16 or through an authorized custodian: *Provided, however*, That
17 the investment company or investment trust is rated within
18 one of the top two rating categories of any nationally
19 recognized rating service such as Moody's or Standard &
20 Poor's.

§12-6-12. Investment restrictions.

1 (a) The board shall hold in nonreal estate equity
2 investments no more than seventy-five percent of the assets
3 managed by the board and no more than seventy-five percent
4 of the assets of any individual participant plan.

5 (b) In addition to any investments the board may make
6 pursuant to subsection (h) of this section, the board shall hold
7 in real estate equity investments no more than twenty-five
8 percent of the assets managed by the board and no more than
9 twenty-five percent of the assets of any individual participant

10 plan: *Provided*, That any such investment be only made upon
11 the recommendation by a professional, third-party fiduciary
12 investment adviser registered with the Securities and
13 Exchange Commission under the Investment Advisors Act of
14 1940, as amended, upon the approval of the board or a
15 committee designated by the board, and upon the execution
16 of the transaction by a third-party investment manager:
17 *Provided, however*, That the board's ownership interest in
18 any fund is less than forty percent of the fund's assets at the
19 time of purchase: *Provided further*, That the combined
20 investment of institutional investors, other public sector
21 entities and educational institutions and their endowments
22 and foundations in the fund is in an amount equal to or
23 greater than fifty percent of the board's total investment in
24 the fund at the time of acquisition. For the purposes of this
25 subsection, "fund" means a real estate investment trust traded
26 on a major exchange of the United States of America, or a
27 partnership, limited partnership, limited liability company or
28 other entity holding or investing in related or unrelated real
29 estate investments, at least three of which are unrelated and
30 the largest of which is not greater than forty percent of the
31 entity's holdings, at the time of purchase.

32 (c) The board shall hold in international securities no
33 more than thirty percent of the assets managed by the board
34 and no more than thirty percent of the assets of any individual
35 participant plan.

36 (d) The board may not at the time of purchase hold more
37 than five percent of the assets managed by the board in the
38 nonreal estate equity securities of any single company or
39 association: *Provided*, That if a company or association has
40 a market weighting of greater than five percent in the
41 Standard & Poor's 500 index of companies, the board may

42 hold securities of that nonreal estate equity equal to its
43 market weighting.

44 (e) No security may be purchased by the board unless the
45 type of security is on a list approved by the board. The board
46 may modify the securities list at any time and shall give
47 notice of that action pursuant to subsection (g), section three
48 of this article and shall review the list at its annual meeting.

49 (f) Notwithstanding the investment limitations set forth
50 in this section, it is recognized that the assets managed by the
51 board or the assets of the participant plans, whether
52 considered in the aggregate or individually, may temporarily
53 exceed the investment limitations in this section due to
54 market appreciation, depreciation and rebalancing limitations.
55 Accordingly, the limitations on investments set forth in this
56 section shall not be considered to have been violated if the
57 board rebalances the assets it manages or the assets of the
58 participant plans, whichever is applicable, to comply with the
59 limitations set forth in this section at least once every twelve
60 months based upon the latest available market information
61 and any other reliable market data that the board considers
62 advisable to take into consideration, except for those assets
63 authorized by subsections (b) and (h) of this section for
64 which compliance with the percentage limitations shall be
65 measured at such time as the investment is made.

66 (g) The board, at the annual meeting required in
67 subsection (h), section three of this article, shall review,
68 establish and modify, if necessary, the investment objectives
69 of the individual participant plans as incorporated in the
70 investment policy statements of the respective trusts so as to
71 provide for the financial security of the trust funds giving
72 consideration to the following:

73 (1) Preservation of capital;

74 (2) Diversification;

75 (3) Risk tolerance;

76 (4) Rate of return;

77 (5) Stability;

78 (6) Turnover;

79 (7) Liquidity; and

80 (8) Reasonable cost of fees.

81 (h) In addition to any and all other investments the board
82 may make under this article and all investment authority
83 granted to the board by this article, the board is expressly
84 authorized to invest no more than twenty percent of the assets
85 managed by the board and no more than twenty percent of
86 the assets of any individual participant plan, or any other
87 endowment or other fund managed by the board, as measured
88 at the time of the investment, in any one or more classes,
89 styles or strategies of alternative investments suitable and
90 appropriate for investment by the board. A suitable and
91 appropriate alternative investment is a private equity fund
92 such as a venture capital, private real estate or buy-out
93 fund; commodities fund; distressed debt fund; mezzanine
94 debt fund; hedge fund; put or call on an individual security
95 purchased for the purpose of hedging an authorized
96 investment position; or fund consisting of any combination
97 of private equity, distressed or mezzanine debt, hedge funds,
98 private real estate, commodities and other types and
99 categories of investment permitted under this article:

100 *Provided*, That any such investment be only made upon the
101 recommendation by a professional, third-party fiduciary
102 investment adviser registered with the Securities and
103 Exchange Commission under the Investment Advisors Act of
104 1940, as amended, upon the approval of the board or a
105 committee designated by the board and upon the execution of
106 the transaction by a third-party investment manager:
107 *Provided, however*, That if the standard confidentiality
108 agreements, policies or procedures of any firm, company or
109 organization through which the board invests in securities
110 prohibit, restrict or limit the disclosure of information
111 pertaining to the securities, the information shall be exempt
112 from disclosure, under the provisions of chapter twenty-nine-
113 b of this code or otherwise, to the extent of the prohibitions,
114 restrictions or limitations: *Provided further*, That the board's
115 ownership interest in any fund is less than forty percent of the
116 fund's assets at the time of purchase: *And provided further*,
117 That the combined investment of institutional investors, other
118 public sector entities, and educational institutions and their
119 endowments and foundations in the fund is in an amount
120 equal to or greater than fifty percent of the board's total
121 investment in the fund at the time of acquisition. For the
122 purposes of this subsection, "fund" means a partnership,
123 limited partnership, limited liability company or other form
124 of entity holding or investing in a collection of related or
125 unrelated investments, at least three of which are unrelated
126 and the largest of which is not greater than forty percent of
127 the fund's composition at the time of purchase. To facilitate
128 access to markets, control, manage or diversify portfolio risk,
129 or enhance performance or efficiency in connection with
130 investments in alternative investments and all other types and
131 categories of investment permitted under this article, the
132 board may enter into commercially customary and prudent
133 market transactions consistent with the laws of the state: *And*
134 *provided further*, That neither the purpose nor the effect of

135 such transactions may materially increase market risk or
136 market exposure of the total portfolio of investments as
137 adjusted, from time to time, by the board. The investments
138 described in this subsection are subject to the requirements,
139 limitations and restrictions set forth in this subsection and the
140 standard of care set forth in section eleven of this article, but
141 are not subject to any other limitations or restrictions set forth
142 elsewhere in this article or code.

§12-6-14. Reports of board; legislative audits, reviews and studies.

1 (a) The board shall prepare annually, or more frequently
2 if considered necessary by the board, a report of its
3 operations and the performance of the various funds
4 administered by it. The report shall include all operational
5 costs, including, but not limited to, investment advisor fees,
6 transaction costs, custody fees, and administrative salaries
7 and costs.

8 (b) A copy shall be furnished to the chief financial officer
9 of each participant.

10 (c) Within the first seven calendar days of each calendar
11 year, the board shall file the annual report with the Joint
12 Committee on Government and Finance, with copies to the
13 President of the Senate, Speaker of the House and Legislative
14 Auditor.

15 (d) Upon request, the report shall be made available to
16 any legislative committee, any banking institution or state or
17 federal savings and loan association in this state and any
18 member of the news media. The report shall be kept
19 available for inspection by any citizen of this state.

20 (e) The board shall cooperate with any legislative audits,
21 performance and consultant reviews and studies of the board
22 as may be directed by the Joint Committee on Government
23 and Finance.

§12-6-18. Liberal construction.

1 This article, being necessary to secure the public health,
2 safety, convenience and welfare of the citizens of this state,
3 shall be liberally construed to effect the public purposes of
4 this article. The powers granted to the board in this article,
5 including, without limitation, those granted in section five of
6 this article, are intended to be broad and shall be construed
7 broadly so as to vest in the board the power and authority
8 necessary or appropriate to carry out and effectuate its
9 corporate purposes in the financial markets of the world, as
10 the same may evolve, from time to time, at all times in a
11 fashion consistent with the prudent investor standard as
12 provided by the West Virginia Uniform Prudent Investor Act,
13 codified as article six-c, chapter forty-four of this code and
14 section eleven of this article.

CHAPTER 210

**(Com. Sub. for H.B. 2348 - By Delegates Stemple, Webster,
Mahan, Varner, Cann, Pethel, Shaver, Kominar, Argento,
Beach and Crosier)**

[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding

thereto a new section, designated §15-5-19a, all relating to the possession of firearms during a proclaimed state of emergency; and clarifying the powers and authorities granted by said article with respect thereto.

Be it enacted by the Legislature of West Virginia:

That §15-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-5-19a, all to read as follows:

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

§15-5-6. Emergency powers of Governor.

§15-5-19a. Possession of firearms during a declared state of emergency.

§15-5-6. Emergency powers of Governor.

1 The provisions of this section shall be operative only
2 during the existence of a state of emergency. The existence
3 of a state of emergency may be proclaimed by the Governor
4 or by concurrent resolution of the Legislature if the Governor
5 in such proclamation, or the Legislature in such resolution,
6 finds that an attack upon the United States has occurred or is
7 anticipated in the immediate future, or that a natural or man-
8 made disaster of major proportions has actually occurred or
9 is imminent within the state, and that the safety and welfare
10 of the inhabitants of this state require an invocation of the
11 provisions of this section. Any such emergency, whether
12 proclaimed by the Governor or by the Legislature, shall
13 terminate upon the proclamation of the termination thereof by
14 the Governor, or the passage by the Legislature of a
15 concurrent resolution terminating such emergency.

16 So long as such state of emergency exists, the Governor
17 shall have and may exercise the following additional
18 emergency powers:

19 (a) To enforce all laws, rules and regulations relating to
20 the provision of emergency services and to assume direct
21 operational control of any or all emergency service forces and
22 helpers in the state;

23 (b) To sell, lend, lease, give, transfer or deliver materials
24 or perform functions relating to emergency services on such
25 terms and conditions as he or she shall prescribe and without
26 regard to the limitations of any existing law and to account to
27 the State Treasurer for any funds received for such property;

28 (c) To procure materials and facilities for emergency
29 services by purchase, condemnation under the provisions of
30 chapter fifty-four of this code or seizure pending institution
31 of condemnation proceedings within thirty days from the
32 seizing thereof and to construct, lease, transport, store,
33 maintain, renovate or distribute such materials and facilities.
34 Compensation for property so procured shall be made in the
35 manner provided in chapter fifty-four of this code;

36 (d) To obtain the services of necessary personnel,
37 required during the emergency, and to compensate them for
38 their services from his or her contingent funds or such other
39 funds as may be available to him or her;

40 (e) To provide and compel the evacuation of all or part of
41 the population from any stricken or threatened area within the
42 state and to take such steps as are necessary for the receipt
43 and care of such evacuees;

44 (f) To control ingress and egress to and from a disaster
45 area, the movement of persons within the area and the
46 occupancy of premises therein;

47 (g) To suspend the provisions of any regulatory statute
48 prescribing the procedures for conduct of state business or the
49 orders, rules or regulations of any state agency, if strict
50 compliance therewith would in any way prevent, hinder or
51 delay necessary action in coping with the emergency;

52 (h) To utilize such available resources of the state and of
53 its political subdivisions as are reasonably necessary to cope
54 with the emergency;

55 (i) To suspend or limit the sale, dispensing or
56 transportation of alcoholic beverages, firearms, explosives
57 and combustibles;

58 (j) To make provision for the availability and use of
59 temporary emergency housing; and

60 (k) To perform and exercise such other functions, powers
61 and duties as are necessary to promote and secure the safety
62 and protection of the civilian population.

63 No powers granted under this section may be interpreted
64 to authorize the seizure or confiscation of a firearm from a
65 person unless that firearm is unlawfully possessed or
66 unlawfully carried by the person, or the person is otherwise
67 engaged in a criminal act.

**§15-5-19a. Possession of firearms during a declared state of
emergency.**

1 No powers granted under this article to state or local
2 authorities may be interpreted to authorize the seizure or
3 confiscation of a firearm from a person during a declared
4 state of emergency unless that firearm is unlawfully
5 possessed or unlawfully carried by the person, or the person
6 is otherwise engaged in a criminal act.

CHAPTER 211

**(Com. Sub. for H.B. 2938 - By Delegates Boggs, M. Poling,
Tucker, Martin, Stemple, Fragale, Paxton, Perry, Evans
and D. Poling)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §30-29-1 and §30-29-5 of the Code of West Virginia, 1931, as amended, all relating to motor carrier inspectors and weight enforcement officers of the Public Service Commission; including motor carrier inspector and weight enforcement officers employed by the Public Service Commission in the definition of law-enforcement officer; and requiring certification as a law-enforcement officer of persons hired as motor carrier inspectors and weight enforcement officers after the first day of July, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That §30-29-1 and §30-29-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND
CERTIFICATION.**

§30-29-1. Definitions.

§30-29-5. Certification requirements.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different
2 meaning clearly appears in the context:

3 "Approved law-enforcement training academy" means
4 any training facility which is approved and authorized to
5 conduct law-enforcement training as provided in this article;

6 "Chief executive" means the Superintendent of the State
7 Police; the chief conservation officer of the Division of
8 Natural Resources; the sheriff of any West Virginia county;
9 any administrative deputy appointed by the chief
10 conservation officer of natural resources; or the chief of any
11 West Virginia municipal law-enforcement agency;

12 "County" means the fifty-five major political
13 subdivisions of the state;

14 "Exempt rank" means any noncommissioned or
15 commissioned rank of sergeant or above;

16 "Governor's committee on crime, delinquency and
17 correction" or "Governor's committee" means the Governor's
18 committee on crime, delinquency and correction established
19 as a state planning agency pursuant to section one, article
20 nine, chapter fifteen of this code;

21 "Law-enforcement officer" means any duly authorized
22 member of a law-enforcement agency who is authorized to
23 maintain public peace and order, prevent and detect crime,
24 make arrests and enforce the laws of the state or any county
25 or municipality thereof, other than parking ordinances, and
26 includes those persons employed as campus police officers at
27 state institutions of higher education in accordance with the
28 provisions of section five, article four, chapter eighteen-b of
29 this code, and persons employed by the Public Service
30 Commission as motor carrier inspectors and weight
31 enforcement officers charged with enforcing commercial
32 motor vehicle safety and weight restriction laws although

33 those institutions and agencies may not be considered
34 law-enforcement agencies. The term also includes those
35 persons employed as rangers by the Hatfield-McCoy regional
36 recreation authority in accordance with the provisions of
37 section six, article fourteen, chapter twenty of this code,
38 although the authority may not be considered a
39 law-enforcement agency: *Provided*, That the subject rangers
40 shall pay the tuition and costs of training. As used in this
41 article, the term "law-enforcement officer" does not apply to
42 the chief executive of any West Virginia law-enforcement
43 agency or any watchman or special conservation officer;

44 "Law-enforcement official" means the duly appointed
45 chief administrator of a designated law-enforcement agency
46 or a duly authorized designee;

47 "Municipality" means any incorporated town or city
48 whose boundaries lie within the geographic boundaries of the
49 state;

50 "Subcommittee" or "law-enforcement training
51 subcommittee" means the subcommittee of the Governor's
52 committee on crime, delinquency and correction created by
53 section two of this article; and

54 "West Virginia law-enforcement agency" means any duly
55 authorized state, county or municipal organization employing
56 one or more persons whose responsibility is the enforcement
57 of laws of the state or any county or municipality thereof:
58 *Provided*, That neither the Hatfield-McCoy regional
59 recreation authority, the Public Service Commission nor any
60 state institution of higher education may be deemed a
61 law-enforcement agency.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below,
2 no person may be employed as a law-enforcement officer by
3 any West Virginia law-enforcement agency or by any state
4 institution of higher education or by the Public Service

5 Commission of West Virginia on or after the effective date of
6 this article unless the person is certified, or is certifiable in
7 one of the manners specified in subsections (c) through (e)
8 below, by the Governor's committee as having met the
9 minimum entry level law-enforcement qualification and
10 training program requirements promulgated pursuant to this
11 article: *Provided*, That the provisions of this section shall not
12 apply to persons hired by the Public Service Commission as
13 motor carrier inspectors and weight enforcement officers
14 prior to the first day of July, two thousand seven.

15 (b) Except as provided in subsection (g) below, a person
16 who is not certified, or certifiable in one of the manners
17 specified in subsections (c) through (e) below, may be
18 conditionally employed as a law-enforcement officer until
19 certified: *Provided*, That within ninety calendar days of the
20 commencement of employment or the effective date of this
21 article if the person is already employed on the effective date,
22 he or she makes a written application to attend an approved
23 law-enforcement training academy. The person's employer
24 shall provide notice, in writing, of the ninety-day deadline to
25 file a written application to the academy within thirty
26 calendar days of that person's commencement of
27 employment. The employer shall provide full disclosure as
28 to the consequences of failing to file a timely written
29 application. The academy shall notify the applicant in
30 writing of the receipt of the application and of the tentative
31 date of the applicant's enrollment. Any applicant who, as the
32 result of extenuating circumstances acceptable to his or her
33 law-enforcement official, is unable to attend the scheduled
34 training program to which he or she was admitted may
35 reapply and shall be admitted to the next regularly scheduled
36 training program. An applicant who satisfactorily completes
37 the program shall, within thirty days of completion, make
38 written application to the Governor's committee requesting

39 certification as having met the minimum entry level law-
40 enforcement qualification and training program requirements.
41 Upon determining that an applicant has met the requirements
42 for certification, the Governor's committee shall forward to
43 the applicant documentation of certification. An applicant
44 who fails to complete the training program to which he or she
45 is first admitted, or was admitted upon reapplication, may not
46 be certified by the Governor's committee: *Provided, however,*
47 That an applicant who has completed the minimum training
48 required by the Governor's committee may be certified as a
49 law-enforcement officer, notwithstanding the applicant's
50 failure to complete additional training hours required in the
51 training program to which he or she originally applied.

52 (c) Any person who is employed as a law-enforcement
53 officer on the effective date of this article and is a graduate of
54 the West Virginia basic police training course, the West
55 Virginia State Police cadet training program, or other
56 approved law-enforcement training academy, is certifiable as
57 having met the minimum entry level law-enforcement
58 training program requirements and is exempt from the
59 requirement of attending a law-enforcement training
60 academy. To receive certification, the person shall make
61 written application within ninety calendar days of the
62 effective date of this article to the Governor's committee
63 requesting certification. The Governor's committee shall
64 review the applicant's relevant scholastic records and, upon
65 determining that the applicant has met the requirements for
66 certification, shall forward to the applicant documentation of
67 certification.

68 (d) Any person who is employed as a law-enforcement
69 officer on the effective date of this article and is not a
70 graduate of the West Virginia basic police training course,
71 the West Virginia State Police cadet training program, or

72 other approved law-enforcement training academy, is
73 certifiable as having met the minimum entry level law-
74 enforcement training program requirements and is exempt
75 from the requirement of attending a law-enforcement training
76 academy if the person has been employed as a law-
77 enforcement officer for a period of not less than five
78 consecutive years immediately preceding the date of
79 application for certification. To receive certification, the
80 person shall make written application within ninety calendar
81 days following the effective date of this article to the
82 Governor's committee requesting certification. The
83 application shall include notarized statements as to the
84 applicant's years of employment as a law-enforcement
85 officer. The Governor's committee shall review the
86 application and, upon determining that the applicant has met
87 the requirements for certification, shall forward to the
88 applicant documentation of certification.

89 (e) Any person who begins employment on or after the
90 effective date of this article as a law-enforcement officer is
91 certifiable as having met the minimum entry level law-
92 enforcement training program requirements and is exempt
93 from attending a law-enforcement training academy if the
94 person has satisfactorily completed a course of instruction in
95 law enforcement equivalent to or exceeding the minimum
96 applicable law-enforcement training curricula promulgated
97 by the Governor's committee. To receive certification, the
98 person shall make written application within ninety calendar
99 days following the commencement of employment to the
100 Governor's committee requesting certification. The
101 application shall include a notarized statement of the
102 applicant's satisfactory completion of the course of
103 instruction in law enforcement, a notarized transcript of the
104 applicant's relevant scholastic records, and a notarized copy
105 of the curriculum of the completed course of instruction. The

106 Governor's committee shall review the application and, if it
107 finds the applicant has met the requirements for certification
108 shall forward to the applicant documentation of certification.

109 (f) Any person who is employed as a law-enforcement
110 officer on or after the effective date of this article and fails to
111 be certified shall be automatically terminated and no further
112 emoluments shall be paid to such officer by his or her
113 employer. Any person terminated shall be entitled to reapply,
114 as a private citizen, to the subcommittee for training and
115 certification, and upon being certified may again be
116 employed as a law-enforcement officer in this state:
117 *Provided,* That if a person is terminated under this subsection
118 because an application was not timely filed to the academy,
119 and the person's employer failed to provide notice or
120 disclosure to that person as set forth in subsection (b) of this
121 section, the employer shall pay the full cost of attending the
122 academy if the person's application to the subcommittee as
123 a private citizen is subsequently approved.

124 (g) Nothing in this article may be construed as
125 prohibiting any governing body, civil service commission or
126 chief executive of any West Virginia law-enforcement
127 agency from requiring their law-enforcement officers to meet
128 qualifications and satisfactorily complete a course of law-
129 enforcement instruction which exceeds the minimum entry
130 level law-enforcement qualification and training curricula
131 promulgated by the Governor's committee.

132 (h) The requirement of this section for qualification,
133 training and certification of law-enforcement officers shall
134 not be mandatory during the two years next succeeding the
135 effective date of this article for the law-enforcement officers
136 of a law-enforcement agency which employs a civil service
137 system for its law-enforcement personnel, nor shall such

138 provisions be mandatory during the five years next
139 succeeding the effective date of this article for law-
140 enforcement officers of a law-enforcement agency which
141 does not employ a civil service system for its
142 law-enforcement personnel: *Provided*, That such
143 requirements shall be mandatory for all such law-
144 enforcement officers until their law-enforcement officials
145 apply for their exemption by submitting a written plan to the
146 Governor's committee which will reasonably assure
147 compliance of all law-enforcement officers of their agencies
148 within the applicable two or five-year period of exemption.

149 (i) Any person aggrieved by a decision of the Governor's
150 committee made pursuant to this article may contest such
151 decision in accordance with the provisions of article five,
152 chapter twenty-nine-a of this code.

153 (j) Any person terminated from employment for not filing
154 an application to the law-enforcement training academy
155 within ninety days after commencing employment as a law-
156 enforcement officer may appeal the termination to the
157 Governor's committee for reconsideration on an individual
158 basis.

159 (k) Beginning the first day of July, two thousand two,
160 until the thirtieth day of June, two thousand three, any
161 applicant who has been conditionally employed as a law-
162 enforcement officer who failed to submit a timely application
163 pursuant to the provisions of this section, may be
164 conditionally employed as a law-enforcement officer and
165 may resubmit an application pursuant to subsection (b) of this
166 section to an approved law-enforcement training academy.
167 If the applicant is accepted, the employer shall pay
168 compensation to the employee for attendance at the law-
169 enforcement training academy at the rate provided in section
170 eight of this article.

CHAPTER 212

**(S.B. 203 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-58; and to amend and reenact §12-3-10a, §12-3-10d and §12-3-10e of said code, all relating to the state Purchasing Card Program; creating the Purchasing Improvement Fund; authorizing use of purchasing cards for regular routine payments, travel and emergency purchases and cash advances for travel purchases; authorizing expenditures from the Purchasing Card Administration Fund to pay expenses related to the use of the card and the general operation of the Auditor's office; providing expenditure from the fund for the Hatfield-McCoy Regional Recreation Authority; and adding members to the Purchasing Card Advisory Committee.

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-3-58; and that §12-3-10a, §12-3-10d and §12-3-10e of said code be amended and reenacted, all to read as follows:

Chapter

- 5A. Department of Administration.**
- 12. Public Money and Securities.**

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**ARTICLE 3. PURCHASING DIVISION.****§5A-3-58. Creation of the Purchasing Improvement Fund.**

1 There is hereby created in the State Treasury a special
2 revenue account to be known as the Purchasing Improvement
3 Fund. The Purchasing Improvement Fund shall receive funds
4 transferred from the Purchasing Card Administration Fund by
5 the Auditor pursuant to section ten-d, article three, chapter
6 twelve of this code and shall be administered by the
7 secretary. Expenditures from the fund shall be for the
8 purposes set forth in this article and are not authorized from
9 collections but are to be made only in accordance with
10 appropriation by the Legislature and in accordance with the
11 provisions of article three, chapter twelve of this code and
12 upon fulfillment of the provisions of article two, chapter
13 eleven-b of this code: *Provided*, That for the fiscal year
14 ending the thirtieth day of June, two thousand eight,
15 expenditures are authorized from collections rather than
16 pursuant to appropriation by the Legislature.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

§12-3-10a. Purchasing Card Program.

§12-3-10d. Purchasing Card Fund created; expenditures.

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

§12-3-10a. Purchasing Card Program.

1 Notwithstanding the provisions of section ten of this
2 article, payment of claims may be made through the use of

3 the state Purchasing Card Program authorized by the
4 provisions of this section. The Auditor, in cooperation with
5 the Secretary of the Department of Administration, may
6 establish a state Purchasing Card Program for the purpose of
7 authorizing all spending units of state government to use a
8 purchasing card as an alternative payment method. The
9 Purchasing Card Program shall be conducted so that
10 procedures and controls for the procurement and payment of
11 goods and services are made more efficient. The program
12 shall permit spending units to use a purchasing card to pay
13 for goods and services. Notwithstanding any other provision
14 of this code to the contrary, a purchasing card may be used to
15 make any payment authorized by the Auditor, including
16 regular routine payments and travel and emergency
17 payments, and such payments shall be set at an amount to be
18 determined by the Auditor. Purchasing cards may not be
19 utilized for the purpose of obtaining cash advances, whether
20 the advances are made in cash or by other negotiable
21 instrument: *Provided*, That purchasing cards may be used for
22 cash advances for travel purchases upon approval of the
23 Auditor. Purchases of goods and services must be received
24 either in advance of or simultaneously with the use of a state
25 purchasing card for payment for those goods or services. The
26 Auditor, by legislative rule, may eliminate the requirement
27 for vendor invoices and provide a procedure for consolidating
28 multiple vendor payments into one monthly payment to a
29 charge card vendor. Selection of a charge card vendor to
30 provide state purchase cards shall be accomplished by
31 competitive bid. The Purchasing Division of the Department
32 of Administration shall contract with the successful bidder
33 for provision of state purchasing cards. Purchasing cards
34 issued under the program shall be used for official state
35 purchases only. The Auditor shall propose rules for
36 promulgation in accordance with the provisions of article

37 three, chapter twenty-nine-a of this code to govern the
38 implementation of the purchase card program.

§12-3-10d. Purchasing Card Fund created; expenditures.

1 (a) All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge cards,
3 and any interest or other return earned on the money, shall be
4 deposited in a special revenue revolving fund, designated the
5 Purchasing Card Administration Fund, in the State Treasury
6 to be administered by the Auditor. The fund shall be used to
7 pay all expenses incurred by the Auditor in the
8 implementation and operation of the Purchasing Card
9 Program and may be used to pay expenses related to the
10 general operation of the Auditor's office. The Auditor also
11 may use the fund to pay expenses incurred by spending units
12 associated with the use of the card, including system and
13 program enhancements, and inspection and monitoring of
14 compliance with all applicable rules and procedures.
15 Expenditures from the fund shall be made in accordance with
16 appropriations by the Legislature pursuant to the provisions
17 of article three, chapter twelve of this code and upon
18 fulfillment of the provisions of article two, chapter five-a of
19 this code.

20 (b) Within three days of receiving rebate moneys
21 resulting from state spending unit purchasing card purchases,
22 the Auditor shall transfer fifteen and one-half percent of such
23 rebate moneys to the Purchasing Improvement Fund created
24 pursuant to section fifty-eight, article three, chapter five-a of
25 this code.

26 (c) Within three days of receiving rebate moneys
27 resulting from state spending unit purchasing card purchases,
28 the Auditor shall transfer fifteen and one-half percent of such

29 rebate moneys to the Hatfield-McCoy Regional Recreation
30 Authority.

**§12-3-10e. Purchasing Card Advisory Committee created;
purpose; membership; expenses.**

1 There is created a Purchasing Card Advisory Committee
2 to enhance the development and implementation of the
3 purchasing card program. The committee shall solicit input
4 from state agencies and make recommendations to improve
5 the performance of the Purchasing Card Program. The
6 committee consists of fourteen members to be appointed as
7 follows:

8 (1) The Auditor shall serve as chairperson of the
9 committee and shall appoint four members from the State
10 College System of West Virginia and the University System
11 of West Virginia, one member from the Department of
12 Health and Human Resources, one member from the Division
13 of Highways and two additional members at large from any
14 state agency;

15 (2) The Secretary of the Department of Administration
16 shall appoint one member from the Information Services and
17 Communications Division, one member from the Financial
18 Accounting and Reporting Section and one member from the
19 Purchasing Division;

20 (3) The Secretary of the Department of Revenue shall
21 appoint one member from the Department of Revenue; and

22 (4) The State Treasurer shall appoint one member from
23 that office. Committee members shall be appointed for a term
24 of one year, commencing on the first day of July, one
25 thousand nine hundred ninety-eight. Committee members
26 shall receive reimbursement for expenses actually incurred in
27 the performance of their duties on the committee.

CHAPTER 213

**(H.B. 2568 - By Delegates Moore, Hatfield, Wysong,
Amores, Reynolds, Fleischauer, Webster, Lane,
Hutchins, Schoen and Marshall)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §17G-2-3 of the Code of West Virginia, 1931, as amended, relating to extending the sunset provision regarding racial profiling analysis.

Be it enacted by the Legislature of West Virginia:

That §17G-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ANALYSIS OF TRAFFIC STOPS STUDY AND
ANNUAL REPORT BY DIRECTOR OF
THE GOVERNOR'S COMMITTEE ON
CRIME, DELINQUENCY AND
CORRECTION.**

**§17G-2-3. Analysis of traffic stop statistics, annual report and
legislative rules.**

- 1 (a) To facilitate the commencement of data collection, the
- 2 Director of the Governor's Committee on Crime,
- 3 Delinquency and Corrections, in consultation with the
- 4 Division of Motor Vehicles, shall propose legislative rules in
- 5 accordance with article three, chapter twenty-nine-a of this
- 6 code. These rules shall include, but are not limited to:

7 (1) The manner of reporting the information to the
8 Division of Motor Vehicles;

9 (2) Promulgation of a form or forms for reporting
10 purposes by various law-enforcement agencies;

11 (3) A means of reporting the information required in
12 section two, article one of this chapter on warning citations
13 to the Division of Motor Vehicles;

14 (4) In consultation with the Fraternal Order of Police, the
15 Sheriff's Association, the Deputy Sheriff's Association and
16 representatives of law-enforcement agencies, a means of
17 providing training to law-enforcement officers on completion
18 and submission of the data on the proposed form;

19 (5) A means of reporting back to individual law-
20 enforcement agencies, from time to time, at the request of a
21 law-enforcement agency on findings specific to that agency
22 in an agreed-upon format to allow the agency to evaluate
23 independently the data provided;

24 (6) A limitation that the data is to be used solely for the
25 purposes of this chapter;

26 (7) Safeguards to protect the identity of individual
27 law-enforcement officers collecting data required by section
28 two, article one of this chapter when no citation or warning
29 is issued;

30 (8) Methodology for collection of gross data by
31 law-enforcement agencies and the analysis of the data;

32 (9) The number of motor vehicle stops and searches of
33 motor vehicles occupied by members of a perceived minority

34 group; the number of motor vehicle stops and searches of
35 motor vehicles occupied by persons who are not members of
36 a minority group; the population of minorities in the areas
37 where the stops occurred; estimates of the number of all
38 vehicles traveling on the public highways where the stops
39 occurred; factors to be included in any evaluation that the
40 data may indicate racial profiling, racial stereotyping or other
41 race-based discrimination or selective enforcement; and other
42 data deemed appropriate by the Governor's Committee on
43 Crime, Delinquency and Correction for the analysis of the
44 protection of constitutional rights; and

45 (10) Protocols for reporting collected data by the Division
46 of Motor Vehicles to the Governor's Committee on Crime,
47 Delinquency and Correction and the analysis thereof.

48 (b) Annually, on or before the first day of February, the
49 Director of the Governor's Committee on Crime,
50 Delinquency and Correction shall publish a public report of
51 the data collected and provide a copy thereof to all
52 law-enforcement agencies subject to this chapter and provide
53 a copy of the report and analysis of the data collected to the
54 Governor and to the Joint Committee on Government and
55 Finance.

56 (c) The provisions of sections two and three, article one
57 of this chapter and section two of this article were effective
58 the thirty-first day of December, two thousand four.

59 (d) Collection of data pursuant to subsection (a) of this
60 section shall terminate on the thirty-first day of December,
61 two thousand eight. The provisions of this chapter shall be
62 of no force or effect after the thirtieth day of June, two
63 thousand nine.

CHAPTER 214

**(Com. Sub. for S.B. 582 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to repeal §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended; to repeal §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; to amend said code by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; to amend and reenact §5F-2-1 and §5F-2-2 of said code; and to amend and reenact §20-1-7 of said code, all relating to the creation of the Real Estate Division in the Department of Administration; providing the Real Estate Division approval of leases; exempting the acquisition and management of public lands and streams by the Division of Natural Resources; creating the position of Executive Director of the Real Estate Division; granting the division authority; requiring inspection of leased or rental property; requiring agencies to maintain and submit real estate inventory records to the Real Estate Division; requiring review of real property inventory; granting rule-making authority; transferring the Public Land Corporation to the Real Estate Division; continuing the Public Land Corporation's board of directors; continuing the Public Land Corporation powers and duties related to the acquisition, leasing, development, disposition and use of public lands; requiring sales of public

land to be conducted by competitive bidding and exceptions; requiring public hearing before the sale, lease, exchange or transfer of land or minerals; requiring competitive bidding and notice before the development or extraction of minerals and related standards; and providing for the transfer and transition of the Public Land Corporation to the Real Estate Division.

Be it enacted by the Legislature of West Virginia:

That §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended, be repealed; that §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code be repealed; that said code be amended by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; that said code be amended by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; and that §20-1-7 of said code be amended and reenacted, all to read as follows:

Chapter

- 5A. Department of Administration.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 20. Natural Resources.**

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article

- 10. Real Estate Division.**
- 11. Public Land Corporation.**

ARTICLE 10. REAL ESTATE DIVISION.

- §5A-10-1. Division created; purpose; director.
- §5A-10-2. Leases for space to be made in accordance with article; exceptions.
- §5A-10-3. Powers and duties of Real Estate Division.
- §5A-10-4. Leasing of space by executive director; delegation of authority.
- §5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.
- §5A-10-6. Long-term leases of public lands for wireless communication towers.

- §5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.
- §5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.
- §5A-10-9. Real property accounting and records.
- §5A-10-10. Real property review.
- §5A-10-11. Rulemaking.

§5A-10-1. Division created; purpose; director.

1 (a) There is hereby created the Real Estate Division
2 within the Department of Administration for the purpose of
3 establishing a centralized office to provide leasing, appraisal
4 and other real estate services to the Secretary of the
5 Department of Administration.

6 (b) The division shall be under the supervision and
7 control of an executive director, who shall be appointed by
8 the Governor, by and with the advice and consent of the
9 Senate.

10 (c) Candidates for the position of executive director shall:

11 (1) Have at least a bachelor of arts or science degree from
12 an accredited four-year college or university; and

13 (2) (A) Be a licensed real estate broker, pursuant to the
14 provisions of article forty, chapter thirty of this code; or

15 (B) Be a licensed or certified real estate appraiser
16 pursuant to the provisions of article thirty-eight, chapter thirty
17 of this code; or

18 (3) (A) Be considered based on their demonstrated
19 education, knowledge and a minimum of ten years'
20 experience in the areas of commercial real estate leasing,
21 commercial real estate appraisal; or

22 (B) Any relevant experience of a minimum of ten years
23 which demonstrates an ability to effectively accomplish the
24 purposes of this article.

25 (d) The Real Estate Division is authorized to employ such
26 employees, including, but not limited to, real estate appraisers
27 licensed in accordance with the provisions of article thirty-
28 eight, chapter thirty of this code, as may be necessary to
29 discharge the duties of the division.

**§5A-10-2. Leases for space to be made in accordance with
article; exceptions.**

1 (a) Notwithstanding any other provision of this code, no
2 department, agency or institution of state government may
3 lease, or offer to lease, as lessee, any grounds, buildings,
4 office or other space except in accordance with the provisions
5 of this article and article three of this chapter.

6 (b) The provisions of the article, except as to office space,
7 do not apply to the Division of Highways of the Department
8 of Transportation.

9 (c) The provisions of this article do not apply to:

10 (1) Public lands, rivers and streams acquired, managed or
11 which title is vested in or transferred to the Division of
12 Natural Resources of the Department of Commerce, pursuant
13 to section seven, article one, chapter twenty of this code and
14 section two, article five of said chapter;

15 (2) The Higher Education Policy Commission;

16 (3) The West Virginia Council for Community and
17 Technical College Education;

18 (4) The institutional boards of governors in accordance
19 with the provisions of subsection (v), section four, article
20 five, chapter eighteen-b of this code;

21 (5) The real property held by the Department of
22 Agriculture, including all institutional farms, easements,
23 mineral rights, appurtenances, farm equipment, agricultural
24 products, inventories, farm facilities and operating revenue
25 funds for those operations; or

26 (6) The real property held by the West Virginia State
27 Conservation Committee, including all easements, mineral
28 rights, appurtenances and operating revenue funds for those
29 operations.

§5A-10-3. Powers and duties of Real Estate Division.

1 The Real Estate Division has the following powers and
2 duties:

3 (1) To provide leasing, appraisal and other real estate
4 services to state spending units;

5 (2) To ensure that the purchase of real estate and all
6 contracts for lease are based on established real estate
7 standards and fair market price;

8 (3) To develop and implement minimum lease space
9 standards for the lease of any grounds, buildings, office or
10 other space required by any spending unit of state
11 government;

12 (4) To develop and implement minimum standards for the
13 selection and acquisition, by contract or lease, of all grounds,
14 buildings, office space or other space by a spending unit of
15 state government except as otherwise provided in this article;

16 (5) To establish and maintain a comprehensive database
17 of all state real estate contracts and leases;

18 (6) To develop policies and procedures for statewide real
19 property management;

20 (7) To maintain a statewide real property management
21 system that has consolidated real property, building and lease
22 information for all departments, agencies and institutions of
23 state government;

24 (8) To develop and maintain a centralized repository of
25 comprehensive space needs for all state departments,
26 agencies and institutions of state government, including up-
27 to-date space and resource utilization, anticipated needs and
28 recommended options;

29 (9) To provide statewide policy leadership and coordinate
30 master planning to guide and organize capital asset
31 management; and

32 (10) To provide assistance to all state departments,
33 agencies or institutions in acquiring, leasing and disposing of
34 real property.

§5A-10-4. Leasing of space by executive director; delegation of authority.

1 The executive director is authorized to lease, in the name
2 of the state, any grounds, buildings, office or other space
3 required by any department, agency or institution of state
4 government: *Provided*, That the executive director may
5 expressly delegate, in writing, the authority granted to him or
6 her by this article to the appropriate department, agency or
7 institution of state government when the rental and other
8 costs to the state do not exceed the sum specified by
9 regulation in any one fiscal year or when necessary to meet
10 bona fide emergencies arising from unforeseen causes.

§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

1 (a) The executive director has sole authority to select and
2 to acquire by contract or lease, in the name of the state, all
3 grounds, buildings, office space or other space, the rental of
4 which is necessarily required by any spending unit, upon a
5 certificate from the chief executive officer or his designee of
6 said spending unit that the grounds, buildings, office space or
7 other space requested is necessarily required for the proper
8 function of said spending unit, that the spending unit will be
9 responsible for all rent and other necessary payments in
10 connection with the contract or lease and that satisfactory
11 grounds, buildings, office space or other space is not
12 available on grounds and in buildings now owned or leased
13 by the state.

14 (b) The executive director shall, before executing any
15 rental contract or lease, determine the fair rental value for the
16 rental of the requested grounds, buildings, office space or
17 other space, in the condition in which they exist and shall
18 contract for or lease said premises at a price not to exceed the
19 fair rental value thereof.

20 (c) The executive director may enter into long-term
21 agreements for buildings, land and space for periods longer
22 than one fiscal year: *Provided*, That such long-term lease
23 agreements are not for periods in excess of forty years, except
24 that the secretary may, in the case of the Adjutant General's
25 department, enter into lease agreements for a term of fifty
26 years or a specific term of more than fifty years so as to
27 comply with federal regulatory requirements and shall
28 contain, in substance, all the following provisions:

29 (1) That the Department of Administration, as lessee, has
30 the right to cancel the lease without further obligation on the
31 part of the lessee upon giving thirty days' written notice to the

32 lessor, such notice being given at least thirty days prior to the
33 last day of the succeeding month;

34 (2) That the lease shall be considered canceled without
35 further obligation on the part of the lessee if the state
36 Legislature or the federal government should fail to
37 appropriate sufficient funds therefor or should otherwise act
38 to impair the lease or cause it to be canceled; and

39 (3) That the lease shall be considered renewed for each
40 ensuing fiscal year during the term of the lease unless it is
41 canceled by the Department of Administration before the end
42 of the then current fiscal year.

§5A-10-6. Long-term leases of public lands for wireless communication towers.

1 (a) Notwithstanding any provision of law to the contrary,
2 the executive director has sole authority to negotiate and
3 enter into long-term lease agreements for lease of public
4 lands to be used for placement of wireless communication
5 towers: *Provided*, That such long-term lease agreements may
6 not be for periods in excess of thirty years: *Provided*,
7 *however*, That for the governmental units named in
8 subsection (d) of this section, any lease proposed by the
9 executive director may only be entered into upon approval in
10 writing of the ranking administrator of the respective
11 governmental unit described in said subsection.

12 (b) All revenues derived from leases established upon the
13 enactment of this section shall be deposited into the General
14 Revenue Fund except as provided in subsections (c) and (d)
15 of this section.

16 (c) Revenues from leases initiated prior to the enactment
17 of this section or subsequently renewed shall continue to be
18 treated as they were prior to the enactment of this section.

19 (d) Revenues derived from the lease of property under the
20 control of the Department of Transportation shall be
21 deposited into the State Road Fund. Revenues derived from
22 the lease of property under the control of the Division of
23 Natural Resources shall be retained by the Division of
24 Natural Resources and deposited into the appropriate fund.
25 Revenues derived from the lease of property under the
26 control of the Department of Agriculture shall be deposited
27 into the Agriculture Fees Fund. Revenues derived from the
28 lease of property under the control of the Division of Forestry
29 shall be deposited into the Division of Forestry Fund.
30 Revenues derived from the lease of property under the
31 control of institutions of higher education shall be deposited
32 into the institution's education and general capital fees fund.
33 Revenues derived from the lease of property under the
34 control of the Higher Education Policy Commission shall be
35 deposited into the commission's State Gifts Grants and
36 Contracts Fund. Revenues derived from the lease of property
37 under the control of the West Virginia Council for
38 Community and Technical College Education shall be
39 deposited into the council's Tuition and Required Educational
40 and General Fees Fund.

41 (e) Any long-term lease agreement entered into pursuant
42 to this section shall contain provisions allowing for the
43 nonexclusive use of the public lands and allowance for use of
44 the same public space for additional towers by competing
45 persons or corporations.

46 (f) The executive director is further authorized to enter
47 into long-term lease agreements for additional wireless
48 communication towers by other persons or corporations upon
49 the same public lands in which there already exists a lease
50 and tower provided for under this section.

51 (g) Any long-term lease agreement entered into pursuant
52 to this section shall be recorded in the office of the county

53 clerk where public land which is the subject of the lease
54 agreement is located.

§5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.

1 Leases and other instruments for grounds, buildings,
2 office or other space shall be signed by the Executive
3 Director of the Real Estate Division in the name of the state.
4 They shall be approved as to form by the Attorney General.
5 A lease or other instrument for grounds, buildings, office or
6 other space that contains a term, including any options, of
7 more than six months for its fulfillment shall be filed with the
8 State Auditor.

§5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.

1 (a) The Executive Director of the Real Estate Division
2 shall inspect as necessary any property which may be under
3 a lease or rental agreement in order to determine whether the
4 property is being kept, preserved, cared for, repaired,
5 maintained, used and operated in accordance with the terms
6 and conditions of the lease or rental agreement. The
7 executive director is authorized to take such action necessary
8 to correct any violation of the terms and conditions of the
9 lease or rental agreement.

10 (b) A spending unit which is granted any grounds,
11 buildings, office space or other space leased in accordance
12 with the provisions of this article may not order or make
13 permanent changes of any type thereto, unless the Executive
14 Director of the Real Estate Division has first determined that
15 the change is necessary for the proper, efficient and
16 economically sound operation of the spending unit.

17 (c) For purposes of this section, a "permanent change"
18 means any addition, alteration, improvement, remodeling,

19 repair or other change involving the expenditure of state
20 funds for the installation of any tangible effect which cannot
21 be economically removed from the grounds, buildings, office
22 space or other space when vacated by the spending unit.

§5A-10-9. Real property accounting and records.

1 (a) All real property owned or leased by the state shall be
2 accounted for by the state spending unit that owns, leases or
3 is in the possession of the real property.

4 (b) Each state spending unit shall establish and maintain
5 a record of each item of real property it owns and/or leases
6 and annually furnish its records to the Real Estate Division.

7 (c) The accounting and reporting requirements of this
8 section, except as to office space, do not apply to:

9 (1) The Division of Highways of the Department of
10 Transportation;

11 (2) Public lands, rivers and streams acquired, managed or
12 which title is vested in or transferred to the Division of
13 Natural Resources of the Department of Commerce, pursuant
14 to section seven, article one, chapter twenty of this code and
15 section two, article five of said chapter;

16 (3) The Higher Education Policy Commission;

17 (4) The West Virginia Council for Community and
18 Technical College Education; or

19 (5) The institutional boards of governors in accordance
20 with the provisions of subsection (v), section four, article
21 five, chapter eighteen-b of this code.

22 (d) With regard to public lands that may be by law
23 specifically allocated to and used by any state agency,

24 institution, division or department, such agency, institution,
25 division or department shall provide an inventory of such
26 public land(s) to the Public Land Corporation in accordance
27 with the provisions of article eleven of this chapter.

28 (e) The records furnished to the Real Estate Division shall
29 include the following information, if applicable:

30 (1) A description of each item of real property including:

31 (A) A reference to a book, page and/or image number
32 from the county records in a particular county; or

33 (B) A legal description;

34 (2) The date of purchase and the purchase price of the
35 real property;

36 (3) The date of lease and the rental costs of the real
37 property;

38 (4) The name of the state spending unit holding title to
39 the real property for the state;

40 (5) A description of the current uses of the real property
41 and the projected future use of the real property; and

42 (6) A description of each building or other improvement
43 located on the real property.

44 (f) If the description of real property required under this
45 section is excessively voluminous, the Real Estate Division
46 may direct the spending unit in possession of the real
47 property to furnish the description only in summary form, as
48 agreed to by the division and the spending unit.

§5A-10-10. Real property review.

1 (a) At least once every four years, the Real Estate
2 Division shall review the inventory of real property for each
3 state spending unit submitted pursuant to this article to verify
4 the accuracy of the inventory records.

5 (b) Based on the review of the inventory of real property,
6 the Real Estate Division shall:

7 (1) Identify any real property owned or leased by the state
8 that is not being used or that is being substantially underused;

9 (2) Make recommendations to the Governor and the
10 Secretary of the Department of Administration regarding the
11 use of real property, which shall include:

12 (A) An analysis of the highest and best use to which the
13 real property may legally be placed; and

14 (B) An analysis of alternative uses of the real property
15 addressing the potential for any other transaction or use that
16 the Real Estate Division determines to be in the best interest
17 of the state; and

18 (3) Submit to the Governor and the Secretary of the
19 Department of Administration any information pertinent to
20 the evaluation of a potential transaction involving the real
21 property, including:

22 (A) An evaluation of any proposals received from private
23 parties that would be of significant benefit to the state; and

24 (B) The market value of such real property.

§5A-10-11. Rulemaking.

- 1 The executive director shall propose rules for legislative
- 2 approval, in accordance with the provisions of article three,
- 3 chapter twenty-nine-a of this code, to implement and enforce
- 4 the provisions of this article.

ARTICLE 11. PUBLIC LAND CORPORATION.

- §5A-11-1. Public Land Corporation.
- §5A-11-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary to board; professional and support staff; execution of legal documents, permits and licenses.
- §5A-11-3. Public Land Corporation, powers and duties.
- §5A-11-4. Public Land Corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.
- §5A-11-5. Public Land Corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.
- §5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.
- §5A-11-7. Effectuation of transfer of Public Land Corporation and transition.
- §5A-11-8. Continuation of the Public Land Corporation.

§5A-11-1. Public Land Corporation.

- 1 (a) The Public Land Corporation, heretofore created and
- 2 established as a unit of the Division of Natural Resources, is
- 3 hereby continued and established as a unit of the Real Estate
- 4 Division of the Department of Administration.

- 5 (b) The corporation is a public benefit corporation and an
- 6 instrumentality of the state and may sue or be sued, contract
- 7 and be contracted with, plead and be impleaded, have and use
- 8 a common seal.

- 9 (c) The corporation is vested with the title of the State of
- 10 West Virginia in public lands, the title to which now is or
- 11 may hereafter become vested in the State of West Virginia by
- 12 reason of any law governing the title of lands of the state:
- 13 *Provided*, That those lands for which title is specifically

14 vested by law in other state agencies, institutions and
15 departments shall continue to be vested in such state
16 agencies, institutions and departments.

17 (d) The provisions of this article do not apply to:

18 (1) The State of West Virginia's interest in the rivers,
19 streams, creeks or beds thereof and all other public lands
20 managed or acquired by the Division of Natural Resources
21 pursuant to the provisions of section seven, article one,
22 chapter twenty of this code and section two, article five,
23 chapter twenty of this code, the title to all of which shall
24 collectively be transferred to and vested in the Division of
25 Natural Resources for the use and enjoyment of the citizens
26 of the state; or

27 (2) Public lands acquired by the Division of Forestry
28 pursuant to article one-a, chapter nineteen of this code.

**§5A-11-2. Corporation boards of directors, members, expenses,
appointment, terms, qualifications; director as
board chairman; meetings, quorum; executive
secretary, secretary to board; professional and
support staff; execution of legal documents,
permits and licenses.**

1 (a) The Public Land Corporation is governed by a board
2 of directors comprised of six members of which four shall be
3 ex officio and two shall be appointed by the Governor. The
4 members of the board shall receive no compensation for their
5 service thereon. The board members who are not ex officio
6 shall be reimbursed by the Secretary of the Department of
7 Administration for their actual and necessary expenses
8 incurred pursuant to their duties under this article from funds
9 authorized for such purposes.

10 (b) The following serve as ex officio members of the
11 board:

12 (1) The Executive Director of the Real Estate Division or
13 a designee, who shall serve as chair;

14 (2) The Director of the Division of Natural Resources or
15 a designee;

16 (3) The Commissioner of the Department of Culture and
17 History or a designee; and

18 (4) The Secretary of the Department of Administration,
19 or a designee.

20 (c) The Governor shall appoint, by and with the advice
21 and consent of the Senate, two members with a demonstrated
22 interest and knowledge in the conservation and protection of
23 the aesthetic, biological, geological, historical, archeological,
24 cultural or recreational values of the public lands of the state.
25 The terms are for four years and no member may serve more
26 than two consecutive terms. The members on the board as of
27 the first day of January, two thousand seven, shall continue
28 to serve until their term has expired and may be reappointed.

29 (d) A majority of the board constitutes a quorum for the
30 transaction of business. The board shall meet at such times
31 and places as it may determine and shall meet on call of the
32 chair. It shall be the duty of the chair to call a meeting of the
33 board on the written request of any three members.

34 (e) The Executive Director of the Real Estate Division
35 shall appoint and supervise an Executive Secretary of the
36 Public Land Corporation, and may employ other necessary
37 professional and support staff for the purposes of this article,
38 who shall be employees of the Department of Administration
39 with merit system status.

40 (f) An affirmative vote of a majority of the members of
41 the corporation is required for any action of the corporation
42 with respect to the sale or exchange of public lands or for the

43 issuance of a lease or contract for the development of
44 minerals, oil or gas. All actions must be taken at a scheduled
45 meeting of the corporation held in compliance with the
46 provisions of article nine-a, chapter six of this code.

47 (g) The powers and duties of the corporation are
48 nondelegable, except that the executive secretary may
49 negotiate and enter into preliminary agreements on behalf of
50 the corporation, and shall, upon authorization of the
51 corporation, be entitled to engage in valid actions of the
52 corporation in respect of day-to-day administrative activities.
53 An agreement entered into by the executive secretary on
54 behalf of the corporation is not valid until such agreement is
55 approved by an affirmative vote of a majority of the
56 corporation.

§5A-11-3. Public Land Corporation, powers and duties.

1 (a) The corporation is hereby authorized and empowered
2 to:

3 (1) Acquire from any persons or the State Auditor or any
4 local, state or federal agency, by purchase, lease or other
5 agreement, any lands necessary and required for public use;

6 (2) Acquire by purchase, condemnation, lease or
7 agreement, receive by gifts and devises or exchange, rights-
8 of-way, easements, waters and minerals suitable for public
9 use;

10 (3) Sell or exchange public lands where it is determined
11 that the sale or exchange of such tract meets any or all of the
12 following disposal criteria:

13 (A) The tract was acquired for a specific purpose and the
14 tract is no longer required for that or any other state purpose;

15 (B) Disposal of the tract serves important public
16 objectives including, but not limited to, expansion of
17 communities and economic development which cannot be
18 achieved on lands other than public lands and which clearly
19 outweigh other public objectives and values including, but
20 not limited to, recreation and scenic values which would be
21 served by maintaining the tract in state ownership; or

22 (C) The tract, because of its location or other
23 characteristics, is difficult and uneconomic to manage as part
24 of the public lands and is not suitable for management by
25 another state department or agency.

26 (4) Sell, purchase or exchange lands or stumpage for the
27 purpose of consolidating lands under state or federal
28 government administration subject to the disposal criteria
29 specified in subdivision (3) of this subsection;

30 (5) Negotiate and effect loans or grants from the
31 government of the United States or any agency thereof for
32 acquisition and development of lands as may be authorized
33 by law to be acquired for public use;

34 (6) Expend the income from the use and development of
35 public lands for the following purposes:

36 (A) Liquidate obligations incurred in the acquisition,
37 development and administration of lands, until all obligations
38 have been fully discharged;

39 (B) Purchase, develop, restore and preserve for public
40 use, sites, structures, objects and documents of prehistoric,
41 historical, archaeological, recreational, architectural and
42 cultural significance to the State of West Virginia; and

43 (C) Obtain grants or matching moneys available from the
44 government of the United States or any of its

45 instrumentalities for prehistoric, historic, archaeological,
46 recreational, architectural and cultural purposes.

47 (7) Designate lands, to which it has title, for development
48 and administration for the public use including recreation,
49 wildlife stock grazing, agricultural rehabilitation and
50 homesteading or other conservation activities;

51 (8) Enter into leases as a lessor for the development and
52 extraction of minerals, including coal, oil, gas, sand or gravel,
53 except as otherwise circumscribed herein: *Provided*, That
54 leases for the development and extraction of minerals shall be
55 made in accordance with the provisions of sections five and
56 six of this article. The corporation shall reserve title and
57 ownership to the mineral rights in all cases;

58 (9) Convey, assign or allot lands to the title or custody of
59 proper departments or other agencies of state government for
60 administration and control within the functions of
61 departments or other agencies as provided by law;

62 (10) Make proper lands available for the purpose of
63 cooperating with the government of the United States in the
64 relief of unemployment and hardship or for any other public
65 purpose.

66 (b) There is hereby continued in the State Treasury a
67 special Public Land Corporation Fund into which shall be
68 paid all proceeds from public land sales and exchanges and
69 rents, royalties and other payments from mineral leases:
70 *Provided*, That all royalties and payments derived from
71 rivers, streams or public lands acquired or managed by the
72 Division of Natural Resources pursuant to section seven,
73 article one, chapter twenty of this code and section two,
74 article five, chapter twenty of this code shall be retained by
75 the Division of Natural Resources. The corporation may
76 acquire public lands from use of the payments made to the

77 fund, along with any interest accruing to the fund. The
78 corporation shall report annually, just prior to the beginning
79 of the regular session of the Legislature, to the finance
80 committees of the Legislature on the financial condition of
81 the special fund. The corporation shall report annually to the
82 Legislature on its public land holdings and all its leases, its
83 financial condition and its operations and shall make such
84 recommendations to the Legislature concerning the
85 acquisition, leasing, development, disposition and use of
86 public lands.

87 (c) All state agencies, institutions, divisions and
88 departments shall make an inventory of the public lands of
89 the state as may be by law specifically allocated to and used
90 by each and provide to the corporation a list of such public
91 lands and minerals, including their current use, intended use
92 or best use to which lands and minerals may be put:
93 *Provided*, That the Division of Highways need not provide
94 the inventory of public lands allocated to and used by it, and
95 the Division of Natural Resources need not provide the
96 inventory of rivers, streams and public lands acquired or
97 managed by it. The inventory shall identify those parcels of
98 land which have no present or foreseeable useful purpose to
99 the State of West Virginia. The inventory shall be submitted
100 annually to the corporation by the first day of August. The
101 corporation shall compile the inventory of all public lands
102 and minerals and report annually to the Legislature by no
103 later than the first day of January, on its public lands and
104 minerals and the lands and minerals of the other agencies,
105 institutions, divisions or departments of this state which are
106 required to report their holdings to the corporation as set forth
107 in this subsection, and its financial condition and its
108 operations.

§5A-11-4. Public Land Corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

1 (a) Sales, exchanges or transfers of public lands under
2 this article shall be conducted under competitive bidding
3 procedures. However, where the secretary or executive
4 director determines it necessary and proper in order to assure
5 the following public policies, including, but not limited to, a
6 preference to users, lands may be sold by modified
7 competitive bidding or without competitive bidding. In
8 recognizing public policies, the secretary or director shall
9 give consideration to the following potential purchasers:

10 (1) The local government entities which are in the
11 vicinity of the lands; and

12 (2) Adjoining landowners.

13 (b) The policy for selecting the methods of sale is as
14 follows:

15 (1) Competitive sale is the general procedure for sales of
16 public lands and shall be used in the following circumstances:

17 (A) Wherever in the judgment of the secretary the lands
18 are accessible and usable regardless of adjoining land
19 ownership; or

20 (B) Wherever the lands are within a developing or
21 urbanizing area and land values are increasing due to the
22 location of the land and interest on the competitive market.

23 (2) Modified competitive sales may be used to permit the
24 adjoining landowner or local governmental entity to meet the

25 high bid at the public sale. Lands otherwise offered under
26 this procedure would normally be public lands not located
27 near urban expansion areas, or not located near areas with
28 rapidly increasing land values, and where existing use of
29 adjacent lands would be jeopardized by sale under
30 competitive bidding procedures.

31 (3) Direct sale may be used when the lands offered for
32 sale are completely surrounded by lands in one ownership
33 with no public access, or where the lands are needed by local
34 governments.

35 (4) In no event shall lands be offered for sale by
36 "modified competitive sales" or "direct sale" unless and until
37 the corporation makes a written finding of justification for
38 use of an alternative bidding procedure.

39 (5) Subject to the bidding procedures set forth herein, the
40 corporation is authorized, at its discretion, to sell public lands
41 subject to rights-of-way, restrictive covenants or easements
42 retained by the corporation, limiting the use of such lands to
43 purposes consistent with the use of adjoining or nearby lands
44 owned by the corporation.

45 (c) When lands have been offered for sale by one method
46 of sale and the lands remain unsold, then the lands may be
47 reoffered by another method of sale.

48 (d) Except as provided in this article and section seven-a,
49 article one, chapter twenty of this code, public lands may not
50 be sold, exchanged or transferred by the corporation for less
51 than fair market value. Fair market value shall be determined
52 by an appraisal made by the Real Estate Division. The
53 appraisal shall be performed using the principles contained in
54 the current Uniform Appraisal Standards for Federal Land

55 Acquisitions published under the auspices of the Interagency
56 Land Acquisition Conference: *Provided*, That public lands
57 not acquired or managed by the Division of Natural
58 Resources pursuant to section seven, article one, chapter
59 twenty of this code or section two, article five of said chapter
60 may be sold, exchanged or transferred to any federal agency
61 or to the state or any of its political subdivisions for less than
62 fair market value if, upon a specific written finding of fact,
63 the Executive Director of the Real Estate Division determines
64 that such a transfer would be in the best interests of the
65 corporation and state.

66 (e) The corporation may reject all bids when such bids do
67 not represent the corporation's considered value of the
68 property exclusive of the fair market value.

69 (f) The corporation shall propose rules for legislative
70 approval, in accordance with the provisions of article three,
71 chapter twenty-nine-a of this code, regarding procedures for
72 conducting public land sales by competitive bidding,
73 modified competitive bidding and direct sales.

**§5A-11-5. Public Land Corporation to hold public hearing
before sale, lease, exchange or transfer of land
or minerals.**

1 (a) Prior to any final decision of any state agency to sell,
2 lease as a lessor, exchange or transfer land or minerals title to
3 which is vested in the Public Land Corporation pursuant to
4 this article, the Public Land Corporation shall:

5 (1) Prepare and reduce to writing the reasons and
6 supporting data regarding the sale, lease, exchange or transfer
7 of land or minerals. The written reasons required under this
8 section shall be available for public inspection at the office of

9 the county clerk at the county courthouse of each county in
10 which the affected lands or minerals are located during the
11 two successive weeks before the date of the public hearing
12 required by this section;

13 (2) Provide for a public hearing to be held at a reasonable
14 time and place within each county in which the affected lands
15 or minerals are located to allow interested members of the
16 public to attend the hearing without undue hardship.
17 Members of the public may be present, submit statements and
18 testimony and question the corporation's representative
19 appointed pursuant to this section;

20 (3) Not less than thirty days prior to the public hearing,
21 provide notice to all members of the Legislature, to the head
22 of the governing body of any political subdivision having
23 zoning or other land use regulatory responsibility in the
24 geographic area within which the public lands or minerals are
25 located and to the head of any political subdivision having
26 administrative or public services responsibility in the
27 geographic area within which the lands or minerals are
28 located;

29 (4) Cause to be published a notice of the required public
30 hearing. The notice shall be published as a Class II legal
31 advertisement in compliance with the provisions of article
32 three, chapter fifty-nine of this code and the publication area
33 shall be each county in which the affected lands or minerals
34 are located. The public hearing shall be held no earlier than
35 the fourteenth successive day and no later than the twenty-
36 first successive day following the first publication of the
37 notice. The notice shall contain the time and place of the
38 public hearing along with a brief description of the affected
39 lands or minerals;

40 (5) Cause a copy of the required notice to be posted in a
41 conspicuous place at the affected land for members of the
42 public to observe. The notice shall remain posted for two
43 successive weeks prior to the date of the public hearing;

44 (6) Appoint a representative of the corporation who shall
45 conduct the required public hearing. The corporation's
46 representative shall have full knowledge of all the facts and
47 circumstances surrounding the proposed sale, lease, exchange
48 or transfer. The representative of the corporation conducting
49 the public hearing shall make the results of the hearing
50 available to the executive director of the Real Estate Division
51 and the Secretary of the Department of Administration for
52 consideration prior to making final decisions regarding the
53 affected lands or minerals. The representative of the
54 corporation shall make a report of the public hearing
55 available for inspection by the public or, upon written request
56 of any interested person, provide a written copy thereof and
57 to all individuals previously receiving written notice of the
58 hearing within thirty days following the public hearing; and

59 (7) If the evidence at the public hearing establishes by a
60 preponderance that the appraisal provided for in subsection
61 (d), section four of this article does not reflect the true, fair
62 market value, the Public Land Corporation shall cause
63 another appraisal to be made.

64 (8) If the evidence at the public hearing establishes by a
65 preponderance that the sale or exchange of land does not
66 meet the criteria set forth in subdivision three, subsection (a),
67 section three of this article, the public land corporation may
68 not proceed with the sale or exchange of said land without
69 judicial approval.

70 (b) The corporation may not sell, lease as lessor,
71 exchange or transfer lands or minerals before the thirtieth
72 successive day following the public hearing required by this
73 section, but in no event may the sale, lease, exchange or
74 transfer of lands or minerals be made prior to fifteen days
75 after the report of the public hearings are made available to
76 the public in general.

77 (c) If the corporation authorizes the staff to proceed with
78 consideration of the lease or sale under the terms of this
79 article, all requirements of this section shall be completed
80 within one year of date of the authorization by the
81 corporation.

**§5A-11-6. Competitive bidding and notice requirements before
the development or extraction of minerals on
certain lands; related standards.**

1 (a) The corporation may enter into a lease or contract for
2 the development of minerals, including, but not limited to,
3 coal, gas, oil, sand or gravel on or under lands in which the
4 corporation holds any right, title or interest: *Provided*, That
5 no lease or contract may be entered into for the extraction and
6 removal of minerals by surface mining or auger mining of
7 coal.

8 (b) With the exception of deep mining operations which
9 are already in progress and permitted as of the fifth day of
10 July, one thousand nine hundred eighty-nine, the extraction
11 of coal by deep mining methods under state forests or
12 wildlife refuges may be permitted only if the lease or contract
13 provides that no entries, portals, air shafts or other incursions
14 upon and into the land incident to the mining operations may
15 be placed or constructed upon the lands or within three
16 thousand feet of its boundary.

17 (c) Any lease or contract entered into by the corporation
18 for the development of minerals shall reserve to the state all
19 rights to subjacent surface support with which the state is
20 seized or possessed at the time of such lease or contract.

21 (d) Notwithstanding any other provisions of the code to
22 the contrary, nothing herein may be construed to permit
23 extraction of minerals by any method from, on or under any
24 state park or state recreation area, nor the extraction of
25 minerals by strip or auger mining upon any state forest or
26 wildlife refuge.

27 (e) The corporation may enter into a lease or contract for
28 the development of minerals where the lease or contract is
29 not prohibited by any other provisions of this code, only after
30 receiving sealed bids therefor, after notice by publication as
31 a Class II legal advertisement in compliance with the
32 provisions of article three, chapter fifty-nine of this code.
33 The area for publication shall be each county in which the
34 minerals are located.

35 (f) The minerals so advertised may be leased or
36 contracted for development at not less than the fair market
37 value, as determined by an appraisal made by an independent
38 person or firm chosen by the corporation, to the highest
39 responsible bidder, who shall give bond for the proper
40 performance of the contract or lease as the corporation
41 designates: *Provided*, That the corporation may reject any
42 and all bids and to readvertise for bids.

43 (g) If the provisions of this section have been complied
44 with, and no bid equal to or in excess of the fair market value
45 is received, the corporation may, at any time during a period
46 of six months after the opening of the bids, lease or contract

47 for the development of the minerals, but the lease or contract
48 price may not be less than the fair market value.

49 (h) Any lease or contract for the development of minerals
50 entered into after the effective date of this section shall be
51 made in accordance with the provisions of this section and
52 section five of this article.

53 (i) The corporation will consult with the office of the
54 Attorney General to assist the corporation in carrying out the
55 provisions of this section.

56 (j) The corporation shall consult with an independent
57 mineral consultant and any other competent third parties with
58 experience and expertise in the leasing of minerals, to assist
59 the corporation in carrying out the provisions of this section,
60 including determining fair market value and negotiating
61 terms and conditions of mineral leases.

62 (k) Once the lessee commences the production of
63 minerals and royalties become due and are paid to the Public
64 Land Corporation, the Public Land Corporation shall hire an
65 independent auditing firm to periodically review the lessee's
66 books and accounts for compliance of payment of appropriate
67 royalties due the Public Land Corporation for its minerals as
68 produced under the lease agreement.

**§5A-11-7. Effectuation of transfer of Public Land Corporation
and transition.**

1 To effectuate the transfer of the Public Land Corporation
2 to Real Estate Division of the Department of Administration
3 upon the effective date of this section in the year two
4 thousand seven:

5 (1) Subject to the provisions of section one-d of this
6 article, the Secretary of the Department of Administration or
7 a designee and the Secretary of the Department of Commerce
8 or a designee shall determine which employees, records,
9 responsibilities, obligations, assets and property, of whatever
10 kind and character, of the Public Land Corporation will be
11 transferred to the Real Estate Division of the Department of
12 Administration beginning the effective date of this section in
13 the year two thousand seven: *Provided*, That any title
14 transferred to or vested in the Public Land Corporation,
15 formerly existing under the provisions of article one-a,
16 chapter twenty of this code, as of the first day of July, two
17 thousand seven, or which may hereafter become vested in the
18 Public Land Corporation in accordance with the provisions
19 of this article, shall continue to be vested in the Public Land
20 Corporation.

21 (2) All orders, determinations, rules, permits, grants,
22 contracts, certificates, licenses, waivers, bonds, authorizations
23 and privileges which have been issued, made, granted or
24 allowed to become effective by the Governor, by any state
25 department or agency or official thereof, or by a court of
26 competent jurisdiction, in the performance of functions which
27 have been transferred to the Real Estate Division of the
28 Department of Administration and were in effect on the date
29 the transfer occurred continue in effect, for the benefit of the
30 department, according to their terms until modified,
31 terminated, superseded, set aside or revoked in accordance
32 with the law by the Governor, the secretary of the
33 Department of Administration, or other authorized official, a
34 court of competent jurisdiction or by operation of law.

35 (3) Any proceedings, including, but not limited to,
36 notices of proposed rulemaking, in which the Public Land
37 Corporation was an initiating or responding party are not

38 affected by the transfer of the Public Land Corporation to the
39 Real Estate Division of the Department of Administration.
40 Orders issued in any proceedings continue in effect until
41 modified, terminated, superseded or revoked by the
42 Governor, the Secretary of Administration, by a court of
43 competent jurisdiction or by operation of law. Nothing in
44 this subdivision prohibits the discontinuance or modification
45 of any proceeding under the same terms and conditions and
46 to the same extent that a proceeding could have been
47 discontinued or modified if the Public Land Corporation had
48 not been transferred to the Real Estate Division of the
49 Department of Administration. Transfer of the Public Land
50 Corporation does not affect suits commenced prior to the
51 effective date of the transfer and all such suits and
52 proceedings shall be had, appeals taken and judgments
53 rendered in the same manner and with like effect as if the
54 transfer had not occurred, except that the Secretary of the
55 Department of Administration or other officer may, in an
56 appropriate case, be substituted or added as a party.

§5A-11-8. Continuation of the Public Land Corporation.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the Public Land Corporation shall continue to exist
3 until the first day of July, two thousand nine, unless sooner
4 terminated, continued or reestablished.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

- §5F-2-1. Transfer and incorporation of agencies and boards; funds.
§5F-2-2. Power and authority of secretary of each department.

***§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter
6 five of this code;

7 (2) Public Employees Insurance Agency and Public
8 Employees Insurance Agency Advisory Board provided in
9 article sixteen, chapter five of this code;

10 (3) Governor's Mansion Advisory Committee provided
11 for in article five, chapter five-a of this code;

12 (4) Commission on Uniform State Laws provided in
13 article one-a, chapter twenty-nine of this code;

14 (5) West Virginia Public Employees Grievance Board
15 provided for in article three, chapter six-c of this code;

16 (6) Board of Risk and Insurance Management provided
17 for in article twelve, chapter twenty-nine of this code;

18 (7) Boundary Commission provided in article twenty-
19 three, chapter twenty-nine of this code;

20 (8) Public Defender Services provided in article twenty-
21 one, chapter twenty-nine of this code;

***CLERK'S NOTE:** This section was also amended by S.B. 442 (Chapter 207) which passed prior to this act, and S.B. 177 (Chapter 111) and S.B. 454 (Chapter 27) which passed subsequent to this act.

22 (9) Division of Personnel provided in article six, chapter
23 twenty-nine of this code;

24 (10) The West Virginia Ethics Commission provided in
25 article two, chapter six-b of this code;

26 (11) Consolidated Public Retirement Board provided in
27 article ten-d, chapter five of this code; and

28 (12) Real Estate Division provided in article ten, chapter
29 five-a of this code.

30 (b) The following agencies and boards, including all of
31 the allied, advisory, affiliated or related entities and funds
32 associated with any agency or board, are incorporated in and
33 administered as a part of the Department of Commerce:

34 (1) Division of Labor provided in article one, chapter
35 twenty-one of this code, which includes:

36 (A) Occupational Safety and Health Review Commission
37 provided in article three-a, chapter twenty-one of this code;
38 and

39 (B) Board of Manufactured Housing Construction and
40 Safety provided in article nine, chapter twenty-one of this
41 code;

42 (2) Office of Miners' Health, Safety and Training
43 provided in article one, chapter twenty-two-a of this code.
44 The following boards are transferred to the Office of Miners'
45 Health, Safety and Training for purposes of administrative
46 support and liaison with the Office of the Governor:

47 (A) Board of Coal Mine Health and Safety and Coal
48 Mine Safety and Technical Review Committee provided in
49 article six, chapter twenty-two-a of this code;

50 (B) Board of Miner Training, Education and Certification
51 provided in article seven, chapter twenty-two-a of this code;
52 and

53 (C) Mine Inspectors' Examining Board provided in article
54 nine, chapter twenty-two-a of this code;

55 (3) The West Virginia Development Office, which
56 includes the Division of Tourism and the Tourism
57 Commission provided in article two, chapter five-b of this
58 code;

59 (4) Division of Natural Resources and Natural Resources
60 Commission provided in article one, chapter twenty of this
61 code;

62 (5) Division of Forestry provided in article one-a, chapter
63 nineteen of this code;

64 (6) Geological and Economic Survey provided in article
65 two, chapter twenty-nine of this code; and

66 (7) Workforce West Virginia provided in chapter twenty-
67 one-a of this code, which includes:

68 (A) Division of Unemployment Compensation;

69 (B) Division of Employment Service;

70 (C) Division of Workforce Development; and

71 (D) Division of Research, Information and Analysis; and

72 (8) Division of Energy provided in article two-f, chapter
73 five-b of this code.

74 (c) The Economic Development Authority provided in
75 article fifteen, chapter thirty-one of this code is continued as
76 an independent agency within the executive branch.

77 (d) The Water Development Authority and Board
78 provided in article one, chapter twenty-two-c of this code is
79 continued as an independent agency within the executive
80 branch.

81 (e) The following agencies and boards, including all of
82 the allied, advisory and affiliated entities, are transferred to
83 the Department of Environmental Protection for purposes of
84 administrative support and liaison with the Office of the
85 Governor:

86 (1) Air Quality Board provided in article two, chapter
87 twenty-two-b of this code;

88 (2) Solid Waste Management Board provided in article
89 three, chapter twenty-two-c of this code;

90 (3) Environmental Quality Board, or its successor board,
91 provided in article three, chapter twenty-two-b of this code;

92 (4) Surface Mine Board provided in article four, chapter
93 twenty-two-b of this code;

94 (5) Oil and Gas Inspectors' Examining Board provided in
95 article seven, chapter twenty-two-c of this code;

96 (6) Shallow Gas Well Review Board provided in article
97 eight, chapter twenty-two-c of this code; and

98 (7) Oil and Gas Conservation Commission provided in
99 article nine, chapter twenty-two-c of this code.

100 (f) The following agencies and boards, including all of
101 the allied, advisory, affiliated or related entities and funds
102 associated with any agency or board, are incorporated in and
103 administered as a part of the Department of Education and
104 the Arts:

105 (1) Library Commission provided in article one, chapter
106 ten of this code;

107 (2) Educational Broadcasting Authority provided in
108 article five, chapter ten of this code;

109 (3) Division of Culture and History provided in article
110 one, chapter twenty-nine of this code;

111 (4) Division of Rehabilitation Services provided in
112 section two, article ten-a, chapter eighteen of this code.

113 (g) The following agencies and boards, including all of
114 the allied, advisory, affiliated or related entities and funds
115 associated with any agency or board, are incorporated in and
116 administered as a part of the Department of Health and
117 Human Resources:

118 (1) Human Rights Commission provided in article eleven,
119 chapter five of this code;

120 (2) Division of Human Services provided in article two,
121 chapter nine of this code;

122 (3) Bureau for Public Health provided in article one,
123 chapter sixteen of this code;

124 (4) Office of Emergency Medical Services and Advisory
125 Council provided in article four-c, chapter sixteen of this
126 code;

127 (5) Health Care Authority provided in article twenty-
128 nine-b, chapter sixteen of this code;

129 (6) Commission on Mental Retardation provided in
130 article fifteen, chapter twenty-nine of this code;

131 (7) Women's Commission provided in article twenty,
132 chapter twenty-nine of this code; and

133 (8) The Child Support Enforcement Division provided in
134 chapter forty-eight of this code.

135 (h) The following agencies and boards, including all of
136 the allied, advisory, affiliated or related entities and funds
137 associated with any agency or board, are incorporated in and
138 administered as a part of the Department of Military Affairs
139 and Public Safety:

140 (1) Adjutant General's Department provided in article
141 one-a, chapter fifteen of this code;

142 (2) Armory Board provided in article six, chapter fifteen
143 of this code;

144 (3) Military Awards Board provided in article one-g,
145 chapter fifteen of this code;

146 (4) West Virginia State Police provided in article two,
147 chapter fifteen of this code;

148 (5) Division of Homeland Security and Emergency
149 Management and Disaster Recovery Board provided in article
150 five, chapter fifteen of this code and Emergency Response
151 Commission provided in article five-a of said chapter;

152 (6) Sheriffs' Bureau provided in article eight, chapter
153 fifteen of this code;

154 (7) Division of Corrections provided in chapter twenty-
155 five of this code;

156 (8) Fire Commission provided in article three, chapter
157 twenty-nine of this code;

158 (9) Regional Jail and Correctional Facility Authority
159 provided in article twenty, chapter thirty-one of this code;

160 (10) Board of Probation and Parole provided in article
161 twelve, chapter sixty-two of this code; and

162 (11) Division of Veterans' Affairs and Veterans' Council
163 provided in article one, chapter nine-a of this code.

164 (i) The following agencies and boards, including all of
165 the allied, advisory, affiliated or related entities and funds
166 associated with any agency or board, are incorporated in and
167 administered as a part of the Department of Revenue:

168 (1) Tax Division provided in article one, chapter eleven
169 of this code;

170 (2) Racing Commission provided in article twenty-three,
171 chapter nineteen of this code;

172 (3) Lottery Commission and position of Lottery Director
173 provided in article twenty-two, chapter twenty-nine of this
174 code;

175 (4) Agency of Insurance Commissioner provided in
176 article two, chapter thirty-three of this code;

177 (5) Office of Alcohol Beverage Control Commissioner
178 provided in article sixteen, chapter eleven of this code and
179 article two, chapter sixty of this code;

180 (6) Board of Banking and Financial Institutions provided
181 in article three, chapter thirty-one-a of this code;

182 (7) Lending and Credit Rate Board provided in chapter
183 forty-seven-a of this code;

184 (8) Division of Banking provided in article two, chapter
185 thirty-one-a of this code;

186 (9) The State Budget Office provided in article two of
187 this chapter;

188 (10) The Municipal Bond Commission provided in article
189 three, chapter thirteen of this code;

190 (11) The Office of Tax Appeals provided in article ten-a,
191 chapter eleven of this code; and

192 (12) The State Athletic Commission provided in article
193 five-a, chapter twenty-nine of this code.

194 (j) The following agencies and boards, including all of
195 the allied, advisory, affiliated or related entities and funds
196 associated with any agency or board, are incorporated in and
197 administered as a part of the Department of Transportation:

Ch. 214]

REAL ESTATE DIVISION

198 (1) Division of Highways provided in article two-a,
199 chapter seventeen of this code;

200 (2) Parkways, Economic Development and Tourism
201 Authority provided in article sixteen-a, chapter seventeen of
202 this code;

203 (3) Division of Motor Vehicles provided in article two,
204 chapter seventeen-a of this code;

205 (4) Driver's Licensing Advisory Board provided in article
206 two, chapter seventeen-b of this code;

207 (5) Aeronautics Commission provided in article two-a,
208 chapter twenty-nine of this code;

209 (6) State Rail Authority provided in article eighteen,
210 chapter twenty-nine of this code; and

211 (7) Port Authority provided in article sixteen-b, chapter
212 seventeen of this code.

213 (k) Except for powers, authority and duties that have been
214 delegated to the secretaries of the departments by the
215 provisions of section two of this article, the position of
216 administrator and the powers, authority and duties of each
217 administrator and agency are not affected by the enactment
218 of this chapter.

219 (l) Except for powers, authority and duties that have been
220 delegated to the secretaries of the departments by the
221 provisions of section two of this article, the existence,
222 powers, authority and duties of boards and the membership,
223 terms and qualifications of members of the boards are not
224 affected by the enactment of this chapter. All boards that are

225 appellate bodies or are independent decisionmakers shall not
226 have their appellate or independent decision-making status
227 affected by the enactment of this chapter.

228 (m) Any department previously transferred to and
229 incorporated in a department by prior enactment of this
230 section means a division of the appropriate department.
231 Wherever reference is made to any department transferred to
232 and incorporated in a department created in section two,
233 article one of this chapter, the reference means a division of
234 the appropriate department and any reference to a division of
235 a department so transferred and incorporated means a section
236 of the appropriate division of the department.

237 (n) When an agency, board or commission is transferred
238 under a bureau or agency other than a department headed by
239 a secretary pursuant to this section, that transfer is solely for
240 purposes of administrative support and liaison with the office
241 of the Governor, a department secretary or a bureau. Nothing
242 in this section extends the powers of department secretaries
243 under section two of this article to any person other than a
244 department secretary and nothing limits or abridges the
245 statutory powers and duties of statutory commissioners or
246 officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the secretary of each department shall have
3 plenary power and authority within and for the department to:

4 (1) Employ and discharge within the office of the
5 secretary employees as may be necessary to carry out the
6 functions of the secretary, which employees shall serve at the
7 will and pleasure of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically, and develop goals,
10 objectives, policies and plans that are necessary or desirable
11 for the effective, efficient and economical operation of the
12 department;

13 (3) Eliminate or consolidate positions, other than
14 positions of administrators or positions of board members
15 and name a person to fill more than one position;

16 (4) Transfer permanent state employees between
17 departments in accordance with the provisions of section
18 seven of this article;

19 (5) Delegate, assign, transfer or combine responsibilities
20 or duties to or among employees, other than administrators or
21 board members;

22 (6) Reorganize internal functions or operations;

23 (7) Formulate comprehensive budgets for consideration
24 by the Governor, and transfer within the department funds
25 appropriated to the various agencies of the department which
26 are not expended due to cost savings resulting from the
27 implementation of the provisions of this chapter: *Provided,*
28 That no more than twenty-five percent of the funds
29 appropriated to any one agency or board may be transferred
30 to other agencies or boards within the department: *Provided,*
31 *however,* That no funds may be transferred from a special
32 revenue account, dedicated account, capital expenditure
33 account or any other account or funds specifically exempted
34 by the Legislature from transfer, except that the use of
35 appropriations from the State Road Fund transferred to the
36 office of the Secretary of the Department of Transportation
37 is not a use other than the purpose for which the funds were

38 dedicated and is permitted: *Provided further*, That if the
39 Legislature by subsequent enactment consolidates agencies,
40 boards or functions, the appropriate secretary may transfer
41 the funds formerly appropriated to the agency, board or
42 function in order to implement consolidation. The authority
43 to transfer funds under this section shall expire on the
44 thirtieth day of June, two thousand five;

45 (8) Enter into contracts or agreements requiring the
46 expenditure of public funds, and authorize the expenditure or
47 obligation of public funds as authorized by law: *Provided*,
48 That the powers granted to the secretary to enter into
49 contracts or agreements and to make expenditures or
50 obligations of public funds under this provision shall not
51 exceed or be interpreted as authority to exceed the powers
52 granted by the Legislature to the various commissioners,
53 directors or board members of the various departments,
54 agencies or boards that comprise and are incorporated into
55 each secretary's department under this chapter;

56 (9) Acquire by lease or purchase property of whatever
57 kind or character and convey or dispose of any property of
58 whatever kind or character as authorized by law: *Provided*,
59 That the powers granted to the secretary to lease, purchase,
60 convey or dispose of such property shall be exercised in
61 accordance with the provisions of articles three, ten and
62 eleven, chapter five-a of this code: *Provided, however*, That
63 the powers granted to the secretary to lease, purchase, convey
64 or dispose of such property shall not exceed or be interpreted
65 as authority to exceed the powers granted by the Legislature
66 to the various commissioners, directors or board members of
67 the various departments, agencies or boards that comprise
68 and are incorporated into each secretary's department under
69 this chapter;

70 (10) Conduct internal audits;

71 (11) Supervise internal management;

72 (12) Promulgate rules, as defined in section two, article
73 one, chapter twenty-nine-a of this code, to implement and
74 make effective the powers, authority and duties granted and
75 imposed by the provisions of this chapter in accordance with
76 the provisions of chapter twenty-nine-a of this code;

77 (13) Grant or withhold written consent to the proposal of
78 any rule, as defined in section two, article one, chapter
79 twenty-nine-a of this code, by any administrator, agency or
80 board within the department. Without written consent, no
81 proposal for a rule shall have any force or effect;

82 (14) Delegate to administrators the duties of the secretary
83 as the secretary may deem appropriate, from time to time, to
84 facilitate execution of the powers, authority and duties
85 delegated to the secretary; and

86 (15) Take any other action involving or relating to
87 internal management not otherwise prohibited by law.

88 (b) The secretaries of the departments hereby created
89 shall engage in a comprehensive review of the practices,
90 policies and operations of the agencies and boards within
91 their departments to determine the feasibility of cost
92 reductions and increased efficiency which may be achieved
93 therein, including, but not limited to, the following:

94 (1) The elimination, reduction and restriction of the
95 state's vehicle or other transportation fleet;

96 (2) The elimination, reduction and restriction of state
97 government publications, including annual reports,
98 informational materials and promotional materials;

99 (3) The termination or rectification of terms contained in
100 lease agreements between the state and private sector for
101 offices, equipment and services;

102 (4) The adoption of appropriate systems for accounting,
103 including consideration of an accrual basis financial
104 accounting and reporting system;

105 (5) The adoption of revised procurement practices to
106 facilitate cost-effective purchasing procedures, including
107 consideration of means by which domestic businesses may be
108 assisted to compete for state government purchases; and

109 (6) The computerization of the functions of the state
110 agencies and boards.

111 (c) Notwithstanding the provisions of subsections (a) and
112 (b) of this section, none of the powers granted to the
113 secretaries herein shall be exercised by the secretary if to do
114 so would violate or be inconsistent with the provisions of any
115 federal law or regulation, any federal-state program or
116 federally delegated program or jeopardize the approval,
117 existence or funding of any program.

118 (d) The layoff and recall rights of employees within the
119 classified service of the state as provided in subsections (5)
120 and (6), section ten, article six, chapter twenty-nine of this
121 code shall be limited to the organizational unit within the
122 agency or board and within the occupational group
123 established by the classification and compensation plan for
124 the classified service of the agency or board in which the
125 employee was employed prior to the agency or board's
126 transfer or incorporation into the department: *Provided*, That
127 the employee shall possess the qualifications established for
128 the job class. The duration of recall rights provided in this
129 subsection shall be limited to two years or the length of

130 tenure, whichever is less. Except as provided in this
131 subsection, nothing contained in this section shall be
132 construed to abridge the rights of employees within the
133 classified service of the state as provided in sections ten and
134 ten-a, article six, chapter twenty-nine of this code.

135 (e) Notwithstanding any other provision of this code to
136 the contrary, the secretary of each department with authority
137 over programs which are payors for prescription drugs,
138 including, but not limited to, the Public Employees Insurance
139 Agency, the Children's Health Insurance Program, the
140 Division of Corrections, the Division of Juvenile Services,
141 the Regional Jail and Correctional Facility Authority, the
142 Workers' Compensation Fund, state colleges and universities,
143 public hospitals, state or local institutions including nursing
144 homes and veterans' homes, the Division of Rehabilitation,
145 public health departments, the Bureau for Medical Services
146 and other programs that are payors for prescription drugs,
147 shall cooperate with the Office of the Pharmaceutical
148 Advocate established pursuant to section four, article sixteen-
149 d, chapter five of this code for the purpose of purchasing
150 prescription drugs for any program over which they have
151 authority.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which best
9 effectuates the purpose of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the
13 Division of Natural Resources any contract or agreement
14 with the federal government or its departments or agencies,
15 subdivisions of the state, corporations, associations,
16 partnerships or individuals;

17 (3) Conduct research in improved conservation methods
18 and disseminate information matters to the residents of the
19 state;

20 (4) Conduct a continuous study and investigation of the
21 habits of wildlife and, for purposes of control and protection,
22 to classify by regulation the various species into such
23 categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time and
28 at such points within the state, as in the discretion of the
29 Natural Resources Commission may appear to be necessary
30 and proper for the purpose of giving interested persons in the
31 various sections of the state an opportunity to be heard
32 concerning open season for their respective areas, and report
33 the results of the meetings to the Natural Resources
34 Commission before such season and bag limits are fixed by
35 it;

36 (7) Suspend open hunting season upon any or all wildlife
37 in any or all counties of the state with the prior approval of
38 the Governor in case of an emergency such as a drought,
39 forest fire hazard or epizootic disease among wildlife. The
40 suspension shall continue during the existence of the
41 emergency and until rescinded by the director. Suspension,
42 or reopening after such suspension, of open seasons may be
43 made upon twenty-four hours' notice by delivery of a copy of
44 the order of suspension or reopening to the wire press
45 agencies at the state capitol;

46 (8) Supervise the fiscal affairs and responsibilities of the
47 division;

48 (9) Designate such localities as he or she shall determine
49 to be necessary and desirable for the perpetuation of any
50 species of wildlife;

51 (10) Enter private lands to make surveys or inspections
52 for conservation purposes, to investigate for violations of
53 provisions of this chapter, to serve and execute warrants and
54 processes, to make arrests and to otherwise effectively
55 enforce the provisions of this chapter;

56 (11) Acquire for the state in the name of the Division of
57 Natural Resources by purchase, condemnation, lease or
58 agreement, or accept or reject for the state, in the name of the
59 Division of Natural Resources, gifts, donations,
60 contributions, bequests or devises of money, security or
61 property, both real and personal, and any interest in such
62 property, including lands and waters, which he or she deems
63 suitable for the following purposes:

64 (a) For state forests for the purpose of growing timber,
65 demonstrating forestry, furnishing or protecting watersheds
66 or providing public recreation;

67 (b) For state parks or recreation areas for the purpose of
68 preserving scenic, aesthetic, scientific, cultural,
69 archaeological or historical values or natural wonders, or
70 providing public recreation;

71 (c) For public hunting, trapping or fishing grounds or
72 waters for the purpose of providing areas in which the public
73 may hunt, trap or fish, as permitted by the provisions of this
74 chapter and the rules issued hereunder;

75 (d) For fish hatcheries, game farms, wildlife research
76 areas and feeding stations;

77 (e) For the extension and consolidation of lands or waters
78 suitable for the above purposes by exchange of other lands or
79 waters under his or her supervision;

80 (f) For such other purposes as may be necessary to carry
81 out the provisions of this chapter;

82 (12) Capture, propagate, transport, sell or exchange any
83 species of wildlife as may be necessary to carry out the
84 provisions of this chapter;

85 (13) Sell timber for not less than the value thereof, as
86 appraised by a qualified appraiser appointed by the director,
87 from all lands under the jurisdiction and control of the
88 director, except those lands that are designated as state parks
89 and those in the Kanawha State Forest. The appraisal shall
90 be made within a reasonable time prior to any sale, reduced
91 to writing, filed in the office of the director and shall be
92 available for public inspection. The director must obtain the

93 written permission of the Governor to sell timber when the
94 appraised value is more than five thousand dollars. The
95 director shall receive sealed bids therefor, after notice by
96 publication as a Class II legal advertisement in compliance
97 with the provisions of article three, chapter fifty-nine of this
98 code and the publication area for such publication shall be
99 each county in which the timber is located. The timber so
100 advertised shall be sold at not less than the appraised value to
101 the highest responsible bidder, who shall give bond for the
102 proper performance of the sales contract as the director shall
103 designate; but the director shall have the right to reject any
104 and all bids and to readvertise for bids. If the foregoing
105 provisions of this section have been complied with and no bid
106 equal to or in excess of the appraised value of the timber is
107 received, the director may, at any time, during a period of six
108 months after the opening of the bids, sell the timber in such
109 manner as he or she deems appropriate, but the sale price
110 shall not be less than the appraised value of the timber
111 advertised. No contract for sale of timber made pursuant to
112 this section shall extend for a period of more than ten years.
113 And all contracts heretofore entered into by the state for the
114 sale of timber shall not be validated by this section if the
115 same be otherwise invalid. The proceeds arising from the
116 sale of the timber so sold shall be paid to the Treasurer of the
117 State of West Virginia and shall be credited to the division
118 and used exclusively for the purposes of this chapter:
119 *Provided*, That nothing contained herein shall prohibit the
120 sale of timber which otherwise would be removed from
121 rights-of-way necessary for and strictly incidental to the
122 extraction of minerals;

123 (14) Sell or lease, with the approval in writing of the
124 Governor, coal, oil, gas, sand, gravel and any other minerals
125 that may be found in the lands under the jurisdiction and
126 control of the director, except those lands that are designated

127 as state parks. The director, before making sale or lease
128 thereof, shall receive sealed bids therefor, after notice by
129 publication as a Class II legal advertisement in compliance
130 with the provisions of article three, chapter fifty-nine of this
131 code, and the publication area for such publication shall be
132 each county in which such lands are located. The minerals so
133 advertised shall be sold or leased to the highest responsible
134 bidder, who shall give bond for the proper performance of the
135 sales contract or lease as the director shall designate; but the
136 director shall have the right to reject any and all bids and to
137 readvertise for bids. The proceeds arising from any such sale
138 or lease shall be paid to the Treasurer of the State of West
139 Virginia and shall be credited to the division and used
140 exclusively for the purposes of this chapter;

141 (15) Exercise the powers granted by this chapter for the
142 protection of forests and regulate fires and smoking in the
143 woods or in their proximity at such times and in such
144 localities as may be necessary to reduce the danger of forest
145 fires;

146 (16) Cooperate with departments and agencies of state,
147 local and federal governments in the conservation of natural
148 resources and the beautification of the state;

149 (17) Report to the Governor each year all information
150 relative to the operation and functions of the division and the
151 director shall make such other reports and recommendations
152 as may be required by the Governor, including an annual
153 financial report covering all receipts and disbursements of the
154 division for each fiscal year, and he or she shall deliver such
155 report to the Governor on or before the first day of December
156 next after the end of the fiscal year so covered. A copy of
157 such report shall be delivered to each house of the Legislature
158 when convened in January next following;

159 (18) Keep a complete and accurate record of all
160 proceedings, record and file all bonds and contracts taken or
161 entered into and assume responsibility for the custody and
162 preservation of all papers and documents pertaining to his or
163 her office, except as otherwise provided by law;

164 (19) Offer and pay, in his or her discretion, rewards for
165 information respecting the violation, or for the apprehension
166 and conviction of any violators, of any of the provisions of
167 this chapter;

168 (20) Require such reports as he or she may deem to be
169 necessary from any person issued a license or permit under
170 the provisions of this chapter, but no person shall be required
171 to disclose secret processes or confidential data of
172 competitive significance;

173 (21) Purchase as provided by law all equipment necessary
174 for the conduct of the division;

175 (22) Conduct and encourage research designed to further
176 new and more extensive uses of the natural resources of this
177 state and to publicize the findings of such research;

178 (23) Encourage and cooperate with other public and
179 private organizations or groups in their efforts to publicize
180 the attractions of the state;

181 (24) Accept and expend, without the necessity of
182 appropriation by the Legislature, any gift or grant of money
183 made to the division for any and all purposes specified in this
184 chapter and he or she shall account for and report on all such
185 receipts and expenditures to the Governor;

186 (25) Cooperate with the state historian and other
187 appropriate state agencies in conducting research with

188 reference to the establishment of state parks and monuments
189 of historic, scenic and recreational value and to take such
190 steps as may be necessary in establishing such monuments or
191 parks as he or she deems advisable;

192 (26) Maintain in his or her office at all times, properly
193 indexed by subject matter and also in chronological sequence,
194 all rules made or issued under the authority of this chapter.
195 Such records shall be available for public inspection on all
196 business days during the business hours of working days;

197 (27) Delegate the powers and duties of his or her office,
198 except the power to execute contracts not related to land and
199 stream management, to appointees and employees of the
200 division, who shall act under the direction and supervision of
201 the director and for whose acts he or she shall be responsible;

202 (28) Conduct schools, institutions and other educational
203 programs, apart from or in cooperation with other
204 governmental agencies, for instruction and training in all
205 phases of the natural resources programs of the state;

206 (29) Authorize the payment of all or any part of the
207 reasonable expenses incurred by an employee of the division
208 in moving his or her household furniture and effects as a
209 result of a reassignment of the employee: *Provided*, That no
210 part of the moving expenses of any one such employee shall
211 be paid more frequently than once in twelve months; and

212 (30) Promulgate rules, in accordance with the provisions
213 of chapter twenty-nine-a of this code, to implement and make
214 effective the powers and duties vested in him or her by the
215 provisions of this chapter and take such other steps as may be
216 necessary in his or her discretion for the proper and effective
217 enforcement of the provisions of this chapter.

CHAPTER 215

**(Com. Sub. for H.B. 2804 - By Delegates Hrutkay,
Crosier, Manchin and Martin)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §17-4-17b of the Code of West Virginia, 1931, as amended, relating to time schedules for utility relocation on highway projects; placing liability and costs on the utility company for failure to comply with proper removal notice; allowing the Division of Highways to reimburse utility companies for subsequent relocations due to plan change after a project is let to construction; and providing for meetings between Division of Highways and utilities.

Be it enacted by the Legislature of West Virginia:

That §17-4-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

- 1 (a) Whenever the division reasonably determines that any
- 2 public utility line or facility located upon, across or under any
- 3 portion of a state highway needs to be removed, relocated or
- 4 adjusted in order to accommodate a highway project, the
- 5 division shall give to the utility reasonable notice in writing
- 6 as mutually agreed, but not to exceed eighteen months

7 directing it to begin the physical removal, relocation or
8 adjustment of such utility obstruction or interference at the
9 cost of the utility, including construction inspection costs and
10 in compliance with the rules of the division and the
11 provisions of article three, chapter twenty-nine-a of this code.

12 (b) If the notice is in conjunction with a highway
13 improvement project, it will be provided at the date of
14 advertisement or award. Prior to the notice directing the
15 physical removal, relocation or adjustment of a utility line or
16 facility, the utility shall adhere to the division's utility
17 relocation procedures for public road improvements which
18 shall include, but not be limited to, the following:

19 (1) The division will submit to the utility a letter and a set
20 of plans for the proposed highway improvement project;

21 (2) The utility must within a reasonable time submit to
22 the division a written confirmation acknowledging receipt of
23 the plans and a declaration of whether or not its facilities are
24 within the proposed project limits and the extent to which the
25 facilities are in conflict with the project;

26 (3) If the utility is adjusting, locating or relocating
27 facilities or lines from or into the division's right-of-way, the
28 utility must submit to the division plans showing existing and
29 proposed locations of utility facilities.

30 (4) The utility's submission shall include with the plans
31 a work plan demonstrating that the utility adjustment,
32 location or relocation will be accomplished in a manner and
33 time frame established by the division's written procedures
34 and instructions. The work plan shall specify the order and
35 calendar days for removal, relocation or adjustment of the
36 utility from or within the project site and any staging property
37 acquisition or other special requirements needed to complete
38 the removal, relocation or adjustment. The division shall
39 approve the work plan, including any requests for
40 compensation, submitted by a utility for a highway

41 improvement project if it is submitted within the established
42 schedule and does not adversely affect the letting date. The
43 division will review the work plan to ensure compliance with
44 the proposed improvement plans and schedule.

45 (c) If additional utility removal, relocation, or adjustment
46 work is found necessary after the letting date of the highway
47 improvement project, the utility shall provide a revised work
48 plan within thirty calendar days after receipt of the division's
49 written notification of the additional work. The utility's
50 revised work plan shall be reviewed by the division to ensure
51 compliance with the highway project or improvement. The
52 division shall reimburse the utility for work performed by the
53 utility that must be performed again as the result of a plan
54 change on the part of the division.

55 (d) Should the utility fail to comply with the notice to
56 remove, relocate or adjust, the utility is liable to the division
57 for direct contract damages, including costs, fees, penalties or
58 other contract charges, for which the division is proven to be
59 liable to a contractor caused by the utility's failure to timely
60 remove, relocate or adjust, unless a written extension is
61 granted by the division. The utility shall not be liable for any
62 delay or other failure to comply with a notice to remove,
63 relocate or adjust that is not solely the fault of the utility,
64 including, but not limited to, the following:

65 (1) The division has not performed its obligations in
66 accordance with the division's rules;

67 (2) The division has not obtained all necessary rights-of-
68 way that affect the utility;

69 (3) The delay or other failure to comply by the utility is
70 due to the division's failure to manage schedules and
71 communicate with the utility;

72 (4) The division seeks to impose liability on the utility
73 based solely upon oral communications or communications
74 not directed to the utility's designated contact person;

75 (5) The division changes construction plans in any
76 manner following the notice to remove or relocate and the
77 change affects the utility's facilities; or,

78 (6) Other good cause, beyond the control of and not the
79 fault of the utility, including, but not limited to, labor
80 disputes, unavailability of materials on a national level, act of
81 God, or extreme weather conditions.

82 (e) In order to avoid construction delays and to create an
83 efficient and effective highway program, the division may
84 schedule program meetings with the public utility on a
85 quarterly basis to assure that schedules are maintained.

CHAPTER 216

**(Com. Sub. for S.B. 524 - By Senators Kessler, Oliverio, Barnes,
McKenzie, Plymale and Unger)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §22C-4-10 of the Code of West Virginia, 1931, as amended, relating to proof of lawful disposal of solid waste as a defense to a violation of disposal law; and establishing penalties for littering.

Be it enacted by the Legislature of West Virginia:

That §22C-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE
AUTHORITIES.**

**§22C-4-10. Mandatory disposal; proof required; penalty
imposed; requiring solid waste
management board and the Public Service
Commission to file report.**

1 (a) Each person occupying a residence or operating a
2 business establishment in this state shall either:

3 (1) Subscribe to and use a solid waste collection service
4 and pay the fees established therefor; or

5 (2) Provide proper proof that said person properly
6 disposes of solid waste at least once within every thirty-day
7 period at approved solid waste facilities or in any other
8 lawful manner. The Secretary of the Department of
9 Environmental Protection shall promulgate rules pursuant to
10 chapter twenty-nine-a of this code regarding an approved
11 method or methods of supplying such proper proof. A civil
12 penalty of one hundred fifty dollars may be assessed to the
13 person not receiving solid waste collection services in
14 addition to the unpaid fees for every year that a fee is not
15 paid. Any person who violates the provisions of this section
16 by not lawfully disposing of his or her solid waste or failing
17 to provide proper proof that he or she lawfully disposes of his
18 or her solid waste at least once a month is guilty of a
19 misdemeanor. Upon conviction, he or she is subject to a fine
20 of not less than fifty dollars nor more than one thousand
21 dollars or sentenced to perform not less than ten nor more
22 than forty hours of community service, such as picking up
23 litter, or both fined and sentenced to community service.

24 (b) The Solid Waste Management Board, in consultation
25 and collaboration with the Public Service Commission, shall
26 prepare and submit, no later than the first day of October, one
27 thousand nine hundred ninety-two, a report concerning the
28 feasibility of implementing a mandatory fee for the collection
29 and disposal of solid waste in West Virginia: *Provided*, That
30 such plan shall consider such factors as affordability, impact
31 on open dumping and other relevant matters. The report shall

32 be submitted to the Governor, the President of the Senate and
33 the Speaker of the House of Delegates.

34 (c) The Public Service Commission, in consultation and
35 collaboration with the Division of Human Services, shall
36 prepare and submit, no later than the first day of October, one
37 thousand nine hundred ninety-two, a report concerning the
38 feasibility of reducing solid waste collection fees to
39 individuals who directly pay such fees and who receive
40 public assistance from state or federal government agencies
41 and are therefore limited in their ability to afford to pay for
42 solid waste disposal. This report shall consider the
43 individual's health and income maintenance and other
44 relevant matters. This report shall also include recommended
45 procedures for individuals or households to qualify for and
46 avail themselves of a reduction in fees. This report shall be
47 submitted to the Governor, the President of the Senate and
48 the Speaker of the House of Delegates.

CHAPTER 217

**(S.B. 186 - By Senators Bowman, Bailey, Helmick, Boley,
Minard and Unger)**

[Passed March 1, 2007; in effect from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-6-32 of the Code of West Virginia,
1931, as amended, relating to continuation of the Board of
Embalmers and Funeral Directors.

Be it enacted by the Legislature of West Virginia:

That §30-6-32 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 6. BOARD OF EMBALMERS AND FUNERAL DIRECTORS.

§30-6-32. Continuation of the Board of Embalmers and Funeral Directors.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Board of Embalmers and Funeral Directors shall
3 continue to exist until the first day of July, two thousand fifteen,
4 unless sooner terminated, continued or reestablished.



CHAPTER 218

(H.B. 2587 - By Delegates Ennis, Talbott and Blair)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact §30-8-11 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Optometry.

Be it enacted by the Legislature of West Virginia:

That §30-8-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-11. Continuation of the Board of Optometry.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia Board of Optometry shall
3 continue to exist until the first day of July, two thousand
4 eighteen, unless sooner terminated, continued or
5 reestablished.

CHAPTER 219

**(S.B. 171 - By Senators Bowman, Bailey, Helmick,
Boley, Unger, Kessler and Sypolt)**

[Passed March 1, 2007; in effect from passage.]

[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-9-32 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Accountancy.

Be it enacted by the Legislature of West Virginia:

That §30-9-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-32. Continuation of the West Virginia Board of Accountancy.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia Board of Accountancy shall
3 continue to exist until the first day of July, two thousand
4 seventeen, unless sooner terminated, continued or
5 reestablished.

CHAPTER 220

(H.B. 2586 - By Delegates Ennis, Talbott and Blair)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §30-10-20 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Veterinary Medicine.

Be it enacted by the Legislature of West Virginia:

That §30-10-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. VETERINARIANS.

§30-10-20. Continuation of the Board of Veterinary Medicine.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia Board of Veterinary Medicine
3 shall continue to exist until the first day of July, two thousand
4 eighteen, unless sooner terminated, continued or
5 reestablished.

CHAPTER 221

(H.B. 2349 - By Delegates Ennis, Talbott and Blair)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-17-16, relating to continuation of the Board of Registration for Sanitarians.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-17-16, to read as follows:

ARTICLE 17. SANITARIANS.

§30-17-16. Continuation of the Board of Registration for Sanitarians.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the Board of Registration for Sanitarians shall
3 continue to exist until the first day of July, two thousand
4 sixteen, unless sooner terminated, continued or reestablished.

CHAPTER 222

**(S.B. 190 - By Senators Bowman, Bailey, Helmick, Boley,
Minard, Unger, Plymale and Foster)**

[Passed March 1, 2007; in effect from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-21-16 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Examiners of Psychologists.

Be it enacted by the Legislature of West Virginia:

That §30-21-16 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-16. Continuation of the Board of Examiners of Psychologists.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the Board of Examiners of Psychologists shall
3 continue to exist until the first day of July, two thousand
4 eighteen, unless sooner terminated, continued or
5 reestablished.

CHAPTER 223

(H.B. 2574 - By Delegates Ennis, Talbott and Blair)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-30-14, relating to continuation of the Board of Social Work Examiners.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-30-14, to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-14. Continuation of the Board of Social Work Examiners.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Board of Social Work Examiners shall continue to
3 exist until the first day of July, two thousand seventeen, unless
4 sooner terminated, continued or reestablished.

CHAPTER 224

**(S.B. 172 - By Senators Bowman, Bailey, Helmick, Boley,
Unger and Kessler)**

[Passed March 1, 2007; in effect from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-34-17 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Respiratory Care Practitioners.

Be it enacted by the Legislature of West Virginia:

That §30-34-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-17. Continuation of the Board of Respiratory Care Practitioners.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Board of Respiratory Care Practitioners shall continue
3 to exist until the first day of July, two thousand seventeen,
4 unless sooner terminated, continued or reestablished.



CHAPTER 225

**(Com. Sub. for H.B. 2801 - By Delegates Moye, Mahan,
Kessler and Sumner)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §5H-1-1, §5H-1-2 and §5H-1-3, all relating to providing a death benefit to the families of firefighters and EMS personnel who are killed as a result of an injury arising out of and in the course of performance of official duties or arising out of any activity on or off duty in the capacity of a firefighter or EMS provider; establishing an effective date; and establishing the processes to get the death benefits and the funding source.

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 chapter, designated §5H-1-1, §5H-1-2 and §5H-1-3, all to read as follows:

CHAPTER 5H. SURVIVOR BENEFITS.

**ARTICLE 1. WEST VIRGINIA FIRE AND EMS SURVIVOR
BENEFIT ACT.**

§5H-1-1. Title and legislative intent.

§5H-1-2. Death benefit for survivors.

§5H-1-3. Effective Date

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the “West Virginia Fire and
2 EMS Survivor Benefit Act.”

3 (b) It is the intent of the Legislature to provide for the
4 payment of death benefits to the surviving spouse, designated
5 beneficiary, children or parents of firefighters and EMS
6 personnel killed in the performance of their duties.

§5H-1-2. Death benefit for survivors.

1 (a) In the event a firefighter or EMS provider is killed in the
2 performance of his or her duties, the department chief, within
3 thirty days from the date of death shall submit certification of
4 the death to the Governor’s office.

5 (b) This act includes both paid and volunteer fire and EMS
6 personnel acting in the performance of his or her duties of any
7 fire or EMS department certified by the State of West Virginia.

8 (c) A firefighter or EMS provider is considered to be acting
9 in the performance of his or her duties for the purposes of this
10 act when he or she is participating in any role of a fire or EMS
11 department function. This includes training, administration
12 meetings, fire or EMS incidents, service calls, apparatus,
13 equipment or station maintenance, fundraisers and travel to or
14 from such functions.

15 (d) Travel includes riding upon any apparatus which is
16 owned or used by the fire or EMS department, or any other
17 vehicle going to or directly returning from a firefighter's home,
18 place of business or other place where he or she shall have been
19 prior to participating in a fire or EMS department function or
20 upon the authorization of the chief of the department or other
21 person in charge.

22 (e) Certification shall include the name of the certified fire
23 or EMS program, the name of the deceased firefighter or EMS
24 provider, the name and address of the beneficiary and the
25 circumstances that qualify the deceased individual for death
26 benefits under this act. Upon receipt of the certification from
27 the certified fire or EMS program, the state shall, from moneys
28 from the State Treasury, General Fund, pay to the certified fire
29 or EMS program the sum of fifty thousand dollars in the name
30 of the beneficiary of the death benefit. Within five days of
31 receipt of this sum from the state, the fire or EMS program
32 certified by the state shall pay the sum as a benefit to the
33 surviving spouse, or designated beneficiary. If there is no
34 surviving spouse or designated beneficiary, to the minor
35 children of the firefighter or EMS provider killed in the
36 performance of duty. When no spouse, designated beneficiary,
37 or minor children survive, the benefit shall be paid to the parent
38 or parents of the firefighter or EMS provider. It is the
39 responsibility of the certified fire or EMS program to document
40 the surviving spouse or beneficiary for purposes of reporting to
41 the Governor's office.

42 (f) Any death ruled by a physician to be a result of an injury
43 sustained during any of the above mentioned performance of
44 fire department duties will be eligible for this benefit, even if
45 this death occurs at a later time.

46 (g) Those individuals who are both firefighters and EMS
47 personnel are eligible for only one death benefit payment.

§5H-1-3. Effective Date.

1 The effective date for this act is the first day of January, two
2 thousand seven.

CHAPTER 226

**(Com. Sub. for H.B. 2718 - By Delegates Swartzmiller,
Beach, Caputo, Amores, Klempa, Schadler, Shook,
Hutchins, Kominar and Wells)**

[Passed March 8, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2007.]

AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10c of said code; to amend said code by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and to amend and reenact §29-25-1 of said code, all relating to authorization of West Virginia lottery table games generally; providing for Lottery Commission operation and administration expenses; providing recoupment criteria and changing the recoupment period for the capital reinvestment fund; West Virginia Lottery Racetrack Table Games Act; authorizing West Virginia Lottery table games at licensed horse and dog racetracks; providing for legislative findings, including constitutional considerations; providing definitions; providing for Lottery

Commission regulation of gaming activities; duties and powers of Lottery Commission; authorizing the Lottery Commission to promulgate rules; authorizing the Lottery Commission and director to hire necessary staff; placing requirements and limitations on lottery employees; providing for duties, powers and administrative expenses of the Lottery Commission; requiring local option elections to approve licensure of West Virginia Lottery table games at racetrack facilities; procedure for elections; providing for reconsideration elections; providing for licensees to engage in activities related to operation of West Virginia Lottery table games at racetrack facilities; providing qualifications for applicant for license to operate West Virginia Lottery table games at a racetrack facility; providing floor plan requirements; authorizing management service contracts; coordination of licensed activities; providing license application requirements; establishing an annual license surcharge for failure to construct certain hotel facilities; extension of time for construction; racetrack table games licensee qualifications; establishing license fees; requirement for surety bond; issuance of licenses and prohibiting transfer, assignment, sale or pledge as collateral; requiring audits and reports of licensees; providing duties of racetrack table games licensees; preference in hiring for table games jobs; providing that the state owns exclusive right to conduct table games and may grant a license to operate West Virginia Lottery table games to qualified licensees; providing duties for racetrack table games licensees; licensees to hold state harmless from any and all claims; providing reporting requirements for table games licensees; establishing requirements for licensees to supply gaming equipment or services; establishing requirements of license for employees of operator of racetracks with West Virginia Lottery table games; establishing requirements for management services provider license; establishing license fees; prohibitions to granting of a license; providing grounds for denial, revocation, suspension or reprimand of license; establishing hearing procedures; providing for expiration and renewal of licenses; requiring renewal fees; requiring Lottery Commission to give notice regarding license expiration and

renewal to licensees; specifying information to be included on license; requiring display and availability of license; requiring notice of change of address; requiring commission approval of West Virginia Lottery table games rules of play; resolution of disputes over game rules by Lottery Commission; requiring licensees to provide written notice to players of games of chance of game rules and payouts; providing for method to determine betting limits and operations and services by racetrack licensees; requiring the posting of betting limits and other requirements relating to operations and services; establishing limitations for offering complimentary goods and services; providing conditions for sale of alcohol; providing for contract agreements and costs for services and training of the State Police; exclusive jurisdiction of State Police over felony offenses committed at a racetrack; authorizing inspections and seizure of certain property; authorizing certain warrantless searches of person and property; imposing privilege tax on adjusted gross receipts of racetrack with West Virginia Lottery table games; providing procedure for filing and payment of said tax; exempting racetrack licensees from certain taxes; prohibition on credits against privilege tax; creating West Virginia Lottery Racetrack Table Games Fund; providing for distribution of amounts from said fund; creating Community Based Service Fund; appropriation of moneys for senior services by the Legislature; creating State Debt Reduction Fund; authorizing expenditures from said fund; authorizing and limiting use of funds by counties and municipalities; clarifying and limiting expenses of the Lottery Commission for administration and enforcement of article; providing prohibited wagers and other activities; prohibiting certain wagering methods; establishing criminal offenses and penalties; providing for forfeiture of certain property; providing civil penalties; providing for the preemption of certain local laws, ordinance and rules; providing for exemption from certain federal laws relating to shipment of gambling devices; and revising legislative findings relating to authorization of West Virginia Lottery table games at a well established resort hotel.

Be it enacted by the Legislature of West Virginia:

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22A-10c of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and that §29-25-1 of said code be amended and reenacted, all to read as follows:

Article

- 22. State Lottery Act.
- 22A. Racetrack Video Lottery Act.
- 22C. West Virginia Lottery Racetrack Table Games Act.
- 25. Authorized Gaming Facility.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.

- 1 (a) There is continued a special revenue fund in the State
- 2 Treasury which shall be designated and known as the "State
- 3 Lottery Fund." The fund consists of all appropriations to the
- 4 fund and all interest earned from investment of the fund and any
- 5 gifts, grants or contributions received by the fund. All revenues
- 6 received from the sale of lottery tickets, materials and games
- 7 shall be deposited with the State Treasurer and placed into the

8 “State Lottery Fund.” The revenue shall be disbursed in the
9 manner provided in this section for the purposes stated in this
10 section and shall not be treated by the Auditor and Treasurer as
11 part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds
13 may be made to the commission or Lottery Fund after the initial
14 appropriation.

15 (c) A minimum annual average of forty-five percent of the
16 gross amount received from each lottery shall be allocated and
17 disbursed as prizes.

18 (d) Not more than fifteen percent of the gross amount
19 received from each lottery may be allocated to and may be
20 disbursed as necessary for fund operation and administration
21 expenses: *Provided*, That for the period beginning the first day
22 of the month following the first passage of a referendum
23 election held pursuant to section seven, article twenty-two-c of
24 this chapter and for eighteen months thereafter, not more than
25 seventeen percent of the gross amount received from each
26 lottery shall be allocated to and may be disbursed as necessary
27 for fund operation and administration expenses.

28 (e) The excess of the aggregate of the gross amount received
29 from all lotteries over the sum of the amounts allocated by
30 subsections (c) and (d) of this section shall be allocated as net
31 profit. In the event that the percentage allotted for operations
32 and administration generates a surplus, the surplus shall be
33 allowed to accumulate to an amount not to exceed two hundred
34 fifty thousand dollars. On a monthly basis, the director shall
35 report to the Joint Committee on Government and Finance of
36 the Legislature any surplus in excess of two hundred fifty
37 thousand dollars and remit to the State Treasurer the entire
38 amount of those surplus funds in excess of two hundred fifty
39 thousand dollars which shall be allocated as net profit.

40 (f) After first satisfying the requirements for funds dedicated
41 to the School Building Debt Service Fund in subsection (h) of
42 this section to retire the bonds authorized to be issued pursuant
43 to section eight, article nine-d, chapter eighteen of this code, and
44 then satisfying the requirements for funds dedicated to the
45 Education, Arts, Sciences and Tourism Debt Service Fund in
46 subsection (i) of this section to retire the bonds authorized to be
47 issued pursuant to section eleven-a, article six, chapter five of
48 this code, any and all remaining funds in the State Lottery Fund
49 shall be made available to pay debt service in connection with
50 any revenue bonds issued pursuant to section eighteen-a of this
51 article, if and to the extent needed for such purpose from time
52 to time. The Legislature shall annually appropriate all of the
53 remaining amounts allocated as net profits in subsection (e) of
54 this section, in such proportions as it considers beneficial to the
55 citizens of this state, to: (1) The Lottery Education Fund created
56 in subsection (g) of this section; (2) the School Construction
57 Fund created in section six, article nine-d, chapter eighteen of
58 this code; (3) the Lottery Senior Citizens Fund created in
59 subsection (j) of this section; and (4) the Division of Natural
60 Resources created in section three, article one, chapter twenty of
61 this code and the West Virginia Development Office as created
62 in section one, article two, chapter five-b of this code, in
63 accordance with subsection (k) of this section. No transfer to
64 any account other than the School Building Debt Service
65 Account, the Education, Arts, Sciences and Tourism Debt
66 Service Fund, the Economic Development Project Fund created
67 under section eighteen-a, article twenty-two, chapter twenty-
68 nine of this code, or any fund from which debt service is paid
69 under subsection (c), section eighteen-a of this article, may be
70 made in any period of time in which a default exists in respect
71 to debt service on bonds issued by the School Building
72 Authority, the State Building Commission, the Economic
73 Development Authority or which are otherwise secured by
74 lottery proceeds. No additional transfer may be made to any
75 account other than the School Building Debt Service Account

76 and the Education, Arts, Sciences and Tourism Debt Service
77 Fund when net profits for the preceding twelve months are not
78 at least equal to one hundred fifty percent of debt service on
79 bonds issued by the School Building Authority and the State
80 Building Commission which are secured by net profits.

81 (g) There is continued a special revenue fund in the State
82 Treasury which shall be designated and known as the "Lottery
83 Education Fund." The fund shall consist of the amounts
84 allocated pursuant to subsection (f) of this section, which shall
85 be deposited into the Lottery Education Fund by the State
86 Treasurer. The Lottery Education Fund shall also consist of all
87 interest earned from investment of the Lottery Education Fund
88 and any other appropriations, gifts, grants, contributions or
89 moneys received by the Lottery Education Fund from any
90 source. The revenues received or earned by the Lottery
91 Education Fund shall be disbursed in the manner provided
92 below and may not be treated by the Auditor and Treasurer as
93 part of the general revenue of the state. Annually, the
94 Legislature shall appropriate the revenues received or earned by
95 the Lottery Education Fund to the state system of public and
96 higher education for these educational programs it considers
97 beneficial to the citizens of this state.

98 (h) On or before the twenty-eighth day of each month, as
99 long as revenue bonds or refunding bonds are outstanding, the
100 lottery director shall allocate to the School Building Debt
101 Service Fund created pursuant to the provisions of section six,
102 article nine-d, chapter eighteen of this code, as a first priority
103 from the net profits of the lottery for the preceding month, an
104 amount equal to one tenth of the projected annual principal,
105 interest and coverage ratio requirements on any and all revenue
106 bonds and refunding bonds issued, or to be issued, on or after
107 the first day of April, one thousand nine hundred ninety-four, as
108 certified to the lottery director in accordance with the provisions
109 of section six, article nine-d, chapter eighteen of this code. In

110 no event shall the monthly amount allocated exceed one million
111 eight hundred thousand dollars, nor may the total allocation of
112 the net profits to be paid into the School Building Debt Service
113 Fund, as provided in this section, in any fiscal year exceed the
114 lesser of the principal and interest requirements certified to the
115 lottery director or eighteen million dollars. In the event there
116 are insufficient funds available in any month to transfer the
117 amount required to be transferred pursuant to this subsection to
118 the School Debt Service Fund, the deficiency shall be added to
119 the amount transferred in the next succeeding month in which
120 revenues are available to transfer the deficiency. A lien on the
121 proceeds of the State Lottery Fund up to a maximum amount
122 equal to the projected annual principal, interest and coverage
123 ratio requirements, not to exceed twenty-seven million dollars
124 annually, may be granted by the School Building Authority in
125 favor of the bonds it issues which are secured by the net lottery
126 profits.

127 When the school improvement bonds, secured by profits
128 from the lottery and deposited in the School Debt Service Fund,
129 mature, the profits shall become available for debt service on
130 additional school improvement bonds as a first priority from the
131 net profits of the lottery or may at the discretion of the authority
132 be placed into the School Construction Fund created pursuant to
133 the provisions of section six, article nine-d, chapter eighteen of
134 this code.

135 (i) Beginning on or before the twenty-eighth day of July,
136 one thousand nine hundred ninety-six, and continuing on or
137 before the twenty-eighth day of each succeeding month
138 thereafter, as long as revenue bonds or refunding bonds are
139 outstanding, the lottery director shall allocate to the Education,
140 Arts, Sciences and Tourism Debt Service Fund created pursuant
141 to the provisions of section eleven-a, article six, chapter five of
142 this code, as a second priority from the net profits of the lottery
143 for the preceding month, an amount equal to one tenth of the

144 projected annual principal, interest and coverage ratio
145 requirements on any and all revenue bonds and refunding bonds
146 issued, or to be issued, on or after the first day of April, one
147 thousand nine hundred ninety-six, as certified to the lottery
148 director in accordance with the provisions of that section. In no
149 event may the monthly amount allocated exceed one million
150 dollars nor may the total allocation paid into the Education,
151 Arts, Sciences and Tourism Debt Service Fund, as provided in
152 this section, in any fiscal year exceed the lesser of the principal
153 and interest requirements certified to the lottery director or ten
154 million dollars. In the event there are insufficient funds
155 available in any month to transfer the amount required pursuant
156 to this subsection to the Education, Arts, Sciences and Tourism
157 Debt Service Fund, the deficiency shall be added to the amount
158 transferred in the next succeeding month in which revenues are
159 available to transfer the deficiency. A second-in-priority lien on
160 the proceeds of the State Lottery Fund up to a maximum amount
161 equal to the projected annual principal, interest and coverage
162 ratio requirements, not to exceed fifteen million dollars
163 annually, may be granted by the State Building Commission in
164 favor of the bonds it issues which are secured by the net lottery
165 profits.

166 When the bonds, secured by profits from the lottery and
167 deposited in the Education, Arts, Sciences and Tourism Debt
168 Service Fund, mature, the profits shall become available for debt
169 service on additional bonds as a second priority from the net
170 profits of the lottery.

171 (j) There is continued a special revenue fund in the State
172 Treasury which shall be designated and known as the "Lottery
173 Senior Citizens Fund." The fund shall consist of the amounts
174 allocated pursuant to subsection (f) of this section, which
175 amounts shall be deposited into the Lottery Senior Citizens
176 Fund by the State Treasurer. The Lottery Senior Citizens Fund
177 shall also consist of all interest earned from investment of the

178 Lottery Senior Citizens Fund and any other appropriations, gifts,
179 grants, contributions or moneys received by the Lottery Senior
180 Citizens Fund from any source. The revenues received or
181 earned by the Lottery Senior Citizens Fund shall be distributed
182 in the manner provided below and may not be treated by the
183 Auditor or Treasurer as part of the general revenue of the state.
184 Annually, the Legislature shall appropriate the revenues
185 received or earned by the Lottery Senior Citizens Fund to any
186 senior citizens medical care and other programs it considers
187 beneficial to the citizens of this state.

188 (k) The Division of Natural Resources and the West
189 Virginia Development Office, as appropriated by the
190 Legislature, may use the amounts allocated to them pursuant to
191 subsection (f) of this section for one or more of the following
192 purposes: (1) The payment of any or all of the costs incurred in
193 the development, construction, reconstruction, maintenance or
194 repair of any project or recreational facility, as these terms are
195 defined in section four, article five, chapter twenty of this code,
196 pursuant to the authority granted to it under article five, chapter
197 twenty of this code; (2) the payment, funding or refunding of the
198 principal of, interest on or redemption premiums on any bonds,
199 security interests or notes issued by the parks and recreation
200 section of the Division of Natural Resources under article five,
201 chapter twenty of this code; or (3) the payment of any
202 advertising and marketing expenses for the promotion and
203 development of tourism or any tourist facility or attraction in
204 this state.

ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.

§29-22A-10c. Surcharge; Capital Reinvestment Fund.

1 (a) For all fiscal years beginning on or after the first day of
2 July, two thousand one, there shall be imposed a surcharge of
3 ten percent against the excess of total net terminal income

4 generated from a licensed racetrack for that fiscal year over total
5 net terminal income from that licensed racetrack for the fiscal
6 year ending the thirtieth day of June, two thousand one.

7 (b) A Capital Reinvestment Fund is hereby created within
8 the lottery fund. Forty-two percent of the surcharge amount
9 attributable to each racetrack shall be retained by the
10 commission and deposited into a separate Capital Reinvestment
11 Account for that licensed racetrack. For each dollar expended
12 by a licensed racetrack for capital improvements at the
13 racetrack, at the location of any amenity associated with the
14 licensed racetrack's destination resort facility operations, or at
15 adjacent facilities owned by the licensee, having a useful life of
16 seven or more years and placed in service after the first day of
17 April, two thousand one, the licensed racetrack shall receive one
18 dollar in recoupment from its Capital Reinvestment Fund
19 Account: *Provided*, That in the case of thoroughbred horse
20 tracks, four cents of every dollar in recoupment shall be
21 reserved into a separate account, which shall only be spent on
22 capital improvements and upgrading to facilities used for the
23 housing and care of horses, facilities located inside the
24 perimeter of the racing surface, including the surface thereof,
25 facilities used for housing persons responsible for the care of
26 horses, and that any such capital improvements and upgrading
27 shall be subject to recoupment under this section only if they
28 have been approved by the Horsemen's Benevolent and
29 Protective Association acting on behalf of the horsemen:
30 *Provided, however*, That in the case of greyhound race tracks,
31 four cents of every dollar in recoupment shall be spent on
32 capital improvements and upgrading in the kennel area or other
33 areas at the track. If a licensed racetrack's unrecouped capital
34 improvements exceed its capital reinvestment fund account at
35 the end of any fiscal year, the excess improvements may be
36 carried forward to seven subsequent fiscal years.

37 (c) Fifty-eight percent of the surcharge amount plus any

- 38 moneys remaining in a racetrack's Capital Reinvestment Fund
 39 Account at the end of any fiscal year shall be deposited in the
 40 State Excess Lottery Revenue Fund created in section eighteen-
 41 a, article twenty-two of this chapter.

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK
 TABLE GAMES ACT.**

- §29-22C-1. Short title.
 §29-22C-2. State authorization of table games at licensed racetrack facilities;
 legislative findings and declarations.
 §29-22C-3. Definitions.
 §29-22C-4. Commission duties and powers.
 §29-22C-5. Appointment of commission staff; conditions of employment.
 §29-22C-6. Licenses required.
 §29-22C-7. Local option election.
 §29-22C-8. License to operate a racetrack with West Virginia Lottery table
 games.
 §29-22C-9. State ownership of table games.
 §29-22C-10. Duties of racetrack table games licensee.
 §29-22C-11. Reports by a racetrack table games licensee.
 §29-22C-12. License to supply a racetrack with gaming equipment or services.
 §29-22C-13. License to be employed in a racetrack with West Virginia Lottery table
 games.
 §29-22C-14. License to be a provider of management services.
 §29-22C-15. License prohibitions.
 §29-22C-16. License denial, revocation, suspension and reprimand.
 §29-22C-17. Hearing procedures.
 §29-22C-18. Notice of license expiration and renewal.
 §29-22C-19. Miscellaneous license provisions.
 §29-22C-20. Game rules of play; disputes.
 §29-22C-21. Betting limits; operations and services.
 §29-22C-22. Posting of betting limits.
 §29-22C-23. Complimentary service, gift, cash or other item.
 §29-22C-24. Law enforcement.
 §29-22C-25. Inspection and seizure.
 §29-22C-26. Tax on the privilege of holding a license to
 operate West Virginia Lottery table games.
 §29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community Based
 Service Fund; State Debt Reduction Fund; distribution of funds.
 §29-22C-28. Prohibition on unauthorized wagering.
 §29-22C-29. Offenses and penalties.
 §29-22C-30. Forfeiture of property.
 §29-22C-31. Civil penalties.
 §29-22C-32. Preemption.
 §29-22C-33. Exemption from federal law.
 §29-22C-34. Shipment of gambling devices.

§29-22C-1. Short title.

1 This article shall be known and may be cited as the West
2 Virginia Lottery Racetrack Table Games Act.

§29-22C-2. State authorization of table games at licensed racetrack facilities; legislative findings and declarations.

1 (a) *Operation of West Virginia lottery table games.* --
2 Notwithstanding any provision of law to the contrary, the
3 operation of West Virginia lottery racetrack table games and
4 ancillary activities at a licensed racetrack and the playing of
5 those West Virginia lottery table games at a licensed racetrack
6 are only lawful when conducted in accordance with the
7 provisions of this article and rules of the commission.

8 (b) *Legislative findings:* -

9 (1) The Legislature finds that horse racing and dog racing
10 and breeding play a critical role in the economy of this state,
11 enhance the revenue collected at the racetracks, contribute vital
12 revenues to the counties and municipalities in which the
13 activities are conducted, provide for significant employment and
14 protect and preserve greenspace and; that a substantial state
15 interest exists in protecting these industries. Furthermore, it
16 finds that the breeding and racing of thoroughbred horses is an
17 integral part of West Virginia's agriculture, and that agriculture
18 is a critical ingredient in West Virginia's economy. It further
19 finds that the operation of table games pursuant to this article,
20 at racetracks in this state that hold racetrack video lottery
21 licenses and licenses to conduct horse or dog racing, will protect
22 and preserve the horse racing and dog racing industries and
23 horse and dog breeding industries, will protect and enhance the
24 tourism industry in this state and indirectly benefit other
25 segments of the economy of this state.

26 (2) The Legislature finds that, pursuant to section thirty-six,
27 article VI of the Constitution of the State of West Virginia
28 grants exclusively to the state the right to lawfully own and
29 operate a lottery in this state.

30 (3) The Legislature finds that recognized principals of
31 ownership allow an owner to maintain ownership while
32 operating an enterprise through agents and licensees.

33 (4) The Legislature finds that it is in the best interest of the
34 State of West Virginia for the state to operate a lottery in the
35 form of table games.

36 (5) The Legislature finds that the table games authorized
37 under the provisions of this article are lotteries as each game
38 involves consideration, the possibility of a prize and their
39 outcome is determined predominantly by chance, which the
40 common law of West Virginia has long held are the three
41 essential elements of a lottery.

42 (6) The Legislature finds that the lottery authorized by the
43 provisions of this article is the exclusive intangible intellectual
44 property of the State of West Virginia as are the other versions
45 of lottery authorized under this chapter.

46 (7) The Legislature finds that the most effective manner in
47 which the state can operate and regulate the forms of lottery
48 authorized by the provisions of this article is to do so through
49 licensees and further that effective operation and regulation
50 requires limiting the number of locations at which the lottery
51 and lottery games so authorized are allowed.

52 (8) The Legislature finds that limiting such table games as
53 authorized under this article to facilities authorized by the
54 provisions of article twenty-three, chapter nineteen of this code
55 which are licensed pursuant to the provisions of article twenty-

56 two-a of this chapter to operate video lottery terminals is the
57 most efficient and effective manner in which to regulate
58 licensees.

59 (9) The Legislature finds that the granting of licenses
60 pursuant to the provisions of this article while maintaining all
61 ownership rights and exercising control through strict regulation
62 of all West Virginia lottery table games authorized by the
63 provisions of this article constitutes an appropriate exercise by
64 the Legislature of the power granted it by the Constitution
65 pursuant to the provisions of section thirty-six, article VI of the
66 Constitution of West Virginia.

67 (10) The Legislature finds that the operation of West
68 Virginia lottery table games at racetracks licensed pursuant to
69 the provision of article twenty-two-a of this chapter and by the
70 provisions of article twenty-three, chapter nineteen of this code
71 serves to protect, preserve and promote the horse and dog racing
72 and breeding industries of this state and will serve to protect,
73 promote and enhance the tourism industry of the state as well as
74 the general fiscal well-being of the state and its subdivisions.

§29-22C-3. Definitions.

1 (a) *Applicability of definitions.* -- For the purposes of this
2 article, the words or terms defined in this section, and any
3 variation of those words or terms required by the context, have
4 the meanings ascribed to them in this section. These definitions
5 are applicable unless a different meaning clearly appears from
6 the context in which the word or term is used.

7 (b) *Terms defined.* --

8 (1) "Adjusted gross receipts" means gross receipts from
9 West Virginia Lottery table games less winnings paid to patrons
10 wagering on the racetrack's table games.

11 (2) “Applicant” means any person who on his or her own
12 behalf, or on behalf of another, has applied for permission to
13 engage in any act or activity that is regulated under the
14 provision of this article for which a license is required by this
15 article or rule of the commission.

16 (3) “Application” means any written request for permission
17 to engage in any act or activity that is regulated under the
18 provisions of this article submitted in the form prescribed by the
19 commission.

20 (4) “Background investigation” means a security, criminal
21 and credit investigation of an applicant who has applied for the
22 issuance or renewal of a license pursuant to this article, or a
23 licensee who holds a current license.

24 (5) “Commission” or “State Lottery Commission” means
25 the West Virginia Lottery Commission created by article
26 twenty-two of this chapter.

27 (6) “Complimentary” means a service or item provided at
28 no cost or at a reduced price.

29 (7) “Compensation” means any money, thing of value, or
30 financial benefit conferred or received by a person in return for
31 services rendered, or to be rendered, whether by that person or
32 another.

33 (8) “Contested case” means a proceeding before the
34 commission, or a hearing examiner designated by the
35 commission to hear the contested case, in which the legal rights,
36 duties, interests or privileges of specific persons are required by
37 law or Constitutional right to be determined after a commission
38 hearing, but does not include cases in which the commission
39 issues a license, permit or certificate after an examination to test
40 the knowledge or ability of the applicant where the controversy

41 concerns whether the examination was fair or whether the
42 applicant passed the examination and does not include rule
43 making.

44 (9) "Control" means the authority directly or indirectly to
45 direct the management and policies of an applicant for a license
46 issued under this article or the holder of a license issued under
47 this article.

48 (10) "Designated gaming area" means one or more specific
49 floor areas of a licensed racetrack within which the commission
50 has authorized operation of racetrack video lottery terminals or
51 table games, or the operation of both racetrack video lottery
52 terminals and West Virginia Lottery table games.

53 (11) "Director" means the Director of the West Virginia
54 State Lottery Commission appointed pursuant to section six,
55 article twenty-two of this chapter.

56 (12) "Disciplinary action" is an action by the commission
57 suspending or revoking a license, fining, excluding,
58 reprimanding or otherwise penalizing a person for violating this
59 article or rules promulgated by the commission.

60 (13) "Financial interest" or "financially interested" means
61 any interest in investments, awarding of contracts, grants, loans,
62 purchases, leases, sales or similar matters under consideration
63 for consummation by the commission. A member, employee or
64 agent of the commission will be considered to have a financial
65 interest in a matter under consideration if any of the following
66 circumstances exist:

67 (A) He or she owns one percent or more of any class of
68 outstanding securities that are issued by a party to the matter
69 under consideration by the commission; or

70 (B) He or she is employed by an independent contractor for
71 a party to the matter under consideration or consummated by the
72 commission.

73 (14) "Gaming equipment" means gaming tables, cards, dice,
74 chips, shufflers, drop boxes or any other mechanical, electronic
75 or other device, mechanism or equipment or related supplies
76 used or consumed in the operation of any West Virginia Lottery
77 table game at a licensed racetrack.

78 (15) "Gross receipts" means the total of all sums including
79 valid or invalid checks, currency, tokens, coupons (excluding
80 match play coupons), vouchers or instruments of monetary
81 value whether collected or uncollected, received by a racetrack
82 with table games from table gaming operations at a race track,
83 including all entry fees assessed for tournaments or other
84 contests.

85 (16) "Indirect ownership" means an interest a person owns
86 in an entity or in property solely as a result of application of
87 constructive ownership rules without regard to any direct
88 ownership interest (or other beneficial interest) in the entity or
89 property. "Indirect ownership" shall be determined under the
90 same rules applicable to determining whether a gain or loss
91 between related parties is recognized for federal income tax
92 purposes.

93 (17) "Licensed racetrack" means a thoroughbred horse or
94 greyhound dog racing facility licensed under both article
95 twenty-two-a of this chapter and article twenty-three, chapter
96 nineteen of this code.

97 (18) "License" means any license applied for or issued by
98 the commission under this article, including, but not limited to:

99 (A) A license to act as agent of the commission in operating
100 West Virginia Lottery table games at a licensed racetrack;

101 (B) A license to supply a racetrack licensed under this
102 article to operate table games with table gaming equipment or
103 services necessary for the operation of table games;

104 (C) A license to be employed at a racetrack licensed under
105 this article to operate West Virginia Lottery table games when
106 the employee works in a designated gaming area that has table
107 games or performs duties in furtherance of or associated with
108 the operation of table games at the licensed racetrack; or

109 (D) A license to provide management services under a
110 contract to a racetrack licensed under this article to operate table
111 games.

112 (19) "Licensee" means any person who is licensed under
113 any provision of this article.

114 (20) "Lottery" means the public gaming systems or games
115 regulated, controlled, owned and operated by the State Lottery
116 Commission in the manner provided by general law, as provided
117 in this article and in articles twenty-two, twenty-two-a, twenty-
118 two-b and twenty-five of this chapter.

119 (21) "Member" means a commission member appointed to
120 the West Virginia Lottery Commission under article twenty-two
121 of this chapter.

122 (22) "National criminal history background check system"
123 means the criminal history record system maintained by the
124 Federal Bureau of Investigation based on fingerprint
125 identification or any other method of positive identification.

126 (23) "Own" means any beneficial or proprietary interest in
127 any real or personal property, including intellectual property,
128 and also includes, but is not limited to, any direct or indirect

129 beneficial or proprietary interest in any business of an applicant
130 or licensee.

131 (24) “Person” means any natural person, and any
132 corporation, association, partnership, limited liability company,
133 limited liability partnership, trust or other entity, regardless of
134 its form, structure or nature other than a government agency or
135 instrumentality.

136 (25) “Player” or “Patron” means a person who plays a
137 racetrack video lottery game or a West Virginia Lottery table
138 game at a racetrack licensed under this article to have table
139 games.

140 (26) “Player’s account” means a financial record established
141 by a licensed racetrack for an individual racetrack patron to
142 which the racetrack may credit winnings and other amounts due
143 to the racetrack patron and from which the patron may withdraw
144 moneys due to the patron for purchase of tokens, chips or
145 electronic media or other purposes.

146 (27) “Racetrack table games license” means authorization
147 granted under this article by the commission to a racetrack that
148 is already licensed under article twenty-two-a of this chapter to
149 operate racetrack video lottery terminals and holds a valid
150 racing license granted by the West Virginia Racing Commission
151 pursuant to the provision of article twenty-three, chapter
152 nineteen of this code, which permits the racetrack as an agent of
153 the commission for the limited purpose of operation of West
154 Virginia Lottery table games in one or more designated gaming
155 areas in one or more buildings owned by the licensed racetrack
156 on the grounds where live pari-mutuel racing is conducted by
157 the licensee.

158 (28) “Racetrack Table Games Fund” means the special fund
159 in the State Treasury created in section twenty-seven of this
160 article.

161 (29) “Significant influence” means the capacity of a person
162 to affect substantially (but not control) either, or both, of the
163 financial and operating policies of another person.

164 (30) “Supplier” means a person who the commission has
165 identified under legislative rules of the commission as requiring
166 a license to provide a racetrack table games licensee with goods
167 or services to be used in connection with operation of table
168 games.

169 (31) “Wager” means a sum of money or thing of value
170 risked on an uncertain occurrence.

171

172 (32) “West Virginia Lottery table game” means any game
173 played with cards, dice or any mechanical, electromechanical or
174 electronic device or machine for money, credit or any
175 representative of value, including, but not limited to, baccarat,
176 blackjack, poker, craps, roulette, wheel of fortune or any
177 variation of these games similar in design or operation and
178 expressly authorized by rule of the commission, including
179 multiplayer electronic table games, machines and devices, but
180 excluding video lottery, punchboards, faro, numbers tickets,
181 push cards, jar tickets, pull tabs or similar games.

182 (33) “Winnings” means the total cash value of all property
183 or sums including currency, tokens, or instruments of monetary
184 value paid to players as a direct result of wagers placed on West
185 Virginia Lottery table games.

§29-22C-4. Commission duties and powers.

1 (a) *Duties.* -- In addition to the duties set forth elsewhere in
2 this article or in articles twenty-two, twenty-two-a, twenty-two-
3 b and twenty-five of this chapter, the commission shall:

4 (1) Establish minimum standards for gaming equipment,
5 including, but not limited to, electronic and mechanical gaming
6 equipment;

TABLE GAMES

[Ch. 226

7 (2) Enter into licensing agreements with facilities eligible to
8 operate West Virginia Lottery table games for the state,
9 providing criteria and guidelines for preservation of the state's
10 ownership, operation and control interests as provided by
11 general law herein;

12 (3) Approve, modify or reject game rules of play proposed
13 by the licensee for West Virginia Lottery table games proposed
14 to be operated at a licensed racetrack;

15 (4) Approve, modify or reject minimum internal control
16 standards proposed by the licensee governing racetrack table
17 game operations, including the maintenance of financial
18 records;

19 (5) Approve staff considered necessary by the director to
20 oversee, inspect and monitor the operation of table games at any
21 racetrack licensed under this article and article twenty-two-a of
22 this chapter, including, but not limited to, inspection of
23 designated gaming areas, gaming equipment and security
24 equipment used in the operation of table games to assure
25 continuous compliance with the provisions of this article,
26 required license conditions and terms, and applicable rules of
27 the commission;

28 (6) Determine eligibility of a person to hold or continue to
29 hold a license issued under this article;

30 (7) Issue all licenses;

31 (8) Maintain a record of all licenses issued;

32 (9) Levy and collect the taxes imposed by this article and
33 the fees, surcharges and civil penalties authorized, required or

34 specified in this article or the legislative rules of the
35 commission, and receive, accept and pay all taxes, fees,
36 surcharges and civil penalties collected under this article into the
37 Racetrack Table Games Fund, except as otherwise provided
38 under this article; and

39 (10) Keep a public record of all commission actions and
40 proceedings with respect to West Virginia Lottery table games.

41 (b) *Powers.* -- In addition to the powers set forth elsewhere
42 in this article or in articles twenty-two, twenty-two-a,
43 twenty-two-b and twenty-five of this chapter, the commission
44 may:

45 (1) Sue to enforce any provision of this article or any rule of
46 the commission, whether by civil action or petition for
47 injunctive relief;

48 (2) Hold hearings, administer oaths and issue subpoenas for
49 attendance of witnesses to testify or subpoenas duces tecum for
50 the production of documents or other evidence;

51 (3) Enter a licensed racetrack with West Virginia Lottery
52 table games at any time and without notice to ensure strict
53 compliance with this article and with the rules of the
54 commission;

55 (4) Bar, for cause, any person from:

56 (A) Entering a designated gaming area of a licensed
57 racetrack with table games, or the grounds of a racetrack
58 licensed under this article; or

59 (B) Participating in any capacity in the play of any West
60 Virginia Lottery table game, or in the operation of West
61 Virginia Lottery table games;

62 (5) Promulgate, or propose for promulgation, in accordance
63 with the provision of article three, chapter twenty-nine-a of this
64 code, any legislative, interpretive and procedural rules the
65 commission considers necessary for the successful
66 implementation, administration and enforcement of this article,
67 and to amend or revoke any promulgated rule, in accordance
68 with provisions of article three, chapter twenty-nine-a of this
69 code, at the discretion of the commission. Any rule proposed by
70 the commission before the first day of September, two thousand
71 seven may be promulgated as an emergency rule;

72 (6) Upon the effective date of this article and prior to
73 promulgation of emergency rules, the commission may accept
74 applications, evaluate qualifications of applicants, and undertake
75 initial review of licenses for: racetracks under section eight of
76 this article; suppliers under section eleven of this article;
77 racetrack employees under section twelve of this article; and
78 providers of management services under section thirteen of this
79 article; and

80 (7) Exercise any other powers necessary to effectuate the
81 provisions of this article and the rules of the commission.

**§29-22C-5. Appointment of commission staff; conditions of
employment.**

1 (a) The director, with the approval of the commission, may
2 appoint any professional, clerical, technical and administrative
3 personnel, who shall be state employees hired in accordance
4 with article six, chapter twenty-nine of this code, which the

5 director considers necessary to carry out the provisions of this
6 article. Prior to his or her appointment, each applicant for a
7 position shall provide his or her fingerprints and shall undergo
8 a thorough background investigation.

9 (b) No commission employee may directly or indirectly
10 hold an ownership or a financial interest in any racetrack table
11 game license, or a supplier license, or a management services
12 license, or in a holding company that owns the license, or in a
13 business related to the license for federal income tax purposes,
14 or be an applicant for any of these licenses.

15 (c) No commission employee may knowingly wager or be
16 paid any prize from any wager at any licensed racetrack with
17 West Virginia Lottery table games within this state or at any
18 facility outside this state or this country that is directly or
19 indirectly owned or operated:

20 (1) By a racetrack table games licensee that is licensed
21 pursuant to this article; or

22 (2) By any person who directly or indirectly owns the
23 racetrack table games license.

§29-22C-6. Licenses required.

1 (a) No person may engage in any activity in connection with
2 a racetrack with West Virginia Lottery table games in this state
3 for which a license is required by this article or rules of the
4 commission unless all necessary licenses have been obtained in
5 accordance with this article and rules of the commission.

6 (b) Licenses are required for the following purposes:

7 (1) For any person operating a racetrack West Virginia
8 Lottery table game in the state;

9 (2) For any person supplying a racetrack table games
10 licensee with gaming equipment or gaming equipment services;

11 (3) For any individual employed by a racetrack table games
12 licensee in connection with the operation of West Virginia
13 Lottery table games in the state; and

14 (4) For any person providing management services under a
15 contract to a racetrack table games licensee.

16 (c) The commission may not grant a license to an applicant
17 until the commission determines that each person who has
18 control of the applicant also meets all of the qualifications the
19 applicant must meet to hold the license for which application is
20 made. The following persons are considered to have control of
21 an applicant:

22 (1) Each person associated with a corporate applicant,
23 including any corporate holding company, parent company or
24 subsidiary company of the applicant, but not including a bank
25 or other licensed lending institution which holds a mortgage or
26 other lien acquired in the ordinary course of business, who has
27 the ability to control the activities of the corporate applicant or
28 elect a majority of the board of directors of that corporation;

29 (2) Each person associated with a noncorporate applicant
30 who directly or indirectly holds any beneficial or proprietary
31 interest in the applicant or who the commission determines to
32 have the ability to control the applicant; and

33 (3) Key personnel of an applicant, including any executive,
34 employee or agent, having the power to exercise significant
35 influence over decisions concerning any part of the applicant's
36 business operation.

37 (d) Any license required by this article or rules of the
38 commission is in addition to all other licenses or permits
39 required by applicable federal, state or local law.

§29-22C-7. Local option election.

1 (a) No racetrack may be licensed under this article to
2 operate West Virginia Lottery table games until a local option
3 election is held in the county in which pari-mutuel wagers are
4 received at a racetrack licensed under article twenty-three,
5 chapter nineteen of this code and the voters of that county
6 voting on the question approve having West Virginia Lottery
7 table games at the racetrack.

8 (b) The county commission shall place the question on the
9 ballot upon the receipt of a written notice from a licensed
10 racetrack located within that county requesting that the question
11 be placed on the ballot.

12 (c) The county commission of the county in which table
13 games would be located shall give notice to the public of the
14 election by publication of the notice as a Class II-0 legal
15 advertisement in compliance with the provisions of article three,
16 chapter fifty-nine of this code and the publication area for the
17 publication shall be the county in which the election is to be
18 held. The date of the last publication of the notice shall fall on
19 a date at least thirty days preceding the day of the election. A
20 local option election shall be effective even though the date of
21 the order of the county commission setting the election or the

22 date of publication of notice of the election is prior to the
23 effective date of this article if the election is otherwise held in
24 accordance with the provisions of this section.

25 (d) On the local option election ballot shall be printed the
26 following:

27 Shall West Virginia Lottery table games be permitted at the
28 [name of licensed racetrack]?

29 Yes No

30 (Place a cross mark in the square next to your choice.)

31 (e) The local option election shall be held in conjunction
32 with the next primary or general election scheduled more than
33 ninety days following receipt by the county commission of the
34 notice required by this section or at a special election:
35 *Provided*, That upon written request by the licensed racetrack
36 that a special election be called, the county commission shall
37 order a special election to be held on the question within ninety
38 days after the receipt by the county commission of that request.
39 The county commission may require the licensed racetrack to
40 pay the entire cost incurred by the county to hold the special
41 election. Approval shall be by a majority of the voters casting
42 votes at the election on the question of approval or disapproval
43 of West Virginia Lottery table games at a licensed racetrack.

44 (f) If the majority votes against allowing table games at a
45 licensed racetrack, no election on the issue shall be held for a
46 period of one hundred four weeks. A local option election may
47 thereafter be held in the manner provided in this section. The
48 process to hold another election on the question shall start anew,
49 as if no prior request for an election on the question had been

50 filed with county commission and as if there had been no prior
51 election on the question.

52 (g) If the majority votes for allowing West Virginia Lottery
53 table games at a licensed racetrack facility in a county, another
54 local option election on the issue shall not be held for a period
55 of five years. A local option election may thereafter be held if
56 a written petition of qualified voters residing within the county
57 equal to at least five percent of the number of persons who were
58 registered to vote in the next preceding general election is
59 received by the county commission of the county in which the
60 horse or dog racetrack is located. The petition may be in any
61 number of counterparts. The petition shall be in the following
62 form:

63 Petition For Local Option Election

64 We, the undersigned legally qualified voters, resident within
65 the County of _____, do hereby petition that a
66 special election be held within the County of
67 _____ upon the following question: Shall West
68 Virginia Lottery table games be permitted at the [name of
69 racetrack]?

70	Name	Address	Date
71		(Post office or street address)	

§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.

1 (a) *Racetrack table games licenses.* -- The commission may
2 issue up to four racetrack table games licenses to operate West
3 Virginia Lottery table games in accordance with the provisions
4 of this article. The Legislature intends that no more than four

5 licenses to operate a racetrack with West Virginia Lottery table
6 games in this state shall be permitted in any event.

7 (b) *Grant of license.* — Upon the passage of a local option
8 election in a county in accordance with the provisions of section
9 seven of this article, the commission shall immediately grant a
10 West Virginia Lottery table games license, and a license for the
11 right to conduct West Virginia Lottery table games as assignee
12 to the intellectual property rights of the state, to allow the
13 licensee to conduct West Virginia table games at the licensed
14 pari-mutuel racetrack identified on the local option election
15 ballot, provided that racetrack holds a valid racetrack video
16 lottery license issued by the commission pursuant to article
17 twenty-two-a of this chapter and a valid racing license granted
18 by the West Virginia Racing Commission pursuant to the
19 provision of article twenty-three, chapter nineteen of this code
20 and has otherwise met the requirements for licensure under the
21 provisions of this article and the rules of the commission.

22 (c) *Location.* -- A racetrack table games license authorizes
23 the operation of West Virginia Lottery table games on the
24 grounds of the particular licensed facility identified in the
25 racetrack video lottery license issued pursuant to article twenty-
26 two-a and the license to conduct horse or dog racing issued
27 pursuant to article twenty-three, chapter nineteen of this code.

28 (d) *Floor plan submission requirement.* -- Prior to
29 commencing the operation of any table games in a designated
30 gaming area, a racetrack table games licensee shall submit to the
31 commission for its approval a detailed floor plan depicting the
32 location of the designated gaming area in which table games
33 gaming equipment will be located and its proposed arrangement
34 of the table games gaming equipment. Any floor plan
35 submission that satisfies the requirements of the rules

36 promulgated by the commission shall be considered approved
37 by the commission unless the racetrack table games licensee is
38 notified in writing to the contrary within one month of filing a
39 detailed floor plan.

40 (e) *Management service contracts.* --

41 (1) *Approval.* -- A racetrack table games licensee may not
42 enter into any management service contract that would permit
43 any person other than the licensee to act as the commission's
44 agent in operating West Virginia Lottery table games unless the
45 management service contract is: (A) With a person licensed
46 under this article to provide management services; (B) is in
47 writing; and (C) the contract has been approved by the
48 commission.

49 (2) *Material change.* -- The licensed racetrack table games
50 licensee shall submit any material change in a management
51 service contract previously approved by the commission to the
52 commission for its approval or rejection before the material
53 change may take effect.

54 (3) *Prohibition on assignment or transfer.* -- A management
55 services contract may not be assigned or transferred to a third
56 party.

57 (4) *Other commission approvals and licenses.* -- The duties
58 and responsibilities of a management services provider under a
59 management services contract may not be assigned, delegated,
60 subcontracted or transferred to a third party to perform without
61 the prior approval of the commission. Third parties must be
62 licensed under this article before providing service. The
63 commission may by rule clarify application of this subdivision
64 and provide exceptions to its application. The commission shall
65 license and require the display of West Virginia Lottery game

66 logos on appropriate game surfaces and other gaming items and
67 locations as the commission considers appropriate.

68 (f) *Coordination of licensed activities.* -- In order to
69 coordinate various licensed activities within racetrack facilities,
70 the following provisions apply to licensed racetrack facilities:

71 (1) The provisions of this article and of article twenty-two-a
72 of this chapter shall be interpreted to allow West Virginia
73 Lottery table games and racetrack video lottery operations under
74 those articles to be harmoniously conducted in the same
75 designated gaming area.

76 (2) On the effective date of this article, the provisions of
77 section twenty-three of this article apply to all video lottery
78 games conducted within a racetrack facility, notwithstanding
79 any inconsistent provisions contained in article twenty-two-a of
80 this chapter to the contrary.

81 (3) On and after the effective date of this article, vacation of
82 the premises after service of beverages ceases is not required,
83 notwithstanding to the contrary any inconsistent provisions of
84 this code or inconsistent rules promulgated by the Alcohol
85 Beverage Control Commissioner with respect to hours of sale of
86 those beverages, or required vacation of the premises.

87 (g) *Fees, expiration date and renewal.* --

88 (1) An initial racetrack table games license fee of one
89 million five hundred thousand dollars shall be paid to the
90 commission at the time of issuance of the racetrack table games
91 license, regardless of the number of months remaining in the
92 license year for which it is issued. All licenses expire at the end
93 of the day on the thirtieth day of June each year.

94 (2) The commission shall annually renew a racetrack table
95 games license as of the first day of July of each year provided
96 the licensee:

97 (A) Successfully renews its racetrack video lottery license
98 under article twenty-two-a of this chapter before the first day of
99 July;

100 (B) Pays to the commission the annual license renewal fee
101 of two million five hundred thousand dollars required by this
102 section at the time it files its application for renewal of its
103 license under article twenty-two-a of this chapter; and

104 (C) During the current license year, the licensee complied
105 with all provisions of this article, all rules adopted by the
106 commission and all final orders of the commission applicable to
107 the licensee.

108 (3) *Annual license surcharge for failure to construct hotel*
109 *on premises.* -- It is the intent of the Legislature that each
110 racetrack for which a racetrack table games license has been
111 issued be or become a destination tourism resort facility. To
112 that end, it is important that each racetrack for which a racetrack
113 table games license has been issued operate a hotel with
114 significant amenities. Therefore, in addition to all other taxes
115 and fees required by the provisions of this article, there is
116 hereby imposed, upon each racetrack for which a racetrack table
117 games license has been issued an annual license surcharge,
118 payable to the commission in the amount of two million five
119 hundred thousand dollars if that racetrack does not operate a
120 hotel on its racing property that contains at least one hundred
121 fifty guest rooms with significant amenities within three years
122 of the passage of the local option election in its county
123 authorizing table games at the racetrack, provided the time for
124 completion of the hotel shall be extended by the same number
125 of days as the completion of the hotel is delayed by a force
126 majeure events or conditions beyond the reasonable control of
127 the racetrack licensee. The surcharge shall be paid upon each

128 renewal of its racetrack table games license made after the
129 expiration of the three year period, and may be extended by the
130 above force majeure events or conditions, until the racetrack
131 opens a qualifying hotel.

132 (4) If the licensee fails to apply to renew its license under
133 article twenty-three, chapter nineteen and article twenty-two-a,
134 chapter twenty-nine of this code until after the license expires,
135 the commission shall renew its license under this article at the
136 time it renews its license under article twenty-two-a of this
137 chapter provided the licensee has paid the annual license fee
138 required by this section and during the preceding license year
139 the licensee complied with all provisions of this article, all rules
140 adopted by the commission and all final orders of the
141 commission applicable to the licensee.

142 (h) *Facility qualifications.* -- A racetrack table games
143 licensee shall demonstrate that the racetrack with West Virginia
144 Lottery table games will: (1) Be accessible to disabled
145 individuals in accordance with applicable federal and state laws;
146 (2) be licensed in accordance with this article, and all other
147 applicable federal, state and local laws; and (3) meet any other
148 qualifications specified in rules adopted by the commission.

149 (i) *Surety bond.* -- A racetrack table games licensee shall
150 execute a surety bond to be given to the state to guarantee the
151 licensee faithfully makes all payments in accordance with the
152 provisions of this article and rules promulgated by the
153 commission. The surety bond shall be:

154 (1) In the amount determined by the commission to be
155 adequate to protect the state against nonpayment by the licensee
156 of amounts due the state under this article;

157 (2) In a form approved by the commission; and

158 (3) With a surety approved by the commission who is
159 licensed to write surety insurance in this state. The bond shall
160 remain in effect during the term of the license and may not be
161 canceled by a surety on less than thirty days' notice in writing
162 to the commission. The total and aggregate liability of the
163 surety on the bond is limited to the amount specified in the
164 bond.

165 (j) *Authorization.* -- A racetrack table games license
166 authorizes the licensee act as an agent of the commission in
167 operating an unlimited amount of West Virginia Lottery table
168 games while the license is active, subject to subsection (d) of
169 this section. A racetrack table games license is not transferable
170 or assignable and cannot be sold or pledged as collateral.

171 (k) *Audits.* -- When applying for a license and annually
172 thereafter prior to license renewal, a racetrack table games
173 licensee shall submit to the commission an annual audit, by a
174 certified public accountant, of the financial transactions and
175 condition of the licensee's total operations. The audit shall be
176 made in accordance with generally accepted accounting
177 principles and applicable federal and state laws.

178 (l) *Commission office space.* -- A racetrack table games
179 licensee shall provide to the commission, at no cost to the
180 commission, suitable office space at the racetrack facility for the
181 commission to perform the duties required of it by this article
182 and the rules of the commission.

§29-22C-9. State ownership of table games.

1 All table games authorized by this article shall be West
2 Virginia lottery games owned by the State of West Virginia. A
3 racetrack table games license granted to a pari-mutuel racetrack
4 by the commission pursuant to this article shall include the
5 transfer by the commission to the racetrack limited license rights

6 in and to the commission's intellectual property ownership of
7 the West Virginia lottery games which includes granting
8 licensees limited lawful authority relating to the conduct of
9 lottery table games for consideration, within the terms and
10 conditions established pursuant to this article and any rules
11 promulgated under this article.

§29-22C-10. Duties of racetrack table games licensee.

- 1 (a) *General.* -- All racetrack table games licensees shall:
- 2 (1) Promptly report to the commission any facts or
3 circumstances related to the operation of a racetrack with West
4 Virginia Lottery table games which constitute a violation of
5 state or federal law;
- 6 (2) Conduct all table games activities and functions in a
7 manner which does not pose a threat to the public health, safety
8 or welfare of the citizens of this state and which does not
9 adversely affect the security or integrity of the operation of
10 West Virginia Lottery table games;
- 11 (3) Hold the commission and this state harmless from and
12 defend and pay for the defense of any and all claims which may
13 be asserted against a racetrack licensee, the commission, the
14 state or employees thereof, arising from the licensee's actions or
15 omission while acting as an agent of the commission by
16 operation of West Virginia Lottery table games pursuant to this
17 article;
- 18 (4) Assist the commission in maximizing table games
19 revenues;

20 (5) Give preference in hiring to existing employees who
21 have expressed an interest in transferring to an entry level West
22 Virginia Lottery Table games job and who have demonstrated
23 the potential to succeed in that job. To enable these employees
24 to develop the skills necessary to fill an entry level West
25 Virginia Lottery table games position, a licensee shall provide
26 customary industry training for entry level West Virginia
27 Lottery table games jobs. The dates, times, place and manner of
28 providing such training, the appropriate qualifications and
29 certifications, the number of existing employees to be trained,
30 the determination of standards for evaluating successful
31 performance in live auditions for such positions and the
32 determination of who shall be given West Virginia Lottery table
33 game jobs shall be within the sole business discretion of the
34 licensee's management, provided that among equally qualified
35 applicants, as determined by the licensee, length of service shall
36 be the determining factor;

37 (6) Maintain all records required by the commission;

38 (7) Upon request by the commission, provide the
39 commission access to all records and the physical premises
40 where the licensee's table games activities and related activities
41 occur, for the purpose of monitoring or inspecting the licensee's
42 activities and the table games, gaming equipment and security
43 equipment;

44 (8) Keep current in all payments and obligations to the
45 commission; and

46 (9) Conduct no less than two hundred twenty live racing
47 dates for each horse or dog race meeting or such other number
48 of live racing dates as may be approved by the racing
49 commission in accordance with the provisions of section

50 twelve-b, article twenty-three, chapter nineteen of this code, and
51 otherwise keep in good standing, all licenses and permits
52 granted by the racing commission pursuant to section six, article
53 twenty-three, chapter nineteen of this code, and any rules
54 promulgated thereunder.

55 (b) *Specific.* -- All racetrack table games licensees shall:

56 (1) Acquire West Virginia Lottery table games and gaming
57 equipment by purchase, lease or other assignment and provide
58 a secure location for the placement, operation and play of the
59 table games and gaming equipment;

60 (2) Permit no person to tamper with or interfere with the
61 operation of any West Virginia Lottery table game;

62 (3) Ensure that West Virginia Lottery table games are
63 within the sight and control of designated employees of the
64 licensed racetrack with West Virginia Lottery table games and
65 under continuous observation by security equipment in
66 conformity with specifications and requirements of the
67 commission;

68 (4) Ensure that West Virginia Lottery table games are
69 placed and remain placed in the specific locations within
70 designated gaming areas at the licensed racetrack which have
71 been approved by the commission. West Virginia Lottery table
72 games at a licensed racetrack shall only be relocated in
73 accordance with the rules of the commission;

74 (5) Maintain at all times sufficient cash and gaming tokens,
75 chips and electronic cards or other electronic media;

76 (6) Install, post and display conspicuously at locations
77 within or about the licensed racetrack with West Virginia
78 Lottery table games, signs, redemption information and other
79 promotional material as required by the commission; and

80 (7) Assume liability for stolen money from any table game.

§29-22C-11. Reports by a racetrack table games licensee.

1 A racetrack table games licensee shall maintain daily
2 records showing the gross receipts and adjusted gross receipts
3 of the racetrack from West Virginia Lottery table games and
4 shall timely file with the commission any additional reports
5 required by rule promulgated by the commission or required by
6 other provisions of this code.

§29-22C-12. License to supply a racetrack with gaming equipment or services.

1 (a) *License.* -- The commission may issue a license to a
2 person to supply a racetrack licensed under this article with
3 gaming equipment or services when the commission determines
4 that the person meets the requirements of this section and any
5 applicable rules of the commission.

6 (b) *License qualifications.* -- Each applicant who is an
7 individual and each individual who controls an applicant, as
8 provided in subsection (c) section six of this article, shall be of
9 good moral character, honesty and integrity and shall have the
10 necessary experience and financial ability to successfully carry
11 out the functions of a West Virginia Lottery table games
12 supplier. The commission may adopt rules establishing
13 additional requirements for a West Virginia Lottery table games
14 supplier. The commission may accept licensing by another
15 jurisdiction, specifically determined by the commission to have

16 similar licensing requirements, as evidence the applicant meets
17 West Virginia Lottery table games supplier licensing
18 requirements.

19 (c) *Supplier specifications.* -- An applicant for a license to
20 supply gaming equipment or services to a racetrack table games
21 licensee shall demonstrate that the gaming equipment or
22 services that the applicant plans to offer to the racetrack table
23 games licensee conform or will conform to standards
24 established by rules of the commission and applicable state law.
25 The commission may accept gaming equipment or services
26 approval by another jurisdiction, specifically determined by the
27 commission to have similar equipment standards, as evidence
28 the applicant meets the standards established by the commission
29 and applicable state law.

30 (d) *License application requirements.* -- An applicant for a
31 license to supply a racetrack table games licensee shall:

32 (1) Submit an application to the commission in the form the
33 commission requires including adequate information to serve as
34 a basis for a thorough background check;

35 (2) Submit fingerprints for a national criminal records check
36 by the Criminal Identification Bureau of the West Virginia State
37 Police and the Federal Bureau of Investigation. The fingerprints
38 shall be furnished by all persons required to be named in the
39 application and shall be accompanied by a signed authorization
40 for the release of information by the Criminal Investigation
41 Bureau and the Federal Bureau of Investigation. The
42 commission may require any applicant seeking the renewal of
43 a license or permit to furnish fingerprints for a national criminal
44 records check by the Criminal Identification Bureau of the West
45 Virginia State Police and the Federal Bureau of Investigation;
46 and

47 (3) Pay to the commission a nonrefundable application and
48 license fee for deposit into the Racetrack Table Games Fund in
49 the amount of one hundred dollars, which shall be in lieu of the
50 first year's license fee provided in subsection (g) of this section.

51 (e) *Authorization.* -- A license to supply a racetrack table
52 games licensee authorizes the licensee to sell or lease gaming
53 equipment or offer services to a racetrack with West Virginia
54 Lottery table games while the license is active. The commission
55 may by rule establish the conditions which constitute an
56 emergency under which the commission may issue provisional
57 licenses pending completion of final action on an application.

58 (f) *Inventory.* -- A licensed table games supplier shall
59 submit to the commission a list of all gaming equipment and
60 services sold, delivered to or offered to a racetrack with West
61 Virginia Lottery table games in this state when required by the
62 commission.

63 (g) *Fees, expiration date and renewal.* -- A licensed table
64 games supplier shall pay to the commission an annual license
65 fee of one hundred dollars for an initial term beginning prior to
66 the date of the supplier's first sale to a racetrack table games
67 licensee and continuing through the end of the twelfth month
68 thereafter whenever the licensee has paid the renewal fee and
69 has continued to comply with all applicable statutory and rule
70 requirements. The commission shall renew a license to supply
71 a racetrack with West Virginia Lottery table games annually
72 thereafter. A racetrack table games licensee may continue to
73 use supplies acquired from a licensed table games supplier while
74 that supplier was licensed, notwithstanding the expiration of the
75 supplier's license, unless the commission finds a defect in those
76 gaming supplies.

§29-22C-13. License to be employed in a racetrack with West Virginia Lottery table games.

1 (a) *Licenses.* -- The commission shall issue a license to be
2 employed in the operation of racetrack table games to a person
3 who meets the requirements of this section.

4 (b) *License qualifications.* -- To qualify for a license to be
5 employed in the operation of West Virginia Lottery table games,
6 the applicant shall be an individual of good moral character,
7 honesty and integrity, and have been offered employment by the
8 racetrack table games licensee contingent upon licensure
9 pursuant to the provisions of this section. The commission by
10 rule may establish different specific requirements for each job
11 classification that may be created by the commission to
12 recognize the extent to which a particular job classification has
13 the ability to impact the proper operation of West Virginia
14 Lottery table games.

15 (c) *License application requirements.* -- An applicant for a
16 license to be employed by a racetrack with West Virginia
17 Lottery table games in a position or to perform duties for which
18 a license is required under this article or rules of the commission
19 shall:

20 (1) Submit an application to the commission in the form
21 required by the commission for each job classification including
22 adequate information to serve as a basis for a thorough
23 background check;

24 (2) Submit fingerprints for a national criminal records check
25 by the Criminal Identification Bureau of the West Virginia State
26 Police and the Federal Bureau of Investigation. The fingerprints
27 shall be furnished by all persons required to be named in the
28 application and shall be accompanied by a signed authorization
29 for the release of information by the Criminal Investigation

30 Bureau and the Federal Bureau of Investigation. The
31 commission may require any applicant seeking the renewal of
32 a license or permit to furnish fingerprints for a national criminal
33 records check by the Criminal Identification Bureau of the West
34 Virginia State Police and the Federal Bureau of Investigation;
35 and

36 (3) Pay to the commission a nonrefundable application fee
37 for deposit into the Racetrack Table Games Fund in the amount
38 of one hundred dollars. The fee may be paid on behalf of an
39 applicant by the employer.

40 (d) *Authorization.* -- A license to be employed by a
41 racetrack with West Virginia Lottery table games permits the
42 licensee to be employed in the capacity designated by the
43 commission with respect to the license while the license is still
44 active.

45 (e) *Renewal fee and form.* -- Each licensed employee shall
46 pay to the commission an annual license fee set by the
47 commission by rule by the thirtieth day of June of each year.
48 The fee may vary based on the job classification of the
49 applicant, but in no event shall it exceed one hundred dollars.
50 The fee may be paid on behalf of the licensed employee by the
51 employer. In addition to a renewal fee, each licensed employee
52 shall submit a renewal application on the form required by the
53 commission.

§29-22C-14. License to be a provider of management services.

1 (a) *License.* -- The commission may issue a license to a
2 person providing management services under a management
3 services contract to a racetrack table games licensee when the
4 commission determines that the person meets the requirements
5 of this section and any applicable rules of the commission.

6 (b) *License qualifications.* -- Each applicant who is an
7 individual and each individual who controls an applicant, as
8 provided in subsection (c), section six of this article, shall be of
9 good moral character, honesty and integrity and shall have the
10 necessary experience and financial ability to successfully carry
11 out the functions of a management services provider. The
12 commission may adopt rules establishing additional
13 requirements for an authorized management services provider.
14 The commission may accept licensing by another jurisdiction,
15 specifically determined by the commission to have similar
16 licensing requirements, as evidence the applicant meets
17 authorized management services provider licensing
18 requirements.

19 (c) *Management service provider specifications.* -- An
20 applicant for a license to provide management services to a
21 racetrack table games licensee shall demonstrate that the
22 management services that the applicant plans to offer to the
23 racetrack table games licensee conform or will conform to
24 standards established by rules of the commission and applicable
25 state law. The commission may accept management services
26 provider approval by another jurisdiction, specifically
27 determined by the commission to have management services, as
28 evidence the applicant meets the standards established by the
29 commission and applicable state law.

30 (d) *License application requirements.* -- An applicant for a
31 license to provide management services to a racetrack table
32 games licensee shall:

33 (1) Submit an application to the commission in the form
34 required by the commission including adequate information to
35 serve as a basis for a thorough background check;

36 (2) Submit fingerprints for a national criminal records check
37 by the Criminal Identification Bureau of the West Virginia State

38 Police and the Federal Bureau of Investigation. The fingerprints
39 shall be furnished by all persons required to be named in the
40 application and shall be accompanied by a signed authorization
41 for the release of information by the Criminal Investigation
42 Bureau and the Federal Bureau of Investigation. The
43 commission may require any applicant seeking the renewal of
44 a license or permit to furnish fingerprints for a national criminal
45 records check by the Criminal Identification Bureau of the West
46 Virginia State Police and the Federal Bureau of Investigation;
47 and

48 (3) Pay to the commission a nonrefundable application and
49 license fee for deposit into the Racetrack Table Games Fund in
50 the amount of one hundred dollars, which shall be in lieu of the
51 first year's license fee provided in subsection (f) of this section.

52 (e) *Authorization.* -- A license to provide management
53 services to a racetrack table games licensee authorizes the
54 licensee to provide management services to a racetrack with
55 West Virginia Lottery table games while the license is active.
56 The commission may by rule establish the conditions which
57 constitute an emergency under which the commission may issue
58 provisional licenses pending completion of final action on an
59 application.

60 (f) *Fees, expiration date and renewal.* -- A licensed provider
61 of management services shall pay to the commission an annual
62 license fee of one hundred dollars for an initial term beginning
63 prior to the date of the provider's first contract with a racetrack
64 table games licensee and continuing through the end of the
65 twelfth month thereafter whenever the licensee has paid the
66 renewal fee and has continued to comply with all applicable
67 statutory and rule requirements. The commission shall renew a
68 license to provide management services to a racetrack with West
69 Virginia Lottery table games annually thereafter. A racetrack
70 table games licensee may continue to use the management

71 services provided by the management services provider while
72 that provider was licensed, notwithstanding the expiration of the
73 provider's license, unless the commission finds the services
74 provided are not conforming to standards established by rule of
75 the commission and applicable state law.

§29-22C-15. License prohibitions.

1 (a) The commission may not grant any license pursuant to
2 the provisions of this article if evidence satisfactory to the
3 commission exists that the applicant:

4 (1) Has knowingly made a false statement of a material fact
5 to the commission;

6 (2) Has been suspended from operating a gambling game,
7 gaming device or gaming operation, or had a license revoked by
8 any governmental authority of a state of the United States
9 having responsibility for the regulation of gambling or gaming
10 activities; or

11 (3) Has been convicted of a crime of moral turpitude, a
12 gambling-related offense, a theft or fraud offense, or has
13 otherwise demonstrated, either by a police record or other
14 satisfactory evidence, a lack of respect for law and order.

15 (b) In the case of an applicant for a license to supply a
16 racetrack with West Virginia Lottery table games, the
17 commission may deny a license to any applicant, reprimand any
18 licensee or suspend or revoke a license:

19 (1) If the applicant or licensee has not demonstrated to the
20 satisfaction of the commission financial responsibility sufficient
21 to adequately meet the requirements of the proposed enterprise;

22 (2) If the applicant or licensee is not the true owner of the
23 business or is not the sole owner and has not disclosed the
24 existence or identity of other persons who have an ownership
25 interest in the business; or

26 (3) If the applicant or licensee is a corporation which sells
27 more than five percent of a licensee's voting stock, or more than
28 five percent of the voting stock of a corporation which controls
29 the licensee, or sells a licensee's assets, other than those bought
30 and sold in the ordinary course of business, or any interest in the
31 assets, to any person not already determined by the commission
32 to have met the qualifications of a licensee under this article.

33 (c) In the case of an applicant for a racetrack table games
34 license, the commission may deny a license to any applicant,
35 reprimand any licensee or suspend or revoke a license:

36 (1) If the applicant or licensee knowingly employs an
37 individual in a job classification which includes West Virginia
38 Lottery table games management duties who has been convicted
39 of a crime of moral turpitude, a gambling-related offense, or a
40 theft or fraud offense under the laws of this state, another state,
41 the United States or a territory of the United States or
42 knowingly employs any individual in a job classification which
43 includes West Virginia Lottery table games management duties
44 who has had a license relating to the operation of a gaming
45 activity revoked by this state or any other state;

46 (2) If the applicant or licensee is not the true owner of the
47 business or is not the sole owner and has not disclosed the
48 existence or identity of other persons who have an ownership
49 interest in the business; or

50 (3) If the applicant or licensee is a corporation, which sells
51 more than five percent of a licensee's voting stock, or more than
52 five percent of the voting stock of a corporation which controls
53 the licensee or sells a licensee's assets, other than those bought

54 and sold in the ordinary course of business, or any interest in the
55 assets, to any person not already determined by the commission
56 to have met the qualifications of a licensee under this article,
57 unless the sale has been approved in advance by the
58 commission.

§29-22C-16. License denial, revocation, suspension and reprimand.

1 (a) Notwithstanding any provision of subsection (b), section
2 thirteen of this article to the contrary, the commission may deny
3 a license to any applicant, reprimand any licensee, or suspend or
4 revoke a license if the applicant or licensee, or any person
5 having control of the applicant or licensee:

6 (1) Fraudulently or deceptively obtains or attempts to obtain
7 a license for the applicant or licensee or another person;

8 (2) Fraudulently or deceptively uses a license;

9 (3) Is convicted of a felony under the laws of this state,
10 another state, the United States or a territory of the United
11 States; or

12 (4) Is convicted of a misdemeanor under the laws of this
13 state, another state, the United States or a territory of the United
14 States for gambling or a gambling related activity.

15 (b) Instead of or in addition to reprimanding a licensee or
16 suspending or revoking a license, the commission may impose
17 a civil penalty under section thirty-one of this article.

§29-22C-17. Hearing procedures.

1 (a) *Right to a hearing.* -- Except as otherwise provided by
2 law, before the commission takes any adverse action involving
3 a licensee under the provisions of this article, it shall give the

4 persons against whom the action is contemplated an opportunity
5 for a hearing before the commission or a hearing examiner
6 designated by the commission.

7 (b) *Notice of hearing and right to counsel.* -- The
8 commission shall give notice and hold the hearing in accordance
9 with article five, chapter twenty-nine-a of this code. The notice
10 shall be sent to the person by certified mail addressed to the last
11 known address of the person at least thirty days before the
12 hearing. The person may be represented at the hearing by legal
13 counsel.

14 (c) *Failure to comply with subpoena.* -- If a person fails to
15 comply with a subpoena issued for purposes of this section, on
16 petition of the commission, the circuit court may compel
17 obedience to the subpoena. If after due notice the person
18 against whom the action is contemplated fails or refuses to
19 appear or provide the item or items for which a subpoena duces
20 tecum was issued, the commission or the commission's
21 designated hearing examiner may hear and determine the matter.

22 (d) *Appeal.* -- Any person aggrieved by a final order or
23 decision of the commission in a contested case may file a
24 petition for appeal in the Circuit Court of Kanawha County
25 within thirty days after the person received notice of the final
26 order or decision, as provided in section four, article five,
27 chapter twenty-nine-a of this code.

§29-22C-18. Notice of license expiration and renewal.

1 (a) At least two months before any license issued under this
2 article expires, the commission shall send to the licensee, by
3 mail addressed to the last known address of the licensee, a
4 renewal application form and notice that states:

5 (1) The date on which the current license expires;

6 (2) The date by which the commission must receive the
7 renewal application for the renewal to be issued and mailed
8 before the existing license expires; and

9 (3) The amount of the renewal fee.

§29-22C-19. Miscellaneous license provisions.

1 (a) The commission shall include on each license that it
2 issues:

3 (1) The type of license;

4 (2) The identity and address of the licensee;

5 (3) The effective date of the license;

6 (4) For employee licenses, the picture of the licensee; and

7 (5) Any other information the commission considers
8 appropriate.

9 (b) Each racetrack table games licensee, licensed supplier of
10 a racetrack with West Virginia Lottery table games or a licensed
11 management services provider shall display the license
12 conspicuously in its place of business or have the license readily
13 available for inspection at the request of any agent of the
14 commission or of a state, local or municipal law-enforcement
15 agency.

16 (c) Each holder of a license to be employed by a racetrack
17 with West Virginia Lottery table games shall carry the license
18 on his or her person at all times when present in a racetrack with
19 West Virginia Lottery table games and, if required by rules
20 adopted by the commission with respect to the particular
21 capacity in which the licensee is employed, have some indicia

22 of licensure prominently displayed on his or her person in
23 accordance with the rules of the commission.

24 (d) Each person licensed under this article shall give the
25 commission written notice of any change of address or any
26 change of any other information provided in the licensee's
27 application for a license or for renewal of a license, as soon as
28 the effective date of the change is known to the licensee but not
29 later than thirty days after the change occurs.

§29-22C-20. Game rules of play; disputes.

1 (a) Each racetrack licensed as an agent of the commission
2 authorized to operate West Virginia Lottery table games shall
3 have written rules of play for each table game it operates that
4 are approved by the commission before the table game is
5 offered to the public. Rules of play proposed by a racetrack
6 table games licensee may be approved, amended or rejected by
7 the commission.

8 (b) All West Virginia Lottery table games shall be
9 conducted according to the specific rules of play approved by
10 the commission. All wagers and pay-offs of winning wagers
11 shall be made according to those rules of play, which shall
12 establish any limitations necessary to assure the vitality of table
13 games operations.

14 (c) Each racetrack table game licensee shall make available
15 in printed form to any patron, upon request of the patron, the
16 complete text of the rules of play of any West Virginia Lottery
17 table game in operation at its racetrack facility, pay-offs of
18 winning wagers and any other advice to the player required by
19 the commission.

20 (d) Patrons are considered to have agreed that the
21 determination of whether the patron is a valid winner is subject

22 to the game play rules and, in the case of any dispute, will be
23 determined by the commission. The determination by the
24 commission shall be final and binding upon all patrons and shall
25 not be subject to further review or appeal.

§29-22C-21. Betting limits; operations and services.

1 (a) Notwithstanding anything to the contrary contained
2 elsewhere in this article, a racetrack licensee may, as agent of
3 the commission, in the exercise of its business judgment,
4 determine and establish with the approval of the commission,
5 with respect to West Virginia lottery table games, the following:

6 (1) Minimum and maximum wagers;

7 (2) Advertising and promotional activities, and the offering
8 of any complimentary to a player, subject to the standards
9 provided in section twenty-three of this article and rules of the
10 commission;

11 (3) Hours of operation;

12 (4) The days during which games may be played; and

13 (5) Currency denominations accepted by any mechanical or
14 electronic bill acceptors.

15 (b) Notwithstanding anything to the contrary contained
16 elsewhere in this chapter, the commission may establish the
17 following parameters for any commission regulated lottery
18 game of any kind which is played at a licensed racetrack:

19 (1) Minimum and maximum payout percentages;

20 (2) Any probability limits of obtaining the maximum payout
21 for a particular play; and

22 (3) Limitations on the types and amounts of financial
23 transactions, including extension of credit to a patron, which a
24 racetrack can enter into with its patrons.

§29-22C-22. Posting of betting limits.

1 A racetrack table game licensee shall conspicuously post a
2 sign at each West Virginia Lottery table game indicating the
3 permissible minimum and maximum wagers pertaining at that
4 table. A racetrack table games licensee may not require any
5 wager to be greater than the stated minimum or less than the
6 stated maximum. However, any wager actually made by a
7 patron and not rejected by a racetrack table games licensee prior
8 to the commencement of play shall be treated as a valid wager.

§29-22C-23. Complimentary service, gift, cash or other item.

1 (a) No racetrack table games licensee may offer or provide
2 any complimentary service, gift, cash or other item of value to
3 any person unless:

4 (1) The complimentary consists of room, food, beverage or
5 entertainment expenses provided directly to the patron and his
6 or her guests by the racetrack table games licensee or indirectly
7 to the patron and his or her guests on behalf of the licensee by
8 a third party;

9 (2) The complimentary consists of documented
10 transportation expenses provided directly to the patron and his
11 or her guests on behalf of a racetrack table games licensee by a
12 third party, provided that the licensee complies with the rules
13 promulgated by the commission to ensure that a patron's and his
14 or her guests' documented transportation expenses are paid for
15 or reimbursed only once; or

16 (3) The complimentary consists of coins, tokens, cash or
17 other complimentary items or services provided through any
18 complimentary distribution program, the terms of which shall be
19 filed with the commission upon implementation of the program
20 or maintained pursuant to commission rule. Any change in the
21 terms of a complimentary program shall be filed with the
22 commission upon implementation of the change.

23 (b) Notwithstanding any provision of subsection (a) of this
24 section to the contrary, a racetrack table games licensee may
25 offer and provide complimentary cash or non-cash gifts that are
26 not otherwise included in that subsection to any person:
27 *Provided*, That any complimentary cash or non-cash gifts in
28 excess of an amount per trip to be set by interpretive rule of the
29 commission, are supported by documentation regarding the
30 reason the gift was provided to the patron and his or her guests,
31 including where applicable a patron's player rating. The
32 documentation shall be maintained by a racetrack table games
33 licensee in accordance with commission rules. For purposes of
34 this subsection, all gifts presented to a patron and a patron's
35 guests directly by the racetrack table games licensee or
36 indirectly on behalf of the licensee by a third party within any
37 five-day period shall be considered to have been made during a
38 single trip.

§29-22C-24. Law enforcement.

1 (a) Generally. – Notwithstanding any provision of this code
2 to the contrary, the commission shall, by contract or cooperative
3 agreement with the West Virginia State Police, arrange for those
4 law-enforcement services uniquely related to gaming as such
5 occurs at facilities of the type authorized by this article that are
6 necessary to enforce the provisions of this article.

7 (b) Costs. – The cost of services provided by the West
8 Virginia State Police pursuant to a contract or cooperative

9 agreement entered into pursuant to the provisions of subsection
10 (a) of this section, including, but not limited to necessary
11 training costs, shall be paid by the commission as an
12 administrative expense.

13 (c) Notwithstanding any provision of this code to the
14 contrary, the West Virginia State Police shall have exclusive
15 jurisdiction over felony offenses committed on the grounds of
16 any racetrack licensed under the provisions of this article.

§29-22C-25. Inspection and seizure.

1 As a condition of licensure, to inspect or investigate for
2 criminal violations of this article or violations of the rules
3 promulgated by the commission, the commission's agents and
4 the West Virginia State Police may each, without notice and
5 without warrant:

6 (1) Inspect and examine all premises of the racetrack with
7 West Virginia Lottery table games, gaming devices, the
8 premises where gaming equipment is manufactured, sold,
9 distributed or serviced or any premises in which any records of
10 the activities are prepared or maintained;

11 (2) Inspect any gaming equipment in, about, upon or around
12 the premises of a racetrack with West Virginia Lottery table
13 games;

14 (3) Seize summarily and remove from the premises and
15 impound any gaming equipment for the purposes of
16 examination, inspection or testing;

17 (4) Inspect, examine and audit all books, records, and
18 documents pertaining to a racetrack table games licensee's
19 operation;

20 (5) Summarily seize, impound or assume physical control
21 of any book, record, ledger, table game, gaming equipment or
22 device, cash box and its contents, counting room or its
23 equipment or West Virginia Lottery table games operations; and

24 (6) Inspect the person, and the person's personal effects
25 present on the grounds of a licensed racetrack with West
26 Virginia Lottery table games, of any holder of a license issued
27 pursuant to this article, while that person is present on the
28 grounds of a licensed racetrack with West Virginia Lottery table
29 games.

**§29-22C-26. Tax on the privilege of holding a license to operate
West Virginia Lottery table games.**

1 (a) *Imposition and rate of tax.* -- For the privilege of holding
2 a license under this article to operate table games, there is levied
3 and shall be collected from the racetrack table games licensee
4 the annual privilege tax imposed by this section. The tax shall
5 be thirty-five percent of the licensee's adjusted gross receipts
6 from the operation of West Virginia Lottery table games. For
7 purposes of calculating the amount of tax due under this section,
8 the licensee shall use the accrual method of accounting.

9 (b) *Tax returns and payment of tax.* --

10 (1) The annual tax levied by subsection (a) of this section is
11 due and payable to the commission in weekly installments on or
12 before the Wednesday of the calendar week following the week
13 in which the adjusted gross receipts were received and the tax
14 accrued.

15 (2) The racetrack table games licensee shall, on or before
16 Wednesday of each week, make out and submit by electronic
17 communication to the commission, a return for the preceding
18 week, in the form prescribed by the commission, showing:

19 (A) The total gross receipts and adjusted gross receipts from
20 operation of West Virginia Lottery table games during that
21 week;

22 (B) The amount of tax for which the racetrack table games
23 licensee is liable; and

24 (C) Any additional information necessary in the
25 computation and collection of the tax required by the
26 commission.

27 (3) The amount of tax shown to be due on the return shall
28 be remitted by electronic funds transfer simultaneously with the
29 filing of the return. All payments received pursuant to this
30 section shall be deposited in the Racetrack Table Games Fund
31 in accordance with the provisions of section twenty-seven of
32 this article.

33 (4) When adjusted gross receipts for a week is a negative
34 number because the winnings paid to patrons wagering on the
35 racetrack's West Virginia Lottery table games exceeds the
36 racetrack's gross receipts from the purchase of table game
37 tokens, chips or electronic media by patrons, the commission
38 shall allow the licensee to, pursuant to rules of the commission,
39 carry over the negative amount of adjusted gross receipts to
40 returns filed for subsequent weeks. The negative amount of
41 adjusted gross receipts may not be carried back to an earlier
42 week and the commission is not required to refund any tax
43 received by the commission, except when the licensee
44 surrenders its license to act as agent of the commission in
45 operating West Virginia lottery table games under this article
46 and the licensee's last return filed under this section shows
47 negative adjusted gross receipts. In that case, the commission
48 shall multiply the amount of negative adjusted gross receipts by
49 the applicable rate of tax and pay the amount to the licensee, in
50 accordance with rules of the commission.

51 (c) *Tax imposed by this section is in lieu of other taxes.*—

52 (1) With the exception of the ad valorem property tax
53 collected under chapter eleven-a of this code, the tax imposed
54 by this section is in lieu of all other state taxes and fees imposed
55 on the operation of, or the proceeds from operation of West
56 Virginia Lottery table games, except as otherwise provided in
57 this section.

58 The Consumers Sales and Services Tax imposed pursuant
59 to article fifteen, chapter eleven of this code, shall not apply to
60 the licensee's gross receipts from any wagering on West
61 Virginia Lottery table games authorized pursuant to this article
62 or to the licensee's purchase of gaming equipment, supplies or
63 services directly used in operation of the table games authorized
64 by this article. These purchases are also exempt from the Use
65 Tax imposed by article fifteen-a, chapter eleven of this code.

66 (2) With the exception of the ad valorem property tax
67 collected under chapter eleven-a of this code, the tax imposed
68 by this section is in lieu of all local taxes and fees levied on or
69 imposed with respect to the privilege of offering West Virginia
70 Lottery table games to the public, including, but not limited to,
71 the municipal business and occupation taxes and amusement
72 taxes authorized by article thirteen, chapter eight of this code,
73 and the municipal sales and service tax and use taxes authorized
74 by article thirteen-c, chapter eight of this code.

75 (d) *Prohibition on credits.* -- Notwithstanding any other
76 provision of this code to the contrary, no credit may be allowed
77 against the tax imposed by this section or against any other tax
78 imposed by any other provision of this code for any investment
79 in gaming equipment, or for any investment in real property, or
80 in improvements to the real property, that is used in the
81 operation of West Virginia Lottery table games.

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community Based Service Fund; State Debt Reduction Fund; distribution of funds.

1 (a)(1) There is hereby created and established a special fund
2 in the State Treasury to be known as the West Virginia Lottery
3 Racetrack Table Games Fund and all tax collected under this
4 article shall be deposited with the State Treasurer and placed in
5 the West Virginia Lottery Racetrack Table Games Fund. The
6 Fund shall be an interest bearing account with all interest or
7 other return earned on the money of the fund credited to and
8 deposited in the fund.

9 (2) Notwithstanding any provision of this article to the
10 contrary, all racetrack table games license fees received by the
11 commission pursuant to section eight of this article shall be
12 deposited into the Community Based Service Fund which is
13 hereby created in the State Treasury. Moneys of the fund shall
14 be expended by the Bureau of Senior Services upon
15 appropriation of the Legislature solely for the purpose of
16 enabling the aged and disabled citizens of this state to maintain
17 their residency in the community based setting through the
18 provision of home and community based services.

19 (b) From the gross amounts deposited into the Racetrack
20 Table Games Fund pursuant to subsection (a) of this section, the
21 commission shall:

22 (1) Retain an amount for the administrative expenses of the
23 commission as determined by the commission in accordance
24 with subsection (d) of this section;

25 (2) Transfer two and one-half percent of adjusted gross
26 receipts from all thoroughbred racetracks with West Virginia
27 Lottery table games to the special funds established by each
28 thoroughbred racetrack table games licensees for the payment

29 of regular racetrack purses, such amount being divided equally
30 between such special funds of each thoroughbred racetrack table
31 games licensee and transfer two and one-half percent of adjusted
32 gross receipts from all greyhound racetracks with West Virginia
33 Lottery table games to the special funds established by each
34 greyhound racetrack table games licensees for the payment of
35 regular racetrack purses, such amount being divided equally
36 between such special funds of each greyhound racetrack table
37 games licensee;

38 (3) Transfer two percent of the adjusted gross receipts from
39 all licensed racetracks to the Thoroughbred Development Fund
40 created under section thirteen-b, article twenty-three, chapter
41 nineteen of this code and the Greyhound Breeding Development
42 Fund created under section ten, article twenty-three, chapter
43 nineteen of this code. The total amount transferred under this
44 subdivision shall be divided pro rata among the development
45 funds for each racetrack table games licensee based on relative
46 adjusted receipts from each racetrack. No portion of the
47 amounts transferred to these funds may be used for the benefit
48 of any person or activity other than at or associated with a
49 racetrack table games licensee;

50 (4) Transfer one percent of the adjusted gross receipts from
51 each licensed racetrack to the county commissions of the
52 counties where racetracks with West Virginia Lottery table
53 games are located. The one percent transferred under this
54 subdivision shall be divided pro rata among the counties with a
55 racetrack with West Virginia Lottery table games based on
56 relative adjusted gross receipts from each county's racetrack:
57 *Provided*, That the county board of education of a growth
58 county, as that term is defined in section three, article twenty,
59 chapter seven of this code, which has enacted the Local Powers
60 Act, and in which county a racetrack is located that has
61 participated in the West Virginia Thoroughbred Development
62 Fund since on or before the first day of January, one thousand

63 nine hundred ninety-one, shall receive one percent of adjusted
64 gross receipts as provided in this subdivision for the purpose of
65 capital improvements;

66 (5) Transfer two percent of the adjusted gross receipts from
67 each licensed racetrack to the governing bodies of
68 municipalities within counties where racetracks with West
69 Virginia Lottery table games are located, which shall be
70 allocated as follows:

71 (A) One half of the amounts transferred under this
72 subdivision shall be allocated to the municipalities within each
73 county having a racetrack table games licensee, based on
74 relative adjusted gross receipts from West Virginia Lottery table
75 games from those racetracks and the total amount allocated to
76 the municipalities within a county shall be divided pro rata
77 among the municipalities based on each municipality's
78 population determined at the most recent United States
79 decennial census of population: *Provided, That:* (i) For each
80 allocation, when a municipality is physically located in two or
81 more counties, only that portion of its population residing in the
82 county where the authorized table games are located shall be
83 considered; (ii) no single municipality in a county where West
84 Virginia Lottery racetrack table games are played may receive
85 a total share under this part A that is in excess of seventy-five
86 percent of the total distribution under this part A for the county
87 in which the municipality is located; and (iii) no municipality
88 receiving moneys under this part A shall receive an amount
89 which is less than that received by a municipality under
90 provisions of subdivision four, subsection (c) of this section;
91 and

92 (B) One half of the amounts transferred under this
93 subdivision shall be allocated pro rata to the municipalities
94 within all the counties having a racetrack table games licensee
95 based on each municipality's population determined at the most

96 recent United States decennial census of population: *Provided*,
97 That: (i) No municipality which received funds above its pro
98 rata share pursuant to subpart (iii) of part A above shall receive
99 an allocation under this part B; (ii) for each allocation, when a
100 municipality is physically located in two or more counties, only
101 that portion of its population residing in the county where the
102 authorized table games are located shall be considered; and (iii)
103 no single municipality in a county where West Virginia Lottery
104 racetrack games are played may receive a total share under this
105 part B that is in excess of twenty-five percent of the total
106 transfers under this part B: *Provided, however*, That the county
107 board of education of a growth county, as that term is defined in
108 section three, article twenty, chapter seven of this code, which
109 has enacted the Local Powers Act, and in which county a
110 racetrack is located that has participated in the West Virginia
111 Thoroughbred Development Fund since on or before the first
112 day of January, one thousand nine hundred ninety-one, shall
113 receive the two percent of adjusted gross receipts as provided in
114 this subdivision for the purpose of capital improvements;

115 (6) Transfer one half of one percent of the adjusted gross
116 receipts to the governing bodies of municipalities in which a
117 racetrack table games licensee is located, which municipalities
118 shall each receive an equal share of the total amount allocated
119 under this subdivision: *Provided*, That no distribution under this
120 subdivision shall be made to any municipality which did not
121 have a licensed racetrack within its municipal boundaries as
122 they existed on the first day of January, two thousand seven:
123 *Provided, however*, That if no racetrack table games licensee is
124 located within a municipality, no transfer shall be made under
125 this subdivision; and

126 (7) Distribute the remaining amounts, hereinafter referred
127 to as the net amounts in the Racetrack Table Games Funds, in
128 accordance with the provisions of subsection (c) of this section.

129 (c) From the net amounts in the Racetrack Table Games
130 Fund, the commission shall:

131 (1) Transfer seventy-six percent to the State Debt Reduction
132 Fund, which is hereby created in the State Treasury. Moneys of
133 the fund shall be expended solely for the purpose of accelerating
134 the reduction of existing unfunded liabilities and existing bond
135 indebtedness of the state and shall be expended or transferred
136 only upon appropriation of the Legislature;

137 (2) Transfer four percent, divided pro rata based on relative
138 adjusted gross receipts from the individual licensed racetracks
139 for and on behalf of all employees of each licensed racing
140 association, into a special fund to be established by the Racing
141 Commission to be used for payment into the pension plan for all
142 employees of each licensed racing association;

143 (3) Transfer ten percent, to be divided and paid in equal
144 shares, to each county commission in the state that is not
145 eligible to receive a distribution under subdivision four,
146 subsection (b) of this section: *Provided*, That funds transferred
147 to county commissions under this subdivision shall be used only
148 to pay regional jail expenses and the costs of infrastructure
149 improvements and other capital improvements.

150 (4) Transfer ten percent, to be divided and paid in equal
151 shares, to the governing bodies of each municipality in the state
152 that is not eligible to receive a distribution under subdivisions
153 five and six, subsection (b) of this section: *Provided*, That
154 funds transferred to municipalities under this subdivision shall
155 be used only to pay for debt reduction in municipal police and
156 fire pension funds and the costs of infrastructure improvements
157 and other capital improvements.

158 (d) All expenses of the commission incurred in the
159 administration and enforcement of this article shall be paid from

160 the Racetrack Table Games Fund, including reimbursement of
161 state law-enforcement agencies for services performed at the
162 request of the commission pursuant to this article. At no time
163 may the commission's expenses associated with a particular
164 racetrack with authorized table games under this article exceed
165 three percent of the total annual adjusted gross receipts received
166 from that licensee's operation of table games under this article,
167 including, but not limited to, all license fees or other amounts
168 attributable to the licensee's operation of table games under this
169 article. These expenses shall either be allocated to the racetrack
170 with West Virginia Lottery table games for which the expense
171 is incurred, if practicable, or be treated as general expenses
172 related to all racetrack table games facilities and be allocated pro
173 rata among the racetrack table games facilities based on the ratio
174 that annual adjusted gross receipts from operation of table
175 games at each racetrack with West Virginia Lottery table games
176 bears to total annual adjusted gross receipts from operation of
177 table games at all racetracks with West Virginia Lottery table
178 games during the fiscal year of the state. From this allowance,
179 the commission shall transfer at least one hundred thousand but
180 not more than five hundred thousand dollars into the
181 Compulsive Gambling Treatment Fund created in section
182 nineteen, article twenty-two-a of this chapter.

§29-22C-28. Prohibition on unauthorized wagering.

1 (a) A racetrack table games licensee may receive wagers
2 only from an individual physically present in a designated
3 gaming area at a licensed racetrack with West Virginia Lottery
4 table games.

5 (b) All racetracks with West Virginia Lottery table games
6 shall use a method of wagering whereby the table game player's
7 money for wagering on table games is, at the request of the
8 player, converted to tokens, electronic cards or other electronic

9 media, or chips at the table or elsewhere at the licensed
10 racetrack.

11 (1) The tokens, electronic cards or other electronic media,
12 or chips issued by a licensee racetrack with West Virginia
13 Lottery table games can only be used for wagering at that
14 racetrack.

15 (2) Wagering on West Virginia Lottery table games may not
16 be conducted with money or other negotiable currency or with
17 tokens, electronic cards or other electronic media or chips not
18 issued by the racetrack where the table games will be played.

19 (3) At the request of the player, the licensee shall convert a
20 player's tokens, electronic cards or other electronic media or
21 chips back to money.

22 (4) The licensee may not charge a fee for converting a
23 player's money to an acceptable media for play at a gaming
24 table or charge a fee for converting the acceptable media for
25 wagering at a gaming table back to money.

26 (c) No licensed racetrack employee may place a wager on
27 any table game at the employer's racetrack.

§29-22C-29. Offenses and penalties.

1 (a) A racetrack table games licensee is guilty of unlawful
2 operation when:

3 (1) The licensee operates a West Virginia Lottery table
4 game without authority of the commission to do so;

5 (2) The licensee operates a West Virginia Lottery table
6 game in any location that is not a designated gaming area
7 approved by the commission;

8 (3) The licensee knowingly conducts, carries on, operates or
9 exposes for play or allows to be conducted, carried on, operated
10 or exposed for play any table game or other device, equipment
11 or material that has in any manner been tampered with or placed
12 in a condition or operated in a manner, the result of which is
13 designed to deceive the public;

14 (4) The licensee employs an individual in a position or to
15 perform duties, for which a license is required by this article or
16 rules of the commission and the employee does not have a
17 license issued under the provisions of this article or the licensee
18 continues to employ the individual in a position or to perform
19 duties, for which a license is required by this article or rules of
20 the commission, after the employee's license expired, was
21 revoked by the commission or not renewed by the commission;

22 (5) The licensee acts or employs another person to act as if
23 he or she is not an agent or employee of the licensee in order to
24 encourage participation in a West Virginia Lottery table game
25 at the licensed racetrack;

26 (6) The licensee knowingly permits an individual under the
27 age of twenty-one years of age to enter or remain in a
28 designated gaming area or to play racetrack video lottery
29 terminals or West Virginia Lottery table games at a licensed
30 racetrack authorized under this article to act as the commission's
31 agent in operating the West Virginia Lottery table games; or

32 (7) The licensee exchanges tokens, chips, electronic media
33 or other forms of credit to be used for wagering at a licensed
34 racetrack authorized under this article to operate West Virginia
35 Lottery table games, for anything of value except in exchange
36 for money or credits to a player's account.

37 (b) A person is guilty of a misdemeanor when:

38 (1) The person knowingly makes a false statement on any
39 application for a license under this article or on an application
40 for renewal of a license issued under this article;

41 (2) The person operates, carries on or exposes for play a
42 West Virginia Lottery table game prior to obtaining a license or
43 after the person's license has expired and prior to actual renewal
44 of the license or before the West Virginia Lottery table game
45 and the licensee's rules for play of the game are approved or
46 modified and approved by the commission; or

47 (3) The person works or is employed in a position requiring
48 a license under the provisions of this article without having the
49 license required by this article.

50 (c) A person is guilty of a felony when:

51 (1) The person offers, promises or gives anything of value
52 or benefit to a person who has an ownership or financial interest
53 in, is employed by or has a service contract with, a racetrack
54 with West Virginia Lottery table games or to that person's
55 spouse or any dependent child or dependent parent, pursuant to
56 an agreement or arrangement, in fact or implied from the
57 circumstances, with intent that the promise or thing of value or
58 benefit will influence the actions of the person in order to affect
59 or attempt to affect the outcome of a West Virginia Lottery table
60 game, or to influence official action of the commission. For the
61 purposes of this subdivision and subdivision (2) of this
62 subsection, the term "person who is connected with a table
63 games facility" includes, but is not limited to, a person licensed
64 under this article as well as an officer or employee of a licensee;

65 (2) The person solicits or knowingly accepts or receives a
66 promise of anything of value or benefit while the person is
67 connected with a racetrack with West Virginia Lottery table
68 games, pursuant to an understanding or arrangement in fact or

69 implied from the circumstances, with the intent that the promise
70 or thing of value or benefit will influence the actions of the
71 person to affect or attempt to affect the outcome of a West
72 Virginia Lottery table game or to influence official action of the
73 commission; or

74 (3) The person uses or possesses on property owned by the
75 licensed racetrack or on property contiguous to the licensed
76 racetrack, with the intent to use, an electronic, electrical or
77 mechanical device that is designed, constructed or programmed
78 to assist the user or another person:

79 (A) In projecting the outcome of a West Virginia Lottery
80 table game;

81 (B) In keeping track of the cards dealt or in play;

82 (C) In analyzing the probability of the occurrence of an
83 event relating to a West Virginia Lottery table game;

84 (D) In analyzing the strategy for playing or betting to be
85 used in a West Virginia Lottery table game, except as permitted
86 in writing by the commission; or

87 (E) In obtaining an advantage at playing any West Virginia
88 Lottery table game at a licensed racetrack authorized under this
89 article to operate West Virginia Lottery table games;

90 (4) The person manufactures, sells or distributes any card,
91 chip, die, game or device, by whatever name called, that is
92 intended by that person to be used to violate any provision of
93 this article or the table gaming laws of any other state;

94 (5) The person places a bet after unlawfully acquiring
95 knowledge of the outcome of the West Virginia Lottery table
96 game that is the subject of the bet or aids a person in acquiring
97 that knowledge for the purpose of placing a bet contingent on

98 the outcome of a West Virginia Lottery table game authorized
99 under this article;

100 (6) The person claims, collects, takes or attempts to claim,
101 collect or take anything of value into or from a racetrack with
102 West Virginia Lottery table games, with intent to defraud,
103 without having made a wager contingent on winning a West
104 Virginia Lottery table game or knowingly claims, collects or
105 takes an amount of money or thing of value of greater value
106 than the amount won;

107 (7) The person knowingly uses chips, electronic media or
108 tokens that are counterfeit to place a wager at a racetrack with
109 West Virginia Lottery table games;

110 (8) The person knowingly uses any medium to place a
111 wager at a racetrack licensed under this article other than tokens,
112 chips, electronic cards or other electronic media, or other
113 method of credit approved by the commission and issued by the
114 racetrack licensed under this article at which the wager is placed or
115 on a West Virginia Lottery table game;

116 (9) The person, not a licensed racetrack under this article or
117 an employee or agent of a racetrack licensed under this article
118 acting in furtherance of the licensee's interest, has in his or her
119 possession on grounds owned by the racetrack licensed under
120 this article or on grounds contiguous to the licensed racetrack,
121 any device, by whatever name called, intended to be used to
122 violate a provision of this article or a rule of the commission
123 implementing or explaining a provision of this article; or

124 (10) The person, not a licensee or employee or agent of a
125 licensee acting in furtherance of the racetrack table games
126 licensee's interests, has in his or her possession any key or
127 device designed for the purpose of opening, entering or
128 affecting the operation of a West Virginia Lottery table game,

129 drop box or an electronic or mechanical device connected with
130 or used in connection with a West Virginia Lottery table game
131 in a licensed racetrack or for removing bills, tokens, chips or
132 other contents therefrom.

133 (d) Any person who violates any provision of subsection (a)
134 or (b) of this section is guilty of a misdemeanor and, upon
135 conviction thereof, shall be fined not more than one thousand
136 dollars and committed to a state correctional facility for not
137 more than six months, except that in the case of a person other
138 than a natural person, the amount of the fine imposed may not
139 be more than twenty-five thousand dollars.

140 (e) Any person who violates any provision of subsection (c)
141 of this section is guilty of a felony and, upon conviction thereof,
142 shall be fined not less than five thousand dollars nor more than
143 ten thousand dollars and committed to a state correctional
144 facility for a term of imprisonment not less than one year nor
145 more than five years.

146 (f) With regard to subdivision (3), subsection (c) of this
147 section, each racetrack table games licensee shall post notice of
148 this prohibition and the penalties of this section in a manner
149 determined by the commission.

§29-22C-30. Forfeiture of property.

1 (a) Anything of value, including all traceable proceeds,
2 including, but not limited to, real and personal property,
3 moneys, negotiable instruments, securities and conveyances, is
4 subject to forfeiture to the State of West Virginia if the item is
5 used for any of the following:

6 (1) As a bribe intended to affect the outcome of a West
7 Virginia Lottery table game in a licensed racetrack; or

8 (2) In exchange for, or to facilitate, a violation of this
9 article.

10 (b) The Legislature finds and declares that the seizure and
11 sale of items under the provisions of this section is not
12 contemplated to be a forfeiture as that term is used in section 5,
13 article XII of the Constitution of West Virginia and, to the
14 extent that a seizure and sale may be found to be such a
15 forfeiture, the Legislature hereby finds and declares that the
16 proceeds from a seizure and sale under this article are not part
17 of net proceeds as it is contemplated by section five, article XII
18 of the Constitution of West Virginia.

19 (c) If the forfeited property includes the racetrack real
20 property and all of its improvements and related personal
21 property, the commission may take control of and operate the
22 racetrack and all related functions until the forfeited property is
23 sold or is returned to the licensee as a result of due process
24 proceedings.

25 (d) Subsection (a) of this section does not apply if the act or
26 omission that gives rise to the forfeiture is committed or omitted
27 without the actual or reasonably implied knowledge or consent
28 of the owner of the property to be forfeited.

§29-22C-31. Civil penalties.

1 (a) The commission may impose on any person who
2 violates the provisions of this article a civil penalty not to
3 exceed fifty thousand dollars for each violation, whether or not
4 the person is licensed under this article.

5 (b) The provisions of article five, chapter twenty-nine-a of
6 this code apply to any civil penalty imposed pursuant to the
7 provisions of this section.

§29-22C-32. Preemption.

1 No local law or rule providing any penalty, disability,
2 restriction, regulation or prohibition for operating a racetrack
3 with West Virginia Lottery table games or supplying a licensed
4 racetrack may be enacted, and the provisions of this article
5 preempt all regulations, rules, ordinances and laws of any
6 county or municipality in conflict with this article.

§29-22C-33. Exemption from federal law.

1 Pursuant to section 2 of chapter 1194, 64 Stat. 1134, 15
2 U.S.C. 1172, approved January 2, 1951, the State of West
3 Virginia, acting by and through duly elected and qualified
4 members of the Legislature, does declare and proclaim that the
5 state is exempt from chapter 1194, 64 Stat. 1134, 15 U.S.C.
6 1171 to 1178.

§29-22C-34. Shipment of gambling devices.

1 All shipments of gambling devices, including video lottery
2 machines, to licensed racetracks in this state, the registering,
3 recording, and labeling of which have been completed by the
4 manufacturer or dealer thereof in accordance with Chapter 1194,
5 64 Stat. 1134, 15 U.S.C. §1171 to §1178, are legal shipments of
6 gambling devices into the State of West Virginia.

ARTICLE 25. AUTHORIZED GAMING FACILITY.**§29-25-1. Authorization of limited gaming facility; findings;
intent.**

1 (a) *Operation of authorized games of chance.* --
2 Notwithstanding any provision of law to the contrary, the
3 operation of West Virginia lottery games permitted by this
4 article and the related operation of a gaming facility and
5 ancillary activities is not unlawful when conducted under the

6 terms specified in this article and article twenty-two-c of this
7 chapter.

8 (b) *Legislative findings.* -- The Legislature finds and
9 declares that the tourism industry plays a critical role in the
10 economy of this state and that a substantial state interest exists
11 in protecting that industry. It further finds and declares that the
12 authorization of the operation of a gaming facility at no more
13 than one well-established historic resort hotel in this state as
14 provided in this article will serve to protect and enhance the
15 tourism industry, and indirectly other segments of the economy
16 of this state, by providing a resort hotel amenity which is
17 becoming increasingly important to many actual and potential
18 resort hotel patrons.

19 The Legislature finds and declares that video lottery
20 operations pursuant to subsection (c), section three of this article
21 and the operation of the other authorized games of chance
22 permitted by this article constitute the operation of lotteries
23 within the purview of section thirty-six, article VI of the
24 Constitution of West Virginia.

25 (c) *Legislative intent.* -- It is the intent of the Legislature in
26 the enactment of this article to promote tourism and year-round
27 employment in this state. It is expressly not the intent of the
28 Legislature to promote gaming. As a consequence, it is the
29 intent of the Legislature to allow limited gaming as authorized
30 by this article and article twenty-two-c of this chapter with all
31 moneys gained from the operation of the gaming facility, other
32 than those necessary to reimburse reasonable costs of operation,
33 to inure to the benefit of the state.

CHAPTER 227

**(H.B. 3072 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-1A-23 of said code; to amend and reenact §11-10-5d of said code; and to amend and reenact §11A-2-2 of said code, all relating to local taxation; defining "charitable exemptions" for purposes of the municipal business and occupation tax; authorizing disclosure of property tax data by the assessor to the sheriff and municipal finance officers; authorizing the Division of Taxation to share with local tax collection authorities federal employer identification numbers; and authorizing the costs incurred to collect delinquent taxes to be shared by all levying bodies.

Be it enacted by the Legislature of West Virginia:

That §8-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-1A-23 of said code be amended and reenacted; that §11-10-5d of said code be amended and reenacted; and that §11A-2-2 of said code be amended and reenacted, all to read as follows:

Chapter

- 8. Municipal Corporations.**
- 11. Taxation.**
- 11A. Collection and Enforcement of Property Taxes.**

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 13. TAXATION AND FINANCE.****§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

1 (a) *Authorization to impose tax.* -- (1) Whenever any
2 business activity or occupation, for which the state imposed its
3 annual business and occupation or privilege tax under article
4 thirteen, chapter eleven of this code, prior to July one, one
5 thousand nine hundred eighty-seven, is engaged in or carried on
6 within the corporate limits of any municipality, the governing
7 body thereof shall have plenary power and authority, unless
8 prohibited by general law, to impose a similar business and
9 occupation tax thereon for the use of the municipality.

10 (2) Municipalities may impose a business and occupation or
11 privilege tax upon every person engaging or continuing within
12 the municipality in the business of aircraft repair, remodeling,
13 maintenance, modification and refurbishing services to any
14 aircraft or to an engine or other component part of any aircraft
15 as a separate business activity.

16 (b) *Maximum tax rates.* -- In no case shall the rate of such
17 municipal business and occupation or privilege tax on a
18 particular activity exceed the maximum rate imposed by the
19 state, exclusive of surtaxes, upon any business activities or
20 privileges taxed under sections two-a, two-b, two-c, two-d, two-
21 e, two-g, two-h, two-i and two-j, article thirteen of said chapter
22 eleven, as such rates were in effect under said article thirteen, on
23 January one, one thousand nine hundred fifty-nine, or in excess
24 of one percent of gross income under section two-k of said
25 article thirteen, or in excess of three tenths of one percent of

26 gross value or gross proceeds of sale under section two-m of
27 said article thirteen. The rate of municipal business and
28 occupation or privilege tax on the activity described in
29 subdivision (2), subsection (a) of this section shall be ten one-
30 hundredths of one percent. The rate of municipal business and
31 occupation or privilege tax on the activity of a health
32 maintenance organization holding a certificate of authority
33 under the provisions of article twenty-five-a, chapter thirty-three
34 of this code, shall not exceed one half of one percent to be
35 applied solely to that portion of gross income received from the
36 Medicaid program pursuant to Title XIX of the Social Security
37 Act, the state employee programs administered by the Public
38 Employees Insurance Agency pursuant to article sixteen,
39 chapter five of this code, and other federal programs, for health
40 care items or services provided directly or indirectly by the
41 health maintenance organization, that is expended for
42 administrative expenses; and shall not exceed one half of one
43 percent to be applied to the gross income received from
44 enrollees, or from employers on behalf of enrollees, from
45 sources other than Medicaid, state employee programs
46 administered by the Public Employees Insurance Agency and
47 other federal programs for health care items or services provided
48 directly or indirectly by the health maintenance organization:
49 *Provided*, That this tax rate limitation shall not extend to that
50 part of the gross income of health maintenance organizations
51 which is received from the use of real property other than
52 property in which any such company maintains its office or
53 offices in this state, whether such income is in the form of
54 rentals or royalties. This provision concerning the maximum
55 municipal business and occupation tax rate on the activities of
56 health maintenance organizations is effective beginning after the
57 thirty-first day of December, one thousand nine hundred ninety-
58 six. Any payments of business and occupation tax made by a
59 health maintenance organization to a municipality for calendar
60 year one thousand nine hundred ninety-seven shall not be
61 subject to recovery by the health maintenance organization.

62 Administrative expenses shall include all expenditures made by
63 a health maintenance organization other than expenses paid for
64 claims incurred or payments made to providers for the benefits
65 received by enrollees.

66 (c) *Effective date of local tax.* -- Any taxes levied pursuant
67 to the authority of this section may be made operative as of the
68 first day of the then current fiscal year or any date thereafter:
69 *Provided*, That any new imposition of tax or any increase in the
70 rate of tax upon any business, occupation or privilege taxed
71 under section two-e of said article thirteen shall apply only to
72 gross income derived from contracts entered into after the
73 effective date of such imposition of tax or rate increase, and
74 which effective date shall not be retroactive in any respect:
75 *Provided, however*, That no tax imposed or revised under this
76 section upon public utility services may be effective unless and
77 until the municipality provides written notice of the same by
78 certified mail to said public utility at least sixty days prior to the
79 effective date of said tax or revision thereof.

80 (d) *Exemptions.* -- A municipality shall not impose its
81 business and occupation or privilege tax on any activity that was
82 exempt from the state's business and occupation tax under the
83 provisions of section three, article thirteen of said chapter
84 eleven, prior to July one, one thousand nine hundred eighty-
85 seven, and determined without regard to any annual or monthly
86 monetary exemption also specified therein: *Provided*, That on
87 and after the first day of July, two thousand seven, a
88 municipality may impose its business and occupation or
89 privilege tax on any activity of a corporation, association or
90 society organized and operated exclusively for religious or
91 charitable purposes that was exempt from the state's business
92 and occupation tax under the provisions of section three, article
93 thirteen of chapter eleven, prior to July one, one thousand nine
94 hundred eighty-seven, but only to the extent that the income
95 generated by the activity is subject to taxation under the

96 provisions of section 511 of the Internal Revenue Code of 1986,
97 as amended.

98 (e) *Activity in two or more municipalities.* -- Whenever the
99 business activity or occupation of the taxpayer is engaged in or
100 carried on in two or more municipalities of this state, the
101 amount of gross income, or gross proceeds of sales, taxable by
102 each municipality shall be determined in accordance with such
103 legislative regulations as the Tax Commissioner may prescribe.
104 It being the intent of the Legislature that multiple taxation of the
105 same gross income, or gross proceeds of sale, under the same
106 classification by two or more municipalities shall not be
107 allowed, and that gross income, or gross proceeds of sales,
108 derived from activity engaged in or carried on within this state,
109 that is presently subject to state tax under section two-c or two-
110 h, article thirteen, chapter eleven of this code, which is not taxed
111 or taxable by any other municipality of this state, may be
112 included in the measure of tax for any municipality in this state,
113 from which the activity was directed, or in the absence thereof,
114 the municipality in this state in which the principal office of the
115 taxpayer is located. Nothing in this subsection shall be
116 construed as permitting any municipality to tax gross income or
117 gross proceeds of sales in violation of the Constitution and laws
118 of this state or the United States, or as permitting a municipality
119 to tax any activity that has a definite situs outside its taxing
120 jurisdiction.

121 (f) Where the governing body of a municipality imposes a
122 tax authorized by this section, such governing body shall have
123 the authority to offer tax credits from such tax as incentives for
124 new and expanding businesses located within the corporate
125 limits of the municipality.

126 (g) *Administrative provisions.* -- The ordinance of a
127 municipality imposing a business and occupation or privilege
128 tax shall provide procedures for the assessment and collection

129 of such tax, which shall be similar to those procedures in article
130 thirteen, chapter eleven of this code, as in existence on June
131 thirtieth, one thousand nine hundred seventy-eight, or to those
132 procedures in article ten, chapter eleven of this code, and shall
133 conform with such provisions as they relate to waiver of
134 penalties and additions to tax.

CHAPTER 11. TAXATION.

Article

1A. Appraisal of Property.

10. Procedure and Administration.

ARTICLE 1A. APPRAISAL OF PROPERTY.

§11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.

1 (a) *Secrecy of returns and return information.* -- Property
2 tax returns and return information filed or supplied pursuant to
3 this article and articles three, four, five and six of this chapter
4 and information obtained by subpoena or subpoena duces tecum
5 issued under the provisions of this article shall be confidential
6 and except as authorized in this section, no officer or employee
7 of the State Tax Department, county assessors, county
8 commissions and the board of public works shall disclose any
9 return or return information obtained by him or her, including
10 such return information obtained by subpoena, in any manner in
11 connection with his or her service as such an officer, member or
12 employee: *Provided,* That nothing herein shall make
13 confidential the itemized description of the property listed, in
14 order to ascertain that all property subject to assessment has
15 been subjected to appraisal: *Provided, however,* That the
16 commissioner and the assessors shall withhold from public
17 disclosure the specific description of burglar alarms and other
18 similar security systems held by any person, stocks, bonds and
19 other personal property held by a natural person, except motor
20 vehicles and other tangible property utilized publicly, and shall
21 withhold from public disclosure information claimed by any

22 taxpayer to constitute a trade secret or confidential patent
23 information: *Provided further*, That such property descriptions
24 withheld from public disclosure shall be subject to production
25 and inspection in connection with any review, protest or
26 intervention in the appraisal or assessment process, under such
27 reasonable limitations as the board of review, board of
28 equalization and review or court shall require. The term officer
29 or employee includes a former officer, member or employee.

30 (b) *Disclosure.* -- (1) Information made confidential by
31 subsection (a) of this section shall be open to inspection by or
32 disclosure to officers, members and employees of the State Tax
33 Department, county assessors, county commissions, county
34 sheriffs, municipal financial officers and to members of the
35 board of public works whose official duties require such
36 inspection or disclosures for property tax administration
37 purposes. Disclosure may be made to persons, or officers or
38 employees thereof, who are employed by the state Tax
39 Commissioner by contract or otherwise, provided such person,
40 or officer or employee thereof, shall be subject to the provisions
41 of this section as fully as if he or she was an officer or employee
42 of the State Tax Department. Information made confidential by
43 subsection (a) of this section shall be open to inspection by the
44 property owner providing such information and to his or her
45 duly authorized representative.

46 (2) Information made confidential by subsection (a) of this
47 section may be disclosed in a judicial or administrative
48 proceeding to collect or ascertain the amount of tax due, but
49 only if: (i) The taxpayer is a party to the proceedings or; (ii)
50 such return information directly relates to a transactional
51 relationship between a person who is a party to the proceeding
52 and the taxpayer which directly affects the resolution of an issue
53 in the proceeding.

54 (c) *Reciprocal exchange.* -- The Tax Commissioner may
55 permit the proper officer of the United States, or the District
56 of Columbia, or any other state, or his or her authorized
57 representative, to inspect reports, declarations or returns filed

58 with the Tax Commissioner or may furnish to such officer or
59 representative a copy of any such document provided such
60 other jurisdiction grants substantially similar privileges to the
61 Tax Commissioner or to the Attorney General of this state.

62 (d) *Penalties.* -- Any officer, member or employee of the
63 State Tax Department, county assessors, county
64 commissions, county sheriffs, municipal financial officers
65 and the board of public works who violates this section shall
66 be guilty of a misdemeanor and, upon conviction thereof,
67 shall be fined not more than one thousand dollars or
68 imprisoned for not more than one year, or both, together with
69 the costs of prosecution.

70 (e) *Limitations.* -- Any person protected by the provisions
71 of this article may, in writing, waive the secrecy provision of
72 this section for such purpose and such period as he or she
73 shall therein state, and the officer with whom such waiver is
74 filed, if he or she so determines may thereupon release to
75 designated recipients such taxpayer's return or other
76 particulars filed under the provisions of the tax articles
77 administered under the provisions of this article.

78 This section shall not be construed to prohibit the
79 publication or release of statistics so classified so as to
80 prevent the identification of particular reports and the items
81 thereof nor to prevent the publication and release of
82 assessments and appraised values of property.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* -- Except when required in an official
2 investigation by the Tax Commissioner into the amount of
3 tax due under any article administered under this article or in

4 any proceeding in which the Tax Commissioner is a party
5 before a court of competent jurisdiction to collect or ascertain
6 the amount of such tax and except as provided in subsections
7 (d) through (n), inclusive, of this section, it shall be unlawful
8 for any officer, employee or agent of this state or of any
9 county, municipality or governmental subdivision to divulge
10 or make known in any manner the tax return, or any part
11 thereof, of any person or disclose information concerning the
12 personal affairs of any individual or the business of any
13 single firm or corporation, or disclose the amount of income,
14 or any particulars set forth or disclosed in any report,
15 declaration or return required to be filed with the Tax
16 Commissioner by any article of this chapter imposing any tax
17 administered under this article or by any rule or regulation of
18 the Tax Commissioner issued thereunder, or disclosed in any
19 audit or investigation conducted under this article. For
20 purposes of this article, tax returns and return information
21 obtained from the Tax Commissioner pursuant to an
22 exchange of information agreement or otherwise pursuant to
23 the provisions of subsections (d) through (n), inclusive, of
24 this section which is in the possession of any officer,
25 employee, agent or representative of any local or municipal
26 governmental entity or other governmental subdivision is
27 subject to the confidentiality and disclosure restrictions set
28 forth in this article: *Provided*, That such officers, employees
29 or agents may disclose the information in an official
30 investigation, by a local or municipal governmental authority
31 or agency charged with the duty and responsibility to
32 administer the tax laws of the jurisdiction, into the amount of
33 tax due under any lawful local or municipal tax administered
34 by that authority or agency, or in any proceeding in which the
35 local or municipal governmental subdivision, authority or
36 agency is a party before a court of competent jurisdiction to
37 collect or ascertain the amount of the tax. Unlawful
38 disclosure of the information by any officer, employee or

39 agent of any local, municipal or governmental subdivision is
40 subject to the sanctions set forth in this article.

41 (b) *Definitions.* -- For purposes of this section:

42 (1) *Background file document.* -- The term "background
43 file document", with respect to a written determination,
44 includes the request for that written determination, any
45 written material submitted in support of the request and any
46 communication (written or otherwise) between the State Tax
47 Department and any person outside the State Tax Department
48 in connection with the written determination received before
49 issuance of the written determination.

50 (2) *Disclosure.* -- The term "disclosure" means making
51 known to any person in any manner whatsoever a return or
52 return information.

53 (3) *Inspection.* -- The terms "inspection" and "inspected"
54 means any examination of a return or return information.

55 (4) *Return.* -- The term "return" means any tax or
56 information return or report, declaration of estimated tax,
57 claim or petition for refund or credit or petition for
58 reassessment that is required by, or provided for, or permitted
59 under the provisions of this article (or any article of this
60 chapter administered under this article) which is filed with
61 the Tax Commissioner by, on behalf of, or with respect to
62 any person and any amendment or supplement thereto,
63 including supporting schedules, attachments or lists which
64 are supplemental to, or part of, the return so filed.

65 (5) *Return information.* -- The term "return information"
66 means:

67 (A) A taxpayer's identity; the nature, source or amount of
68 his or her income, payments, receipts, deductions,
69 exemptions, credits, assets, liabilities, net worth, tax liability,
70 tax withheld, deficiencies, overassessments or tax payments,
71 whether the taxpayer's return was, is being, or will be
72 examined or subject to other investigation or processing, or
73 any other data received by, recorded by, prepared by,
74 furnished to or collected by the Tax Commissioner with
75 respect to a return or with respect to the determination of the
76 existence, or possible existence, of liability (or the amount
77 thereof) or by any person under the provisions of this article
78 (or any article of this chapter administered under this article)
79 for any tax, additions to tax, penalty, interest, fine, forfeiture
80 or other imposition or offense; and

81 (B) Any part of any written determination or any
82 background file document relating to such written
83 determination. "Return information" does not include,
84 however, data in a form which cannot be associated with or
85 otherwise identify, directly or indirectly, a particular
86 taxpayer. Nothing in the preceding sentence, or in any other
87 provision of this code, shall be construed to require the
88 disclosure of standards used or to be used for the selection of
89 returns for examination or data used or to be used for
90 determining such standards.

91 (6) *Tax administration.* -- The term "tax administration"
92 means:

93 (A) The administration, management, conduct, direction
94 and supervision of the execution and application of the tax
95 laws or related statutes of this state and the development and
96 formulation of state and local tax policy relating to existing
97 or proposed state and local tax laws and related statutes of
98 this state; and

99 (B) Includes assessment, collection, enforcement,
100 litigation, publication and statistical gathering functions
101 under the laws of this state and of local governments.

102 (7) *Taxpayer identity*. -- The term "taxpayer identity"
103 means the name of a person with respect to whom a return is
104 filed, his or her mailing address, his or her taxpayer
105 identifying number or a combination thereof.

106 (8) *Taxpayer return information*. -- The term "taxpayer
107 return information" means return information as defined in
108 subdivision (5) of this subsection which is filed with, or
109 furnished to, the Tax Commissioner by or on behalf of the
110 taxpayer to whom such return information relates.

111 (9) *Written determination*. -- The term "written
112 determination" means a ruling, determination letter, technical
113 advice memorandum or letter or administrative decision
114 issued by the Tax Commissioner.

115 (c) *Criminal penalty*. -- Any officer, employee or agent
116 (or former officer, employee or agent) of this state or of any
117 county, municipality or governmental subdivision who
118 violates this section shall be guilty of a misdemeanor and,
119 upon conviction thereof, shall be fined not more than one
120 thousand dollars or imprisoned for not more than one year, or
121 both, together with costs of prosecution.

122 (d) *Disclosure to designee of taxpayer*. -- Any person
123 protected by the provisions of this article may, in writing,
124 waive the secrecy provisions of this section for such purpose
125 and such period as he or she shall therein state. The Tax
126 Commissioner may, subject to such requirements and
127 conditions as he or she may prescribe, thereupon release to
128 designated recipients such taxpayer's return or other

129 particulars filed under the provisions of the tax articles
130 administered under the provisions of this article, but only to
131 the extent necessary to comply with a request for information
132 or assistance made by the taxpayer to such other person.
133 However, return information shall not be disclosed to such
134 person or persons if the Tax Commissioner determines that
135 such disclosure would seriously impair administration of this
136 state's tax laws.

137 (e) *Disclosure of returns and return information for use*
138 *in criminal investigations.* -

139 (1) *In general.* -- Except as provided in subdivision (3) of
140 this subsection, any return or return information with respect
141 to any specified taxable period or periods shall, pursuant to
142 and upon the grant of an ex parte order by a federal district
143 court judge, federal magistrate or circuit court judge of this
144 state, under subdivision (2) of this subsection, be open (but
145 only to the extent necessary as provided in such order) to
146 inspection by, or disclosure to, officers and employees of any
147 federal agency, or of any agency of this state, who personally
148 and directly engaged in:

149 (A) Preparation for any judicial or administrative
150 proceeding pertaining to the enforcement of a specifically
151 designated state or federal criminal statute to which this state,
152 the United States or such agency is or may be a party;

153 (B) Any investigation which may result in such a
154 proceeding; or

155 (C) Any state or federal grand jury proceeding pertaining
156 to enforcement of such a criminal statute to which this state,
157 the United States or such agency is or may be a party. Such
158 inspection or disclosure shall be solely for the use of such

159 officers and employees in such preparation, investigation or
160 grand jury proceeding.

161 (2) *Application of order.* -- Any United States attorney,
162 any special prosecutor appointed under Section 593 of Title
163 28, United States Code, or any attorney in charge of a United
164 States justice department criminal division organized crime
165 strike force established pursuant to Section 510 of Title 28,
166 United States Code, may authorize an application to a circuit
167 court judge or magistrate, as appropriate, for the order
168 referred to in subdivision (1) of this subsection. Any
169 prosecuting attorney of this state may authorize an
170 application to a circuit court judge of this state for the order
171 referred to in said subdivision. Upon the application, the
172 judge or magistrate may grant such order if he or she
173 determines on the basis of the facts submitted by the
174 applicant that:

175 (A) There is reasonable cause to believe, based upon
176 information believed to be reliable, that a specific criminal
177 act has been committed;

178 (B) There is reasonable cause to believe that the return or
179 return information is or may be relevant to a matter relating
180 to the commission of such act; and

181 (C) The return or return information is sought exclusively
182 for use in a state or federal criminal investigation or
183 proceeding concerning such act and the information sought
184 to be disclosed cannot reasonably be obtained, under the
185 circumstances, from another source.

186 (3) The Tax Commissioner may not disclose any return
187 or return information under subdivision (1) of this subsection
188 if he or she determines and certifies to the court that the

189 disclosure would identify a confidential informant or
190 seriously impair a civil or criminal tax investigation.

191 (f) *Disclosure to person having a material interest.* -- The
192 Tax Commissioner may, pursuant to legislative regulations
193 promulgated by him or her, and upon such terms as he or she
194 may require, disclose a return or return information to a
195 person having a material interest therein: *Provided*, That
196 such disclosure shall only be made if the Tax Commissioner
197 determines, in his or her discretion, that the disclosure would
198 not seriously impair administration of this state's tax laws.

199 (g) *Statistical use.* -- This section shall not be construed
200 to prohibit the publication or release of statistics so classified
201 as to prevent the identification of particular returns and the
202 items thereof.

203 (h) *Disclosure of amount of outstanding lien.* -- If notice
204 of lien has been recorded pursuant to section twelve of this
205 article, the amount of the outstanding obligation secured by
206 such lien may be disclosed to any person who furnishes
207 written evidence satisfactory to the Tax Commissioner that
208 such person has a right in the property subject to the lien or
209 intends to obtain a right in such property.

210 (i) *Reciprocal exchange.* -- The Tax Commissioner may,
211 pursuant to written agreement, permit the proper officer of
212 the United States, or the District of Columbia or any other
213 state, or any political subdivision of this state, or his or her
214 authorized representative, who is charged by law with
215 responsibility for administration of a similar tax, to inspect
216 reports, declarations or returns filed with the Tax
217 Commissioner or may furnish to such officer or
218 representative a copy of any document, provided any other
219 jurisdiction grants substantially similar privileges to the Tax

220 Commissioner or to the Attorney General of this state:
221 *Provided*, That pursuant to written agreement the Tax
222 Commissioner may provide to the assessor of any county,
223 sheriff of any county, or the mayor of any West Virginia
224 municipality the federal employer identification number of
225 any business being carried on within the jurisdiction of the
226 requesting assessor, sheriff or mayor. The disclosure shall be
227 only for the purpose of, and only to the extent necessary in,
228 the administration of tax laws: *Provided, however*, That the
229 information may not be disclosed to the extent that the Tax
230 Commissioner determines that such disclosure would identify
231 a confidential informant or seriously impair any civil or
232 criminal tax investigation.

233 (j) *Exchange with municipalities.* -- The Tax
234 Commissioner shall, upon the written request of the mayor or
235 governing body of any West Virginia municipality, allow the
236 duly authorized agent of the municipality to inspect and make
237 copies of the state business and occupation tax return filed by
238 taxpayers of the municipality and any other state tax returns
239 (including, but not limited to, consumers sales and services
240 tax return information and health care provider tax return
241 information) as may be reasonably requested by the
242 municipality. Such inspection or copying shall include
243 disclosure to the authorized agent of the municipality for tax
244 administration purposes of all available return information
245 from files of the tax department relating to taxpayers who
246 transact business within the municipality. The Tax
247 Commissioner shall be permitted to inspect or make copies
248 of any tax return and any return information or other
249 information related thereto in the possession of any
250 municipality or its employees, officers, agents or
251 representatives that has been submitted to or filed with the
252 municipality by any person for any tax including, but not
253 limited to, the municipal business and occupation tax, public

254 utility tax, municipal license tax, tax on purchases of
255 intoxicating liquors, license tax on horse racing or dog racing
256 and municipal amusement tax.

257 (k) *Release of administrative decisions.* -- The Tax
258 Commissioner shall release to the public his or her
259 administrative decisions, or a summary thereof: *Provided,*
260 That unless the taxpayer appeals the administrative decision
261 to circuit court or waives in writing his or her rights to
262 confidentiality, any identifying characteristics or facts about
263 the taxpayer shall be omitted or modified to an extent so as
264 to not disclose the name or identity of the taxpayer.

265 (l) *Release of taxpayer information.* -- If the Tax
266 Commissioner believes that enforcement of the tax laws
267 administered under this article will be facilitated and
268 enhanced thereby, he or she shall disclose, upon request, the
269 names and address of persons:

270 (A) Who have a current business registration certificate.

271 (B) Who are licensed employment agencies.

272 (C) Who are licensed collection agencies.

273 (D) Who are licensed to sell drug paraphernalia.

274 (E) Who are distributors of gasoline or special fuel.

275 (F) Who are contractors.

276 (G) Who are transient vendors.

277 (H) Who are authorized by law to issue a sales or use tax
278 exemption certificate.

Ch. 227]

TAXATION

279 (I) Who are required by law to collect sales or use taxes.

280 (J) Who are foreign vendors authorized to collect use tax.

281 (K) Whose business registration certificate has been
282 suspended or canceled or not renewed by the Tax
283 Commissioner.

284 (L) Against whom a tax lien has been recorded under
285 section twelve of this article (including any particulars stated
286 in the recorded lien).

287 (M) Against whom criminal warrants have been issued
288 for a criminal violation of this state's tax laws.

289 (N) Who have been convicted of a criminal violation of
290 this state's tax laws.

291 (m) *Disclosure of return information to child support*
292 *enforcement division.* --

293 (1) *State return information.* -- The Tax Commissioner
294 may, upon written request, disclose to the child support
295 enforcement division created by article two, chapter forty-
296 eight-a of this code:

297 (A) Available return information from the master files of
298 the tax department relating to the Social Security account
299 number, address, filing status, amounts and nature of income
300 and the number of dependents reported on any return filed
301 by, or with respect to, any individual with respect to whom
302 child support obligations are sought to be enforced; and

303 (B) Available state return information reflected on any
304 state return filed by, or with respect to, any individual

305 described in paragraph (A) of this subdivision relating to the
306 amount of the individual's gross income, but only if such
307 information is not reasonably available from any other
308 source.

309 (2) *Restrictions on disclosure.* -- The Tax Commissioner
310 shall disclose return information under subdivision (1) of this
311 subsection only for purposes of, and to the extent necessary
312 in, collecting child support obligations from and locating
313 individuals owing such obligations.

314 (n) *Disclosure of names and addresses for purposes of*
315 *jury selection.* -- The Tax Commissioner shall, at the written
316 request of a circuit court or the chief judge thereof, provide
317 to the circuit court within thirty calendar days a list of the
318 names and addresses of individuals residing in the county or
319 counties comprising the circuit who have filed a state
320 personal income tax return for the preceding tax year. The
321 list provided shall set forth names and addresses only. The
322 request shall be limited to counties within the jurisdiction of
323 the requesting court.

324 The court, upon receiving the list or lists, shall direct the
325 jury commission of the appropriate county to merge the
326 names and addresses with other lists used in compiling a
327 master list of residents of the county from which prospective
328 jurors are to be chosen. Immediately after the master list is
329 compiled, the jury commission shall cause the list provided
330 by the Tax Commissioner and all copies thereof to be
331 destroyed and shall certify to the circuit court and to the Tax
332 Commissioner that the lists have been destroyed.

**CHAPTER 11A. COLLECTION AND ENFORCEMENT OF
PROPERTY TAXES.****ARTICLE 2. DELINQUENCY AND METHODS OF
ENFORCING PAYMENT.****§11A-2-2. Collection by civil action; fees and costs not required
of sheriff.**

1 (a) Taxes are hereby declared to be debts owing by the
2 taxpayer, for which he or she shall be personally liable. After
3 delinquency, the sheriff may enforce this liability by
4 appropriate action in any court of competent jurisdiction. No
5 such action shall be brought after five years from the time the
6 action accrued.

7 (b) In any such action, the sheriff shall be permitted to
8 prosecute the same without paying fees or costs, and without
9 providing bond or security, as may otherwise be required of
10 civil litigants by the provisions of this code, and shall have all
11 services and process, including the services of witnesses,
12 without paying therefor: *Provided*, That the sheriff shall
13 maintain for each action for the recovery of delinquent taxes
14 records sufficient to demonstrate the total fees and costs paid
15 and that would have been paid but for the authority provided
16 herein to seek recovery without such payment: *Provided*,
17 *however*, That where the sheriff recovers delinquent taxes in
18 or as the result of such action, whether by way of settlement
19 or judgment, such fees and costs as above required to be
20 recorded shall be recoverable from the opposite party and
21 upon receipt of any recovery, the sheriff shall pay from the
22 amount recovered such fees or costs to the officer who
23 otherwise would have been entitled thereto but for the
24 provisions of this section: *Provided further*, That the fees
25 and costs shall be paid prior to payment to the various taxing
26 units of the balance of the recovered taxes: *And provided*
27 *further*, That the payment to the various taxing units shall be
28 prorated on the basis of the total amount of taxes due them.

CHAPTER 228

**(H.B. 2991 - By Delegates White, Boggs, Yost, Reynolds,
Perdue, Doyle, Tucker, Marshall, Manchin, Anderson
and Border)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating to the State Tax Division in the Department of Revenue; and authorizing the Tax Commissioner to conduct criminal background checks for prospective employees.

Be it enacted by the Legislature of West Virginia:

That §11-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. SUPERVISION.

§11-1-1. Office of Tax Commissioner continued and designated the State Tax Division; appointment, term, oath and bond of commissioner; powers and duties generally; sections of division; assistant tax commissioner; authorization of criminal background checks conducted by Tax Commissioner for prospective employees; assistant attorneys general to assist commissioner.

- 1 (a) The Office of the Tax Commissioner is continued in all
- 2 respects as previously constituted in the state government, but
- 3 is hereby designated as the State Tax Division of the
- 4 Department of Revenue.

5 (b) The Tax Commissioner is the chief executive officer of
6 the State Tax Division and shall be appointed by the Governor,
7 by and with the advice and consent of the Senate, to serve at the
8 will and pleasure of the Governor for the term for which the
9 governor was elected and until a successor has been appointed
10 and has qualified.

11 (c) The Tax Commissioner, before entering upon the duties
12 of office, shall take the oath or affirmation prescribed by section
13 5, article IV of the Constitution. The Tax Commissioner shall
14 give bond with good security, to be approved by the Governor,
15 in the penalty of fifteen thousand dollars. The Tax
16 Commissioner shall be repaid his or her actual disbursements
17 for traveling expenses. The Tax Commissioner shall be provided
18 with an office in the capitol and with furniture, office equipment
19 and any necessary clerical assistance.

20 (d) The Tax Commissioner has control and supervision of
21 the State Tax Division and is responsible for the work of each
22 of its sections or other subunits. Each section or bureau shall be
23 headed by a director appointed by the Tax Commissioner and
24 who is responsible to the Tax Commissioner for the work of his
25 or her section or bureau. The Tax Commissioner may create any
26 sections or bureaus and employ any necessary staff or
27 employees to administer the state tax laws for which the Tax
28 Commissioner or tax division is responsible, within the amount
29 of expenditures appropriated for operation of the tax division by
30 the Legislature. The Tax Commissioner has authority to appoint
31 an assistant Tax Commissioner who shall be his or her principal
32 assistant. The powers and duties vested in the Tax
33 Commissioner by this chapter and any other provisions of law
34 may be delegated by the Tax Commissioner to the assistant or
35 other employees, but the Tax Commissioner is responsible for
36 all official acts of his or her delegates.

37 (e) In order to assist in determining if an applicant for
38 employment in the State Tax Division is suitable for such
39 employment, the commissioner is authorized to conduct a
40 criminal records check through the criminal identification
41 bureau of the West Virginia State Police and a national criminal
42 history check through the federal bureau of investigation. The
43 result of any criminal records or criminal history check shall be
44 sent to the commissioner. The commissioner and any other
45 employees of the State Tax Division shall not disclose
46 information obtained pursuant to this subsection except for
47 purposes directly related to the employment of the application
48 by the tax division.

49 (f) The Tax Commissioner, if he or she considers the action
50 necessary, may request the Attorney General to appoint assistant
51 attorneys general who shall perform duties as required by the
52 Tax Commissioner. The Attorney General, in pursuance of the
53 request, may select and appoint assistant attorneys general, with
54 the consent of the Tax Commissioner, to serve during the will
55 and pleasure of the Attorney General, and the assistants shall be
56 paid out of any funds made available for that purpose by the
57 Legislature to the State Tax Division.

CHAPTER 229

(Com. Sub. for S.B 541 - By Senators Plymale and Edgell)

[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1C-5b; to amend and reenact §11-8-6f of said code; to amend said code by adding

thereto a new section, designated §11-21-23; to amend and reenact §18-9A-2, §18-9A-11 and §18-9A-15 of said code; and to amend said code by adding thereto a new section, designated §18-9A-2a, all relating to public school finance; requiring local share to be calculated assuming properties are being assessed at sixty percent of market value; increasing the limit on revenue generated by the regular school board levy; amending “growth county” definition and clarifying what new property values to include for the purposes of the Growth County School Facilities Act; increasing state aid to counties by reducing the percentage used to calculate levies for general current expense purposes subject to exception; providing for a refundable property tax credit for real property taxes paid in excess of a certain percent of income; requiring that a library funding obligation created by special act be paid from certain funds; limiting a library funding obligation; allowing, under certain conditions, a transfer of the library funding obligation so that the obligation is paid from excess levy revenues; voiding the library funding obligation under certain conditions; and providing extraordinary sustained increased enrollment impact supplement.

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 §11-1C-5b; that §11-8-6f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-21-23; that §18-9A-2, §18-9A-11 and §18-9A-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9A-2a, all to read as follows:

Chapter

11. Taxation.

18. Education.

CHAPTER 11. TAXATION.**Article**

- 1C. Fair and Equitable Property Valuation.
- 8. Levies.
- 21. Personal Income Tax.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**§11-1C-5b. Assessment for purpose of calculating local share.**

1 (a) This section is effective the first day of July, two
2 thousand thirteen.

3 (b) The Tax Commissioner shall calculate the total assessed
4 values for the purpose of calculating local share for each county
5 each year pursuant to this section and report the total assessed
6 values to the State Board of Education on or before the first day
7 of December of each year.

8 (c) To provide for assessors to assess at sixty percent of
9 market value, it is the intent of the Legislature that local share,
10 as set forth in section eleven, article nine-a, chapter eighteen of
11 this code, be calculated assuming that the types of property
12 included in the assessment ratio study in each county are
13 assessed at a level in which the assessment ratio study indicates
14 would be sixty percent of market value.

15 (d) For each of Classes II, III and IV as set forth in section
16 five, article eight of this chapter, all real property of the type
17 that is or would be included in the assessment ratio study if sold
18 is assumed for the purpose of calculating local share to be
19 assessed at the amount the property would be assessed at if all
20 the property in the class were adjusted under the assumption
21 that, using a ratio of sixty percent, all the property were under
22 or over assessed to the same extent as that property included in
23 the assessment ratio study so that using the assessment ratio
24 study as an indicator all the property in the class would be
25 assessed at the ratio of sixty percent of market value: *Provided,*

26 That if the sales ratio analysis indicates that assessments are
27 within ten percent of sixty percent of market value, assessments
28 are considered to be sixty percent of market value for the
29 purposes of this section.

30 (e) The amount of the assumed assessed values determined
31 pursuant to subsection (d) of this section shall be added to the
32 actual assessed values of personal property, farmland, managed
33 timberland, public utility property or any other centrally
34 assessed property provided in paragraphs (A), (B), (C) and (D),
35 subdivision (2), subsection (a), section five of this article and
36 the sum of these values is the total assessed value for the
37 purpose of calculating local share.

ARTICLE 8. LEVIES.

§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.

1 (a) Notwithstanding any other provision of law, where any
2 annual appraisal, triennial appraisal or general valuation of
3 property would produce a statewide aggregate assessment that
4 would cause an increase of two percent or more in the total
5 property tax revenues that would be realized were the then
6 current regular levy rates of the county boards of education to
7 be imposed, the rate of levy for county boards of education shall
8 be reduced uniformly statewide and proportionately for all
9 classes of property for the forthcoming tax year so as to cause
10 the rate of levy to produce no more than one hundred two
11 percent of the previous year's projected statewide aggregate
12 property tax revenues from extending the county board of
13 education levy rate, unless subsection (b) of this section is
14 complied with. The reduced rates of levy shall be calculated in
15 the following manner: (1) The total assessed value of each class
16 of property as it is defined by section five of this article for the
17 assessment period just concluded shall be reduced by deducting
18 the total assessed value of newly created properties not assessed
19 in the previous year's tax book for each class of property; (2) the

20 resulting net assessed value of Class I property shall be
21 multiplied by .01; the value of Class II by .02; and the values of
22 Classes III and IV, each by .04; (3) total the current year's
23 property tax revenue resulting from regular levies for the boards
24 of education throughout this state and multiply the resulting sum
25 by one hundred two percent: *Provided*, That the one hundred
26 two percent figure shall be increased by the amount the boards
27 of education's increased levy provided for in subsection (b),
28 section eight, article one-c of this chapter; (4) divide the total
29 regular levy tax revenues, thus increased in subdivision (3) of
30 this subsection, by the total weighted net assessed value as
31 calculated in subdivision (2) of this subsection and multiply the
32 resulting product by one hundred; the resulting number is the
33 Class I regular levy rate, stated as cents-per-one hundred dollars
34 of assessed value; and (5) the Class II rate is two times the Class
35 I rate; Classes III and IV, four times the Class I rate as
36 calculated in the preceding subdivision.

37 An additional appraisal or valuation due to new construction
38 or improvements, including beginning recovery of natural
39 resources, to existing real property or newly acquired personal
40 property shall not be an annual appraisal or general valuation
41 within the meaning of this section, nor shall the assessed value
42 of the improvements be included in calculating the new tax levy
43 for purposes of this section. Special levies shall not be included
44 in any calculations under this section.

45 (b) After conducting a public hearing, the Legislature may,
46 by act, increase the rate above the reduced rate required in
47 subsection (a) of this section if an increase is determined to be
48 necessary.

49 (c) The State Tax Commissioner shall report to the Joint
50 Committee on Government and Finance and the Legislative
51 Oversight Commission on Education Accountability by the first
52 day of March of each year on the progress of assessors in each
53 county in assessing properties at the constitutionally required
54 sixty percent of market value and the effects of increasing the
55 limit on the increase in total property tax revenues set forth in
56 this section to two percent.

57 (d) *Growth County School Facilities Act. — Legislative*
58 *findings. —*

59 The Legislature finds and declares that there has been,
60 overall, a statewide decline in enrollment in the public schools
61 of this state; due to this decline, most public schools have ample
62 space for students, teachers and administrators; however, some
63 counties of this state have experienced significant increases in
64 enrollment due to significant growth in those counties; that
65 those counties experiencing significant increases do not have
66 adequate facilities to accommodate students, teachers and
67 administrators. Therefore, the Legislature finds that county
68 boards of education in those high-growth counties should have
69 the authority to designate revenues generated from the
70 application of the regular school board levy due to new
71 construction or improvements placed in a Growth County
72 School Facilities Act Fund be used for school facilities in those
73 counties to promote the best interests of this state's students.

74 (1) For the purposes of this subsection, “growth county”
75 means any county that has experienced an increase in second
76 month net enrollment of fifty or more during any three of the
77 last five years, as determined by the State Department of
78 Education.

79 (2) The provisions of this subsection shall only apply to any
80 growth county, as defined in subdivision (1) of this subsection,
81 that, by resolution of its county board of education, chooses to
82 use the provisions of this subsection.

83 (3) For any growth county, as defined in subdivision (1) of
84 this subsection, that adopts a resolution choosing to use the
85 provisions of this subsection, pursuant to subdivision (2) of this
86 subsection, assessed values resulting from additional appraisal
87 or valuation due to new construction or improvements to
88 existing real property shall be designated as new property values
89 and identified by the county assessor. The statewide regular
90 school board levy rate as established by the Legislature shall be
91 applied to the assessed value designated as new property values
92 and the resulting property tax revenues collected from

93 application of the regular school board levy rate shall be placed
94 in a separate account designated as the Growth County School
95 Facilities Act Fund. Revenues deposited in the Growth County
96 School Facilities Act Fund shall be appropriated by the county
97 board of education for construction, maintenance or repair of
98 school facilities. Revenues in the fund may be carried over for
99 an indefinite length of time and may be used as matching funds
100 for the purpose of obtaining funds from the School Building
101 Authority or for the payment of bonded indebtedness incurred
102 for school facilities. For any growth county choosing to use the
103 provisions of this subsection, estimated school board revenues
104 generated from application of the regular school board levy rate
105 to new property values are not to be considered as local funds
106 for purposes of the computation of local share under the
107 provisions of section eleven, article nine-a, chapter eighteen of
108 this code.

109 (e) This section, as amended during the legislative session
110 in the year two thousand four, shall be effective as to any
111 regular levy rate imposed for the county boards of education for
112 taxes due and payable on or after the first day of July, two
113 thousand four. If any provision of this section is held invalid,
114 the invalidity shall not affect other provisions or applications of
115 this section which can be given effect without the invalid
116 provision or its application and to this end the provisions of this
117 section are declared to be severable.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

1 (a) For the tax years beginning on or after the first day of
2 January, two thousand eight, any homeowner living in his or her
3 homestead shall be allowed a refundable credit against the taxes
4 imposed by this article equal to the amount of real property
5 taxes paid in excess of four percent of their income. If the
6 refundable credit provided in this section exceeds the amount of
7 taxes imposed by this article, the State Department of Revenue
8 shall refund that amount to the homeowner.

9 (b) Due to the administrative cost of processing, the
10 refundable credit authorized by this section may not be refunded
11 if less than ten dollars.

12 (c) The credit for each property tax year shall be claimed by
13 filing a claim for refund within twelve months after the real
14 property taxes are paid on the homestead.

15 (d) For the purposes of this section:

16 (1) "Gross household income" is defined as federal adjusted
17 gross income plus the sum of the following:

18 (A) Modifications in subsection (b), section twelve of this
19 article increasing federal adjusted gross income;

20 (B) Federal tax-exempt interest reported on federal tax
21 return;

22 (C) Workers' compensation and loss of earnings insurance;
23 and

24 (D) Nontaxable social security benefits; and

25 (2) For the tax years beginning before the first day January,
26 two thousand eight, "real property taxes paid" means the
27 aggregate of regular levies, excess levies and bond levies
28 extended against the homestead that are paid during the calendar
29 year and determined after any application of any discount for
30 early payment of taxes but before application of any penalty or
31 interest for late payment of property taxes for property tax years
32 that begin on or after the first day of January, two thousand
33 eight.

34 (e) A homeowner is eligible to benefit from this section or
35 section twenty-one of this article, whichever section provides
36 the most benefit as determined by the homeowner. No
37 homeowner may receive benefits under both this section and
38 section twenty-one of this article during the same taxable year.

39 Nothing in this section denies those entitled to the homestead
40 exemption provided in section three, article six-b of this chapter.

41 (f) No homeowner may receive a refundable tax credit
42 imposed by this article in excess of one thousand dollars. This
43 amount shall be reviewed annually by the Legislature to
44 determine if an adjustment is necessary.

CHAPTER 18. EDUCATION.

- §18-9A-2. Definitions.
 §18-9A-2a. Definition of levies for general concurrent expense purpose.
 §18-9A-11. Computation of local share; appraisal and assessment of property; public library support.
 §18-9A-15. Allowance for increased enrollment; extraordinary sustained increase enrollment impact supplement.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) "State board" means the West Virginia Board of
3 Education.

4 (b) "County board" or "board" means a county board of
5 education.

6 (c) "Professional salaries" means the state legally mandated
7 salaries of the professional educators as provided in article four,
8 chapter eighteen-a of this code.

9 (d) "Professional educator" shall be synonymous with and
10 shall have the same meaning as "teacher" as defined in section
11 one, article one of this chapter.

12 (e) "Professional instructional personnel" means a
13 professional educator whose regular duty is as that of a
14 classroom teacher, librarian, counselor, attendance director,
15 school psychologist or school nurse with a bachelor's degree

16 and who is licensed by the West Virginia Board of Examiners
17 for Registered Professional Nurses. A professional educator
18 having both instructional and administrative or other duties shall
19 be included as professional instructional personnel for that ratio
20 of the school day for which he or she is assigned and serves on
21 a regular full-time basis in appropriate instruction, library,
22 counseling, attendance, psychologist or nursing duties.

23 (f) "Service personnel salaries" means the state legally
24 mandated salaries for service personnel as provided in section
25 eight-a, article four, chapter eighteen-a of this code.

26 (g) "Service personnel" means all personnel as provided in
27 section eight, article four, chapter eighteen-a of this code. For
28 the purpose of computations under this article of ratios of
29 service personnel to adjusted enrollment, a service employee
30 shall be counted as that number found by dividing his or her
31 number of employment days in a fiscal year by two hundred:
32 *Provided*, That the computation for any service person
33 employed for three and one-half hours or less per day as
34 provided in section eight-a, article four, chapter eighteen-a of
35 this code shall be calculated as one-half an employment day.

36 (h) "Net enrollment" means the number of pupils enrolled
37 in special education programs, kindergarten programs and
38 grades one to twelve, inclusive, of the public schools of the
39 county. Commencing with the school year beginning on the first
40 day of July, one thousand nine hundred eighty-eight, net
41 enrollment further shall include adults enrolled in regular
42 secondary vocational programs existing as of the effective date
43 of this section, subject to the following:

44 (1) Net enrollment includes no more than one thousand of
45 those adults counted on the basis of full-time equivalency and
46 apportioned annually to each county in proportion to the adults
47 participating in regular secondary vocational programs in the
48 prior year counted on the basis of full-time equivalency; and

49 (2) Net enrollment does not include any adult charged
50 tuition or special fees beyond that required of the regular
51 secondary vocational student.

52 (i) "Adjusted enrollment" means the net enrollment plus
53 twice the number of pupils enrolled for special education,
54 including gifted pupils in grades one through eight and
55 exceptional gifted pupils in grades nine through twelve, plus the
56 number of pupils in grades nine through twelve enrolled for
57 honors and advanced placement programs, subject to the
58 following:

59 (1) No more than four percent of net enrollment of grades
60 one through eight may be counted as enrolled in gifted
61 education and no more than six percent of net enrollment of
62 grades nine through twelve may be counted as enrolled in gifted
63 education, exceptional gifted education (subject to the limitation
64 set forth in section one, article twenty of this chapter) and
65 honors and advanced placement programs for the purpose of
66 determining adjusted enrollment within a county;

67 (2) Nothing herein shall be construed to limit the number of
68 students who may actually enroll in gifted, exceptional gifted,
69 honors or advanced placement education programs in any
70 county;

71 (3) No pupil may be counted more than three times for the
72 purpose of determining adjusted enrollment;

73 (4) The enrollment shall be adjusted to the equivalent of the
74 instructional term and in accordance with the eligibility
75 requirements and rules established by the state board; and

76 (5) No pupil shall be counted more than once by reason of
77 transfer within the county or from another county within the
78 state, and no pupil shall be counted who attends school in this
79 state from another state.

80 (j) "Levies for general current expense purposes" means
81 ninety-four percent of the levy rate for county boards of
82 education calculated or set by the Legislature pursuant to the
83 provisions of section six-f, article eight, chapter eleven of this
84 code: *Provided*, That beginning the first day of July, two
85 thousand eight, "levies for general current expense purposes"
86 means ninety percent of the levy rate for county boards of
87 education calculated or set by the Legislature pursuant to the
88 provisions of section six-f, article eight, chapter eleven of this
89 code: *Provided, however*, That effective the first day of July,
90 two thousand ten, the definitions set forth in this subsection are
91 subject to the provisions of section two-a of this article.

§18-9A-2a. Definition of levies for general current expense purposes.

1 (a) For the purposes of this section only, "property" means
2 only Classes II, III and IV properties exclusive of natural
3 resources property as defined in section ten, article one-c,
4 chapter eleven of this code, personal property, farmland,
5 managed timberland, public utility property or any other
6 centrally assessed property provided in paragraphs (A), (B), (C)
7 and (D), subdivision (2), subsection (a), section five, article one-
8 c, chapter eleven of this code: *Provided*, That nothing in this
9 subsection may be construed to require that levies for general
10 current expense purposes be applied only to those properties that
11 are included in this definition.

12 (b) For the purposes of this section only, the median ratio of
13 the assessed values to actual selling prices in the assessment
14 ratio study applicable to the immediately preceding fiscal year
15 shall be used as the indicator to determine the percentage market
16 value that properties are being assessed at.

17 (c) Notwithstanding any other provision of this section or
18 section two of this article, effective the first day of July, two
19 thousand ten, for any county that is not assessing property at
20 least at fifty-four percent of market value, "levies for general

21 current expense purposes” means ninety-eight percent of the
22 levy rate for county boards of education set by the Legislature
23 pursuant to section six-f, article eight, chapter eleven of this
24 code.

25 (d) Any county that receives additional state aid due to its
26 using a percentage less than ninety-eight percent in the
27 calculation of levies for general current expense purposes, shall
28 report to the state board how the additional state aid was used.
29 The state board shall compile the reports from all the county
30 boards into a single report, and shall report to the Legislative
31 Oversight Commission on Education Accountability how the
32 county boards used this additional state aid. The report shall be
33 made annually as soon as practical after the end of each fiscal
34 year.

**§18-9A-11. Computation of local share; appraisal and assessment
of property; public library support.**

1 (a) On the basis of each county's certificates of valuation as
2 to all classes of property as determined and published by the
3 assessors pursuant to section six, article three, chapter eleven of
4 this code for the next ensuing fiscal year in reliance upon the
5 assessed values annually developed by each county assessor
6 pursuant to the provisions of articles one-c and three of said
7 chapter, the state board shall for each county compute by
8 application of the levies for general current expense purposes,
9 as defined in section two of this article, the amount of revenue
10 which the levies would produce if levied upon one hundred
11 percent of the assessed value of each of the several classes of
12 property contained in the report or revised report of the value,
13 made to it by the Tax Commissioner as follows:

14 (1) The state board shall first take ninety-five percent of the
15 amount ascertained by applying these rates to the total assessed
16 public utility valuation in each classification of property in the
17 county.

18 (2) The state board shall then apply these rates to the
19 assessed taxable value of other property in each classification in
20 the county as determined by the Tax Commissioner and shall
21 deduct therefrom five percent as an allowance for the usual
22 losses in collections due to discounts, exonerations,
23 delinquencies and the like. All of the amount so determined
24 shall be added to the ninety-five percent of public utility taxes
25 computed as provided in subdivision (1) of this subsection and
26 this total shall be further reduced by the amount due each
27 county assessor's office pursuant to the provisions of section
28 eight, article one-c, chapter eleven of this code and this amount
29 shall be the local share of the particular county.

30 As to any estimations or preliminary computations of local
31 share required prior to the report to the Legislature by the Tax
32 Commissioner, the state shall use the most recent projections or
33 estimations that may be available from the Tax Department for
34 that purpose.

35 (b) Commencing with the two thousand thirteen fiscal year
36 and each fiscal year thereafter, subsection (a) of this section is
37 void and local share shall be calculated in accordance with the
38 following:

39 (1) The state board shall for each county compute by
40 application of the levies for general current expense purposes,
41 as defined in sections two and two-a of this article, the amount
42 of revenue which the levies would produce if levied upon one
43 hundred percent of the assessed value calculated pursuant to
44 section five-b, article one-c, chapter eleven of this code;

45 (2) Five percent shall be deducted from the revenue
46 calculated pursuant to subdivision (1) of this subsection as an
47 allowance for the usual losses in collections due to discounts,
48 exonerations, delinquencies and the like; and

49 (3) The amount calculated in subdivision (2) of this
50 subsection shall further be reduced by the sum of money due
51 each assessor's office pursuant to the provisions of section

52 eight, article one-c, chapter eleven of this code and this reduced
53 amount shall be the local share of the particular county.

54 (c) Whenever in any year a county assessor or a county
55 commission shall fail or refuse to comply with the provisions of
56 this section in setting the valuations of property for assessment
57 purposes in any class or classes of property in the county, the
58 State Tax Commissioner shall review the valuations for
59 assessment purposes made by the county assessor and the
60 county commission and shall direct the county assessor and the
61 county commission to make corrections in the valuations as
62 necessary so that they shall comply with the requirements of
63 chapter eleven of this code and this section and the Tax
64 Commissioner shall enter the county and fix the assessments at
65 the required ratios. Refusal of the assessor or the county
66 commission to make the corrections constitutes grounds for
67 removal from office.

68 (d) For the purposes of any computation made in
69 accordance with the provisions of this section, in any taxing unit
70 in which tax increment financing is in effect pursuant to the
71 provisions of article eleven-b, chapter seven of this code, the
72 assessed value of a related private project shall be the base-
73 assessed value as defined in section two of said article.

74 (e) For purposes of any computation made in accordance
75 with the provisions of this section, in any county where the
76 county board of education has adopted a resolution choosing to
77 use the provisions of the Growth County School Facilities Act
78 set forth in section six-f, article eight, chapter eleven of this
79 code, estimated school board revenues generated from
80 application of the regular school board levy rate to new property
81 values, as that term is designated in said section, may not be
82 considered local share funds and shall be subtracted before the
83 computations in subdivisions (1) and (2), subsection (a) of this
84 section or in subdivisions (2) and (3), subsection (b) of this
85 section as applicable, are made.

86 (f) The Legislature finds that public school systems
87 throughout the state provide support in varying degrees to
88 public libraries through a variety of means including budgeted
89 allocations, excess levy funds and portions of their regular
90 school board levies as may be provided by special act. A
91 number of public libraries are situated on the campuses of
92 public schools and several are within public school buildings
93 serving both the students and public patrons. To the extent that
94 public schools recognize and choose to avail the resources of
95 public libraries toward developing within their students such
96 legally recognized elements of a thorough and efficient
97 education as literacy, interests in literature, knowledge of
98 government and the world around them and preparation for
99 advanced academic training, work and citizenship, public
100 libraries serve a legitimate school purpose and may do so
101 economically. For the purposes of any computation made in
102 accordance with the provisions of this section, the library
103 funding obligation on the regular school board levies created by
104 a special act shall be paid from that portion of the levies which
105 exceeds the proportion determined to be local share. If the
106 library funding obligation is greater than the amount available
107 in excess of the county's local share, the obligation created by
108 the special act is reduced to the amount which is available,
109 notwithstanding any provisions of the special act to the contrary.

110 (g) It is the intent of the Legislature that whenever a
111 provision of subsection (f) of this section is contrary to any
112 special act of the Legislature which has been or may in the
113 future be enacted by the Legislature that creates a library
114 funding obligation on the regular school board levy of a county,
115 subsection (f) of this section controls over the special act.
116 Specifically, the special acts which are subject to said subsection
117 upon the enactment of this section during the two thousand
118 seven regular session of the Legislature include:

119 (1) Enrolled Senate Bill No. 11, passed on the twelfth day
120 of February, one thousand nine hundred seventy, applicable to
121 the Berkeley County Board of Education;

122 (2) Enrolled House Bill No. 1352, passed on the seventh
123 day of April, one thousand nine hundred eighty-one, applicable
124 to the Hardy County Board of Education;

125 (3) Enrolled Committee Substitute for House Bill No. 2833,
126 passed on the fourteenth day of March, one thousand nine
127 hundred eighty-seven, applicable to the Harrison County Board
128 of Education;

129 (4) Enrolled House Bill No. 161, passed on the sixth day of
130 March, one thousand nine hundred fifty-seven, applicable to the
131 Kanawha County Board of Education;

132 (5) Enrolled Senate Bill No. 313, passed on the twelfth day
133 of March, one thousand nine hundred thirty-seven, as amended
134 by Enrolled House Bill No. 1074, passed on the eighth day of
135 March, one thousand nine hundred sixty-seven, and as amended
136 by Enrolled House Bill No. 1195, passed on the eighteenth day
137 of January, one thousand nine hundred eighty-two, applicable
138 to the Ohio County Board of Education;

139 (6) Enrolled House Bill No. 938, passed on the twenty-
140 eighth day of February, one thousand nine hundred sixty-nine,
141 applicable to the Raleigh County Board of Education;

142 (7) Enrolled House Bill No. 398, passed on the first day of
143 March, one thousand nine hundred thirty-five, applicable to the
144 Tyler County Board of Education;

145 (8) Enrolled Committee Substitute for Senate Bill No. 450,
146 passed on the eleventh day of March, one thousand nine
147 hundred ninety-four, applicable to the Upshur County Board of
148 Education; and

149 (9) Enrolled House Bill No. 2994, passed on the thirteenth
150 day of March, one thousand nine hundred eighty-seven,
151 applicable to the Wood County Board of Education.

152 (h) Notwithstanding any provision of any special act set
153 forth in subsection (g) of this section to the contrary, the county
154 board of any county with a special act creating a library
155 obligation out of the county's regular school levy revenues may
156 transfer that library obligation so that it becomes an obligation
157 of its excess levy revenues instead of its regular school levy
158 revenues, subject to the following:

159 (1) If a county board chooses to transfer the library
160 obligation pursuant to this subsection, the library funding
161 obligation shall remain an obligation of the regular school levy
162 revenues until after the fiscal year in which a vote on an excess
163 levy occurs;

164 (2) If a county board chooses to transfer the library
165 obligation pursuant to this subsection, the county board shall
166 include the funding of the public library obligation in the same
167 amount as its library funding obligation on its regular levy
168 revenues as the purpose or one of the purposes for the excess
169 levy to be voted on;

170 (3) If a county board chooses to transfer the library
171 obligation pursuant to this subsection, regardless of whether or
172 not the excess levy passes, effective the fiscal year after the
173 fiscal year in which a vote on the excess levy occurs, a county's
174 library obligation on its regular levy revenues is void
175 notwithstanding any provision of the special acts set forth in
176 subsection (g) of this section to the contrary; and

177 (4) Nothing in subdivision (3) of this subsection prohibits
178 a county board from funding its public library obligation
179 voluntarily.

**§18-9A-15. Allowance for increased enrollment; extraordinary
sustained increased enrollment impact
supplement.**

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
5 an amount to be determined as follows:

6 (1) The state board shall promulgate a rule pursuant to
7 article three-b, chapter twenty-nine-a of this code that
8 establishes an objective method for projecting the increase in net
9 enrollment for each school district. The state superintendent
10 shall use the method prescribed by the rule to project the
11 increase in net enrollment for each school district.

12 (2) The state superintendent shall multiply the average total
13 state aid per net pupil by the sum of the projected increases in
14 net enrollment for all school districts and report this amount to
15 the Governor for inclusion in his or her proposed budget to the
16 Legislature. The Legislature shall appropriate to the West
17 Virginia Department of Education the amount calculated by the
18 state superintendent and proposed by the Governor.

19 (3) The state superintendent shall calculate each school
20 district's share of the appropriation by multiplying the projected
21 increase in net enrollment for the school district by the average
22 total state aid per net pupil and shall distribute sixty percent of
23 each school district's share to the school district on or before the
24 first day of September of each year. The state superintendent
25 shall make a second distribution of the remainder of the
26 appropriation in accordance with subdivision (4) of this
27 subsection.

28 (4) After the first distribution pursuant to subdivision (3) of
29 this subsection is made and after the actual increase in net
30 enrollment is available, the state superintendent shall compute
31 the total actual amount to be allocated to each school district for
32 the year. The total actual amount to be allocated to each school
33 district for the year is the actual increase in the school district's
34 net enrollment multiplied by the average total state aid per net

35 pupil. The state superintendent shall make the second
36 distribution to each school district in an amount determined so
37 that the total amount distributed to the district for the year, in
38 both the first and second distributions, equals the actual increase
39 in net enrollment multiplied by the average total state aid per net
40 pupil. The state superintendent shall make the second
41 distribution on or before the thirty-first day of December of each
42 year: *Provided*, That if the amount distributed to a school
43 district during the first distribution is greater than the total
44 amount to which a district is entitled to receive for the year, the
45 district shall refund the difference to the Department of
46 Education prior to the thirtieth day of June of the fiscal year in
47 which the excess distribution is made.

48 (5) If the amount of the appropriation for increased
49 enrollment is not sufficient to provide payment in full for the
50 total of these several allocations, each county allocation shall be
51 reduced to an amount which is proportionate to the
52 appropriation compared to the total of the several allocations
53 and the allocations as thus adjusted shall be distributed to the
54 counties as provided in this section: *Provided*, That the
55 Governor shall request a supplemental appropriation at the next
56 legislative session for the reduced amount.

57 (b) To help offset the budgetary impact of extraordinary and
58 sustained increases in net enrollment in a county, there shall be
59 included in the basic state aid of any county whose most recent
60 three-year average growth in second month net enrollment is
61 two percent or more, an amount equal to one fourth of the state
62 average per pupil state aid multiplied by the increase in the
63 county's second month net enrollment in the latest year.

64 (c) No provision of this section shall be construed to in any
65 way affect the allocation of moneys for educational purposes to
66 a county under other provisions of law.

CHAPTER 230**(H.B. 3141 - By Delegates Amores, Varner and Stemple)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §11-3-5 of the Code of West Virginia, 1931, as amended, relating to whom assessors may issue proof of payment of personal property taxes.

Be it enacted by the Legislature of West Virginia:

That §11-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.**§11-3-5. Correction of previous property books; entry of omitted property.**

1 The assessor, in making out the land and personal
2 property books, shall correct any and every mistake he or she
3 discovers in the books for any previous year.

4 When the assessor ascertains that any real or personal
5 property in his or her county liable to taxation, other than that
6 mentioned in the next succeeding paragraph, has been
7 omitted from the land or personal property books for a period
8 of less than five years, he or she shall make an entry of the
9 property in the proper book of the year in which the omission
10 was discovered and assess the same, according to the rule
11 prescribed in section one of this article, and shall charge the
12 same with all taxes chargeable against it at the rate of levy for
13 the year or years the same was omitted, together with interest
14 at the rate of six percent per annum for the years the same

15 was omitted from the books: *Provided*, That if the taxpayer,
16 including any person, firm or corporation, and excluding
17 public service corporations, requires proof of payment of
18 personal property taxes then the taxpayer shall file a listing
19 of all personal property owned on the assessment date
20 preceding the tax year or years for which proof must be
21 shown. The assessor shall then create a supplemental
22 assessment for the year or years required for proof of
23 payment for all personal property taxes provided on the
24 listing and present the supplemental assessment to the sheriff
25 who shall apply the levy rate or rates for the year or years so
26 assessed and prepare a tax bill and collect the taxes together
27 with interest thereon at the rate of six percent per annum for
28 the years the same was omitted from the books and any
29 penalties included thereon: *Provided, however*, That any
30 person who has been a resident of the state less than one year
31 prior to the assessment date is not required to pay any interest
32 or penalty.

33 And when the assessor ascertains that any notes, bonds,
34 bills and accounts receivable, stocks and other intangible
35 personal property in his or her county liable to taxation has
36 been omitted from the personal property books for a period
37 of five years or less after the thirty-first day of December,
38 one thousand nine hundred thirty-two, he or she shall make
39 entry of the property in the personal property book of the
40 year in which the omission was discovered and assess the
41 same at its true and actual value, according to the rule
42 prescribed in section one of this article, and shall charge the
43 same with all taxes chargeable against it after the year last
44 aforesaid at the rate of levy for the year or years the same
45 was omitted after the year aforesaid, together with interest
46 thereon at the rate of six percent per annum for the years the
47 same was omitted from the books.

48 Any assessor failing to make an entry as in this section
49 provided, when discovered by him or her or called to his or
50 her attention by any taxpayer interested therein, shall forfeit
51 one hundred dollars.

CHAPTER 231**(S.B. 406 - By Senator Jenkins)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to including qualified continuing care retirement communities under the provisions of the Tax Limitations Amendment; and defining “qualified continuing care retirement community” and “qualified resident”.

Be it enacted by the Legislature of West Virginia:

That §11-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.**§11-4-3. Definitions.**

1 (a) For the purpose of giving effect to the Tax Limitations
2 Amendment, this chapter shall be interpreted in accordance
3 with the following definitions, unless the context clearly
4 requires a different meaning:

5 (1) “Owner” means the person, as defined in section ten,
6 article two, chapter two of this code, who is possessed of the
7 freehold, whether in fee or for life. A person seized or
8 entitled in fee subject to a mortgage or deed of trust securing
9 a debt or liability is considered the owner until the mortgagee
10 or trustee takes possession, after which the mortgagee or

11 trustee shall be considered the owner. A person who has an
12 equitable estate of freehold, or is a purchaser of a freehold
13 estate who is in possession before transfer of legal title is also
14 considered the owner. Owner shall also include the
15 corporation or other organization possessed of the freehold of
16 a qualified continuing care retirement community.

17 (2) “Used and occupied by the owner thereof exclusively
18 for residential purpose” means actual habitation by the owner
19 or the owner’s spouse, or a qualified resident of all or a
20 portion of a parcel of real property as a place of abode to the
21 exclusion of any commercial use: *Provided*, That if the parcel
22 of real property was unoccupied at the time of assessment
23 and either: (A) Was used and occupied by the owner thereof
24 exclusively for residential purposes on the first day of July of
25 the previous year assessment date; (B) was unimproved on
26 the first day of July of the previous year but a building
27 improvement for residential purposes was subsequently
28 constructed thereon between that date and the time of
29 assessment; or (C) is retained by the property owner for
30 noncommercial purposes and was most recently used and
31 occupied by the owner or the owner’s spouse as a residence
32 and the owner, as a result of illness, accident or infirmity, is
33 residing with a family member or is a resident in a nursing
34 home, personal care home, rehabilitation center or similar
35 facility, then the property shall be considered “used and
36 occupied by the owner thereof exclusively for residential
37 purpose”: *Provided, however*, That nothing herein contained
38 shall permit an unoccupied or unimproved property to be
39 considered “used and occupied by the owner thereof
40 exclusively for residential purposes” for more than one year
41 unless the owner, as a result of illness, accident or infirmity,
42 is residing with a family member or is a resident of a nursing
43 home, personal care home, rehabilitation center or similar

44 facility. Except in the case of a qualified continuing care
45 retirement community, if a license is required for an activity
46 on the premises or if an activity is conducted thereon which
47 involves the use of equipment of a character not commonly
48 employed solely for domestic as distinguished from
49 commercial purposes, the use may not be considered to be
50 exclusively residential. In the case of a qualified continuing
51 care retirement community, uses attendant to the functioning
52 of the qualified continuing care retirement community,
53 including, without limitation, cafeteria, laundry, personal and
54 health care services, shall not be considered a commercial use
55 even if such activity or equipment requires a separate license
56 or payment.

57 (3) "Family member" means a person who is related by
58 common ancestry, adoption or marriage including, but not
59 limited to, persons related by lineal and collateral
60 consanguinity.

61 (4) "Farm" means a tract or contiguous tracts of land used
62 for agriculture, horticulture or grazing and includes all real
63 property designated as "wetlands" by the United States Army
64 Corps of Engineers or the United States Fish and Wildlife
65 Service.

66 (5) "Occupied and cultivated" means subjected as a unit
67 to farm purposes, whether used for habitation or not, and
68 although parts may be lying fallow, in timber or in
69 wastelands.

70 (6) "Qualified continuing care retirement community"
71 means a continuing care retirement community: (A) Owned
72 by a corporation or other organization exempt from federal

73 income taxes under the Internal Revenue Code; (B) used in
74 a manner consistent with the purpose of providing housing
75 and health care for residents; and (C) which receives no
76 Medicaid funding under the provisions of article four-b,
77 chapter nine of this code. For purposes of this section, a
78 continuing care retirement community is a licensed facility
79 under the provisions of articles five-c and five-d, chapter
80 sixteen of this code at which independent living, assisted
81 living and nursing care, if necessary, are provided to
82 qualified residents.

83 “Qualified resident” means a person who contracts with
84 a qualified continuing care retirement community to reside
85 therein, in exchange for the payment of an entrance fee or
86 deposit, or payment of periodic charges, or both.

87 (b) Effective date of amendments -- Amendments to this
88 section enacted during the regular session of the Legislature
89 in the year two thousand six shall have retroactive effect to
90 and including the first day of July, two thousand five, and
91 shall apply in determining tax for tax years beginning the first
92 day of January, two thousand six, and thereafter.
93 Effective date of amendments --- Amendments to this section
94 enacted during the regular session of the Legislature in the
95 year two thousand seven shall take effect on the first day of
96 July, two thousand seven.

CHAPTER 232

**(S.B. 441 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §11-6A-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13-2o of said code; and to amend said code by adding thereto a new section, designated §11-13-2p, all relating generally to tax treatment of wind power projects; imposing limitation on salvage valuation of facilities at a wind power project; increasing taxable generating capacity of wind power-generating unit for business and occupation tax purposes; and providing credit against additional business and occupation tax liability for certain contractually agreed contributions to specified counties, county school boards or municipalities.

Be it enacted by the Legislature of West Virginia:

That §11-6A-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13-2o of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-13-2p, all to read as follows:

Article

- 6A. Pollution Control Facilities Tax Treatment.**
- 13. Business and Occupation Tax.**

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.**§11-6A-5a. Wind power projects.**

1 (a) Notwithstanding any other provisions of this article,
2 a power project designed, constructed or installed to convert
3 wind into electrical energy shall be subject to the provisions
4 of this section.

5 (b) Each wind turbine installed at a wind power project
6 and each tower upon which the turbine is affixed shall be
7 considered to be personal property that is a pollution control
8 facility for purposes of this article and, subject to an
9 allocation of the value of project property determined by the
10 Tax Commissioner in accordance with this section, all of the
11 value associated with the wind turbine and tower shall be
12 accorded salvage valuation: *Provided*, That the portion of the
13 total value of the facility assigned salvage value in
14 accordance with this section shall, on and after the first day
15 of July, two thousand seven, be no greater than seventy-nine
16 percent of the total value of the facility. All personal property
17 at a wind power project other than a wind turbine and tower
18 shall not be accorded salvage valuation and shall not be
19 considered to be personal property that is a pollution control
20 facility. For purposes of this section, “wind turbine and
21 tower” is limited to: The rotor, consisting of the blades and
22 the supporting hub; the drive train, which includes the
23 remaining rotating parts such as the shafts, gearbox,
24 coupling, a mechanical brake and the generator; the nacelle
25 and main frame, including the wind turbine housing, bedplate

26 and the yaw system; the turbine transformer; the machine
 27 controls; the tower; and the tower foundation.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2o. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

§11-13-2p. Credit against tax based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

§11-13-2o. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

1 (a) *Definitions.* -- As used in this section:

2 (1) "Average four-year generation" is computed by
 3 dividing by four the sum of a generating unit's net generation,
 4 expressed in kilowatt hours, for calendar years one thousand
 5 nine hundred ninety-one, one thousand nine hundred ninety-
 6 two, one thousand nine hundred ninety-three and one
 7 thousand nine hundred ninety-four. For any generating unit
 8 which was newly installed and placed into commercial
 9 operation after the first day of January, one thousand nine
 10 hundred ninety-one, and prior to the effective date of this
 11 section, "average four-year generation" is computed by
 12 dividing the unit's net generation for the period beginning
 13 with the month in which the unit was placed into commercial
 14 operation and ending with the month preceding the effective
 15 date of this section by the number of months in the period
 16 and multiplying the resulting amount by twelve with the

17 result being a representative twelve-month average of the
18 unit's net generation while in an operational status.

19 (2) "Capacity factor" means a fraction, the numerator of
20 which is average four-year generation and the denominator
21 of which is the maximum possible annual generation.

22 (3) "Generating unit" means a mechanical apparatus or
23 structure which through the operation of its component parts
24 is capable of generating or producing electricity and is
25 regularly used for this purpose.

26 (4) "Inactive reserve" means the removal of a generating
27 unit from commercial service for a period of not less than
28 twelve consecutive months as a result of lack of need for
29 generation from the generating unit or as a result of the
30 requirements of state or federal law or the removal of a
31 generating unit from commercial service for any period as a
32 result of any physical exigency which is beyond the
33 reasonable control of the taxpayer.

34 (5) "Maximum possible annual generation" means the
35 product, expressed in kilowatt hours, of official capability
36 times eight thousand seven hundred sixty hours.

37 (6) "Official capability" means the nameplate capacity
38 rating of a generating unit expressed in kilowatts.

39 (7) "Peaking unit" means a generating unit designed for
40 the limited purpose of meeting peak demands for electricity
41 or filling emergency electricity requirements.

42 (8) "Retired from service" means the removal of a
43 generating unit from commercial service for a period of at
44 least twelve consecutive months with the intent that the unit
45 will not thereafter be returned to active service.

46 (9) "Taxable generating capacity" means the product,
47 expressed in kilowatts, of the capacity factor times the
48 official capability of a generating unit, subject to the
49 modifications set forth in subdivisions (2) and (3), subsection
50 (c) of this section.

51 (10) "Net generation" for a period means the kilowatt
52 hours of net generation available for sale generated or
53 produced by the generating unit in this state during the period
54 less the following:

55 (A) Twenty-one twenty-sixths of the kilowatt hours of
56 electricity generated at the generating unit and sold during the
57 period to a plant location of a customer engaged in
58 manufacturing activity if the contract demand at the plant
59 location exceeds two hundred thousand kilowatts per hour in
60 a year or where the usage at the plant location exceeds two
61 hundred thousand kilowatts per hour in a year;

62 (B) Twenty-one twenty-sixths of the kilowatt hours of
63 electricity produced or generated at the generating unit during
64 the period by any person producing electric power and an
65 alternative form of energy at a facility located in this state
66 substantially from gob or other mine refuse;

67 (C) The total kilowatt hours of electricity generated at the
68 generating unit exempted from tax during the period by
69 subsection (b), section two-n of this article.

70 (b) *Rate of tax.* -- Upon every person engaging or
71 continuing within this state in the business of generating or
72 producing electricity for sale, profit or commercial use, either
73 directly or indirectly through the activity of others, in whole
74 or in part, or in the business of selling electricity to
75 consumers, or in both businesses, the tax imposed by section
76 two of this article shall be equal to:

77 (1) For taxpayers who generate or produce electricity for
78 sale, profit or commercial use, the product of twenty-two
79 dollars and seventy-eight cents multiplied by the taxable
80 generating capacity of each generating unit in this state
81 owned or leased by the taxpayer, subject to the modifications
82 set forth in subsection (c) of this section: *Provided*, That with
83 respect to each generating unit in this state which has
84 installed a flue gas desulfurization system, the tax imposed
85 by section two of this article shall, on and after the thirty-first
86 day of January, one thousand nine hundred ninety-six, be
87 equal to the product of twenty dollars and seventy cents
88 multiplied by the taxable generating capacity of the units,
89 subject to the modifications set forth in subsection (c) of this
90 section: *Provided, however*, That with respect to kilowatt
91 hours sold to or used by a plant location engaged in
92 manufacturing activity in which the contract demand at the
93 plant location exceeds two hundred thousand kilowatts per
94 hour per year or if the usage at the plant location exceeds two
95 hundred thousand kilowatts per hour in a year, in no event
96 shall the tax imposed by this article with respect to the sale or

97 use of the electricity exceed five hundredths of one cent times
98 the kilowatt hours sold to or used by a plant engaged in a
99 manufacturing activity; and

100 (2) For taxpayers who sell electricity to consumers in this
101 state that is not generated or produced in this state by the
102 taxpayer, nineteen hundredths of one cent times the kilowatt
103 hours of electricity sold to consumers in this state that were
104 not generated or produced in this state by the taxpayer,
105 except that the rate shall be five hundredths of one cent times
106 the kilowatt hours of electricity not generated or produced in
107 this state by the taxpayer which is sold to a plant location in
108 this state of a customer engaged in manufacturing activity if
109 the contract demand at such plant location exceeds two
110 hundred thousand kilowatts per hour per year or if the usage
111 at such plant location exceeds two hundred thousand
112 kilowatts per hour in a year. The measure of tax under this
113 subdivision shall be equal to the total kilowatt hours of
114 electricity sold to consumers in the state during the taxable
115 year, that were not generated or produced in this state by the
116 taxpayer, to be determined by subtracting from the total
117 kilowatt hours of electricity sold to consumers in the state the
118 net kilowatt hours of electricity generated or produced in the
119 state by the taxpayer during the taxable year. For the
120 purposes of this subdivision, net kilowatt hours of electricity
121 generated or produced in this state by the taxpayer includes
122 the taxpayer's pro rata share of electricity generated or
123 produced in this state by a partnership or limited liability
124 company of which the taxpayer is a partner or member. The
125 provisions of this subdivision shall not apply to those
126 kilowatt hours exempt under subsection (b), section two-n of

127 this article. Any person taxable under this subdivision shall
128 be allowed a credit against the amount of tax due under this
129 subdivision for any electric power generation taxes or a tax
130 similar to the tax imposed by subdivision (1) of this
131 subsection paid by the taxpayer with respect to the electric
132 power to the state in which the power was generated or
133 produced. The amount of credit allowed may not exceed the
134 tax liability arising under this subdivision with respect to the
135 sale of the power.

136 (c) The following provisions are applicable to taxpayers
137 subject to tax under subdivision (1), subsection (b) of this
138 section:

139 (1) *Retired units; inactive reserve.* -- If a generating unit
140 is retired from service or placed in inactive reserve, a
141 taxpayer may not be liable for tax computed with respect to
142 the taxable generating capacity of the unit for the period that
143 the unit is inactive or retired. The taxpayer shall provide
144 written notice to the Joint Committee on Government and
145 Finance, as well as to any other entity as may be otherwise
146 provided by law, eighteen months prior to retiring any
147 generating unit from service in this state.

148 (2) *New generating units.* -- If a new generating unit,
149 other than a peaking unit, is placed in initial service on or
150 after the effective date of this section, the generating unit's
151 taxable generating capacity shall equal forty percent of the
152 official capability of the unit: *Provided*, That the taxable
153 generating capacity of a county or municipally owned
154 generating unit shall equal zero percent of the official

155 capability of the unit and for taxable periods ending on or
156 before the thirty-first day of December, two thousand seven,
157 the taxable generating capacity of a generating unit utilizing
158 a turbine powered primarily by wind shall equal five percent
159 of the official capability of the unit: *Provided further*, That
160 for taxable periods beginning on or after the first day of
161 January, two thousand eight, the taxable generating capacity
162 of a generating unit utilizing a turbine powered primarily by
163 wind shall equal twelve percent of the official capability of
164 the unit.

165 (3) *Peaking units*. -- If a peaking unit is placed in initial
166 service on or after the effective date of this section, the
167 generating unit's taxable generating capacity shall equal five
168 percent of the official capability of the unit: *Provided*, That
169 the taxable generating capacity of a county- or municipally
170 owned generating plant shall equal zero percent of the official
171 capability of the unit.

172 (4) *Transfers of interests in generating units*. -- If a
173 taxpayer acquires an interest in a generating unit, the
174 taxpayer shall include the computation of taxable generating
175 capacity of the unit in the determination of the taxpayer's tax
176 liability as of the date of the acquisition. Conversely, if a
177 taxpayer transfers an interest in a generating unit, the
178 taxpayer may not for periods thereafter be liable for tax
179 computed with respect to the taxable generating capacity of
180 the transferred unit.

181 (5) *Proration, allocation*. -- The Tax Commissioner shall
182 promulgate rules in conformity with the provisions of article

183 three, chapter twenty-nine-a of this code to provide for the
184 administration of this section and to equitably prorate taxes
185 for a taxable year in which a generating unit is first placed in
186 service, retired or placed in inactive reserve, or in which a
187 taxpayer acquires or transfers an interest in a generating unit,
188 to equitably allocate and reallocate adjustments to net
189 generation, and to equitably allocate taxes among multiple
190 taxpayers with interests in a single generating unit, it being
191 the intent of the Legislature to prohibit multiple taxation of
192 the same taxable generating capacity.

193 So as to provide for an orderly transition with respect to
194 the rate-making effect of this section, those electric light and
195 power companies which, as of the effective date of this
196 section, are permitted by the West Virginia Public Service
197 Commission to utilize deferred accounting for purposes of
198 recovery from ratepayers of any portion of business and
199 occupation tax expense under this article shall be permitted,
200 until the time that action pursuant to a rate application or
201 order of the commission provides for appropriate alternative
202 rate-making treatment for such expense, to recover the tax
203 expense imposed by this section by means of deferred
204 accounting to the extent that the tax expense imposed by this
205 section exceeds the level of business and occupation tax
206 under this article currently allowed in rates.

207 (6) *Electricity generated by manufacturer or affiliate for*
208 *use in manufacturing activity.* -- When electricity used in a
209 manufacturing activity is generated in this state by the person
210 who owns the manufacturing facility in which the electricity
211 is used and the electricity-generating unit or units producing

212 the electricity so used are owned by the manufacturer, or by
213 a member of the manufacturer's controlled group, as defined
214 in Section 267 of the Internal Revenue Code of 1986, as
215 amended, the generation of the electricity may not be taxable
216 under this article: *Provided*, That any electricity generated or
217 produced at the generating unit or units which is sold or used
218 for purposes other than in the manufacturing activity shall be
219 taxed under this section and the amount of tax payable shall
220 be adjusted to be equal to an amount which is proportional to
221 the electricity sold for purposes other than the manufacturing
222 activity. The Department of Revenue shall promulgate rules
223 in accordance with article three, chapter twenty-nine-a of this
224 code: *Provided, however*, That the rules shall be promulgated
225 as emergency rules.

226 (d) Beginning the first day of June, one thousand nine
227 hundred ninety-five, electric light and power companies that
228 actually paid tax based on the provisions of subdivision (3),
229 subsection (a), section two-d of this article or section two-m
230 of this article for every taxable month in one thousand nine
231 hundred ninety-four shall determine their liability for
232 payment of tax under this article in accordance with
233 subdivisions (1) and (2) of this subsection. All other electric
234 light and power companies shall determine their liability for
235 payment of tax under this article exclusively under this
236 section beginning the first day of June, one thousand nine
237 hundred ninety-five, and thereafter.

238 (1) If for taxable months beginning on or after the first
239 day of June, one thousand nine hundred ninety-five, liability
240 for tax under this section is equal to or greater than the sum

241 of the power company's liability for payment of tax under
242 subdivision (3), subsection (a), section two-d of this article
243 and this section, then the company shall pay the tax due
244 under this section and not the tax due under subdivision (3),
245 subsection (a), section two-d of this article and section two-m
246 of this article. If tax liability under this section is less than the
247 tax shall be paid under subdivision (3), subsection (a), section
248 two-d of this article and section two-m of this article and the
249 tax due under this section may not be paid.

250 (2) Notwithstanding subdivision (1) of this subsection,
251 for taxable years beginning on or after the first day of
252 January, one thousand nine hundred ninety-eight, all electric
253 and light power companies shall determine their liability for
254 payment of tax under this article exclusively under this
255 section.

**§11-13-2p. Credit against tax based on the taxable generating
capacity of a generating unit utilizing a turbine
powered primarily by wind.**

1 (a) For taxable periods beginning on or after the first day
2 of January, two thousand eight, a credit shall be allowed
3 against tax imposed by this article and calculated based on
4 the taxable generating capacity of a generating unit utilizing
5 a turbine powered primarily by wind. The total credit shall be
6 equal to the amount of qualified contractually agreed
7 contributions as defined in this section. The amount of total
8 credit shall be reduced each year by the amount of credit
9 annually applied to reduce tax under this section.

10 (b) *Definitions.* -- For purposes of this section:

11 (1) "Qualified contractually agreed contribution" means
12 money paid, or the lower of the cost or fair market value, at
13 the time of transfer, of property transferred, by the taxpayer,
14 the owner of the taxpayer or the operator or owner of the
15 wind turbine unit to a county in which the wind turbine unit
16 is located, a county school board of the county in which the
17 wind turbine unit is located or to a municipality located in the
18 county in which the wind turbine unit is located pursuant to
19 a written transfer agreement.

20 (A) The term "qualified contractually agreed
21 contribution" does not include any payment in lieu of taxes
22 or any tax, fee or levy paid to any county, county school
23 board or municipality or to any other governmental
24 subdivision, agency or instrumentality of this state or of any
25 county or municipality.

26 (B) The term "qualified contractually agreed
27 contribution" does not include any payment in lieu of taxes
28 or any tax, fee or levy paid to any county, county school
29 board or municipality or to any other governmental
30 subdivision, agency or instrumentality of any state other than
31 this state or of any county or municipality of any state other
32 than this state.

33 (C) The term "qualified contractually agreed
34 contribution" does not include any payment in lieu of taxes
35 or any tax, fee or levy paid to the United States or to any
36 governmental subdivision of the United States or to any

37 agency or instrumentality of the United States or to any
38 foreign government or subdivision, agency or instrumentality
39 thereof.

40 (2) "Taxpayer" means any person that is legally liable for
41 tax imposed by this article that is calculated based on the
42 taxable generating capacity of a generating unit utilizing a
43 turbine powered primarily by wind.

44 (3) "Wind turbine unit" means, and is limited to, an
45 electricity-generating unit utilizing a turbine powered
46 primarily by wind that has a taxable generating capacity
47 determined in accordance with subdivision (2), subsection
48 (c), section two-o of this article.

49 (4) "Written transfer agreement" means a written contract
50 or written promise to transfer money or property to a county
51 in which the wind turbine unit is located, a county school
52 board of the county in which the wind turbine unit is located
53 or a municipality located in the county in which the wind
54 turbine unit is located, executed not later than the first day of
55 March, two thousand seven, by the taxpayer, the owner of the
56 taxpayer or the operator or owner of the wind turbine unit
57 and executed by the county commission of the county in
58 which the wind turbine unit is located or by any officer or
59 representative of the county commission having authority to
60 execute binding legal documents for the county commission,
61 the county school board of the county in which the wind
62 turbine unit is located or any officer or representative of the
63 county school board having authority to execute binding legal
64 documents for the county school board, or the city council,

65 mayor or city manager of a municipality located in the county
66 in which the wind turbine unit is located or any officer or
67 representative of the municipality having authority to execute
68 binding legal documents for the municipality.

69 (c) *Credit limitations.* —

70 (1) The total amount of credit allowable under this
71 section is limited to the amount of qualified contractually
72 agreed contributions made pursuant to a written transfer
73 agreement.

74 (2) The credit allowed under this section may only be
75 applied to offset annual tax imposed by this article that is
76 measured by the taxable generating capacity of the wind
77 turbine unit. No other tax imposed by or under this article
78 may be offset by the credit allowed under this section and no
79 other tax imposed by this code may be offset by the credit.

80 (3) The credit allowed under this section shall be applied
81 after application of the credit allowed under article thirteen-d
82 of this chapter, as applicable, and after any other applicable
83 credits allowed by this chapter against tax imposed by this
84 article.

85 (4) The amount of credit allowed under this section and
86 the amount of the credit allowed under article thirteen-d of
87 this chapter may not, in combination, reduce the amount of
88 annual tax imposed by this article on the taxable generating
89 capacity of the wind turbine unit to an amount that is less
90 than fifty percent of the amount of annual tax that would

91 have been imposed by this article on the wind turbine unit if
92 the taxable generating capacity of the wind turbine unit was
93 set at five percent of the official capacity of the wind turbine
94 unit.

95 (d) *Time over which credit may be applied.* --

96 (1) The total amount of credit determined under
97 subsection (a) of this section shall be reduced annually by the
98 amount of credit applied in each tax year to offset tax under
99 this section.

100 (2) The credit allowed under this section may be applied
101 annually, beginning on the later of:

102 (A) The year a qualified contractually agreed contribution
103 in money was paid or a qualified contractually agreed
104 contribution in property was delivered to the county, the
105 county school board or the municipality; or

106 (B) The year in which title thereto irrevocably passed to
107 the transferee;

108 (3) The credit may thereafter be taken in each succeeding
109 tax year until the amount of total credit has been exhausted or
110 until the ninth succeeding tax year after the contractually
111 agreed contribution of money was so paid or the
112 contractually agreed contribution of property was so
113 delivered. Credit remaining after the ninth succeeding tax
114 year is forfeited.

115 (4) Credit to which a taxpayer is entitled under this
116 section shall be applied in an order and sequence such that
117 the credit earned earliest in time shall be applied first in any
118 tax year to offset tax under this section.

119 (e) *Credit for successor businesses and transferees of a*
120 *wind turbine unit; apportionment.* --

121 (1) *Mere change in form of business.* -- The credit
122 allowed under this section shall not be forfeited by reason of
123 a mere change in the form of the entity or organization that
124 is conducting the business so long as the successor business
125 continues to remain a taxpayer, as defined in this section, in
126 this state, operating the wind turbine unit that was originally
127 owned or operated by the predecessor taxpayer. Such
128 successor shall acquire the amount of credit that remains
129 available under this section for each subsequent taxable year
130 until the credit expires or is exhausted, based on the years
131 remaining and amount of credit remaining to which the
132 transferor was entitled at the time of the transfer.

133 (2) *Transfer or sale to successor.* -- The credit allowed
134 under this section shall not be forfeited by reason of a
135 transfer or sale to a successor business of a wind turbine unit
136 so long as the successor business continues to remain a
137 taxpayer, as defined in this section, in this state, operating the
138 wind turbine unit that was originally owned or operated by
139 the predecessor taxpayer. Upon transfer or sale of a wind
140 turbine unit, the successor shall acquire the amount of credit
141 that remains available under this section for each subsequent
142 taxable year until the credit expires or is exhausted, based on
143 the years remaining and amount of credit remaining to which
144 the transferor was entitled at the time of the transfer.

145 (3) *Apportionment in the year of transfer.* — Upon
146 transfer or sale, the successor shall acquire the amount of
147 credit that remains available under this section for each
148 taxable year subsequent to the taxable year of the transferor
149 during which the transfer occurred and, for the year of
150 transfer, an amount of annual credit for the year in the same
151 proportion as the number of days remaining in the transferor's
152 taxable year bears to the total number of days in the
153 transferor's taxable year.

CHAPTER 233

(Com. Sub. for S.B. 672 - By Senator McCabe)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-6C-1, §11-6C-2, §11-6C-3, §11-6C-4 and §11-6C-5 of the Code of West Virginia, 1931, as amended, all relating to the special method for appraising dealer vehicle inventory generally; including dealer boat inventory and daily passenger rental car inventory in the special method for appraising dealer vehicle inventory; providing the method for determining the market value of passenger rental cars held in inventory of daily passenger car rental businesses; providing the method for determining the market value of dealer motorboat inventory held by a recreational vehicle dealer; and providing the method for determining the market value of house trailers and factory-built homes.

Be it enacted by the Legislature of West Virginia:

That §11-6C-1, §11-6C-2, §11-6C-3, §11-6C-4 and §11-6C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6C. SPECIAL METHOD FOR APPRAISING DEALER VEHICLE INVENTORY, DEALER MOTORBOAT INVENTORY, DAILY PASSENGER RENTAL CAR INVENTORY, AND HOUSE TRAILER AND FACTORY-BUILT HOMES INVENTORY.

- §11-6C-1. Inventory included within scope of article.
- §11-6C-2. Method for determining market value of dealer vehicle inventory, dealer motorboat inventory, daily passenger rental car inventory and house trailer and factory-built homes inventory.
- §11-6C-3. Owner to file return estimating market value.
- §11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, or house trailer and factory-built homes inventory.
- §11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

§11-6C-1. Inventory included within scope of article.

1 Notwithstanding any other provisions of law, inventory
 2 of vehicles, as that term is defined in section one, article one,
 3 chapter seventeen-b of this code that is held for sale or lease
 4 by new or used vehicle dealers licensed under the provisions
 5 of article six, chapter seventeen-a of this code, or held for
 6 sale or lease by daily passenger car rental businesses licensed
 7 under the provisions of article six-d of said chapter and
 8 inventory of motorboats, as that term is defined in section
 9 one, article six of said chapter, that is held for sale or lease by
 10 a recreational vehicle dealer, as that term is defined in said

11 section, that is licensed under the authority of section three,
12 article six of said chapter, consisting of individual units of
13 personal new or used property, each unit of which, upon its
14 sale to a retail purchaser, must, as a matter of law, be titled in
15 the name of the retail purchaser and registered with the
16 Division of Motor Vehicles, shall be appraised for
17 assessment purposes, as set forth in this article: *Provided*,
18 That house trailers and factory-built homes shall be included
19 within the scope of this article.

20 This article does not apply to units of inventory which are
21 included in fleet sales, transactions between dealers or
22 classified as heavy duty trucks of sixteen thousand pounds or
23 more gross vehicular weight. For purposes of this article,
24 inventory subject to the provisions of this article shall be
25 denoted "dealer vehicle inventory", "dealer motorboat
26 inventory", "daily passenger rental car inventory" and "house
27 trailer and factory-built homes inventory".

**§11-6C-2. Method for determining market value of dealer
vehicle inventory, dealer motorboat inventory,
daily passenger rental car inventory and
house trailer and factory-built homes
inventory.**

1 (a) For purposes of appraisal, the market value of dealer
2 vehicle inventory and dealer motorboat inventory, as of the
3 first day of July of each year, shall be the gross sales or total
4 annual sales of such inventory made by such dealer during
5 the preceding calendar year, divided by twelve, for a dealer
6 with respect to which or whom sales were made during the

7 entire preceding year. For the purposes of this article, "gross
8 sales" or "total annual sales" means the amount received in
9 money, credits, property, services or other consideration from
10 sales within this state without deduction on account of the
11 cost of the property sold, amounts paid for interest or any
12 other expenses whatsoever. Gross sales or total annual sales
13 shall not be reduced by the value of an item of tangible
14 personal property which is traded in for the purpose of
15 reducing the purchase price of the item purchased. In the
16 case of dealers who were not in business during the entire
17 calendar year immediately preceding the first day of July of
18 that calendar year, the assessor shall estimate the market
19 value of such inventory based on such data as may be
20 available to him or her: *Provided*, That the assessor may
21 extrapolate estimates using such sales data as may be
22 available and reliable when sales are made for a period of
23 three months or more during the prior year: *Provided*,
24 *however*, That there shall be excluded from the appraisal
25 calculations the value of those units which were not
26 physically held as inventory by the owner of the inventory at
27 any time during the preceding year. In all cases, the market
28 value, so derived, shall serve as the basis for calculating the
29 appraised value.

30 (b) For purposes of appraisal, the market value of daily
31 passenger rental car inventory, as of the first day of July of
32 each year, shall be the gross value of all daily passenger
33 rental cars made available by a daily passenger rental car
34 business on the first day of each month of the immediately
35 preceding calendar year: *Provided*, That the daily passenger
36 rental car business shall add together the gross values and
37 divide that sum by twelve. For purposes of this article,

38 "gross value" means the lowest value for each vehicle as
39 shown in a nationally accepted used car guide determined by
40 the Tax Commissioner. To calculate the "gross value" of any
41 vehicle that does not appear in a nationally accepted used car
42 guide, the Tax Commissioner shall determine the percent of
43 the manufacturer's suggested retail price for each such
44 vehicle held as a daily passenger rental car without deduction
45 on account of the cost of any inventory, amounts paid for
46 interest or any other expenses whatsoever. In the case of
47 daily passenger rental car businesses that were not in
48 business during the entire calendar year immediately
49 preceding the first day of July of that calendar year, the
50 assessor shall estimate the market value of such daily
51 passenger rental car inventory based on such data as may be
52 available to him or her: *Provided, however*, That the assessor
53 may extrapolate estimates using the daily passenger rental car
54 data that is made available and reliable when rentals were
55 made for a period of three months or more during the prior
56 year: *Provided further*, That there shall be excluded from the
57 appraisal calculations the value of those units which were not
58 physically held as daily passenger rental car inventory by the
59 owner of the daily passenger rental car inventory at any time
60 during the preceding year. In all cases, the gross value of
61 daily passenger rental car inventory, so derived, shall serve
62 as the basis for calculating the appraised value of the
63 inventory. For purposes of this article, "daily passenger
64 rental car inventory" includes all motor vehicles licensed as
65 a class A motor vehicle as defined in section one, article ten,
66 chapter seventeen-a of this code.

67 (c) For purposes of appraisal, the market value of house
68 trailer and factory-built homes inventory, as of the first day
69 of July of each year, shall be the gross sales or total annual
70 sales of such inventory made by such dealer during the

71 preceding calendar year, divided by twelve, for a dealer with
72 respect to which or whom sales were made during the entire
73 preceding year. For the purposes of this article, "gross sales"
74 or "total annual sales" means the amount received in money,
75 credits, property, services or other consideration from sales
76 within this state without deduction on account of the cost of
77 the property sold, amounts paid for interest or any other
78 expenses whatsoever. Gross sales or total annual sales shall
79 not be reduced by the value of an item of tangible personal
80 property which is traded in for the purpose of reducing the
81 purchase price of the item purchased. In the case of dealers
82 who were not in business during the entire calendar year
83 immediately preceding the first day of July of that calendar
84 year, the assessor shall estimate the market value of such
85 inventory based on such data as may be available to him or
86 her: *Provided*, That the assessor may extrapolate estimates
87 using such sales data as may be available and reliable when
88 sales are made for a period of three months or more during
89 the prior year: *Provided, however*, That there shall be
90 excluded from the appraisal calculations the value of those
91 units which were not physically held as inventory by the
92 owner of the inventory at any time during the preceding year.
93 In all cases, the market value, so derived, shall serve as the
94 basis for calculating the appraised value.

§11-6C-3. Owner to file return estimating market value.

1 The owner of dealer vehicle inventory, daily passenger
2 rental car inventory, dealer motorboat inventory, or house
3 trailer and factory-built homes inventory shall report the
4 market value of such inventory, derived as set forth in section
5 two of this article, to the assessor, as a part of the return
6 required by law to be filed annually pursuant to the
7 provisions of this chapter.

§11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, or house trailer and factory-built homes inventory.

1 The annual amount of tax levied upon the dealer vehicle
2 inventory, daily passenger rental car inventory, dealer
3 motorboat inventory or house trailer and factory-built homes
4 inventory pursuant to article eight of this chapter shall be
5 based upon the market value as determined pursuant to this
6 article, times the assessment percentage then provided by
7 law.

§11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

1 (a) This article is adopted to address the lack of
2 uniformity, audit difficulties and business management issues
3 arising in this state with respect to the assessment of the
4 personal property held as new and used dealer vehicle
5 inventory, daily passenger rental car inventory, dealer
6 motorboat inventory or house trailer and factory-built homes
7 inventory. Accordingly, the Legislature finds and declares
8 that the adoption of this article will provide a more reliable
9 and uniform method of determining market value of dealer
10 vehicle inventory, daily passenger rental car inventory, dealer
11 motorboat inventory or house trailer and factory-built homes
12 inventory; minimize audit problems associated with such
13 property; provide a predictable revenue stream for levying
14 bodies; maximize the owner's ability to manage inventory;
15 and provide clear guidance to local authorities by superseding
16 the wide variety of otherwise lawful appraisal methods now
17 in use in this state.

18 (b) The Tax Commissioner shall have the power to
19 promulgate such rules as may be necessary to implement the
20 provisions of this article.

CHAPTER 234

**(H.B. 2988 - By Delegates White, Boggs, Kominar,
Poling, M., Iaquinta, Ashley and Walters)**

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §11-10-4 of the Code of West Virginia, 1931, as amended, relating to administration of taxes, and enacting certain definitions.

Be it enacted by the Legislature of West Virginia:

That §11-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND
ADMINISTRATION ACT.**

§11-10-4. Definitions.

1 For the purpose of this article, the term:

2 (a) "Officer or employee of this state" shall include, but
3 is not limited to, any former officer or employee of the State
4 of West Virginia.

5 (b) "Office of tax appeals" means the West Virginia
6 office of tax appeals created by section three, article ten-a of
7 this chapter.

8 (c) "Person" shall include, but is not limited to, any
9 individual, firm, partnership, limited partnership,

10 copartnership, joint venture, association, corporation,
11 municipal corporation, organization, receiver, estate, trust,
12 guardian, executor, administrator, and also any officer,
13 employee or member of any of the foregoing who, as an
14 officer, employee or member, is under a duty to perform or
15 is responsible for the performance of an act prescribed by the
16 provisions of this article and the provisions of any of the
17 other articles of this chapter which impose taxes administered
18 by the tax commissioner, unless the intention to give a more
19 limited or broader meaning is disclosed by the context of this
20 article or any of the other articles of this chapter which
21 impose taxes administered by the tax commissioner.

22 (d) "Return" means for taxable years beginning on or
23 after the first day of January, two thousand seven, a tax or
24 information return or report, declaration of estimated tax,
25 claim or petition for refund or credit or petition for
26 reassessment which is complete and that is required by, or
27 provided for, or permitted under the provisions of this article
28 (or any article of this chapter administered under this article)
29 which is filed with the tax commissioner by, on behalf of, or
30 with respect to any person and any amendment or supplement
31 thereto, including supporting schedules, attachments or lists
32 which are supplemental to the return so filed. For purposes
33 of this subsection, "complete" means for taxable years
34 beginning on or after the first day of January, two thousand
35 seven, the information required to be entered is entered on
36 the applicable return forms. A return form is not to be
37 considered complete if the information required to be entered
38 on the applicable return forms is only contained in
39 amendments or supplements thereto, including supporting
40 schedules, attachments or lists. A return that is not considered
41 complete is deemed not to be filed:

42 (1) For purposes of claiming a refund of any tax
43 administered under this article;

44 (2) For purposes of the commencement of any limitation
45 on any assessment under section fifteen of this article;

46 (3) For purposes of determining the commencement of
47 the period when the tax commissioner shall pay interest for
48 the late payment of a refund;

49 (4) For purposes of additions to tax imposed under
50 sections eighteen, eighteen-a or eighteen-b of this article; or

51 (5) For purposes of penalties imposed under section
52 nineteen of this article.

53 (e) "State" means any state of the United States or the
54 District of Columbia.

55 (f) "Tax" or "taxes" includes within the meaning thereof
56 taxes specified in section three of this article, additions to tax,
57 penalties and interest, unless the intention to give the same a
58 more limited meaning is disclosed by the context.

59 (g) "Tax commissioner" or "commissioner" means the tax
60 commissioner of the state of West Virginia or his or her
61 delegate.

62 (h) "Taxpayer" means any person required to file a return
63 for any tax administered under this article, or any person
64 liable for the payment of any tax administered under this
65 article.

66 (i) "Tax administered under this article" means any tax to
67 which this article applies as set forth in section three of this
68 article.

69 (j) "This code" means the Code of West Virginia, one
70 thousand nine hundred thirty-one, as amended.

71 (k) "This state" means the State of West Virginia.

CHAPTER 235

**(H.B. 2990 - By Delegates Doyle, Barker, Klempa, Marshall,
Carmichael, Blair and Walters)**

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating to the administration of taxes; and providing technical corrections to assure the proper collection of offset fees.

Be it enacted by the Legislature of West Virginia:

That §11-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND
ADMINISTRATION ACT.**

§11-10-11. Collection of tax.

1 (a) *General.* -- The Tax Commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by this
3 article or any of the other articles of this chapter to which this
4 article is applicable. In addition to all other remedies
5 available for the collection of debts due this state, the Tax
6 Commissioner may proceed by foreclosure of the lien
7 provided in section twelve, or by levy and distraint under
8 section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.* --

11 (1) Any person contracting with a nonresident contractor
12 subject to the taxes imposed by articles thirteen, twenty-one
13 and twenty-four of this chapter, shall withhold payment, in
14 the final settlement of the contract, of a sufficient amount, not
15 exceeding six percent of the contract price, as will in the
16 person's opinion be sufficient to cover the taxes, until the
17 receipt of a certificate from the Tax Commissioner to the
18 effect that the above referenced taxes imposed against the
19 nonresident contractor have been paid or provided for.

20 (2) If any person shall fail to withhold as provided in
21 subdivision (1) of this subsection, that person is personally
22 liable for the payment of all taxes attributable to the contract,
23 not to exceed six percent of the contract price. The taxes
24 attributable shall be recoverable by the Tax Commissioner by
25 appropriate legal proceedings, which may include issuance of
26 an assessment under this article.

27 (c) *Prerequisite for issuance of certificate of dissolution*
28 *or withdrawal of corporation.* -- The Secretary of State shall
29 withhold the issuance of any certificate of dissolution or
30 withdrawal in the case of any corporation organized under
31 the laws of this state, or organized under the laws of another
32 state and admitted to do business in this state, until the receipt
33 of a certificate from the Tax Commissioner to the effect that
34 every tax administered under this article imposed against any
35 corporation has been paid or provided for, or that the
36 applicant is not liable for any tax administered under this
37 article.

38 (d) *Prerequisite to final settlement of contract with this*
39 *state or political subdivision; penalty.* -- All state, county,
40 district and municipal officers and agents making contracts

41 on behalf of this state or any political subdivision thereof
42 shall withhold payment, in the final settlement of any
43 contract, until the receipt of a certificate from the Tax
44 Commissioner to the effect that the taxes imposed by articles
45 thirteen, twenty-one and twenty-four of this chapter against
46 the contractor have been paid or provided for. If the
47 transaction embodied in the contract or the subject matter of
48 the contract is subject to county or municipal business and
49 occupation tax, then the payment shall also be withheld until
50 receipt of a release from the county or municipality to the
51 effect that all county or municipal business and occupation
52 taxes levied or accrued against the contractor have been paid.
53 Any official violating this section is subject to a civil penalty
54 of one thousand dollars, recoverable as a debt in a civil action
55 brought by the Tax Commissioner.

56 (e) *Limited effect of Tax Commissioner's certificates.* --
57 The certificates of the Tax Commissioner provided in
58 subsections (b), (c) and (d) of this section shall not bar
59 subsequent investigations, assessments, refunds and credits
60 with respect to the taxpayer.

61 (f) *Payment when person sells out or quits business;*
62 *liability of successor; lien.* --

63 (1) If any person subject to any tax administered under
64 this article sells out his, her or its business or stock of goods,
65 or ceases doing business, any tax, additions to tax, penalties
66 and interest imposed by this article or any of the other articles
67 of this chapter to which this article is applicable shall become
68 due and payable immediately and that person shall, within
69 thirty days after selling out his, her or its business or stock of
70 goods or ceasing to do business, make a final return or
71 returns and pay any tax or taxes which are due. The unpaid
72 amount of any tax is a lien upon the property of that person.

73 (2) The successor in business of any person who sells out
74 his, her or its business or stock of goods, or ceases doing
75 business, is personally liable for the payments of tax,
76 additions to tax, penalties and interest unpaid after expiration
77 of the thirty-day period allowed for payment: *Provided*, That
78 if the business is purchased in an arms-length transaction, and
79 if the purchaser withholds so much of the consideration for
80 the purchase as will satisfy any tax, additions to tax, penalties
81 and interest which may be due until the seller produces a
82 receipt from the Tax Commissioner evidencing the payment
83 thereof, the purchaser is not personally liable for any taxes
84 attributable to the former owner of the business unless the
85 contract of sale provides for the purchaser to be liable for
86 some or all of the taxes. The amount of tax, additions to tax,
87 penalties and interest for which the successor is liable is a
88 lien on the property of the successor, which shall be enforced
89 by the Tax Commissioner as provided in this article.

90 (g) *Priority in distribution of estate or property in*
91 *receivership; personal liability of fiduciary.* -- All taxes due
92 and unpaid under this article shall be paid from the first
93 money available for distribution, voluntary or compulsory, in
94 receivership, bankruptcy or otherwise, of the estate of any
95 person, firm or corporation, in priority to all claims, except
96 taxes and debts due the United States which under federal
97 law are given priority over the debts and liens created by this
98 article. Any trustee, receiver, administrator, executor or
99 person charged with the administration of an estate who
100 violates the provisions of this section is personally liable for
101 any taxes accrued and unpaid under this article, which are
102 chargeable against the person, firm or corporation whose
103 estate is in administration.

104 (h) *Injunction.* -- If the taxpayer fails for a period of more
105 than sixty days to fully comply with any of the provisions of
106 this article or of any other article of this chapter to which this

107 article is applicable, the Tax Commissioner may institute a
108 proceeding to secure an injunction to restrain the taxpayer
109 from doing business in this state until the taxpayer fully
110 complies with the provisions of this article or any other
111 articles. No bond is required of the Tax Commissioner in any
112 action instituted under this subsection.

113 (i) *Costs.* -- In any proceeding under this section, upon
114 judgment or decree for the Tax Commissioner, he or she shall
115 be awarded his or her costs.

116 (j) *Refunds; credits; right to offset.* --

117 (1) Whenever a taxpayer has a refund or credit due it for
118 an overpayment of any tax administered under this article, the
119 Tax Commissioner may reduce the amount of the refund or
120 credit by the amount of any tax administered under this
121 article, whether it be the same tax or any other tax, which is
122 owed by the same taxpayer and collectible as provided in
123 subsection (a) of this section.

124 (2) The Tax Commissioner may enter into agreements
125 with the Internal Revenue Service that provide for offsetting
126 state tax refunds against federal tax liabilities; offsetting
127 federal tax refunds against state tax liabilities; and
128 establishing the amount of the offset fee per transaction
129 which both agencies may charge each other: *Provided*, That
130 offsets under subdivision (1) of this subsection shall occur
131 prior to offset under this subdivision. At the times moneys
132 are received as a result of an offset of a taxpayer's federal tax
133 refund under the provisions of section 6402(e) of the Internal
134 Revenue Code, the taxpayer is given credit against state tax
135 liability for the amount of the offset less a deduction for the
136 offset fee imposed by the Internal Revenue Service:
137 *Provided, however*, That the amount of the offset fee
138 imposed by the Internal Revenue Service shall be added to

139 the taxes, interest and penalties owed by the taxpayer to this
140 state: *Provided further*, That the amount of the offset fee
141 imposed by the Tax Commissioner shall be deducted from
142 the moneys retained from the taxpayer's state tax refund and
143 then deposited in the special revolving fund which is hereby
144 created and established in the State Treasury and designated
145 as the Tax Offset Fee Administration Fund: *And provided*
146 *further*, That the fees deposited in the Tax Offset Fee
147 Administration Fund may be expended by the Tax
148 Commissioner for the general administration of the taxes
149 administered under the authority of this article.

150 (k) *Spouse relieved of liability in certain cases.* --

151 (1) *In general.* -- Under regulations prescribed by the Tax
152 Commissioner, if:

153 (A) A joint personal income tax return has been made for
154 a taxable year;

155 (B) On the return there is a substantial understatement of
156 tax attributable to grossly erroneous items of one spouse;

157 (C) The other spouse establishes that in signing the return
158 he or she did not know, and had no reason to know, that there
159 was a substantial understatement; and

160 (D) Taking into account all the facts and circumstances,
161 it is inequitable to hold the other spouse liable for the
162 deficiency in tax for the taxable year attributable to the
163 substantial understatement, then the other spouse is relieved
164 of any liability for tax, including interest, additions to tax,
165 and other amounts for the taxable year to the extent the
166 liability is attributable to the substantial understatement.

167 (2) *Grossly erroneous items.* -- For purposes of this
168 subsection, the term "grossly erroneous items" means, with
169 respect to any spouse:

170 (A) Any item of gross income attributable to a spouse
171 which is omitted from gross income; and

172 (B) Any claim of a deduction, credit or basis by a spouse
173 in an amount for which there is no basis in fact or law.

174 (3) *Substantial understatement.* -- For purposes of this
175 subsection, the term "substantial understatement" means any
176 understatement, as defined in regulations prescribed by the
177 Tax Commissioner which exceed five hundred dollars.

178 (4) Understatement must exceed specified percentage of
179 spouse's income.

180 (A) *Adjusted gross income of twenty thousand dollars or*
181 *less.* -- If the spouse's adjusted gross income for the
182 readjustment year is twenty thousand dollars or less, this
183 subsection applies only if the liability described in paragraph
184 (1) of this subsection is greater than ten percent of the
185 adjusted gross income.

186 (B) *Adjusted gross income of more than twenty thousand*
187 *dollars.* -- If the spouse's adjusted gross income for the
188 readjustment year is more than twenty thousand dollars,
189 subparagraph (A) of this subdivision is applied by
190 substituting "twenty-five percent" for "ten percent".

191 (C) *Readjustment year.* -- For purposes of this paragraph,
192 the term "readjustment year" means the most recent taxable
193 year of the spouse ending before the date the deficiency
194 notice is mailed.

195 (D) *Computation of spouse's adjusted gross income.* -- If
 196 the spouse is married to another spouse at the close of the
 197 readjustment year, the spouse's adjusted gross income shall
 198 include the income of the new spouse whether or not they file
 199 a joint return.

200 (E) *Exception for omissions from gross income.* -- This
 201 paragraph shall not apply to any liability attributable to the
 202 omission of an item from gross income.

203 (5) *Adjusted gross income.* -- For purposes of this
 204 subsection, the term "adjusted gross income" means the West
 205 Virginia adjusted gross income of the taxpayer, determined
 206 under article twenty-one of this chapter.

CHAPTER 236

(S.B. 588 - By Senators Fanning, Bailey, McKenzie and Kessler)

[Passed March 8, 2007; in effect from passage.]
 [Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-13-2f of the Code of West Virginia, 1931, as amended, relating to the taxation of synthetic fuel; removing the expiration date of the tax on manufacturing or production of synthetic fuel from coal which is scheduled to expire on the thirtieth day of June, two thousand seven; and amending the definition of synthetic fuel-producing county.

Be it enacted by the Legislature of West Virginia:

That §11-13-2f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

1 (a) *Rate and measure of tax.* — There is hereby imposed an
2 annual tax, in accordance with section two of this article, upon
3 every person engaging or continuing within this state in the
4 business of manufacturing or producing synthetic fuel from coal
5 for sale, profit or commercial use, either directly or through the
6 activity of others, in whole or in part, and the amount of the tax
7 shall be equal to fifty cents per ton of synthetic fuel
8 manufactured or produced for sale, profit or commercial use
9 during the taxable year. When a fraction of a ton is included in
10 the measure of tax, the rate of tax as to that fraction of a ton
11 shall be proportional. The measure of tax is the total number of
12 tons of synthetic fuel product manufactured or produced in this
13 state during the taxable year for sale, profit or commercial use
14 regardless of the place of sale or the fact that deliveries may be
15 made to points outside this state. Liability for payment of this
16 tax shall accrue when the synthetic fuel product is sold by the
17 manufacturer or producer, determined by when the producer or
18 manufacturer recognizes gross receipts for federal income tax
19 purposes. When there is no sale of the synthetic fuel product,
20 liability for tax shall accrue when the synthetic fuel product is
21 shipped from the manufacturing facility for commercial use,
22 whether by the taxpayer or by a related party, except as
23 otherwise provided in legislative rules promulgated by the Tax

24 Commissioner as provided in article three, chapter twenty-nine-
25 a of this code.

26 (b) *Definitions.* -- For purposes of this section:

27 (1) "Fiscal year" means the fiscal year of this state.

28 (2) "Fuel" means material that produces usable heat or
29 power upon combustion.

30 (3) "Fuel manufactured or produced from coal" means
31 liquid, gaseous or solid fuels produced from coal, including, but
32 not limited to, such fuels when used as feedstocks.

33 (4) "Office of chief inspector" means the state Auditor as ex
34 officio chief inspector and supervisor of local government
35 offices in accordance with section eleven, article nine, chapter
36 six of this code.

37 (5) "Provisional share" means the portion of the Synthetic
38 Fuel-Producing Counties Grant Fund that is available for
39 possible distribution to each synthetic fuel-producing county.
40 The amount of each county's provisional share is derived by
41 dividing the share computation base by the number of synthetic
42 fuel-producing counties in this state during the fiscal year. The
43 share computation base is the sum of: (A) Net revenues
44 deposited in the synthetic fuel-producing counties grant fund for
45 the fiscal year; and (B) any amounts repooled for the fiscal year
46 into the synthetic fuel-producing counties grant fund under this
47 section; less (C) the amount dedicated and allotted to the
48 director of the Development Office under this section for
49 administration of the synthetic fuel-producing counties grant
50 program. A county shall be counted as a synthetic fuel-
51 producing county only if a synthetic fuel-manufacturing plant

52 actively produced synthetic fuel in the county during the fiscal
53 year.

54 (6) "Synthetic fuel manufactured or produced from coal" or
55 "synthetic fuel" means and includes, but is not limited to, any
56 fuel that is made or formed into a briquette, fragment, sheet,
57 flake or other solid form by combining a binder or binding
58 substance with coal dust, coal fines, crushed coal, pulverized
59 coal, stoker fines, waste coal, coal or material derived from
60 slurry ponds, coal or material derived from gob piles or any
61 combination of the aforementioned materials without regard to
62 whether any federal tax credit is, or would have been, available
63 for or with relation to the production of such fuel. The term
64 "synthetic fuel manufactured or produced from coal" or
65 "synthetic fuel" also means, but is not limited to, fuel
66 manufactured or produced from coal for which credit is
67 allowable for federal income tax purposes under section twenty-
68 nine of the United States Internal Revenue Code, as in effect on
69 the first day of January, two thousand one, or for which credit
70 would have been allowable if the synthetic fuel was produced
71 from a facility, or expansion of a facility, that meets the
72 requirement of section twenty-nine of the Internal Revenue
73 Code or would have met the requirements on the first day of
74 January, two thousand one, notwithstanding that such facility or
75 expansion of a facility may have been placed in service either
76 prior to or subsequent to the first day of January, two thousand
77 one. "Synthetic fuel" does not include coke or coke gas.

78 (7) "Synthetic fuel-producing county" means a county of
79 this state in which a synthetic fuel-manufacturing plant is
80 physically located that actively produces synthetic fuel during
81 the fiscal year. For purposes of determining whether a county is
82 a synthetic fuel-producing county, the location of the synthetic
83 fuel-manufacturing company headquarters, the state of

84 incorporation or organization of the company or the location of
85 any managerial office or facility or other office or facility of the
86 company, other than the synthetic fuel-manufacturing plant, and
87 the physical location where the coal or other material used in
88 synthetic fuel manufacturing is extracted from the earth shall not
89 be determinative of the designation of a county as a synthetic
90 fuel-producing county.

91 (8) "Synthetic fuel-nonproducing county" means any county
92 of this state other than a synthetic fuel-producing county.

93 (9) "Ton" means two thousand pounds.

94 (10) "Director of the Development Office" or "director"
95 means the director of the West Virginia Development Office
96 created and continued under article two, chapter five-b of this
97 code.

98 (c) *Credits not allowed against tax.* -- When determining
99 the amount of tax due under this section, no credit shall be
100 allowed under section three-c or three-d of this article or under
101 any other article of this chapter or any other chapter of this code
102 unless it is expressly provided that the credit applies to the
103 business and occupation tax on the privilege of manufacturing
104 or producing synthetic fuel.

105 (d) *Emergency rule authorized.* -- The Tax Commissioner
106 may, in the commissioner's discretion, promulgate an
107 emergency rule as provided in article three, chapter twenty-nine-
108 a of this code that clarifies, explains or implements the
109 provisions of this section.

110 (e) *Dedication and distribution of proceeds, creation of*
111 *funds.* --

112 (1) The first four million dollars of the net amount of tax
113 collected during each fiscal year for exercise of the privilege
114 taxed under this section shall be deposited into the Mining and
115 Reclamation Operations Fund created in the State Treasury by
116 section thirty-two, article three, chapter twenty-two of this code.

117 (2) There is hereby created a fund in the State Treasury
118 entitled the Synthetic Fuel-Producing Counties Grant Fund
119 which shall be a revolving fund that shall carry over each fiscal
120 year. The net amount of tax collected for exercise of the
121 privilege taxed under this section in excess of the first four
122 million dollars during each fiscal year, not to exceed two
123 million sixty thousand dollars, shall be deposited in the
124 Synthetic Fuel-Producing Counties Grant Fund. Moneys in the
125 Synthetic Fuel-Producing Counties Grant Fund in excess of
126 moneys allocated to the director of the Development Office
127 shall be dedicated to and distributed among the synthetic fuel-
128 producing counties under the Synthetic Fuel-Producing
129 Counties Grant Program as provided in this section. The county
130 commission of a synthetic fuel-producing county shall use
131 ninety percent of the funds distributed to the county out of the
132 Synthetic Fuel-Producing Counties Grant Fund for
133 infrastructure improvement and ten percent of the funds
134 distributed to the county out of the Synthetic Fuel-Producing
135 Counties Grant Fund for economic development.

136 (3) There is hereby created in the State Treasury a fund
137 entitled the synthetic fuel-nonproducing counties fund which
138 shall be a revolving fund that shall carry over each fiscal year.
139 The net amount of tax collected for exercise of the privilege
140 taxed under this section in excess of the first six million sixty
141 thousand dollars during each fiscal year, not to exceed two
142 million dollars, shall be deposited in the synthetic fuel-
143 nonproducing counties fund and equally divided and distributed

144 among the synthetic fuel-nonproducing counties. The county
145 commission of a synthetic fuel-nonproducing county shall first
146 use such moneys for Regional Jail and Correctional Facility
147 Authority and county jail expenses, and shall use any remainder
148 for such lawful public purposes as the county commission may
149 prescribe.

150 (4) The net amount of the tax collected in excess of eight
151 million sixty thousand dollars during each fiscal year shall be
152 dedicated to the General Revenue Fund.

153 (5) The office of chief inspector shall annually determine
154 that a county's expenditures of moneys distributed under this
155 section is in compliance with the requirements of this section.

156 (6) For purposes of this subsection, "net amount of tax
157 collected" means the gross amount of tax collected under this
158 section less allowed refunds and credits.

159 (f) *Administration of the Synthetic Fuel-Producing Counties*
160 *Grant Program.* --

161 (1) The Director of the Development Office is hereby
162 authorized and empowered to administer the distribution of
163 moneys in the Synthetic Fuel-Producing Counties Grant Fund.

164 (A) On or before the plan submission due date prescribed by
165 the Director of the Development Office, the county commission
166 of each synthetic fuel-producing county may annually, or with
167 such frequency as may be prescribed by the Director of the
168 Development Office, submit a plan to the Director of the
169 Development Office for use of the county's provisional share of
170 the synthetic fuel-producing counties grant fund.

171 (B) A grant of moneys out of the Synthetic Fuel-Producing
172 Counties Grant Fund shall only be distributed to a synthetic
173 fuel-producing county or encumbered for the use of a synthetic
174 fuel-producing county after approval by the Director of the
175 Development Office of the plan for use of the county's
176 provisional share of the fund, submitted to the Director of the
177 Development Office by the county commission. The Director of
178 the Development Office shall approve the synthetic fuel-
179 producing county's plan for use if the plan for use reasonably
180 conforms to the requirements of this section and the rules
181 promulgated with relation thereto.

182 (C) If the county's plan is approved, the Director of the
183 Development Office may authorize a grant of money out of the
184 Synthetic Fuel-Producing Counties Grant Fund to the county to
185 be used by the county as specified in the approved plan for use.

186 (D) The Director of the Development Office may authorize
187 distribution of any amount encumbered for the use of the county
188 and carried over from a prior period in accordance with
189 applicable plans for use previously approved.

190 (E) The Director of the Development Office may authorize
191 encumbrances for any synthetic fuel-producing county of
192 moneys in the Synthetic Fuel-Producing Counties Grant Fund,
193 up to the amount of the county's provisional share for the fiscal
194 year, for one or more qualified uses specified in the county's
195 plan for use if the county's approved plan for use of the moneys
196 sets forth a qualified use for the county's provisional share over
197 a period of several fiscal years or a qualified use of the moneys
198 calling for accumulation and distribution to the county in one or
199 more subsequent fiscal years. Encumbered funds may carry over
200 to succeeding fiscal years and may be used to accumulate
201 reserves over a period of time for use by the county.

202 (F) In no case may an amount distributed to a synthetic
203 fuel-producing county exceed the amount of a county's
204 provisional share for the fiscal year plus the amount of moneys
205 encumbered in the fund for the use of the particular county and
206 carried over from a prior period.

207 (2) The Director of the Development Office may approve
208 distributions of a county's provisional share of the Synthetic
209 Fuel-Producing Counties Grant Fund for use as the county's
210 share for state or federal matching funds programs so long as, in
211 the aggregate, ninety percent of the funds distributed to the
212 county out of the Synthetic Fuel-Producing Counties Grant
213 Fund are used for infrastructure improvement and ten percent of
214 the funds distributed to the county out of the Synthetic Fuel-
215 Producing Counties Grant Fund are used for economic
216 development: *Provided*, That no county may use any amount
217 distributed out of the Synthetic Fuel-Producing Counties Grant
218 Fund as money to be matched under the funds matching
219 program authorized by subsection (b), section three, article two,
220 chapter five-b of this code.

221 (3) *Repooling*. --

222 (A) Any synthetic fuel-producing county that has failed to
223 have its plan, or amended and resubmitted plan or plans,
224 approved by the Director of the Development Office for a
225 period of eighteen months immediately subsequent to the initial
226 plan submission date shall lose its entitlement to the provisional
227 share of revenues deposited in the fund and attributable to the
228 fiscal year to which that plan relates and the provisional share
229 that would have been attributable to that county for that fiscal
230 year shall be pooled with all other receipts in the Synthetic Fuel-
231 Producing Counties Grant Fund attributable to revenues for the
232 fiscal year during which the eighteen-month period ends and

233 shall then be reallocated equally to all synthetic fuel-producing
234 counties as part of the provisional share of each, as if the
235 repooled moneys were tax revenues deposited into the fund
236 during the fiscal year in which the eighteen-month period ended.
237 For purposes of this subsection, the “initial plan submission
238 date” means the earlier of: (i) The required submission date, as
239 prescribed by the Director of the Development Office, for the
240 initial plan for use of the county’s provisional share of the
241 Synthetic Fuel-Producing Counties Grant Fund for the fiscal
242 year, with such extensions of time to file as may be authorized
243 under rules promulgated by the Director of the Development
244 Office; or (ii) the actual date of submission of the initial plan for
245 the fiscal year. For purposes of this subsection, the term “initial
246 plan” means the first plan for use that was submitted, or that
247 should have been submitted, by a county for the fiscal year,
248 before the submission of any amended, revised or resubmitted
249 plan by the county for that fiscal year.

250 (B) Any synthetic fuel-producing county which fails to
251 timely submit a plan for use of its provisional share of the
252 Synthetic Fuel-Producing Counties Grant Fund, with such
253 extensions of time to file as may be authorized under rules
254 promulgated by the Director of the Development Office, shall
255 lose its entitlement to its provisional share of revenues deposited
256 in the fund and attributable to that fiscal year and the
257 provisional share that would have been attributable to that
258 county for that year shall be pooled with all other receipts in the
259 Synthetic Fuel-Producing Counties Grant Fund attributable to
260 revenues for the fiscal year and shall be reallocated equally
261 among the remaining synthetic fuel-producing counties other
262 than the county or counties that have failed to timely file the
263 plan for use and shall be made available for distribution to those
264 remaining counties, as part of their provisional share for the
265 fiscal year.

266 (C) Funds encumbered pursuant to approval of the Director
267 of the Development Office under this subsection shall not be
268 subject to repooling: *Provided*, That if the Director of the
269 Development Office determines that moneys previously
270 distributed to a county out of the Synthetic Fuel-Producing
271 Counties Grant Fund have not been used as required under the
272 approved plan for the county or determines that previously
273 distributed moneys derived from encumbered funds have not
274 been used for the qualified purpose for which the encumbrance
275 was originally approved or if there appears to be a reasonable
276 probability that encumbered funds will not be used for that
277 qualified purpose, the Director of the Development Office may
278 revoke the encumbrance of any funds of that synthetic fuel-
279 producing county remaining in the fund and repool the funds so
280 encumbered for reallocation to all synthetic fuel-producing
281 counties. The Director of the Development Office may, in the
282 director's discretion, give the county an opportunity to cure the
283 nonqualified use of moneys derived from the Synthetic
284 Fuel-Producing Counties Grant Fund or to submit an alternative
285 plan for use of the encumbered funds which may be approved
286 by the director if that plan complies with the requirements of
287 this section.

288 (g) *Promulgation of rules by the director of the*
289 *Development Office authorized.* -- The Director of the
290 Development Office, in his or her discretion, may promulgate
291 an emergency rule as provided in article three, chapter twenty-
292 nine-a of this code that clarifies, explains or implements the
293 Synthetic Fuel-Producing Counties Grant Program, distribution
294 of moneys out of or encumbrance of moneys in the Synthetic
295 Fuel-Producing Counties Grant Fund. The Director of the
296 Development Office is hereby granted continuing authority to
297 promulgate in accordance with article three, chapter twenty-
298 nine-a of this code such interpretive, legislative or procedural

299 rules, or any combination thereof, for administration of the
300 Synthetic Fuel-Producing Counties Grant Program as the
301 Director of the Development Office may find necessary and
302 appropriate. The director of the Development Office may
303 prescribe criteria for qualification under the infrastructure
304 improvement use requirement and the economic development
305 requirement of this section.

306 (h) There is hereby dedicated and allocated to the West
307 Virginia Development Office sixty thousand dollars annually for
308 administration of the Synthetic Fuel-Producing Counties Grant
309 Program under this section. Sixty thousand dollars shall be paid
310 out of the Synthetic Fuel-Producing Counties Grant Fund to the
311 director of the Development Office each fiscal year for
312 administration of the Synthetic Fuel-Producing Counties Grant
313 Program.

314 (i) *Effective date.* --

315 (1) This section as enacted in the year two thousand took
316 effect upon enactment. The measure of tax shall include all
317 synthetic fuel sold or shipped after the first day of January, two
318 thousand one, regardless of when the synthetic fuel was
319 manufactured or produced in this state.

320 (2) Amendments to this section enacted during the fifth
321 extraordinary session of the Legislature in the year two thousand
322 one shall have retroactive effect to the first day of January, two
323 thousand one, and the measure of tax shall include all synthetic
324 fuel sold or shipped after the first day of January, two thousand
325 one, regardless of when the synthetic fuel was manufactured or
326 produced in this state.

CHAPTER 237

**(H.B. 2989 - By Delegates Yost, Reynolds, Perdue, Doyle,
Barker, Tucker, Marshall, Manchin and Blair)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §11-10E-6, §11-10E-8 and §11-10E-9 of the Code of West Virginia, 1931, as amended, all relating to certain tax shelters used to avoid paying state income taxes; clarifying when certain penalties are imposed; determining when the tax shelter registration number is to be filed with the tax commissioner; and determining when tax shelter investor lists are to be filed with the Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-6. Failure to register tax shelter or maintain list.

§11-10E-8. Registration of tax shelters.

§11-10E-9. Investor lists.

§11-10E-6. Failure to register tax shelter or maintain list.

- 1 (a) *Penalty imposed.* -- Any person that fails to comply
- 2 with the requirements of section eight or section nine of this

3 article shall incur a penalty as provided in subsection (b). A
4 person shall not be in compliance with the requirements of
5 section eight unless and until the required registration has
6 been filed and contains all of the information required to be
7 included with such registration under such section eight or
8 Section 6111 of the Internal Revenue Code. A person shall
9 not be in compliance with the requirements of section nine
10 unless, at the time the required list is made available to the
11 Tax Commissioner, such list contains all of the information
12 required to be maintained under such section nine or Section
13 6112 of the Internal Revenue Code.

14 (b) *Amount of penalty.* -- The following penalties apply:

15 (1) In the case of each failure to comply with the
16 requirements of subsection (a), subsection (b) or subsection
17 (d) of section eight, the penalty shall be ten thousand dollars;

18 (2) If the failure to comply with the requirements of
19 subsection (a), subsection (b) or subsection (d) of section
20 eight is with respect to a listed transaction described in
21 subsection (c) of section eight, the penalty shall be one
22 hundred thousand dollars;

23 (3) In the case of each failure to comply with the
24 requirements of subsection (a) or subsection (b) of section
25 nine, the penalty shall be ten thousand dollars; and

26 (4) If the failure to comply with the requirements of
27 subsection (a) or subsection (b) of section nine is with respect
28 to a listed transaction described in subsection (c) of section
29 nine, the penalty shall be one hundred thousand dollars.

30 (c) *Authority to rescind penalty.* -- The office of tax
31 appeals, with the written approval of the Tax Commissioner,
32 may rescind all or any portion of any penalty imposed by this

33 section with respect to any violation only if one or more of
34 the following apply: (1) It is determined that failure to
35 comply did not jeopardize the best interests of the state and
36 is not due to any willful neglect or any intent not to comply;
37 (2) it is shown that the violation is due to an unintentional
38 mistake of fact; (3) rescinding the penalty would promote
39 compliance with the requirements of this article and effective
40 tax administration; or (4) the taxpayer can show that there
41 was reasonable cause for the failure to disclose and that the
42 taxpayer acted in good faith.

43 (d) *Coordination with other penalties.* -- The penalty
44 imposed by this section is in addition to any penalty imposed
45 by this article or article ten of this chapter.

§11-10E-8. Registration of tax shelters.

1 (a) *Federal tax shelter.* -- Any tax shelter organizer or
2 material advisor required to register a tax shelter under
3 Section 6111 of the Internal Revenue Code shall send a
4 duplicate of the federal registration information to the Tax
5 Commissioner not later than the day on which registration is
6 required under federal law. Any person required to register
7 under Section 6111 of the Internal Revenue Code who
8 receives a tax registration number from the Secretary of the
9 Treasury shall, within thirty days after request by the Tax
10 Commissioner, file a statement of that registration number
11 with the Tax Commissioner.

12 (b) *Additional requirements for listed transactions.* -- In
13 addition to the requirements of subsection (a), for any
14 transactions entered into on or after the twenty-eighth day of
15 February, two thousand, that become listed transactions (as
16 defined under Treasury Regulations Section 1.6011-4) at any
17 time, those transactions shall be registered with the Tax
18 Commissioner (in the form and manner prescribed by the Tax

19 Commissioner) by the later of: (i) Sixty days after entering
20 into the transaction; (ii) sixty days after the transaction
21 becomes a listed transaction; or (iii) the first day of July, two
22 thousand six.

23 (c) *Tax shelters subject to this section for taxable years*
24 *commencing before the first day of January, two thousand*
25 *seven.* -- The provisions of this section apply to any tax
26 shelter herein described in which a person:

27 (1) Organizes or participates in the sale of an interest in
28 a partnership, entity or other plan or arrangement; and

29 (2) Makes or causes another person to make a false or
30 fraudulent statement with respect to securing a tax benefit or
31 a gross valuation as to any material matter, and which is or
32 was one or more of the following: (A) Organized in this state;
33 (B) doing business in this state; or (C) deriving income from
34 sources in this state.

35 (d) *Tax shelters subject to this section for taxable years*
36 *commencing on or after the first day of January, two*
37 *thousand seven.* -- The provisions of this section apply to
38 any tax shelter herein described in which a person organizes
39 or participates in the sale of an interest in a partnership, entity
40 or other plan or arrangement that is or was one or more of the
41 following: (i) Organized in this state; (ii) doing business in
42 this state; or (iii) deriving income from sources in this state.

43 (e) *Tax shelter identification number.* -- Any person
44 required to file a return under this article and required to
45 include on the person's federal income tax return a tax shelter
46 identification number pursuant to Section 6111 of the Internal
47 Revenue Code shall furnish such number when filing the
48 person's West Virginia return.

§11-10E-9. Investor lists.

1 (a) *Federal abusive tax shelter.* -- Any person required to
2 maintain a list under Section 6112 of the Internal Revenue
3 Code and Treasury Regulations Section 301.6112-1 with
4 respect to a potentially abusive tax shelter shall furnish such
5 list to the Tax Commissioner not later than the time such list
6 is required to be furnished to the Internal Revenue Service
7 under federal income tax law. The list required under this
8 section shall include the same information required with
9 respect to a potentially abusive tax shelter under Treasury
10 Regulations Section 301.6112-1 and any other information
11 that the Tax Commissioner may require.

12 (b) *Additional requirements for listed transactions.* -- For
13 transactions entered into on or after the twenty-eighth day of
14 February, two thousand, that become listed transactions (as
15 defined under Treasury Regulations Section 1.6011-4) at any
16 time thereafter, the list shall be furnished to the Tax
17 Commissioner by the later of sixty days after entering into
18 the transaction or sixty days after the transaction becomes a
19 listed transaction.

20 (c) *Tax shelters subject to this section.* -- The provisions
21 of this section apply to any tax shelter herein described in
22 which a person:

23 (1) Organizes or participates in the sale of an interest in
24 a partnership, entity or other plan or arrangement; and

25 (2) Makes or causes another person to make a false or
26 fraudulent statement with respect to securing a tax benefit or
27 a gross valuation as to any material matter; and which is or
28 was one or more of the following: (A) Organized in this state;
29 (B) doing business in this state; or (C) deriving income from
30 sources in this state.

31 (d) *Tax shelters subject to this section for taxable years*
32 *commencing on or after the first day of January, two*
33 *thousand seven.* -- The provisions of this section apply to
34 any tax shelter herein described in which a person organizes
35 or participates in the sale of an interest in a partnership, entity
36 or other plan or arrangement that is or was one or more of the
37 following: (i) Organized in this state; (ii) doing business in
38 this state; or (iii) deriving income from sources in this state.

CHAPTER 238

**(Com. Sub for H.B. 3048 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 9, 2007; in effect January 1, 2008.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-13Q-10a,
relating to the economic opportunity tax credit; providing credit
for specified high technology manufacturers; specifying
definitions.

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 §11-13Q-10a, to read as
follows:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**§11-13Q-10a. Credit allowed for specified high technology manufacturers.**

- 1 (a) *High technology manufacturing business defined.* --
 2 For purposes of this section, the term "high technology
 3 manufacturing business" means and is limited to only those
 4 businesses engaging in a manufacturing activity properly
 5 classified as having one or more of the following six-digit
 6 North American Industry Classification System code
 7 numbers.

North American Industry Classification System Code	Manufacturing Activity
	Computer & Peripheral Equipment
334111	Electronic Computers
334112	Computer Storage Devices
	Electronic Components
334411	Electron Tubes
334414	Electronic Capacitors
	Semiconductors
334413	Semiconductor & Related Devices
333295	Semiconductor Machinery

8 (b) *Amount of credit allowed.*

9 (1) *Credit allowed.* -- An eligible high technology
10 manufacturing business taxpayer is allowed a credit against
11 the portion of taxes imposed by this state that are attributable
12 to and the direct consequence of the eligible high technology
13 manufacturing business taxpayer's qualified investment in a
14 new or expanded high technology manufacturing business in
15 this state which results in the creation of at least twenty new
16 jobs within twelve months after placing qualified investment
17 into service. The amount of this credit is determined as
18 provided in this section.

19 (2) *Amount of credit.* -- The annual amount of credit
20 allowable under this subsection is one hundred percent of the
21 tax attributable to qualified investment, for each consecutive
22 year of a twenty-year credit period.

23 (3) *Application of credit.* -- The annual credit allowance
24 must be taken beginning with the taxable year in which the
25 taxpayer places the qualified investment into service or use
26 in this state, unless the taxpayer elects to delay the beginning
27 of the twenty-year credit period until the next succeeding
28 taxable year. This election is made in the annual income tax
29 return filed under this chapter by the taxpayer for the taxable
30 year in which the qualified investment is first placed in
31 service or use. Once made, this election cannot be revoked.
32 The annual credit allowance shall be taken and applied
33 against the taxes enumerated in section seven of this article.
34 The credit shall offset 100 percent of tax attributable to
35 qualified investment and shall be applied for a period of
36 twenty consecutive years without carryover.

37 (c) *New jobs.* -- The term "new jobs" has the meaning
38 ascribed to it in section three of this article.

39 (1) The term "new employee" has the meaning ascribed
40 to it in section three of this article: *Provided*, That this term
41 does not include employees filling new jobs who:

42 (A) Are related individuals, as defined in subsection (i),
43 section 51 of the Internal Revenue Code of 1986, or a person
44 who owns ten percent or more of the business with such
45 ownership interest to be determined under rules set forth in
46 subsection (b), section 267 of the Internal Revenue Code of
47 1986; or

48 (B) Worked for the taxpayer during the six-month period
49 ending on the date the taxpayer's qualified investment is
50 placed in service or use and is rehired by the taxpayer during
51 the six-month period beginning on the date taxpayer's
52 qualified investment is placed in service or use.

53 (2) *When a job is attributable.* -- An employee's position
54 is directly attributable to the qualified investment if:

55 (A) The employee's service is performed or his or her
56 base of operations is at the new or expanded business facility;

57 (B) The position did not exist prior to the construction,
58 renovation, expansion or acquisition of the business facility
59 and the making of the qualified investment;

60 (C) But for the qualified investment, the position would
61 not have existed; and

62 (D) The median compensation of the new jobs
63 attributable to the qualified investment is greater than forty-
64 five thousand dollars per year: *Provided*, That this median
65 compensation amount shall be adjusted for inflation each
66 year in accordance with the provisions of this section.

67 (3) *Median compensation adjusted for inflation.* -- The
68 median compensation requirements applicable to high
69 technology manufacturing business taxpayers for purposes of
70 this section, shall be adjusted for inflation by application of
71 a cost-of-living adjustment. The adjusted median
72 compensation amount shall be applicable, as adjusted, each
73 year throughout the twenty-year credit period. Failure of a
74 taxpayer entitled to credit under this section to meet the
75 median compensation requirement for any year will result in
76 forfeiture of the credit for that year. However, if in any
77 succeeding year within the original twenty year credit period,
78 the taxpayer pays a median compensation to its employees
79 which exceeds the inflation adjusted median compensation
80 amount for that year, the taxpayer shall regain entitlement to
81 take the credit for that year only. No credit forfeited in a
82 prior year shall be taken, and the tax year or years to which
83 the forfeited credit would have been applied shall be forfeited
84 and deducted from the remainder of the years over which the
85 credit can be taken.

86 (A) *Cost-of-living adjustment.* -- For purposes of this
87 section, the cost-of-living adjustment for any calendar year is
88 the percentage, if any, by which the consumer price index for
89 the preceding calendar year exceeds the consumer price index
90 for the calendar year two thousand seven.

91 (B) *Consumer price index for any calendar year.* -- For
92 purposes of this section, the consumer price index for any
93 calendar year is the average of the federal consumer price
94 index as of the close of the twelve-month period ending on
95 the thirty-first day of August of such calendar year.

96 (C) *Consumer price index.* -- For purposes of this section,
97 the term "Federal Consumer Price Index" means the last
98 consumer price index for all urban consumers published by
99 the United States Department of Labor.

100 (D) *Rounding.* -- If any increase in the median
101 compensation amount under this section is not a multiple of
102 fifty dollars, such increase shall be rounded to the next lowest
103 multiple of fifty dollars.

104 (d) *Credit exclusion.* --

105 (1) Any taxpayer that has taken the credit against tax
106 authorized under this section shall not be eligible for
107 application of the credit allowed under any other section of
108 this article during the twenty year credit period authorized by
109 this section for the same qualified investment on which credit
110 allowed by this article was taken.

111 (2) Any taxpayer that has taken the credit against tax
112 authorized under this section may not take the credit
113 authorized under any other provision of this code for the
114 same qualified investment on which credit allowed by this
115 article was taken.

116 (e) *Rules.* -- The commissioner may prescribe such rules
117 as he or she determines necessary in order to determine the

118 amount of credit allowed under this section to a taxpayer; to
119 verify a taxpayer's continued entitlement to claim the credit;
120 and to verify proper application of the credit allowed.

121 (f) *Notices and reports.* -- The commissioner may require
122 a taxpayer intending to claim credit under this section to file
123 with the commissioner a notice of intent to claim this credit
124 before the taxpayer begins reducing his or her monthly or
125 quarterly installment payments of estimated tax for the credit
126 provided in this section.

127 (g) *Report to the Legislature.* -- The Tax Commissioner
128 shall report to the Legislature by January 1, 2014, regarding
129 the use of this tax credit. The Tax Commissioner shall
130 forward this report to the Joint Committee on Government
131 and Finance and the House and Senate Finance Committees.

CHAPTER 239

**(Com. Sub. for H.B. 2945 - By Klempa, Moore, D. Poling,
Rodighiero, Ellis, laquinta, J. Miller, Pethel,
Fragale and Hutchins)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §11-13W-1, relating
to providing for tax credits for apprenticeship training in
construction trades.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13W-1, to read as follows:

ARTICLE 13W. APPRENTICESHIP TRAINING TAX CREDITS.

§11-13W-1. Tax credits for apprenticeship training in construction trades.

1 (a) *Credit allowed.* - For those tax years beginning on or
2 after the first day of January, two thousand eight, there shall
3 be allowed a credit for any taxpayer against certain taxes
4 imposed by this state as described in subsection (d) of this
5 section for wages paid to apprentices in the construction
6 trades who are registered with the United States Department
7 of Labor, Office of Apprenticeship, West Virginia State
8 Office, by such taxpayer in the tax year that an apprentice
9 and taxpayer participate in a qualified apprenticeship training
10 program, as described in this section, which: (1) Is jointly
11 administered by labor and management trustees; (2) is
12 administered pursuant to 29 U.S.C. Section 50; and (3) is
13 certified in accordance with regulations adopted by the
14 United States Bureau of Apprenticeship and Training.

15 (b) *Amount of credit.* - The tax credit shall be in an
16 amount equal to one dollar per hour multiplied by the total
17 number of hours worked during the tax year by an apprentice
18 working for the taxpayer participating in the qualified
19 apprenticeship training program, provided the amount of
20 credit allowed for any tax year with respect to each such
21 apprentice may not exceed one thousand dollars or fifty
22 percent of actual wages paid in such tax year for such
23 apprenticeship, whichever is less.

24 (c) *Qualified apprenticeship training program*
25 *requirements.* - In addition to the qualifications specified in
26 subsection (a) of this section, a qualified apprenticeship
27 training program shall also be required to consist of at least
28 two thousand but not more than ten thousand hours of on the
29 job apprenticeship training for certification of such
30 apprenticeship by the United States Bureau of Apprenticeship
31 and Training.

32 (d) *Application of annual credit allowance.* - The amount
33 of credit as determined under subsection (b) of this section is
34 allowed as a credit against the taxpayer's state tax liability
35 applied as provided in subdivisions (1) through (3), inclusive,
36 of this subsection, and in that order.

37 (1) *Business franchise tax.* -- The credit must first be
38 applied to reduce the taxes imposed by article twenty-three of
39 this chapter for the taxable year.

40 (2) *Corporation net income taxes.* - After application of
41 subdivision (1) of this subsection, any unused credit is next
42 applied to reduce the taxes imposed by article twenty-four of
43 this chapter for the taxable year.

44 (3) *Personal income taxes.* --

45 (A) If the person making the qualified investment is an
46 electing small business corporation (as defined in section
47 1361 of the United States Internal Revenue Code of 1986, as
48 amended), a partnership, a limited liability company that is
49 treated as a partnership for federal income tax purposes, or a
50 sole proprietorship, then any unused credit (after application
51 of subdivisions (1) and (2) of this subsection) is allowed as
52 a credit against the taxes imposed by article twenty-one of
53 this chapter on the income from business or other
54 activity subject to tax under article twenty-three of this

55 chapter or on income of a sole proprietor attributable to the
56 business.

57 (B) Electing small business corporations, limited liability
58 companies, partnerships and other unincorporated
59 organizations shall allocate the credit allowed by this article
60 among its members in the same manner as profits and losses
61 are allocated for the taxable year.

62 (4) No credit is allowed under this section against any
63 employer withholding taxes imposed by article twenty-one of
64 this chapter.

65 (e) *Unused credit.* -- If any credit remains after
66 application of subsection (d) of this section, the amount
67 thereof is forfeited. No carryback to a prior taxable year is
68 allowed for the amount of any unused portion of any annual
69 credit allowance.

CHAPTER 240

**(Com. Sub. for H.B. 2955 - By Delegates Caputo, Manchin,
Klempa, Paxton, Shook and Marshall)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-47 of the Code of West Virginia, 1931, as amended, all relating to the motor fuel excise tax generally; extending the date to which the rate of the flat-rate component of the motor fuel excise tax will remain at twenty and one-half cents per invoiced gallon; and requiring the Commissioner of Highways to report to the Joint Committee on Government and Finance or its designated

subcommittee on the amount of tax paid into the state road fund, any matching federal funds, and all expenditures therefrom.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-14C-47 of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

§11-14C-47. Disposition of tax collected; dedicated receipts; reports.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to twenty and one-half cents per
3 invoiced gallon plus a variable component comprised of
4 either the tax imposed by section eighteen-b, article fifteen of
5 this chapter or the tax imposed under section thirteen-a,
6 article fifteen-a of this chapter, as applicable: *Provided*, That
7 the motor fuel excise tax shall take effect the first day of
8 January, two thousand four: *Provided, however*, That on and
9 after the first day of August, two thousand thirteen, the flat
10 rate portion of the motor fuel excise tax shall be fifteen and
11 one-half cents per gallon: *Provided further*, That the variable
12 component shall be equal to five percent of the average
13 wholesale price of the motor fuel: *And provided further*, That
14 the average wholesale price shall be no less than ninety-seven
15 cents per invoiced gallon and is computed as hereinafter
16 prescribed in this section.

17 (b) *Determination of average wholesale price.* --

18 (1) To simplify determining the average wholesale price
19 of all motor fuel, the Tax Commissioner shall, effective with
20 the period beginning the first day of the month of the
21 effective date of the tax and each first day of January
22 thereafter, determine the average wholesale price of motor
23 fuel for each annual period on the basis of sales data gathered
24 for the preceding period of the first day of July through the
25 thirty-first day of October. Notification of the average
26 wholesale price of motor fuel shall be given by the Tax
27 Commissioner at least thirty days in advance of each first day
28 of January by filing notice of the average wholesale price in
29 the state register, and by any other means as the Tax
30 Commissioner considers reasonable.

31 (2) The “average wholesale price” means the single,
32 statewide average per gallon wholesale price, rounded to the
33 third decimal (thousandth of a cent), exclusive of state and
34 federal excise taxes on each gallon of motor fuel, as
35 determined by the Tax Commissioner from information
36 furnished by suppliers, importers and distributors of motor
37 fuel in this state, or other information regarding wholesale
38 selling prices as the Tax Commissioner may gather, or a
39 combination of information: *Provided*, That in no event shall
40 the average wholesale price be determined to be less than
41 ninety-seven cents per gallon of motor fuel.

42 (3) All actions of the Tax Commissioner in acquiring data
43 necessary to establish and determine the average wholesale
44 price of motor fuel, in providing notification of his or her
45 determination prior to the effective date of any change in rate,
46 and in establishing and determining the average wholesale
47 price of motor fuel, may be made by the Tax Commissioner
48 without compliance with the provisions of article three,
49 chapter twenty-nine-a of this code.

50 (4) In any administrative or court proceeding brought to
51 challenge the average wholesale price of motor fuel as
52 determined by the Tax Commissioner, his or her
53 determination is presumed to be correct and shall not be set
54 aside unless it is clearly erroneous.

55 (c) There is hereby levied a floorstocks tax on motor fuel
56 held in storage outside the bulk transfer/terminal system as of
57 the close of the business day preceding the first day of
58 January, two thousand four, and upon which the tax levied by
59 this section has not been paid. For the purposes of this
60 section, "close of the business day" means the time at which
61 the last transaction has occurred for that day. The floorstocks
62 tax is payable by the person in possession of the motor fuel
63 on the first day of January, two thousand four. The amount
64 of the floorstocks tax on motor fuel is equal to the sum of the
65 tax rate specified in subsection (a) of this section multiplied
66 by the gallons in storage as of the close of the business day
67 preceding the first day of January, two thousand four.

68

69 (1) Persons in possession of taxable motor fuel in storage
70 outside the bulk transfer/terminal system as of the close of
71 the business day preceding the first day of January, two
72 thousand four, shall:

73 (A) Take an inventory at the close of the business day
74 preceding the first day of January, two thousand four, to
75 determine the gallons in storage for purposes of determining
76 the floorstocks tax;

77 (B) Report no later than the thirty-first day of January,
78 two thousand four, the gallons on forms provided by the
79 commissioner; and

80 (C) Remit the tax levied under this section no later than
81 the first day of June, two thousand four.

82 (2) In the event the tax due is paid to the commissioner
83 on or before the thirty-first day of January, two thousand
84 four, the person remitting the tax may deduct from their
85 remittance five percent of the tax liability due.

86 (3) In the event the tax due is paid to the commissioner
87 after the first day of June, two thousand four, the person
88 remitting the tax shall pay, in addition to the tax, a penalty in
89 the amount of five percent of the tax liability due.

90 (4) In determining the amount of floorstocks tax due
91 under this section, the amount of motor fuel in dead storage
92 may be excluded. There are two methods for calculating the
93 amount of motor fuel in dead storage:

94 (A) If the tank has a capacity of less than ten thousand
95 gallons, the amount of motor fuel in dead storage is two
96 hundred gallons and if the tank has a capacity of ten thousand
97 gallons or more, the amount of motor fuel in dead storage is
98 four hundred gallons; or

99 (B) Use the manufacturer's conversion table for the tank
100 after measuring the number of inches between the bottom of
101 the tank and the bottom of the mouth of the drainpipe:
102 *Provided*, That the distance between the bottom of the tank
103 and the bottom of the mouth of the draw pipe is presumed to
104 be six inches.

105 (d) Every licensee who, on the effective date of any rate
106 change, has in inventory any motor fuel upon which the tax
107 or any portion thereof has been previously paid shall take a
108 physical inventory and file a report thereof with the
109 commissioner, in the format as required by the commissioner,
110 within thirty days after the effective date of the rate change,
111 and shall pay to the commissioner at the time of filing the
112 report any additional tax due under the increased rate.

§11-14C-47. Disposition of tax collected; dedicated receipts; reports.

1 (a) There is hereby created and established in the state
2 treasury a special revolving fund to be known and designated
3 as the “Motor Fuel General Tax Administration Fund.” The
4 commissioner is authorized to retain one half of one percent
5 of the tax collected pursuant to the provisions of this article:
6 *Provided*, That in any fiscal year in which the tax collected
7 pursuant to the provisions of this article exceed three hundred
8 million dollars, the commissioner is authorized to retain an
9 additional one percent of the tax in excess of the three
10 hundred million dollars that is collected. The amounts
11 retained by the commissioner under this subsection shall be
12 deposited in the motor fuel general tax administration fund
13 and may be expended for the general administration of taxes
14 imposed by this chapter.

15 (b) All remaining tax collected under the provisions of
16 this article after deducting the amount of any refunds
17 lawfully paid shall be paid into the state road fund and used
18 only for the purpose of construction, reconstruction,
19 maintenance and repair of highways, matching of federal
20 moneys available for highway purposes and payment of the
21 interest and sinking fund obligations on state bonds issued for
22 highway purposes.

23 (c) Not less than monthly, beginning the first day of July,
24 two thousand seven, the Commissioner of Highways shall
25 report to the Joint Committee on Government and Finance or
26 its designated subcommittee on the amount of tax paid into
27 the state road fund under subsection (b) of this section, any
28 matching federal funds, and all expenditures therefrom.

CHAPTER 241**(S.B. 631 - By Senator McCabe)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to the consumers sales and service tax generally; and providing a refundable exemption for purchases by a contractor when the purchased materials will be used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure to be used primarily by persons or entities exempt from the consumers sales and service tax on purchases.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**§11-15-8d. Limitations on right to assert exemptions.**

1 Persons who perform "contracting" as defined in section
2 two of this article, or persons acting in an agency capacity, may
3 not assert any exemption to which the purchaser of such
4 contracting services or the principal is entitled. Any statutory
5 exemption to which a taxpayer may be entitled shall be invalid
6 unless the tangible personal property or taxable service is

7 actually purchased by such taxpayer and is directly invoiced to
8 and paid by such taxpayer: *Provided*, That this section shall not
9 apply to purchases by an employee for his or her employer;
10 purchases by a partner for his or her partnership; or purchases
11 by a duly authorized officer of a corporation, or unincorporated
12 organization, for his or her corporation or unincorporated
13 organization so long as the purchase is invoiced to and paid by
14 such employer, partnership, corporation or unincorporated
15 organization.

16 *Transition rule.* -- This section shall not apply to purchases
17 of tangible personal property or taxable services in fulfillment
18 of a purchasing agent or procurement agent contract executed
19 and legally binding on the parties thereto prior to the fifteenth
20 day of September, one thousand nine hundred ninety: *Provided*,
21 That this transition rule shall not apply to any purchases of
22 tangible personal property or taxable services made under such
23 a contract after the thirty-first day of August, one thousand nine
24 hundred ninety-one; and this transition rule shall not apply if the
25 primary purpose of the purchasing agent or procurement agent
26 contract was to avoid payment of consumers sales and use taxes:
27 *Provided, however*, That effective the first day of July, two
28 thousand seven, this section shall not apply to purchases of
29 services, machinery, supplies or materials, except gasoline and
30 special fuel, to be directly used or consumed in the construction,
31 alteration, repair or improvement of a new or existing building
32 or structure by a person performing “contracting”, as defined in
33 section two of this article, if the purchaser of the “contracting”
34 services would be entitled to claim the refundable exemption
35 under the provisions of subdivision (2), subsection (b), section
36 nine of this article had it purchased the services, machinery,
37 supplies or materials.

CHAPTER 242**(S.B. 690 - By Senators Unger and Jenkins)**

[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the sales tax exemption on materials used for highway construction and maintenance.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**§11-15-9. Exemptions.**

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption set
3 forth in this subsection may, in lieu of paying the tax imposed
4 by this article and filing a claim for refund, execute a certificate
5 of exemption, in the form required by the Tax Commissioner,
6 and deliver it to the vendor of the property or service in the
7 manner required by the Tax Commissioner. However, the Tax
8 Commissioner may, by rule, specify those exemptions
9 authorized in this subsection for which exemption certificates
10 are not required. The following sales of tangible personal
11 property and services are exempt as provided in this subsection:

- 12 (1) Sales of gas, steam and water delivered to consumers
13 through mains or pipes and sales of electricity;
- 14 (2) Sales of textbooks required to be used in any of the
15 schools of this state or in any institution in this state which
16 qualifies as a nonprofit or educational institution subject to the
17 West Virginia Department of Education and the Arts, the Board
18 of Trustees of the University System of West Virginia or the
19 board of directors for colleges located in this state;
- 20 (3) Sales of property or services to this state, its institutions
21 or subdivisions, governmental units, institutions or subdivisions
22 of other states: *Provided*, That the law of the other state
23 provides the same exemption to governmental units or
24 subdivisions of this state and to the United States, including
25 agencies of federal, state or local governments for distribution
26 in public welfare or relief work;
- 27 (4) Sales of vehicles which are titled by the Division of
28 Motor Vehicles and which are subject to the tax imposed by
29 section four, article three, chapter seventeen-a of this code or
30 like tax;
- 31 (5) Sales of property or services to churches which make no
32 charge whatsoever for the services they render: *Provided*, That
33 the exemption granted in this subdivision applies only to
34 services, equipment, supplies, food for meals and materials
35 directly used or consumed by these organizations and does not
36 apply to purchases of gasoline or special fuel;
- 37 (6) Sales of tangible personal property or services to a
38 corporation or organization which has a current registration
39 certificate issued under article twelve of this chapter, which is
40 exempt from federal income taxes under Section 501(c)(3) or
41 (c)(4) of the Internal Revenue Code of 1986, as amended, and
42 which is:

43 (A) A church or a convention or association of churches as
44 defined in Section 170 of the Internal Revenue Code of 1986, as
45 amended;

46 (B) An elementary or secondary school which maintains a
47 regular faculty and curriculum and has a regularly enrolled body
48 of pupils or students in attendance at the place in this state
49 where its educational activities are regularly carried on;

50 (C) A corporation or organization which annually receives
51 more than one half of its support from any combination of gifts,
52 grants, direct or indirect charitable contributions or membership
53 fees;

54 (D) An organization which has no paid employees and its
55 gross income from fundraisers, less reasonable and necessary
56 expenses incurred to raise the gross income (or the tangible
57 personal property or services purchased with the net income), is
58 donated to an organization which is exempt from income taxes
59 under Section 501(c)(3) or (c)(4) of the Internal Revenue Code
60 of 1986, as amended;

61 (E) A youth organization, such as the Girl Scouts of the
62 United States of America, the Boy Scouts of America or the
63 YMCA Indian Guide/Princess Program and the local affiliates
64 thereof, which is organized and operated exclusively for
65 charitable purposes and has as its primary purpose the
66 nonsectarian character development and citizenship training of
67 its members;

68 (F) For purposes of this subsection:

69 (i) The term "support" includes, but is not limited to:

70 (I) Gifts, grants, contributions or membership fees;

71 (II) Gross receipts from fundraisers which include receipts
72 from admissions, sales of merchandise, performance of services
73 or furnishing of facilities in any activity which is not an
74 unrelated trade or business within the meaning of Section 513
75 of the Internal Revenue Code of 1986, as amended;

76 (III) Net income from unrelated business activities, whether
77 or not the activities are carried on regularly as a trade or
78 business;

79 (IV) Gross investment income as defined in Section 509(e)
80 of the Internal Revenue Code of 1986, as amended;

81 (V) Tax revenues levied for the benefit of a corporation or
82 organization either paid to or expended on behalf of the
83 organization; and

84 (VI) The value of services or facilities (exclusive of services
85 or facilities generally furnished to the public without charge)
86 furnished by a governmental unit referred to in Section
87 170(c)(1) of the Internal Revenue Code of 1986, as amended, to
88 an organization without charge. This term does not include any
89 gain from the sale or other disposition of property which would
90 be considered as gain from the sale or exchange of a capital
91 asset or the value of an exemption from any federal, state or
92 local tax or any similar benefit;

93 (ii) The term “charitable contribution” means a contribution
94 or gift to or for the use of a corporation or organization,
95 described in Section 170(c)(2) of the Internal Revenue Code of
96 1986, as amended; and

97 (iii) The term “membership fee” does not include any
98 amounts paid for tangible personal property or specific services
99 rendered to members by the corporation or organization;

100 (G) The exemption allowed by this subdivision does not
101 apply to sales of gasoline or special fuel or to sales of tangible
102 personal property or services to be used or consumed in the
103 generation of unrelated business income as defined in Section
104 513 of the Internal Revenue Code of 1986, as amended. The
105 exemption granted in this subdivision applies only to services,
106 equipment, supplies and materials used or consumed in the
107 activities for which the organizations qualify as tax-exempt
108 organizations under the Internal Revenue Code and does not
109 apply to purchases of gasoline or special fuel;

110 (7) An isolated transaction in which any taxable service or
111 any tangible personal property is sold, transferred, offered for
112 sale or delivered by the owner of the property or by his or her
113 representative for the owner's account, the sale, transfer, offer
114 for sale or delivery not being made in the ordinary course of
115 repeated and successive transactions of like character by the
116 owner or on his or her account by the representative: *Provided,*
117 That nothing contained in this subdivision may be construed to
118 prevent an owner who sells, transfers or offers for sale tangible
119 personal property in an isolated transaction through an
120 auctioneer from availing himself or herself of the exemption
121 provided in this subdivision, regardless of where the isolated
122 sale takes place. The Tax Commissioner may propose a
123 legislative rule for promulgation pursuant to article three,
124 chapter twenty-nine-a of this code which he or she considers
125 necessary for the efficient administration of this exemption;

126 (8) Sales of tangible personal property or of any taxable
127 services rendered for use or consumption in connection with the
128 commercial production of an agricultural product the ultimate
129 sale of which is subject to the tax imposed by this article or
130 which would have been subject to tax under this article:
131 *Provided,* That sales of tangible personal property and services
132 to be used or consumed in the construction of or permanent
133 improvement to real property and sales of gasoline and special

134 fuel are not exempt: *Provided, however,* That nails and fencing
135 may not be considered as improvements to real property;

136 (9) Sales of tangible personal property to a person for the
137 purpose of resale in the form of tangible personal property:
138 *Provided,* That sales of gasoline and special fuel by distributors
139 and importers is taxable except when the sale is to another
140 distributor for resale: *Provided, however,* That sales of building
141 materials or building supplies or other property to any person
142 engaging in the activity of contracting, as defined in this article,
143 which is to be installed in, affixed to or incorporated by that
144 person or his or her agent into any real property, building or
145 structure is not exempt under this subdivision;

146 (10) Sales of newspapers when delivered to consumers by
147 route carriers;

148 (11) Sales of drugs, durable medical goods, mobility-
149 enhancing equipment and prosthetic devices dispensed upon
150 prescription and sales of insulin to consumers for medical
151 purposes. The amendment to this subdivision shall apply to
152 sales made after the thirty-first day of December, two thousand
153 three;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a
161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services. For purposes of this subdivision,
164 the term "casual and occasional sales not conducted in a

165 repeated manner or in the ordinary course of repetitive and
166 successive transactions of like character” means sales of
167 tangible personal property or services at fundraisers sponsored
168 by a corporation or organization which is exempt, under
169 subdivision (6) of this subsection, from payment of the tax
170 imposed by this article on its purchases when the fundraisers are
171 of limited duration and are held no more than six times during
172 any twelve-month period and “limited duration” means no more
173 than eighty-four consecutive hours: *Provided*, That sales for
174 volunteer fire departments and volunteer school support groups,
175 with duration of events being no more than eighty-four
176 consecutive hours at a time, which are held no more than
177 eighteen times in a twelve-month period for the purposes of this
178 subdivision are considered “casual and occasional sales not
179 conducted in a repeated manner or in the ordinary course of
180 repetitive and successive transactions of a like character”;

181 (15) Sales of property or services to a school which has
182 approval from the Board of Trustees of the University System
183 of West Virginia or the Board of Directors of the State College
184 System to award degrees, which has its principal campus in this
185 state and which is exempt from federal and state income taxes
186 under Section 501(c)(3) of the Internal Revenue Code of 1986,
187 as amended: *Provided*, That sales of gasoline and special fuel
188 are taxable;

189 (16) Sales of lottery tickets and materials by licensed lottery
190 sales agents and lottery retailers authorized by the state Lottery
191 Commission, under the provisions of article twenty-two, chapter
192 twenty-nine of this code;

193 (17) Leases of motor vehicles titled pursuant to the
194 provisions of article three, chapter seventeen-a of this code to
195 lessees for a period of thirty or more consecutive days;

196 (18) Notwithstanding the provisions of section eighteen or
197 eighteen-b of this article or any other provision of this article to
198 the contrary, sales of propane to consumers for poultry house

199 heating purposes, with any seller to the consumer who may have
200 prior paid the tax in his or her price, to not pass on the same to
201 the consumer, but to make application and receive refund of the
202 tax from the Tax Commissioner pursuant to rules which are
203 promulgated after being proposed for legislative approval in
204 accordance with chapter twenty-nine-a of this code by the Tax
205 Commissioner;

206 (19) Any sales of tangible personal property or services
207 purchased and lawfully paid for with food stamps pursuant to
208 the federal food stamp program codified in 7 U. S. C. §2011, *et*
209 *seq.*, as amended, or with drafts issued through the West
210 Virginia special supplement food program for women, infants
211 and children codified in 42 U. S. C. §1786;

212 (20) Sales of tickets for activities sponsored by elementary
213 and secondary schools located within this state;

214 (21) Sales of electronic data processing services and related
215 software: *Provided*, That, for the purposes of this subdivision,
216 “electronic data processing services” means:

217 (A) The processing of another’s data, including all
218 processes incident to processing of data such as keypunching,
219 keystroke verification, rearranging or sorting of previously
220 documented data for the purpose of data entry or automatic
221 processing and changing the medium on which data is sorted,
222 whether these processes are done by the same person or several
223 persons; and

224 (B) Providing access to computer equipment for the purpose
225 of processing data or examining or acquiring data stored in or
226 accessible to the computer equipment;

227 (22) Tuition charged for attending educational summer
228 camps;

229 (23) Dispensing of services performed by one corporation,
230 partnership or limited liability company for another corporation,
231 partnership or limited liability company when the entities are
232 members of the same controlled group or are related taxpayers
233 as defined in Section 267 of the Internal Revenue Code.
234 "Control" means ownership, directly or indirectly, of stock,
235 equity interests or membership interests possessing fifty percent
236 or more of the total combined voting power of all classes of the
237 stock of a corporation, equity interests of a partnership or
238 membership interests of a limited liability company entitled to
239 vote or ownership, directly or indirectly, of stock, equity
240 interests or membership interests possessing fifty percent or
241 more of the value of the corporation, partnership or limited
242 liability company;

243 (24) Food for the following are exempt:

244 (A) Food purchased or sold by a public or private school,
245 school-sponsored student organizations or school-sponsored
246 parent-teacher associations to students enrolled in the school or
247 to employees of the school during normal school hours; but not
248 those sales of food made to the general public;

249 (B) Food purchased or sold by a public or private college or
250 university or by a student organization officially recognized by
251 the college or university to students enrolled at the college or
252 university when the sales are made on a contract basis so that a
253 fixed price is paid for consumption of food products for a
254 specific period of time without respect to the amount of food
255 product actually consumed by the particular individual
256 contracting for the sale and no money is paid at the time the
257 food product is served or consumed;

258 (C) Food purchased or sold by a charitable or private
259 nonprofit organization, a nonprofit organization or a
260 governmental agency under a program to provide food to
261 low-income persons at or below cost;

262 (D) Food sold by a charitable or private nonprofit
263 organization, a nonprofit organization or a governmental agency
264 under a program operating in West Virginia for a minimum of
265 five years to provide food at or below cost to individuals who
266 perform a minimum of two hours of community service for each
267 unit of food purchased from the organization;

268 (E) Food sold in an occasional sale by a charitable or
269 nonprofit organization, including volunteer fire departments and
270 rescue squads, if the purpose of the sale is to obtain revenue for
271 the functions and activities of the organization and the revenue
272 obtained is actually expended for that purpose;

273 (F) Food sold by any religious organization at a social or
274 other gathering conducted by it or under its auspices, if the
275 purpose in selling the food is to obtain revenue for the functions
276 and activities of the organization and the revenue obtained from
277 selling the food is actually used in carrying out those functions
278 and activities: *Provided*, That purchases made by the
279 organizations are not exempt as a purchase for resale; or

280 (G) Food sold by volunteer fire departments and rescue
281 squads that are exempt from federal income taxes under Section
282 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
283 amended, when the purpose of the sale is to obtain revenue for
284 the functions and activities of the organization and the revenue
285 obtained is exempt from federal income tax and actually
286 expended for that purpose;

287 (25) Sales of food by little leagues, midget football leagues,
288 youth football or soccer leagues, band boosters or other school
289 or athletic booster organizations supporting activities for grades
290 kindergarten through twelve and similar types of organizations,
291 including scouting groups and church youth groups, if the
292 purpose in selling the food is to obtain revenue for the functions
293 and activities of the organization and the revenues obtained
294 from selling the food is actually used in supporting or carrying

295 on functions and activities of the groups: *Provided*, That the
296 purchases made by the organizations are not exempt as a
297 purchase for resale;

298 (26) Charges for room and meals by fraternities and
299 sororities to their members: *Provided*, That the purchases made
300 by a fraternity or sorority are not exempt as a purchase for
301 resale;

302 (27) Sales of or charges for the transportation of passengers
303 in interstate commerce;

304 (28) Sales of tangible personal property or services to any
305 person which this state is prohibited from taxing under the laws
306 of the United States or under the constitution of this state;

307 (29) Sales of tangible personal property or services to any
308 person who claims exemption from the tax imposed by this
309 article or article fifteen-a of this chapter pursuant to the
310 provision of any other chapter of this code;

311 (30) Charges for the services of opening and closing a burial
312 lot;

313 (31) Sales of livestock, poultry or other farm products in
314 their original state by the producer of the livestock, poultry or
315 other farm products or a member of the producer's immediate
316 family who is not otherwise engaged in making retail sales of
317 tangible personal property; and sales of livestock sold at public
318 sales sponsored by breeders or registry associations or livestock
319 auction markets: *Provided*, That the exemptions allowed by this
320 subdivision may be claimed without presenting or obtaining
321 exemption certificates provided the farmer maintains adequate
322 records;

323 (32) Sales of motion picture films to motion picture
324 exhibitors for exhibition if the sale of tickets or the charge for

325 admission to the exhibition of the film is subject to the tax
326 imposed by this article and sales of coin-operated video arcade
327 machines or video arcade games to a person engaged in the
328 business of providing the machines to the public for a charge
329 upon which the tax imposed by this article is remitted to the Tax
330 Commissioner: *Provided*, That the exemption provided in this
331 subdivision may be claimed by presenting to the seller a
332 properly executed exemption certificate;

333 (33) Sales of aircraft repair, remodeling and maintenance
334 services when the services are to an aircraft operated by a
335 certified or licensed carrier of persons or property, or by a
336 governmental entity, or to an engine or other component part of
337 an aircraft operated by a certificated or licensed carrier of
338 persons or property, or by a governmental entity and sales of
339 tangible personal property that is permanently affixed or
340 permanently attached as a component part of an aircraft owned
341 or operated by a certificated or licensed carrier of persons or
342 property, or by a governmental entity, as part of the repair,
343 remodeling or maintenance service and sales of machinery, tools
344 or equipment directly used or consumed exclusively in the
345 repair, remodeling or maintenance of aircraft, aircraft engines or
346 aircraft component parts for a certificated or licensed carrier of
347 persons or property or for a governmental entity;

348 (34) Charges for memberships or services provided by
349 health and fitness organizations relating to personalized fitness
350 programs;

351 (35) Sales of services by individuals who babysit for a
352 profit: *Provided*, That the gross receipts of the individual from
353 the performance of baby-sitting services do not exceed five
354 thousand dollars in a taxable year;

355 (36) Sales of services by public libraries or by libraries at
356 academic institutions or by libraries at institutions of higher
357 learning;

358 (37) Commissions received by a manufacturer's
359 representative;

360 (38) Sales of primary opinion research services when:

361 (A) The services are provided to an out-of-state client;

362 (B) The results of the service activities, including, but not
363 limited to, reports, lists of focus group recruits and compilation
364 of data are transferred to the client across state lines by mail,
365 wire or other means of interstate commerce, for use by the client
366 outside the State of West Virginia; and

367 (C) The transfer of the results of the service activities is an
368 indispensable part of the overall service.

369 For the purpose of this subdivision, the term "primary
370 opinion research" means original research in the form of
371 telephone surveys, mall intercept surveys, focus group research,
372 direct mail surveys, personal interviews and other data
373 collection methods commonly used for quantitative and
374 qualitative opinion research studies;

375 (39) Sales of property or services to persons within the state
376 when those sales are for the purposes of the production of
377 value-added products: *Provided*, That the exemption granted in
378 this subdivision applies only to services, equipment, supplies
379 and materials directly used or consumed by those persons
380 engaged solely in the production of value-added products:
381 *Provided, however*, That this exemption may not be claimed by
382 any one purchaser for more than five consecutive years, except
383 as otherwise permitted in this section.

384 For the purpose of this subdivision, the term "value-added
385 product" means the following products derived from processing
386 a raw agricultural product, whether for human consumption or
387 for other use. For purposes of this subdivision, the following

388 enterprises qualify as processing raw agricultural products into
389 value-added products: Those engaged in the conversion of:

390 (A) Lumber into furniture, toys, collectibles and home
391 furnishings;

392 (B) Fruits into wine;

393 (C) Honey into wine;

394 (D) Wool into fabric;

395 (E) Raw hides into semifinished or finished leather
396 products;

397 (F) Milk into cheese;

398 (G) Fruits or vegetables into a dried, canned or frozen
399 product;

400 (H) Feeder cattle into commonly accepted slaughter
401 weights;

402 (I) Aquatic animals into a dried, canned, cooked or frozen
403 product; and

404 (J) Poultry into a dried, canned, cooked or frozen product;

405 (40) Sales of music instructional services by a music teacher
406 and artistic services or artistic performances of an entertainer or
407 performing artist pursuant to a contract with the owner or
408 operator of a retail establishment, restaurant, inn, bar, tavern,
409 sports or other entertainment facility or any other business
410 location in this state in which the public or a limited portion of
411 the public may assemble to hear or see musical works or other
412 artistic works be performed for the enjoyment of the members
413 of the public there assembled when the amount paid by the

414 owner or operator for the artistic service or artistic performance
415 does not exceed three thousand dollars: *Provided*, That nothing
416 contained herein may be construed to deprive private social
417 gatherings, weddings or other private parties from asserting the
418 exemption set forth in this subdivision. For the purposes of this
419 exemption, artistic performance or artistic service means and is
420 limited to the conscious use of creative power, imagination and
421 skill in the creation of aesthetic experience for an audience
422 present and in attendance and includes, and is limited to, stage
423 plays, musical performances, poetry recitations and other
424 readings, dance presentation, circuses and similar presentations
425 and does not include the showing of any film or moving picture,
426 gallery presentations of sculptural or pictorial art, nude or strip
427 show presentations, video games, video arcades, carnival rides,
428 radio or television shows or any video or audio taped
429 presentations or the sale or leasing of video or audio tapes, air
430 shows or any other public meeting, display or show other than
431 those specified herein: *Provided, however*, That nothing
432 contained herein may be construed to exempt the sales of tickets
433 from the tax imposed in this article. The state Tax
434 Commissioner shall propose a legislative rule pursuant to article
435 three, chapter twenty-nine-a of this code establishing definitions
436 and eligibility criteria for asserting this exemption which is not
437 inconsistent with the provisions set forth herein: *Provided*
438 *further*, That nude dancers or strippers may not be considered as
439 entertainers for the purposes of this exemption;

440 (41) Charges to a member by a membership association or
441 organization which is exempt from paying federal income taxes
442 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
443 of 1986, as amended, for membership in the association or
444 organization, including charges to members for newsletters
445 prepared by the association or organization for distribution
446 primarily to its members, charges to members for continuing
447 education seminars, workshops, conventions, lectures or courses
448 put on or sponsored by the association or organization,
449 including charges for related course materials prepared by the

450 association or organization or by the speaker or speakers for use
451 during the continuing education seminar, workshop, convention,
452 lecture or course, but not including any separate charge or
453 separately stated charge for meals, lodging, entertainment or
454 transportation taxable under this article: *Provided*, That the
455 association or organization pays the tax imposed by this article
456 on its purchases of meals, lodging, entertainment or
457 transportation taxable under this article for which a separate or
458 separately stated charge is not made. A membership association
459 or organization which is exempt from paying federal income
460 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue
461 Code of 1986, as amended, may elect to pay the tax imposed
462 under this article on the purchases for which a separate charge
463 or separately stated charge could apply and not charge its
464 members the tax imposed by this article or the association or
465 organization may avail itself of the exemption set forth in
466 subdivision (9) of this subsection relating to purchases of
467 tangible personal property for resale and then collect the tax
468 imposed by this article on those items from its member;

469 (42) Sales of governmental services or governmental
470 materials by county assessors, county sheriffs, county clerks or
471 circuit clerks in the normal course of local government
472 operations;

473 (43) Direct or subscription sales by the Division of Natural
474 Resources of the magazine currently entitled *Wonderful West*
475 *Virginia* and by the Division of Culture and History of the
476 magazine currently entitled *Goldenseal* and the journal currently
477 entitled *West Virginia History*;

478 (44) Sales of soap to be used at car wash facilities;

479 (45) Commissions received by a travel agency from an
480 out-of-state vendor;

481 (46) The service of providing technical evaluations for
482 compliance with federal and state environmental standards
483 provided by environmental and industrial consultants who have
484 formal certification through the West Virginia Department of
485 Environmental Protection or the West Virginia Bureau for
486 Public Health or both. For purposes of this exemption, the
487 service of providing technical evaluations for compliance with
488 federal and state environmental standards includes those costs
489 of tangible personal property directly used in providing such
490 services that are separately billed to the purchaser of such
491 services and on which the tax imposed by this article has
492 previously been paid by the service provider;

493 (47) Sales of tangible personal property and services by
494 volunteer fire departments and rescue squads that are exempt
495 from federal income taxes under Section 501(c)(3) or (c)(4) of
496 the Internal Revenue Code of 1986, as amended, if the sole
497 purpose of the sale is to obtain revenue for the functions and
498 activities of the organization and the revenue obtained is exempt
499 from federal income tax and actually expended for that purpose;

500 (48) Lodging franchise fees, including royalties, marketing
501 fees, reservation system fees or other fees assessed after the first
502 day of December, one thousand nine hundred ninety-seven, that
503 have been or may be imposed by a lodging franchiser as a
504 condition of the franchise agreement; and

505 (49) Sales of the regulation size United States flag and the
506 regulation size West Virginia flag for display.

507 (b) *Refundable exemptions.* -- Any person having a right or
508 claim to any exemption set forth in this subsection shall first pay
509 to the vendor the tax imposed by this article and then apply to
510 the Tax Commissioner for a refund or credit, or as provided in

511 section nine-d of this article, give to the vendor his or her West
512 Virginia direct pay permit number. The following sales of
513 tangible personal property and services are exempt from tax as
514 provided in this subsection:

515 (1) Sales of property or services to bona fide charitable
516 organizations who make no charge whatsoever for the services
517 they render: *Provided*, That the exemption granted in this
518 subdivision applies only to services, equipment, supplies, food,
519 meals and materials directly used or consumed by these
520 organizations and does not apply to purchases of gasoline or
521 special fuel;

522 (2) Sales of services, machinery, supplies and materials
523 directly used or consumed in the activities of manufacturing,
524 transportation, transmission, communication, production of
525 natural resources, gas storage, generation or production or
526 selling electric power, provision of a public utility service or the
527 operation of a utility service or the operation of a utility
528 business, in the businesses or organizations named in this
529 subdivision and does not apply to purchases of gasoline or
530 special fuel;

531 (3) Sales of property or services to nationally chartered
532 fraternal or social organizations for the sole purpose of free
533 distribution in public welfare or relief work: *Provided*, That
534 sales of gasoline and special fuel are taxable;

535 (4) Sales and services, fire-fighting or station house
536 equipment, including construction and automotive, made to any
537 volunteer fire department organized and incorporated under the
538 laws of the State of West Virginia: *Provided*, That sales of
539 gasoline and special fuel are taxable;

540 (5) Sales of building materials or building supplies or other
541 property to an organization qualified under Section 501(c)(3) or
542 (c)(4) of the Internal Revenue Code of 1986, as amended, which
543 are to be installed in, affixed to or incorporated by the
544 organization or its agent into real property or into a building or
545 structure which is or will be used as permanent low-income
546 housing, transitional housing, an emergency homeless shelter,
547 a domestic violence shelter or an emergency children and youth
548 shelter if the shelter is owned, managed, developed or operated
549 by an organization qualified under Section 501(c)(3) or (c)(4) of
550 the Internal Revenue Code of 1986, as amended; and

551 (6) Sales of construction and maintenance materials
552 acquired by a second party for use in the construction or
553 maintenance of a highway project: *Provided*, That in lieu of any
554 refund or credit to the person that paid the tax imposed by this
555 article, the Tax Commissioner shall pay to the Division of
556 Highways for deposit into the State Road Fund of the state
557 reimbursement for the tax in the amount estimated under the
558 provisions of this subdivision: *Provided, however*, That by the
559 fifteenth day of June of each fiscal year, the division shall
560 provide to the Tax Department an itemized listing of highway
561 projects with the amount of funds expended for highway
562 construction and maintenance. The Commissioner of Highways
563 shall request reimbursement of the tax based on an estimate that
564 forty percent of the total gross funds expended by the agency
565 during the fiscal period were for the acquisition of materials
566 used for highway construction and maintenance. The amount of
567 the reimbursement shall be calculated at six percent of the forty
568 percent.

CHAPTER 243

**(Com. Sub. for H.B. 2380 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9i, relating to exempting the purchase of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax.

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 §11-15-9i, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.

1 (a) Notwithstanding any provision of this article, article
2 fifteen-a or article fifteen-b of this chapter, the purchase by
3 a health care provider of drugs, durable medical goods,
4 mobility enhancing equipment and prosthetic devices, all as
5 defined in section two, article fifteen-b of this chapter, to be
6 dispensed upon prescription and intended for use in the

7 diagnosis, cure, mitigation, treatment, or prevention of injury
8 or disease in humans shall be exempt from the tax imposed
9 by this article.

10 (b) For purposes of this exemption, "health care provider"
11 means any person licensed to prescribe drugs, durable
12 medical goods, mobility enhancing equipment and prosthetic
13 devices intended for use in the diagnosis, cure, mitigation,
14 treatment, or prevention of injury or disease in humans. For
15 purposes of this section, the term "health care provider"
16 includes any hospital, medical clinic, nursing home, or
17 provider of inpatient hospital services and any provider of
18 outpatient hospital services, physician services, nursing
19 services, ambulance services, or surgical services.

20 (c) This section shall be effective the first day of July,
21 two thousand seven.



CHAPTER 244

**(H.B. 2917 - By Delegates Caputo, DeLong, Fragale, Hatfield,
Hrutkay, Morgan, M. Poling, Varner, White, Boggs and Kominar)**

[Passed February 19, 2007; in effect from passage.]

[Approved by the Governor on March 6, 2007.]

AN ACT to amend and reenact §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, relating to the accelerated payment of consumers sales and service tax and personal income tax withholding tax; and eliminating the requirement for such accelerated payments after a certain date.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

Article

- 15. **Consumer's Sales and Service Tax.**
- 21. **Personal Income Tax.**

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-16. Tax return and payment; exception.

1 (a) *Payment of tax.* -- Subject to the exceptions set forth
2 in subsection (b) of this section, the taxes levied by this
3 article are due and payable in monthly installments, on or
4 before the twentieth day of the month next succeeding the
5 month in which the tax accrued, except as otherwise provided
6 in this article.

7 (b) *Tax return.* -- The taxpayer shall, on or before the
8 twentieth day of each month, make out and mail to the tax
9 commissioner a return for the preceding month, in the form
10 prescribed by the tax commissioner, showing:

11 (1) The total gross proceeds of the vendor's business for
12 the preceding month;

13 (2) The gross proceeds of the vendor's business upon
14 which the tax is based;

15 (3) The amount of the tax for which the vendor is liable;
16 and

17 (4) Any further information necessary in the computation
18 and collection of the tax which the tax commissioner may
19 require, except as otherwise provided in this article or article
20 fifteen-b of this chapter.

21 (c) *Remittance to accompany return.* -- Except as
22 otherwise provided in this article or article fifteen-b of this
23 chapter, a remittance for the amount of the tax shall
24 accompany the return.

25 (d) *Deposit of collected tax.* -- Tax collected by the tax
26 commissioner shall be deposited as provided in section thirty
27 of this article, except that:

28 (1) Tax collected on sales of gasoline and special fuel
29 shall be deposited in the state road fund; and

30 (2) Any sales tax collected by the alcohol beverage
31 control commissioner from persons or organizations licensed
32 under authority of article seven, chapter sixty of this code
33 shall be paid into a revolving fund account in the state
34 treasury, designated the drunk driving prevention fund, to be
35 administered by the commission on drunk driving prevention,
36 subject to appropriations by the Legislature.

37 (e) *Return to be signed.* -- A return shall be signed by the
38 taxpayer or the taxpayer's duly authorized agent, when a
39 paper return is prepared and filed. When the return is filed
40 electronically, the return shall include the digital mark or
41 digital signature, as defined in article three, chapter thirty-
42 nine-a of this code, or the personal identification number of
43 the taxpayer, or the taxpayer's duly authorized agent, made in
44 accordance with any procedural rule that may be promulgated
45 by the Tax Commissioner.

46 (f) *Accelerated payment.* --

47 (1) Taxpayers whose average monthly payment of the
48 taxes levied by this article and article fifteen-a of this chapter
49 during the previous calendar year exceeds one hundred
50 thousand dollars, shall remit the tax attributable to the first

51 fifteen days of June each year on or before the twentieth day
52 of June: *Provided*, That on and after the first day of June,
53 two thousand seven, the provisions of this subsection (f) that
54 require the accelerated payment on or before the twentieth
55 day of June of the tax imposed by this article and article
56 fifteen-a of this chapter are no longer effective, and any such
57 tax due and owing shall be payable in accordance with
58 subsection (a) of this section.

59 (2) For purposes of complying with subdivision (1) of
60 this subsection the taxpayer shall remit an amount equal to
61 the amount of tax imposed by this article and article fifteen-a
62 of this chapter on actual taxable sales of tangible personal
63 property and custom software and sales of taxable services
64 during the first fifteen days of June or, at the taxpayer's
65 election, the taxpayer may remit an amount equal to fifty
66 percent of the taxpayer's liability for tax under this article on
67 taxable sales of tangible personal property and custom
68 software and sales of taxable services made during the
69 preceding month of May.

70 (3) For a business which has not been in existence for a
71 full calendar year, the total tax due from the business during
72 the prior calendar year shall be divided by the number of
73 months, including fractions of a month, that it was in
74 business during the prior calendar year; and if that amount
75 exceeds one hundred thousand dollars, the tax attributable to
76 the first fifteen days of June each year shall be remitted on or
77 before the twentieth day of June as provided in subdivision
78 (2) of this subsection.

79 (4) When a taxpayer required to make an advanced
80 payment of tax under subdivision (1) of this subsection
81 makes out its return for the month of June, which is due on
82 the twentieth day of July, the taxpayer may claim as a credit
83 against liability under this article for tax on taxable

84 transactions during the month of June, the amount of the
85 advanced payment of tax made under subdivision (1) of this
86 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.

1 (a) *General.* -- Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following the
4 close of such calendar quarter, file a withholding return as
5 prescribed by the Tax Commissioner and pay over to the Tax
6 Commissioner the taxes so required to be deducted and
7 withheld. Where the average quarterly amount so deducted
8 and withheld by any employer is less than one hundred fifty
9 dollars and the aggregate for the calendar year can reasonably
10 be expected to be less than six hundred dollars, the Tax
11 Commissioner may by regulation permit an employer to file
12 an annual return and pay over to the Tax Commissioner the
13 taxes deducted and withheld on or before the last day of the
14 month following the close of the calendar year: *Provided,*
15 That the Tax Commissioner may, by nonemergency
16 legislative rules promulgated pursuant to article three, chapter
17 twenty-nine-a of this code, change the minimum amounts
18 established by this subsection. The Tax Commissioner may,
19 if he or she believes such action necessary for the protection
20 of the revenues, require any employer to make the return and
21 pay to him or her the tax deducted and withheld at any time,
22 or from time to time.

23 (b) *Monthly returns and payments of withheld tax on*
24 *and after the first day of January, two thousand one.* --
25 Notwithstanding the provisions of subsection (a) of this

26 section, on and after the first day of January, two thousand
27 one, every employer required to deduct and withhold tax
28 under this article shall, for each of the first eleven months of
29 the calendar year, on or before the twentieth day of the
30 succeeding month and for the last calendar month of the year,
31 on or before the last day of the succeeding month, file a
32 withholding return as prescribed by the Tax Commissioner
33 and pay over to the Tax Commissioner the taxes so required
34 to be deducted and withheld, if such withheld taxes aggregate
35 two hundred fifty dollars or more for the month, except any
36 employer with respect to whom the Tax Commissioner may
37 have by regulation provided otherwise in accordance with the
38 provisions of subsection (a) of this section.

39 (c) *Annual returns and payments of withheld tax of*
40 *certain domestic and household employees.* -- Employers of
41 domestic and household employees whose withholdings of
42 federal income tax are annually paid and reported by the
43 employer pursuant to the filing of Schedule H of federal form
44 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,
45 on or before the thirty-first day of January next succeeding
46 the end of the calendar year for which withholdings are
47 deducted and withheld, file an annual withholding return with
48 the Tax Commissioner and annually remit to the Tax
49 Commissioner West Virginia personal income taxes deducted
50 and withheld for the employees. The Tax Commissioner may
51 promulgate legislative or other rules pursuant to article three,
52 chapter twenty-nine-a of this code for implementation of this
53 subsection.

54 (d) *Deposit in trust for Tax Commissioner.* -- Whenever
55 any employer fails to collect, truthfully account for, or pay
56 over the tax, or to make returns of the tax as required in this
57 section, the Tax Commissioner may serve a notice requiring
58 the employer to collect the taxes which become collectible
59 after service of the notice, to deposit the taxes in a bank

60 approved by the Tax Commissioner, in a separate account, in
61 trust for and payable to the Tax Commissioner, and to keep
62 the amount of the tax in the separate account until payment
63 over to the Tax Commissioner. The notice shall remain in
64 effect until a notice of cancellation is served by the Tax
65 Commissioner.

66 (e) *Accelerated payment.* -- (1) Notwithstanding the
67 provisions of subsections (a) and (b) of this section, for
68 calendar years beginning after the thirty-first day of
69 December, one thousand nine hundred ninety, every
70 employer required to deduct and withhold tax whose average
71 payment per calendar month for the preceding calendar year
72 under subsection (b) of this section exceeded one hundred
73 thousand dollars shall remit the tax attributable to the first
74 fifteen days of June each year on or before the twenty-third
75 day of June: *Provided,* That on and after the first day of
76 June, two thousand seven, the provisions of this subsection
77 (e) that require the accelerated payment on or before the
78 twenty-third day of June of the tax imposed by this article are
79 no longer effective, and any such tax due and owing shall be
80 payable in accordance with subsection (a) of this section.

81 (2) For purposes of complying with subdivision (1) of
82 this subsection, the employer shall remit an amount equal to
83 the withholding tax due under this article on employee
84 compensation subject to withholding tax payable or paid to
85 employees for the first fifteen days of June or, at the
86 employer's election, the employer may remit an amount equal
87 to fifty percent of the employer's liability for withholding tax
88 under this article on compensation payable or paid to
89 employees for the preceding month of May.

90 (3) For an employer which has not been in business for
91 a full calendar year, the total amount the employer was
92 required to deduct and withhold under subsection (b) of this

93 section for the prior calendar year shall be divided by the
94 number of months, including fractions of a month, that it was
95 in business during the prior calendar year, and if that amount
96 exceeds one hundred thousand dollars, the employer shall
97 remit the tax attributable to the first fifteen days of June each
98 year on or before the twenty-third day of June, as provided in
99 subdivision (2) of this subsection.

100 (4) When an employer required to make an advanced
101 payment of withholding tax under subdivision (1) of this
102 subsection makes out its return for the month of June, which
103 is due on the twentieth day of July, that employer may claim
104 as a credit against its liability under this article for tax on
105 employee compensation paid or payable for employee
106 services rendered during the month of June the amount of the
107 advanced payment of tax made under subdivision (1) of this
108 subsection.

109 (f) The amendments to this section enacted in the year
110 two thousand six are effective for tax years beginning on or
111 after the first day of January, two thousand six.

112 (g) An annual reconciliation of West Virginia personal
113 income tax withheld shall be submitted by the employer on
114 or before the twenty-eighth day of February following the
115 close of the calendar year, together with Tax Division copies
116 of all withholding tax statements for that preceding calendar
117 year. The reconciliation shall be accompanied by a list of the
118 amounts of income withheld for each employee in such form
119 as the Tax Commissioner prescribes and shall be filed
120 separately from the employer's monthly or quarterly return.

121 (h) Any employer required to file a withholding return
122 for two hundred fifty or more employees shall file its return
123 using electronic filing as defined in section fifty-four of this
124 article. An employer that is required to file electronically but

125 does not do so is subject to a penalty in the amount of
126 twenty-five dollars per employee for whom the return was
127 not filed electronically, unless the employer shows that the
128 failure is due to reasonable cause and not due to willful
129 neglect.

CHAPTER 245

**(Com. Sub. for S.B. 569 - By Senators Plymale,
Jenkins and Kessler)**

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §11-15-18b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-24-43a; and to amend said code by adding thereto two new sections, designated §17-16B-7a and §17-16B-7b, all relating to dedicating up to four million three hundred thousand dollars from annual collections of the corporation net income tax for construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority; creating the Special Railroad and Intermodal Enhancement Fund into which those funds are deposited and from which expenditures are made under the administration of the West Virginia Public Port Authority; providing administrative procedures for the State Tax Commissioner's deposit of those funds; providing an expiration date for the deposit of those funds; and directing a study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard, West Virginia.

Be it enacted by the Legislature of West Virginia:

That §11-15-18b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-24-43a; and that said code be amended by adding thereto two new sections, designated §17-16B-7a and §17-16B-7b, all to read as follows:

Chapter

- 11. **Taxation.**
- 17. **Roads and Highways.**

CHAPTER 11. TAXATION.

Article

- 15. **Consumers Sales and Service Tax.**
- 24. **Corporation Net Income Tax.**

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18b. Tax on motor fuel effective the first day of January, two thousand four.

1 (a) *General.* -- Effective the first day of January, two
2 thousand four, all sales of motor fuel subject to the flat rate
3 of the tax imposed by section five, article fourteen-c of this
4 chapter are subject to the tax imposed by this article which
5 shall comprise the variable component of the tax imposed by
6 said section and be collected and remitted at the time the tax
7 imposed by said section is remitted. Sales of motor fuel upon
8 which the tax imposed by this article has been paid shall not
9 thereafter be again taxed under the provisions of this article.
10 This section is construed so that all gallons of motor fuel sold
11 and delivered, or delivered, in this state are taxed one time.

12 (b) *Measure of tax.* -- The measure of tax imposed by this
13 article on sales of motor fuel is the average wholesale price

14 as defined and determined in section five, article fourteen-c
15 of this chapter. For purposes of maintaining revenue for
16 highways, and recognizing that the tax imposed by this article
17 is generally imposed on gross proceeds from sales to ultimate
18 consumers, whereas the tax on motor fuel herein is imposed
19 on the average wholesale price of the motor fuel; in no case,
20 for the purposes of taxation under this article, shall the
21 average wholesale price be determined to be less than ninety-
22 seven cents per gallon of motor fuel for all gallons of motor
23 fuel sold during the reporting period, notwithstanding any
24 provision of this article to the contrary.

25 (c) *Definitions.* -- For purposes of this article, the terms
26 “gasoline” and “special fuel” are defined as provided in
27 section two, article fourteen-c of this chapter. Other terms
28 used in this section have the same meaning as when used in
29 a similar context in said article.

30 (d) *Tax return and tax due.* -- The tax imposed by this
31 article on sales of motor fuel shall be paid by each taxpayer
32 on or before the last day of the calendar month by check,
33 bank draft, certified check or money order payable to the Tax
34 Commissioner for the amount of tax due for the preceding
35 month, notwithstanding any provision of this article to the
36 contrary: *Provided*, That the commissioner may require all or
37 certain taxpayers to file tax returns and payments
38 electronically. The return required by the commissioner shall
39 accompany the payment of tax: *Provided, however*, That if
40 no tax is due, the return required by the commissioner shall
41 be completed and filed on or before the last day of the month.

42 (e) *Compliance.* -- To facilitate ease of administration
43 and compliance by taxpayers, the Tax Commissioner shall
44 require persons liable for the tax imposed by this article on
45 sales of motor fuel to file a combined return and make a
46 combined payment of the tax due under this article on sales

47 of motor fuel and the tax due under article fourteen-c of this
48 chapter on motor fuel. In order to encourage use of a
49 combined return each month and the making of a single
50 payment each month for both taxes, the due date of the return
51 and tax due under said article is the last day of each month,
52 notwithstanding any provision in said article to the contrary.

53 (f) *Dedication of tax.* -- All tax collected under the
54 provisions of this section, after deducting the amount of any
55 refunds lawfully paid, shall be deposited in the Road Fund in
56 the State Treasurer's office and used only for the purpose of
57 construction, reconstruction, maintenance and repair of
58 highways and payment of principal and interest on state
59 bonds issued for highway purposes: *Provided,* That
60 notwithstanding any provision to the contrary, any tax
61 collected on the sale of aviation fuel after deducting the
62 amount of any refunds lawfully paid shall be deposited in the
63 State Treasurer's office and transferred to the State
64 Aeronautical Commission to be used for the purpose of
65 matching federal funds available for the reconstruction,
66 maintenance and repair of public airports and airport
67 runways.

68 (g) *Construction.* -- This section is not construed as
69 taxing any sale of motor fuel which this state is prohibited
70 from taxing under the constitution of this state or the
71 constitution or laws of the United States.

72 (h) *Effective date.* -- The provisions of this section take
73 effect on the first day of January, two thousand four. The
74 provisions of this section enacted during the two thousand
75 seven Legislative session take effect on the first day of
76 January, two thousand eight.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-43a. Dedication of tax proceeds to railways.**

1 (a) Beginning the first day of January, two thousand
2 eight, there is hereby dedicated an annual amount of up to
3 four million three hundred thousand dollars from annual
4 collections of the tax imposed by this article for the purpose
5 of construction, reconstruction, maintenance and repair of
6 railways, the construction of railway-related structures and
7 payment of principal and interest on state bonds issued for
8 railway purposes, as approved by the West Virginia Public
9 Port Authority.

10 (b) For purposes of administering the deposits required
11 by this subdivision, after the thirty-first day of December,
12 two thousand seven, from the taxes imposed by this section
13 and paid to the Tax Commissioner in each quarter of the year,
14 after deducting the amount of any refunds lawfully paid and
15 any administrative costs authorized by this code, the Tax
16 Commissioner shall pay into the Special Railroad and
17 Intermodal Enhancement Fund provided for in section seven-
18 a, article sixteen-b, chapter seventeen of this code an amount
19 equal to at least one million seventy-five thousand dollars. In
20 any quarter where the collections are less than the amount
21 required to be paid into the Special Railroad and Intermodal
22 Enhancement Fund, or where the total amount paid in any
23 year will be less than four million three hundred thousand
24 dollars, the difference shall be paid from amounts available
25 from collections in succeeding quarters until paid in full.
26 Notwithstanding any provision of this section to the contrary,
27 the total amount to be deposited into the Special Railroad and
28 Intermodal Enhancement Fund for the year two thousand
29 sixteen shall not exceed two million one hundred fifty
30 thousand dollars.

31 (c) Notwithstanding any provision of this section to the
32 contrary, all provisions of this section relating to requiring
33 the deposit of moneys in the Special Railroad and Intermodal
34 Enhancement Fund shall expire at the end of the thirtieth day
35 of June, two thousand sixteen.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.

§17-16B-7b. Study of feasibility intermodal facility at Prichard, West Virginia.

§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.

1 There is hereby established in the State Treasury a
2 Special Railroad and Intermodal Enhancement Fund, which
3 shall consist of all amounts deposited into the fund pursuant
4 to section forty-three-a, article twenty-four, chapter eleven of
5 this code. The Special Railroad and Intermodal Enhancement
6 Fund shall be administered by the West Virginia Public Port
7 Authority. The money deposited in the fund shall be used
8 only for the purpose of construction, reconstruction,
9 maintenance and repair of railways, the construction of
10 railway-related structures and payment of principal and
11 interest on state bonds issued for railway purposes, as
12 approved by the West Virginia Public Port Authority.

§17-16B-7b. Study of feasibility intermodal facility at Prichard, West Virginia.

1 The West Virginia Public Port Authority shall conduct a
2 study relating to the feasibility of the planning, development,
3 construction and operation of the intermodal facility at
4 Prichard, West Virginia, to determine whether the same is
5 sustainable.

CHAPTER 246

**(H.B. 2285 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed February 16, 2007; in effect from passage.]
[Approved by the Governor on February 28, 2007.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of
5 the United States means the provisions of the Internal
6 Revenue Code of 1986, as amended, and any other provisions
7 of the laws of the United States that relate to the
8 determination of income for federal income tax purposes. All

9 amendments made to the laws of the United States after the
10 thirty-first day of December, two thousand five, but prior to
11 the first day of January, two thousand seven, shall be given
12 effect in determining the taxes imposed by this article to the
13 same extent those changes are allowed for federal income tax
14 purposes, whether the changes are retroactive or prospective,
15 but no amendment to the laws of the United States made on
16 or after the first day of January, two thousand seven, shall be
17 given any effect.

18 (b) *Medical savings accounts.* -- The term "taxable trust"
19 does not include a medical savings account established
20 pursuant to section twenty, article fifteen, chapter thirty-three
21 of this code or section fifteen, article sixteen of said chapter.
22 Employer contributions to a medical savings account
23 established pursuant to said sections are not "wages" for
24 purposes of withholding under section seventy-one of this
25 article.

26 (c) *Surtax.* -- The term "surtax" means the twenty percent
27 additional tax imposed on taxable withdrawals from a
28 medical savings account under section twenty, article fifteen,
29 chapter thirty-three of this code and the twenty percent
30 additional tax imposed on taxable withdrawals from a
31 medical savings account under section fifteen, article sixteen
32 of said chapter which are collected by the Tax Commissioner
33 as tax collected under this article.

34 (d) *Effective date.* -- The amendments to this section
35 enacted in the year two thousand seven are retroactive to the
36 extent allowable under federal income tax law. With respect
37 to taxable years that began prior to the first day of January,
38 two thousand seven, the law in effect for each of those years
39 shall be fully preserved as to that year, except as provided in
40 this section.

41 (e) For purposes of the refundable credit allowed to a low
42 income senior citizen for property tax paid on his or her
43 homestead in this state, the term "laws of the United States"
44 as used in subsection (a) of this section means and includes
45 the term "low income" as defined in subsection (b), section
46 twenty-one of this article and as reflected in the poverty
47 guidelines updated periodically in the federal register by the
48 U.S. Department of Health and Human Services under the
49 authority of 42 U.S.C. §9902(2).

CHAPTER 247

**(S.B. 749 - By Senators Helmick, Plymale, Chafin, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Sypolt,
Fanning, Facemyer, Boley, Sprouse and Guills)**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-23-5b; to amend and reenact §11-23-6 and §11-23-27 of said code; to amend and reenact §11-24-1, §11-24-3a, §11-24-7, §11-24-13a and §11-24-24 of said code; and to amend said code by adding thereto four new sections, designated §11-24-13c, §11-24-13d, §11-24-13e and §11-24-13f, all relating to business taxes generally; reducing the business franchise tax; and requiring combined reporting of certain taxes upon businesses.

Be it enacted by the Legislature of West Virginia:

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-23-5b;

that §11-23-6 and §11-23-27 of said code be amended and reenacted; that §11-24-1, §11-24-3a, §11-24-7, §11-24-13a and §11-24-24 of said code be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §11-24-13c, §11-24-13d, §11-24-13e and §11-24-13f, all to read as follows:

Article

- 23. **Business Franchise Tax.**
- 24. **Corporation Net Income Tax.**

ARTICLE 23. BUSINESS FRANCHISE TAX.

- §11-23-5b. Apportionment of income of financial organizations.
- §11-23-6. Imposition of tax; change in rate of tax.
- §11-23-27. Credit for franchise tax paid to another state.

§11-23-5b. Apportionment of income of financial organizations.

1 Notwithstanding any other provisions of this article or
 2 this code to the contrary, for tax years beginning on or after
 3 the first day of January, two thousand nine, the provisions of
 4 section five-a of this article are null and void and of no force
 5 or effect.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General.* -- An annual business franchise tax is
 2 hereby imposed on the privilege of doing business in this
 3 state and in respect of the benefits and protection conferred.
 4 Such tax shall be collected from every domestic corporation,
 5 every corporation having its commercial domicile in this
 6 state, every foreign or domestic corporation owning or
 7 leasing real or tangible personal property located in this state
 8 or doing business in this state and from every partnership
 9 owning or leasing real or tangible personal property located
 10 in this state or doing business in this state, effective on and
 11 after the first day of July, one thousand nine hundred eighty-
 12 seven.

13 (b) *Amount of tax and rate; effective date.* --

14 (1) On and after the first day of July, one thousand nine
15 hundred eighty-seven, the amount of tax shall be the greater
16 of fifty dollars or fifty-five one hundredths of one percent of
17 the value of the tax base, as determined under this article:
18 *Provided*, That when the taxpayer's first taxable year under
19 this article is a short taxable year, the taxpayer's liability shall
20 be prorated based upon the ratio which the number of months
21 in which such short taxable year bears to twelve: *Provided*,
22 *however*, That this subdivision shall not apply to taxable
23 years beginning on or after the first day of January, one
24 thousand nine hundred eighty-nine.

25 (2) *Taxable years after the thirty-first day of December,*
26 *one thousand nine hundred eighty-eight.* -- For taxable years
27 beginning on or after the first day of January, one thousand
28 nine hundred eighty-nine, the amount of tax due under this
29 article shall be the greater of fifty dollars or seventy-five one
30 hundredths of one percent of the value of the tax base as
31 determined under this article.

32 (3) *Taxable years after the thirtieth day of June, one*
33 *thousand nine hundred ninety-seven.* -- For taxable years
34 beginning on or after the first day of July, one thousand nine
35 hundred ninety-seven, the amount of tax due under this
36 article shall be the greater of fifty dollars or seventy
37 hundredths of one percent of the value of the tax base as
38 determined under this article.

39 (4) *Taxable years after the thirty-first day of December,*
40 *two thousand six.* -- For taxable years beginning on or after
41 the first day of January, two thousand seven, the amount of
42 tax due under this article shall be the greater of fifty dollars
43 or fifty-five one hundredths of one percent of the value of the
44 tax base as determined under this article.

45 (5) *Taxable years after the thirty-first day of December,*
46 *two thousand eight.* -- For taxable years beginning on or after
47 the first day of January, two thousand nine, the amount of tax
48 due under this article shall be the greater of fifty dollars or
49 forty-eight one hundredths of one percent of the value of the
50 tax base as determined under this article.

51 (6) *Taxable years after the thirty-first day of December,*
52 *two thousand nine.* -- For taxable years beginning on or after
53 the first day of January, two thousand ten, the amount of tax
54 due under this article shall be the greater of fifty dollars or
55 forty-one one hundredths of one percent of the value of the
56 tax base as determined under this article.

57 (7) *Taxable years after the thirty-first day of December,*
58 *two thousand ten.* -- For taxable years beginning on or after
59 the first day of January, two thousand eleven, the amount of
60 tax due under this article shall be the greater of fifty dollars
61 or thirty-four one hundredths of one percent of the value of
62 the tax base as determined under this article.

63 (8) *Taxable years after the thirty-first day of December,*
64 *two thousand eleven.* -- For taxable years beginning on or
65 after the first day of January, two thousand twelve, the
66 amount of tax due under this article shall be the greater of
67 fifty dollars or twenty-seven one hundredths of one percent
68 of the value of the tax base as determined under this article.

69 (9) *Taxable years after the thirty-first day of December,*
70 *two thousand twelve.* -- For taxable years beginning on or
71 after the first day of January, two thousand thirteen, the
72 amount of tax due under this article shall be the greater of
73 fifty dollars or twenty one hundredths of one percent of the
74 value of the tax base as determined under this article.

75 (c) *Short taxable years.* -- When the taxpayer's taxable
76 year for federal income tax purposes is a short taxable year,
77 the tax determined by application of the tax rate to the
78 taxpayer's tax base shall be prorated based upon the ratio
79 which the number of months in such short taxable year bears
80 to twelve: *Provided,* That when the taxpayer's first taxable
81 year under this article is less than twelve months, the
82 taxpayer's liability shall be prorated based upon the ratio
83 which the number of months the taxpayer was doing business
84 in this state bears to twelve but in no event shall the tax due
85 be less than fifty dollars.

§11-23-27. Credit for franchise tax paid to another state.

1 (a) Effective for taxable years beginning on or after the
2 first day of January, one thousand nine hundred ninety-one,
3 and notwithstanding any provisions of this code to the
4 contrary, any financial organization having its commercial
5 domicile in this state shall be allowed a credit against the tax
6 imposed by this article for any taxable year for taxes paid to
7 another state. That credit shall be equal in amount to the
8 lesser of:

9 (1) The taxes such financial organization shall actually
10 have paid, which payments were made on or before the filing
11 date of the annual return required by this article, to any other
12 state and which tax was based upon or measured by the
13 financial organization's capital and was paid with respect to
14 the same taxable year; or

15 (2) The portion of the tax actually paid that the financial
16 organization would have paid if the rate of tax imposed by
17 this article is applied to the tax base determined under the law
18 of such other state.

19 (b) Any additional payments of such tax to other states,
20 or to political subdivisions thereof, by a financial
21 organization described in this section, and any refunds of
22 such taxes, made or received by such financial organization
23 with respect to the taxable year, but after the due date of the
24 annual return required by this article for the taxable year,
25 including any extensions, shall likewise be accounted for in
26 the taxable year in which such additional payment is made or
27 such refund is received by the financial organization.

28 (c) For tax years beginning on or after the first day of
29 January, two thousand nine, the provisions of this section are
30 null and void and of no force or effect.

ARTICLE 24. CORPORATION NET INCOME TAX.

- §11-24-1. Legislative findings.
- §11-24-3a. Specific terms defined.
- §11-24-7. Allocation and apportionment.
- §11-24-13a. Method of filing for business taxes.
- §11-24-13c. Determination of taxable income or loss using combined report.
- §11-24-13d. Determination of the business income of the combined group.
- §11-24-13e. Designation of surety.
- §11-24-13f. Water's-edge election; initiation and withdrawal.
- §11-24-24. Credit for income tax paid to another state.

§11-24-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 adoption by this state for its corporation net income tax
3 purposes of certain provisions of the laws of the United
4 States relating to the determination of income for federal
5 income tax purposes will: (1) Simplify preparation of state
6 corporation net income tax returns by taxpayers; (2) improve
7 enforcement of the state corporation net income tax through
8 better use of information obtained from federal income tax
9 audits; and (3) aid interpretation of the state corporation net

10 income tax law through increased use of federal judicial and
11 administrative determinations and precedents.

12 The Legislature does, therefore, declare that this article
13 be construed so as to accomplish the foregoing purposes.

14 In recognition of the fact that corporate business is
15 increasingly conducted on a national and international basis,
16 it is the intent of the Legislature to adopt a combined system
17 of income tax reporting for corporations. A separate
18 accounting system is sometimes not adequate to accurately
19 measure the income of multistate and multinational
20 corporations doing business in this state and sometimes
21 creates tax disadvantages for West Virginia corporations in
22 competition with those multistate and multinational
23 corporations. Therefore, it is the intent of the Legislature to
24 capture lost revenue with adoption of a combined reporting
25 tax base.

§11-24-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income*. -- The term “business income”
3 means income arising from transactions and activity in the
4 regular course of the taxpayer’s trade or business and
5 includes income from tangible and intangible property if the
6 acquisition, management and disposition of the property or
7 the rendering of services in connection therewith constitute
8 integral parts of the taxpayer’s regular trade or business
9 operations and includes all income which is apportionable
10 under the Constitution of the United States.

11 (2) “Combined group” means the group of all persons
12 whose income and apportionment factors are required to be
13 taken into account pursuant to subsection (a) or (b), section

14 thirteen-a of this article in determining the taxpayer's share
15 of the net business income or loss apportionable to this state.

16 (3) *Commercial domicile.* -- The term "commercial
17 domicile" means the principal place from which the trade or
18 business of the taxpayer is directed or managed: *Provided,*
19 That the commercial domicile of a financial organization,
20 which is subject to regulation as such, shall be at the place
21 designated as its principal office with its regulating authority.

22 (4) *Compensation.* -- The term "compensation" means
23 wages, salaries, commissions and any other form of
24 remuneration paid to employees for personal services.

25 (5) *Corporation.* -- "Corporation" means any corporation
26 as defined by the laws of this state or organization of any
27 kind treated as a corporation for tax purposes under the laws
28 of this state, wherever located, which if it were doing
29 business in this state would be a "taxpayer". The business
30 conducted by a partnership which is directly or indirectly
31 held by a corporation shall be considered the business of the
32 corporation to the extent of the corporation's distributive
33 share of the partnership income, inclusive of guaranteed
34 payments to the extent prescribed by regulation. The term
35 "corporation" includes a joint-stock company and any
36 association or other organization which is taxable as a
37 corporation under the federal income tax law.

38 (6) *Delegate.* -- The term "delegate" in the phrase "or his
39 delegate", when used in reference to the Tax Commissioner,
40 means any officer or employee of the State Tax Department
41 duly authorized by the Tax Commissioner directly, or
42 indirectly by one or more redelegations of authority, to
43 perform the functions mentioned or described in this article
44 or regulations promulgated thereunder.

45 (7) *Domestic corporation.* -- The term “domestic
46 corporation” means any corporation organized under the laws
47 of West Virginia and certain corporations organized under
48 the laws of the state of Virginia before the twentieth day of
49 June, one thousand eight hundred sixty-three. Every other
50 corporation is a foreign corporation.

51 (8) *Engaging in business.* -- The term “engaging in
52 business” or “doing business” means any activity of a
53 corporation which enjoys the benefits and protection of
54 government and laws in this state.

55 (9) *Federal Form 1120.* -- The term “Federal Form 1120”
56 means the annual federal income tax return of any
57 corporation made pursuant to the United States Internal
58 Revenue Code of 1986, as amended, or in successor
59 provisions of the laws of the United States, in respect to the
60 federal taxable income of a corporation, and filed with the
61 federal Internal Revenue Service. In the case of a corporation
62 that elects to file a federal income tax return as part of an
63 affiliated group, but files as a separate corporation under this
64 article, then as to such corporation Federal Form 1120 means
65 its pro forma Federal Form 1120.

66 (10) *Fiduciary.* -- The term “fiduciary” means, and
67 includes, a guardian, trustee, executor, administrator,
68 receiver, conservator or any person acting in any fiduciary
69 capacity for any person.

70 (11) *Financial organization.* -- The term “financial
71 organization” means:

72 (A) A holding company or a subsidiary thereof. As used
73 in this section “holding company” means a corporation
74 registered under the federal Bank Holding Company Act of

75 1956 or registered as a savings and loan holding company
76 other than a diversified savings and loan holding company
77 (as defined in Section 408(a)(1)(F) of the federal National
78 Housing Act (12 U. S. C. §1730(a)(1)(F));

79 (B) A regulated financial corporation or a subsidiary
80 thereof. As used in this section “regulated financial
81 corporation” means:

82 (1) An institution, the deposits, shares or accounts of
83 which are insured under the Federal Deposit Insurance Act or
84 by the federal Savings and Loan Insurance Corporation;

85 (2) An institution that is a member of a federal home loan
86 bank;

87 (3) Any other bank or thrift institution incorporated or
88 organized under the laws of a state that is engaged in the
89 business of receiving deposits;

90 (4) A credit union incorporated and organized under the
91 laws of this state;

92 (5) A production credit association organized under 12 U.
93 S. C. §2071;

94 (6) A corporation organized under 12 U. S. C. §611
95 through §631 (an Edge act corporation); or

96 (7) A federal or state agency or branch of a foreign bank
97 (as defined in 12 U. S. C. §3101); or

98 (C) A corporation which derives more than fifty percent
99 of its gross business income from one or more of the
100 following activities:

- 101 (1) Making, acquiring, selling or servicing loans or
102 extensions of credit. Loans and extensions of credit include:
- 103 (I) Secured or unsecured consumer loans;
- 104 (II) Installment obligations;
- 105 (III) Mortgages or other loans secured by real estate or
106 tangible personal property;
- 107 (IV) Credit card loans;
- 108 (V) Secured and unsecured commercial loans of any type;
109 and
- 110 (VI) Loans arising in factoring.
- 111 (2) Leasing or acting as an agent, broker or advisor in
112 connection with leasing real and personal property that is the
113 economic equivalent of an extension of credit (as defined by
114 the Federal Reserve Board in 12 C. F. R. 225.25(b)(5)).
- 115 (3) Operating a credit card business.
- 116 (4) Rendering estate or trust services.
- 117 (5) Receiving, maintaining or otherwise handling
118 deposits.
- 119 (6) Engaging in any other activity with an economic
120 effect comparable to those activities described in item (1),
121 (2), (3), (4) or (5) of this subparagraph.
- 122 (12) *Fiscal year*. -- The term “fiscal year” means an
123 accounting period of twelve months ending on any day other

124 than the last day of December and on the basis of which the
125 taxpayer is required to report for federal income tax purposes.

126 (13) *Includes and including.* -- The terms “includes” and
127 “including”, when used in a definition contained in this
128 article, shall not be deemed to exclude other things otherwise
129 within the meaning of the term being defined.

130 (14) “Internal Revenue Code” means Title 26 of the
131 United States Code, as amended, without regard to
132 application of federal treaties unless expressly made
133 applicable to states of the United States.

134 (15) *Nonbusiness income.* -- The term “nonbusiness
135 income” means all income other than business income.

136 (16) “Partnership” means a general or limited partnership,
137 or organization of any kind treated as a partnership for tax
138 purposes under the laws of this state.

139 (17) *Person.* -- The term “person” is to be deemed
140 interchangeable with the term “corporation” in this section.
141 The term “person” means any individual, firm, partnership,
142 general partner of a partnership, limited liability company,
143 registered limited liability partnership, foreign limited
144 liability partnership, association, corporation (whether or not
145 the corporation is, or would be if doing business in this state,
146 subject to the tax imposed by this article), company,
147 syndicate, estate, trust, business trust, trustee, trustee in
148 bankruptcy, receiver, executor, administrator, assignee or
149 organization of any kind.

150 (18) *Pro forma return.* -- The term “pro forma return”
151 when used in this article means the return which the taxpayer

152 would have filed with the Internal Revenue Service had it not
153 elected to file federally as part of an affiliated group.

154 (19) *Public utility*. -- The term “public utility” means any
155 business activity to which the jurisdiction of the Public
156 Service Commission of West Virginia extends under section
157 one, article two, chapter twenty-four of this code.

158 (20) *Sales*. -- The term “sales” means all gross receipts of
159 the taxpayer that are “business income”, as defined in this
160 section.

161 (21) *State*. -- The term “state” means any state of the
162 United States, the District of Columbia, the Commonwealth
163 of Puerto Rico, any territory or possession of the United
164 States and any foreign country or political subdivision
165 thereof.

166 (22) *Taxable year, tax year*. -- The term “taxable year” or
167 “tax year” means the taxable year for which the taxable
168 income of the taxpayer is computed under the federal income
169 tax law.

170 (23) *Tax*. -- The term “tax” includes, within its meaning,
171 interest and additions to tax, unless the intention to give it a
172 more limited meaning is disclosed by the context.

173 (24) *Tax Commissioner*. -- The term “Tax
174 Commissioner” means the Tax Commissioner of the State of
175 West Virginia or his delegate.

176 (25) “Tax haven” means a jurisdiction that, for a
177 particular tax year in question: (A) Is identified by the
178 Organization for Economic Cooperation and Development as
179 a tax haven or as having a harmful preferential tax regime; or

180 (B) a jurisdiction that has no, or nominal, effective tax on the
181 relevant income and: (i) That has laws or practices that
182 prevent effective exchange of information for tax purposes
183 with other governments regarding taxpayers subject to, or
184 benefiting from, the tax regime; or (ii) that lacks
185 transparency. For purposes of this definition, a tax regime
186 lacks transparency if the details of legislative, legal or
187 administrative provisions are not open to public scrutiny and
188 apparent, or are not consistently applied among similarly
189 situated taxpayers; (iii) facilitates the establishment of
190 foreign-owned entities without the need for a local
191 substantive presence or prohibits these entities from having
192 any commercial impact on the local economy; (iv) explicitly
193 or implicitly excludes the jurisdiction's resident taxpayers
194 from taking advantage of the tax regime's benefits or
195 prohibits enterprises that benefit from the regime from
196 operating in the jurisdiction's domestic market; or (v) has
197 created a tax regime which is favorable for tax avoidance,
198 based upon an overall assessment of relevant factors,
199 including whether the jurisdiction has a significant untaxed
200 offshore financial or other services sector relative to its
201 overall economy. For purposes of this definition, the phrase
202 "tax regime" means a set or system of rules, laws, regulations
203 or practices by which taxes are imposed on any person,
204 corporation or entity, or on any income, property, incident,
205 indicia or activity pursuant to governmental authority.

206 (26) *Taxpayer*. -- The term "taxpayer" means any person
207 subject to the tax imposed by this article.

208 (27) *This code*. -- The term "this code" means the Code
209 of West Virginia, one thousand nine hundred thirty-one, as
210 amended.

211 (28) *This state.* -- The term “this state” means the State of
212 West Virginia.

213 (29) “United States” means the United States of America
214 and includes all of the states of the United States, the District
215 of Columbia and United States territories and possessions.

216 (30) “Unitary business” means a single economic
217 enterprise that is made up either of separate parts of a single
218 business entity or of a commonly controlled group of
219 business entities that are sufficiently interdependent,
220 integrated and interrelated through their activities so as to
221 provide a synergy and mutual benefit that produces a sharing
222 or exchange of value among them and a significant flow of
223 value to the separate parts.

224 (31) *West Virginia taxable income.* -- The term “West
225 Virginia taxable income” means the taxable income of a
226 corporation as defined by the laws of the United States for
227 federal income tax purposes, adjusted, as provided in this
228 article: *Provided*, That in the case of a corporation having
229 income from business activity which is taxable without this
230 state, its “West Virginia taxable income” shall be such
231 portion of its taxable income as so defined and adjusted as is
232 allocated or apportioned to this state under the provisions of
233 this article.

§11-24-7. Allocation and apportionment.

1 (a) *General.* -- Any taxpayer having income from
2 business activity which is taxable both in this state and in
3 another state shall allocate and apportion its net income as
4 provided in this section. For purposes of this section, the term
5 “net income” means the taxpayer’s federal taxable income
6 adjusted as provided in section six of this article.

7 (b) *“Taxable in another state” defined.* -- For purposes
8 of allocation and apportionment of net income under this
9 section, a taxpayer is taxable in another state if:

10 (1) In that state the taxpayer is subject to a net income
11 tax, a franchise tax measured by net income, a franchise tax
12 for the privilege of doing business or a corporation stock tax;
13 or

14 (2) That state has jurisdiction to subject the taxpayer to a
15 net income tax, regardless of whether, in fact, that state does
16 or does not subject the taxpayer to the tax.

17 (c) *Business activities entirely within West Virginia.* -- If
18 the business activities of a taxpayer take place entirely within
19 this state, the entire net income of the taxpayer is subject to
20 the tax imposed by this article. The business activities of a
21 taxpayer are considered to have taken place in their entirety
22 within this state if the taxpayer is not “taxable in another
23 state”: *Provided*, That for tax years beginning before the first
24 day of January, two thousand nine, the business activities of
25 a financial organization having its commercial domicile in
26 this state are considered to take place entirely in this state,
27 notwithstanding that the organization may be “taxable in
28 another state”: *Provided, however*, That for tax years
29 beginning before the first day of January, two thousand nine,
30 the income from the business activities of a financial
31 organization not having its commercial domicile in this state
32 shall be apportioned according to the applicable provisions of
33 this article.

34 (d) *Business activities partially within and partially*
35 *without West Virginia; allocation of nonbusiness income.* --
36 If the business activities of a taxpayer take place partially
37 within and partially without this state and the taxpayer is also

38 taxable in another state, rents and royalties from real or
39 tangible personal property, capital gains, interest, dividends
40 or patent or copyright royalties, to the extent that they
41 constitute nonbusiness income of the taxpayer, shall be
42 allocated as provided in subdivisions (1) through (4),
43 inclusive, of this subsection: *Provided*, That to the extent the
44 items constitute business income of the taxpayer, they may
45 not be so allocated but they shall be apportioned to this state
46 according to the provisions of subsection (e) of this section
47 and to the applicable provisions of section seven-b of this
48 article.

49 (1) *Net rents and royalties.* --

50 (A) Net rents and royalties from real property located in
51 this state are allocable to this state.

52 (B) Net rents and royalties from tangible personal
53 property are allocable to this state:

54 (i) If and to the extent that the property is utilized in this
55 state; or

56 (ii) In their entirety if the taxpayer's commercial domicile
57 is in this state and the taxpayer is not organized under the
58 laws of or taxable in the state in which the property is
59 utilized.

60 (C) The extent of utilization of tangible personal property
61 in a state is determined by multiplying the rents and royalties
62 by a fraction, the numerator of which is the number of days
63 of physical location of the property in the state during the
64 rental or royalty period in the taxable year and the
65 denominator of which is the number of days of physical
66 location of the property everywhere during all rental or

67 royalty periods in the taxable year. If the physical location of
68 the property during the rental or royalty period is unknown or
69 unascertainable by the taxpayer, tangible personal property
70 is utilized in the state in which the property was located at the
71 time the rental or royalty payer obtained possession.

72 (2) *Capital gains.* --

73 (A) Capital gains and losses from sales of real property
74 located in this state are allocable to this state.

75 (B) Capital gains and losses from sales of tangible
76 personal property are allocable to this state if:

77 (i) The property had a situs in this state at the time of the
78 sale; or

79 (ii) The taxpayer's commercial domicile is in this state
80 and the taxpayer is not taxable in the state in which the
81 property had a situs.

82 (C) Capital gains and losses from sales of intangible
83 personal property are allocable to this state if the taxpayer's
84 commercial domicile is in this state.

85 (D) Gains pursuant to Section 631 (a) and (b) of the
86 Internal Revenue Code of 1986, as amended, from sales of
87 natural resources severed in this state shall be allocated to
88 this state if they are nonbusiness income.

89 (3) Interest and dividends are allocable to this state if the
90 taxpayer's commercial domicile is in this state.

91 (4) *Patent and copyright royalties.* --

92 (A) Patent and copyright royalties are allocable to this
93 state:

94 (i) If and to the extent that the patent or copyright is
95 utilized by the payer in this state; or

96 (ii) If and to the extent that the patent or copyright is
97 utilized by the payer in a state in which the taxpayer is not
98 taxable and the taxpayer's commercial domicile is in this
99 state.

100 (B) A patent is utilized in a state to the extent that it is
101 employed in production, fabrication, manufacturing or other
102 processing in the state or to the extent that a patented product
103 is produced in the state. If the basis of receipts from patent
104 royalties does not permit allocation to states or if the
105 accounting procedures do not reflect states of utilization, the
106 patent is utilized in the state in which the taxpayer's
107 commercial domicile is located.

108 (C) A copyright is utilized in a state to the extent that
109 printing or other publication originates in the state. If the
110 basis of receipts from copyright royalties does not permit
111 allocation to states or if the accounting procedures do not
112 reflect states of utilization, the copyright is utilized in the
113 state in which the taxpayer's commercial domicile is located.

114 (5) *Corporate partner's distributive share.* --

115 (A) Persons carrying on business as partners in a
116 partnership, as defined in Section 761 of the Internal Revenue
117 Code of 1986, as amended, are liable for income tax only in
118 their separate or individual capacities.

119 (B) A corporate partner's distributive share of income,
120 gain, loss, deduction or credit of a partnership shall be
121 modified as provided in section six of this article for each
122 partnership. For taxable years beginning on or after the thirty-
123 first day of December, one thousand nine hundred ninety-
124 eight, the distributive share shall then be allocated and
125 apportioned as provided in this section, using the
126 partnership's property, payroll and sales factors. The sum of
127 that portion of the distributive share allocated and
128 apportioned to this state shall then be treated as distributive
129 share allocated to this state; and that portion of distributive
130 share allocated or apportioned outside this state shall be
131 treated as distributive share allocated outside this state, unless
132 the taxpayer requests or the Tax Commissioner, under
133 subsection (h) of this section requires that the distributive
134 share be treated differently.

135 (e) *Business activities partially within and partially*
136 *without this state; apportionment of business income.* -- All
137 net income, after deducting those items specifically allocated
138 under subsection (d) of this section, shall be apportioned to
139 this state by multiplying the net income by a fraction, the
140 numerator of which is the property factor plus the payroll
141 factor plus two times the sales factor and the denominator of
142 which is four, reduced by the number of factors, if any,
143 having no denominator.

144 (1) *Property factor.* -- The property factor is a fraction,
145 the numerator of which is the average value of the taxpayer's
146 real and tangible personal property owned or rented and used
147 by it in this state during the taxable year and the denominator
148 of which is the average value of all the taxpayer's real and
149 tangible personal property owned or rented and used by the
150 taxpayer during the taxable year, which is reported on
151 Schedule L Federal Form 1120, plus the average value of all

152 real and tangible personal property leased and used by the
153 taxpayer during the taxable year.

154 (2) *Value of property.* -- Property owned by the taxpayer
155 shall be valued at its original cost, adjusted by subsequent
156 capital additions or improvements thereto and partial
157 disposition thereof, by reason of sale, exchange,
158 abandonment, etc.: *Provided*, That where records of original
159 cost are unavailable or cannot be obtained without
160 unreasonable expense, property shall be valued at original
161 cost as determined under rules of the Tax Commissioner.
162 Property rented by the taxpayer from others shall be valued
163 at eight times the annual rental rate. The term “net annual
164 rental rate” is the annual rental paid, directly or indirectly, by
165 the taxpayer, or for its benefit, in money or other
166 consideration for the use of property and includes:

167 (A) Any amount payable for the use of real or tangible
168 personal property, or any part of the property, whether
169 designated as a fixed sum of money or as a percentage of
170 sales, profits or otherwise.

171 (B) Any amount payable as additional rent or in lieu of
172 rents, such as interest, taxes, insurance, repairs or any other
173 items which are required to be paid by the terms of the lease
174 or other arrangement, not including amounts paid as service
175 charges, such as utilities, janitor services, etc. If a payment
176 includes rent and other charges unsegregated, the amount of
177 rent shall be determined by consideration of the relative
178 values of the rent and the other items.

179 (3) *Movable property.* -- The value of movable tangible
180 personal property used both within and without this state
181 shall be included in the numerator to the extent of its
182 utilization in this state. The extent of the utilization shall be

183 determined by multiplying the original cost of the property
184 by a fraction, the numerator of which is the number of days
185 of physical location of the property in this state during the
186 taxable period and the denominator of which is the number
187 of days of physical location of the property everywhere
188 during the taxable year. The number of days of physical
189 location of the property may be determined on a statistical
190 basis or by other reasonable method acceptable to the Tax
191 Commissioner.

192 (4) *Leasehold improvements.* -- Leasehold improvements
193 shall, for purposes of the property factor, be treated as
194 property owned by the taxpayer regardless of whether the
195 taxpayer is entitled to remove the improvements or the
196 improvements revert to the lessor upon expiration of the
197 lease. Leasehold improvements shall be included in the
198 property factor at their original cost.

199 (5) *Average value of property.* -- The average value of
200 property shall be determined by averaging the values at the
201 beginning and ending of the taxable year: *Provided*, That the
202 Tax Commissioner may require the averaging of monthly
203 values during the taxable year if substantial fluctuations in
204 the values of the property exist during the taxable year, or
205 where property is acquired after the beginning of the taxable
206 year, or is disposed of, or whose rental contract ceases,
207 before the end of the taxable year.

208 (6) *Payroll factor.* -- The payroll factor is a fraction, the
209 numerator of which is the total compensation paid in this
210 state during the taxable year by the taxpayer for
211 compensation and the denominator of which is the total
212 compensation paid by the taxpayer during the taxable year,
213 as shown on the taxpayer's federal income tax return as filed
214 with the Internal Revenue Service, as reflected in the

215 schedule of wages and salaries and that portion of cost of
216 goods sold which reflects compensation or as shown on a pro
217 forma return.

218 (7) *Compensation.* -- The term “compensation” means
219 wages, salaries, commissions and any other form of
220 remuneration paid to employees for personal services.
221 Payments made to an independent contractor or to any other
222 person not properly classifiable as an employee shall be
223 excluded. Only amounts paid directly to employees are
224 included in the payroll factor. Amounts considered as paid
225 directly to employees include the value of board, rent,
226 housing, lodging and other benefits or services furnished to
227 employees by the taxpayer in return for personal services,
228 provided the amounts constitute income to the recipient for
229 federal income tax purposes.

230 (8) *Employee.* -- The term “employee” means:

231 (A) Any officer of a corporation; or

232 (B) Any individual who, under the usual common-law
233 rule applicable in determining the employer-employee
234 relationship, has the status of an employee.

235 (9) *Compensation.* -- Compensation is paid or accrued in
236 this state if:

237 (A) The employee’s service is performed entirely within
238 this state; or

239 (B) The employee’s service is performed both within and
240 without this state, but the service performed without the state
241 is incidental to the individual’s service within this state. The
242 word “incidental” means any service which is temporary or

243 transitory in nature or which is rendered in connection with
244 an isolated transaction; or

245 (C) Some of the service is performed in this state and:

246 (i) The employee's base of operations or, if there is no
247 base of operations, the place from which the service is
248 directed or controlled is in the state; or

249 (ii) The base of operations or the place from which the
250 service is directed or controlled is not in any state in which
251 some part of the service is performed, but the employee's
252 residence is in this state.

253 The term "base of operations" is the place of more or less
254 permanent nature from which the employee starts his or her
255 work and to which he or she customarily returns in order to
256 receive instructions from the taxpayer or communications
257 from his or her customers or other persons or to replenish
258 stock or other materials, repair equipment, or perform any
259 other functions necessary to the exercise of his or her trade or
260 profession at some other point or points. The term "place
261 from which the service is directed or controlled" refers to the
262 place from which the power to direct or control is exercised
263 by the taxpayer.

264 (10) *Sales factor.* -- The sales factor is a fraction, the
265 numerator of which is the gross receipts of the taxpayer
266 derived from transactions and activity in the regular course of
267 its trade or business in this state during the taxable year
268 (business income), less returns and allowances. The
269 denominator of the fraction is the total gross receipts derived
270 by the taxpayer from transactions and activity in the regular
271 course of its trade or business during the taxable year
272 (business income), and reflected in its gross income reported

273 and as appearing on the taxpayer's Federal Form 1120, and
274 consisting of those certain pertinent portions of the (gross
275 income) elements set forth: *Provided*, That if either the
276 numerator or the denominator includes interest or dividends
277 from obligations of the United States government which are
278 exempt from taxation by this state, the amount of such
279 interest and dividends, if any, shall be subtracted from the
280 numerator or denominator in which it is included.

281 (11) *Allocation of sales of tangible personal property.* --

282 (A) Sales of tangible personal property are in this state if:

283 (i) The property is received in this state by the purchaser,
284 other than the United States government, regardless of the f.
285 o. b. point or other conditions of the sale. In the case of
286 delivery by common carrier or other means of transportation,
287 the place at which the property is ultimately received after all
288 transportation has been completed is the place at which the
289 property is received by the purchaser. Direct delivery in this
290 state, other than for purposes of transportation, to a person or
291 firm designated by the purchaser, is delivery to the purchaser
292 in this state and direct delivery outside this state to a person
293 or firm designated by the purchaser is not delivery to the
294 purchaser in this state, regardless of where title passes or
295 other conditions of sale; or

296 (ii) The property is shipped from an office, store,
297 warehouse, factory or other place of storage in this state and
298 the purchaser is the United States government.

299 (B) All other sales of tangible personal property delivered
300 or shipped to a purchaser within a state in which the taxpayer
301 is not taxed, as defined in subsection (b) of this section, shall
302 be excluded from the denominator of the sales factor.

303 (12) *Allocation of other sales.* -- Sales, other than sales of
304 tangible personal property, are in this state if:

305 (A) The income-producing activity is performed in this
306 state; or

307 (B) The income-producing activity is performed both in
308 and outside this state and a greater proportion of the income-
309 producing activity is performed in this state than in any other
310 state, based on costs of performance; or

311 (C) The sale constitutes business income to the taxpayer,
312 or the taxpayer is a financial organization not having its
313 commercial domicile in this state, and in either case the sale
314 is a receipt described as attributable to this state in subsection
315 (b), section seven-b of this article.

316 (13) *Financial organizations and other taxpayers with*
317 *business activities partially within and partially without this*
318 *state.* -- Notwithstanding anything contained in this section
319 to the contrary, in the case of financial organizations and
320 other taxpayers, not having their commercial domicile in this
321 state, the rules of this subsection apply to the apportionment
322 of income from their business activities except as expressly
323 otherwise provided in subsection (b), section seven-b of this
324 article.

325 (f) *Income-producing activity.* -- The term “income-
326 producing activity” applies to each separate item of income
327 and means the transactions and activity directly engaged in
328 by the taxpayer in the regular course of its trade or business
329 for the ultimate purpose of obtaining gain or profit. The
330 activity does not include transactions and activities
331 performed on behalf of the taxpayer, such as those conducted
332 on its behalf by an independent contractor. “Income-

333 producing activity” includes, but is not limited to, the
334 following:

335 (1) The rendering of personal services by employees with
336 utilization of tangible and intangible property by the taxpayer
337 in performing a service;

338 (2) The sale, rental, leasing, licensing or other use of real
339 property;

340 (3) The sale, rental, leasing, licensing or other use of
341 tangible personal property; or

342 (4) The sale, licensing or other use of intangible personal
343 property.

344 The mere holding of intangible personal property is not,
345 in itself, an income-producing activity: *Provided*, That the
346 conduct of the business of a financial organization is an
347 income-producing activity.

348 (g) *Cost of performance.* -- The term “cost of
349 performance” means direct costs determined in a manner
350 consistent with generally accepted accounting principles and
351 in accordance with accepted conditions or practices in the
352 trade or business of the taxpayer.

353 (h) *Other methods of allocation and apportionment.* --

354 (1) *General.* -- If the allocation and apportionment
355 provisions of subsections (d) and (e) of this section do not
356 fairly represent the extent of the taxpayer’s business activities
357 in this state, the taxpayer may petition for or the Tax
358 Commissioner may require, in respect to all or any part of the
359 taxpayer’s business activities, if reasonable:

- 360 (A) Separate accounting;
- 361 (B) The exclusion of one or more of the factors;
- 362 (C) The inclusion of one or more additional factors which
363 will fairly represent the taxpayer's business activity in this
364 state; or
- 365 (D) The employment of any other method to effectuate an
366 equitable allocation or apportionment of the taxpayer's
367 income. The petition shall be filed no later than the due date
368 of the annual return for the taxable year for which the
369 alternative method is requested, determined without regard to
370 any extension of time for filing the return and the petition
371 shall include a statement of the petitioner's objections and of
372 the alternative method of allocation or apportionment as it
373 believes to be proper under the circumstances with such
374 detail and proof as the Tax Commissioner may require.
- 375 (2) *Alternative method for public utilities.* -- If the
376 taxpayer is a public utility and if the allocation and
377 apportionment provisions of subsections (d) and (e) of this
378 section do not fairly represent the taxpayer's business
379 activities in this state, the taxpayer may petition for, or the
380 Tax Commissioner may require, as an alternative to the other
381 methods provided for in subdivision (1) of this subsection,
382 the allocation and apportionment of the taxpayer's net
383 income in accordance with any system of accounts prescribed
384 by the public service commission of this state pursuant to the
385 provisions of section eight, article two, chapter twenty-four
386 of this code: *Provided*, That the allocation and apportionment
387 provisions of the system of accounts fairly represent the
388 extent of the taxpayer's business activities in this state for the
389 purposes of the tax imposed by this article.

390 (3) *Burden of proof.* -- In any proceeding before the Tax
391 Commissioner or in any court in which employment of one
392 of the methods of allocation or apportionment provided for in
393 subdivision (1) or (2) of this subsection is sought, on the
394 ground that the allocation and apportionment provisions of
395 subsections (d) and (e) of this section do not fairly represent
396 the extent of the taxpayer's business activities in this state,
397 the burden of proof is:

398 (A) If the Tax Commissioner seeks employment of one
399 of the methods, on the Tax Commissioner; or

400 (B) If the taxpayer seeks employment of one of the other
401 methods, on the taxpayer.

402 (4) For tax years beginning on or after the first day of
403 January, two thousand nine, the provisions of sections seven-
404 a and seven-b of this article shall be null and void and of no
405 force or effect.

§11-24-13a. Method of filing for business taxes.

1 (a) *Privilege to file consolidated return.* --

2 (1) An affiliated group of corporations (as defined for
3 purposes of filing a consolidated federal income tax return)
4 shall, subject to the provisions of this section and in
5 accordance with any regulations prescribed by the Tax
6 Commissioner, have the privilege of filing a consolidated
7 return with respect to the tax imposed by this article for the
8 taxable year in lieu of filing separate returns. The making of
9 a consolidated return shall be upon the condition that all
10 corporations which at any time during the taxable year have
11 been members of the affiliated group are included in such
12 return and consent to the filing of such return. The filing of

13 a consolidated return shall be considered as such consent.
14 When a corporation is a member of an affiliated group for a
15 fractional part of the year, the consolidated return shall
16 include the income of such corporation for that part of the
17 year during which it is a member of the affiliated group.

18 (2) For tax years beginning on and after the first day of
19 January, two thousand nine, the provisions of this subsection
20 are null and void and of no further force or effect.

21 (b) *Election binding.* --

22 (1) If an affiliated group of corporations elects to file a
23 consolidated return under this article for any taxable year
24 ending after the thirtieth day of June, one thousand nine
25 hundred eighty-seven, such election once made shall not be
26 revoked for any subsequent taxable year without the written
27 approval of the Tax Commissioner consenting to the
28 revocation.

29 (2) For tax years beginning on and after the first day of
30 January, two thousand nine, the provisions of this subsection
31 are null and void and of no further force or effect.

32 (c) *Consolidated return - financial organizations.* --

33 An affiliated group that includes one or more financial
34 organizations may elect under this section to file a
35 consolidated return when that affiliated group complies with
36 all of the following rules:

37 (1) The affiliated group of which the financial
38 organization is a member must file a federal consolidated
39 income tax return for the taxable year.

40 (2) All members of the affiliated group included in the
41 federal consolidated return must consent to being included in
42 the consolidated return filed under this article. The filing of
43 a consolidated return under this article is conclusive proof of
44 such consent.

45 (3) The West Virginia taxable income of the affiliated
46 group shall be the sum of:

47 (A) The pro forma West Virginia taxable income of all
48 financial organizations having their commercial domicile in
49 this state that are included in the federal consolidated return,
50 as shown on a combined pro forma West Virginia return
51 prepared for such financial organizations; plus

52 (B) The pro forma West Virginia taxable income of all
53 financial organizations not having their commercial domicile
54 in this state that are included in the federal consolidated
55 return, as shown on a combined pro forma West Virginia
56 return prepared for such financial organizations; plus

57 (C) The pro forma West Virginia taxable income of all
58 other members included in the federal consolidated income
59 tax return, as shown on a combined pro forma West Virginia
60 return prepared for all such nonfinancial organization
61 members, except that income, income adjustments and
62 exclusions, apportionment factors and other items considered
63 when determining tax liability shall not be included in the pro
64 forma return prepared under this paragraph for a member that
65 is totally exempt from tax under section five of this article, or
66 for a member that is subject to a different special industry
67 apportionment rule provided for in this article. When a
68 different special industry apportionment rule applies, the
69 West Virginia taxable income of a member(s) subject to that
70 special industry apportionment rule shall be determined on a

71 separate pro forma West Virginia return for the member(s)
72 subject to that special industry rule and the West Virginia
73 taxable income so determined shall be included in the
74 consolidated return.

75 (4) The West Virginia consolidated return is prepared in
76 accordance with regulations of the Tax Commissioner
77 promulgated as provided in article three, chapter twenty-nine-
78 a of this code.

79 (5) The filing of a consolidated return does not distort
80 taxable income. In any proceeding, the burden of proof that
81 taxpayer's method of filing does not distort taxable income
82 shall be upon the taxpayer.

83 (6) For tax years beginning on and after the first day of
84 January, two thousand nine, the provisions of this subsection
85 are null and void and of no further force or effect.

86 (d) *Combined return.* --

87 (1) A combined return may be filed under this article by
88 a unitary group, including a unitary group that includes one
89 or more financial organizations, only pursuant to the prior
90 written approval of the Tax Commissioner. A request for
91 permission to file a combined return must be filed on or
92 before the statutory due date of the return, determined
93 without inclusion of any extension of time to file the return.
94 Permission to file a combined return may be granted by the
95 Tax Commissioner only when taxpayer submits evidence that
96 conclusively establishes that failure to allow the filing of a
97 combined return will result in an unconstitutional distortion
98 of taxable income. When permission to file a combined
99 return is granted, combined filing will be allowed for the
100 year(s) stated in the Tax Commissioner's letter. The

101 combined return must be filed in accordance with regulations
102 of the Tax Commissioner promulgated in accordance with
103 article three, chapter twenty-nine-a of this code.

104 (2) For tax years beginning on and after the first day of
105 January, two thousand nine, the provisions of this subsection
106 are null and void and of no further force or effect.

107 (e) *Method of filing under this article deemed controlling*
108 *for purposes of other business taxes articles. --*

109 The taxpayer shall file on the same basis under article
110 twenty-three of this chapter as such taxpayer files under this
111 article for the taxable year.

112 (f) *Regulations. --*

113 The Tax Commissioner shall prescribe such regulations
114 as he may deem necessary in order that the tax liability of any
115 affiliated group or combined group of corporations filing a
116 consolidated return, or of any unitary group of corporations
117 filing a combined return, and of each corporation in the
118 affiliated or unitary group, both during and after the period of
119 affiliation, may be returned, determined, computed, assessed,
120 collected and adjusted, in such manner as the Tax
121 Commissioner deems necessary to clearly reflect the income
122 tax liability and the income factors necessary for the
123 determination of such liability, and in order to prevent
124 avoidance of such tax liability.

125 (g) *Computation and payment of tax. --*

126 In any case in which a consolidated or combined return
127 is filed, or required to be filed, the tax due under this article
128 from the affiliated, combined or unitary group shall be

129 determined, computed, assessed, collected and adjusted in
130 accordance with regulations prescribed by the Tax
131 Commissioner, in effect on the last day prescribed by section
132 thirteen of this article for the filing of such return, and such
133 affiliated, combined or unitary group, as the case may be,
134 shall be treated as the taxpayer. However, when any member
135 of an affiliated, combined or unitary group that files a
136 consolidated or combined return under this article is allowed
137 to claim credit against its tax liability under this article for
138 payment of any other tax, the amount of credit allowed may
139 not exceed that member's proportionate share of the
140 affiliated, combined or unitary group's precredit tax liability
141 under this article, as shown on its pro forma return.

142 (h) *Consolidated or combined return may be required.* --

143 The Tax Commissioner may require any person or
144 corporation to make and file a separate return or to make and
145 file a composite, unitary, consolidated or combined return, as
146 the case may be, in order to clearly reflect the taxable income
147 of such corporations.

148 (i) *Effective date.* --

149 The amendments to this section made by chapter one
150 hundred seventy-nine, Acts of the Legislature in the year one
151 thousand nine hundred ninety, shall apply to all taxable years
152 ending after the eighth day of March, one thousand nine
153 hundred ninety. Amendments to this article enacted by this
154 act in the year one thousand nine hundred ninety-six shall
155 apply to taxable years beginning on or after the first day of
156 January, one thousand nine hundred ninety-six, except that
157 financial organizations that are part of an affiliated group
158 may elect, after the effective date of this act, to file a
159 consolidated return prepared in accordance with the

160 provisions of this section, as amended, and subject to
161 applicable statutes of limitation, for taxable years beginning
162 on or after the first day of January, one thousand nine
163 hundred ninety-one, but before the first day of January, one
164 thousand nine hundred ninety-six, notwithstanding provisions
165 then in effect prohibiting out-of-state financial organizations
166 from filing consolidated returns for those years: *Provided,*
167 That when the statute of limitation on filing an amended
168 return for any of those years expires before the first day of
169 July, one thousand nine hundred ninety-six, the consolidated
170 return for such year, if filed, must be filed by said first day of
171 July.

172 (j) *Combined reporting required.* --

173 For tax years beginning on and after the first day of
174 January, two thousand nine, any taxpayer engaged in a
175 unitary business with one or more other corporations shall
176 file a combined report which includes the income, determined
177 under section thirteen-c or thirteen-d of this article, and the
178 allocation and apportionment of income provisions of this
179 article, of all corporations that are members of the unitary
180 business, and such other information as may be required by
181 the Tax Commissioner.

182 (k) *Combined reporting at Tax Commissioner's*
183 *discretion.* --

184 (1) The Tax Commissioner may require the combined
185 report to include the income and associated apportionment
186 factors of any persons that are not included pursuant to
187 subsection (j) of this section, but that are members of a
188 unitary business, in order to reflect proper apportionment of
189 income of the entire unitary businesses. The Tax
190 Commissioner may require combination of persons that are

191 not or would not be doing business in this state pursuant to
192 this section.

193 (2) If the Tax Commissioner determines that the reported
194 income or loss of a taxpayer engaged in a unitary business
195 with any person not included pursuant to subsection (j) of this
196 section represents an avoidance or evasion of tax by such
197 taxpayer, the Tax Commissioner may, on a case-by-case
198 basis, require all or any part of the income and associated
199 apportionment factors of such person be included in the
200 taxpayer's combined report.

201 (3) With respect to inclusion of associated apportionment
202 factors pursuant to this section, the Tax Commissioner may
203 require the exclusion of any one or more of the factors, the
204 inclusion of one or more additional factors which will fairly
205 represent the taxpayer's business activity in this state, or the
206 employment of any other method to effectuate a proper
207 reflection of the total amount of income subject to
208 apportionment and an equitable allocation and apportionment
209 of the taxpayer's income.

**§11-24-13c. Determination of taxable income or loss using
combined report.**

1 (a) The use of a combined report does not disregard the
2 separate identities of the taxpayer members of the combined
3 group. Each taxpayer member is responsible for tax based on
4 its taxable income or loss apportioned or allocated to this
5 state, which shall include, in addition to other types of
6 income, the taxpayer member's apportioned share of business
7 income of the combined group, where business income of the
8 combined group is calculated as a summation of the
9 individual net business incomes of all members of the
10 combined group. A member's net business income is

11 determined by removing all but business income, expense
12 and loss from that member's total income, as provided in this
13 section and section thirteen-d of this article.

14 (b) *Components of income subject to tax in this state;*
15 *application of tax credits and post-apportionment deductions. --*

16 (1) Each taxpayer member is responsible for tax based on
17 its taxable income or loss apportioned or allocated to this
18 state, which shall include:

19 (A) Its share of any business income apportionable to this
20 State of each of the combined groups of which it is a
21 member, determined under subsection (c) of this section;

22 (B) Its share of any business income apportionable to this
23 state of a distinct business activity conducted within and
24 without the state wholly by the taxpayer member, determined
25 under the provisions for apportionment of business income
26 set forth in this article;

27 (C) Its income from a business conducted wholly by the
28 taxpayer member entirely within the state;

29 (D) Its income sourced to this state from the sale or
30 exchange of capital or assets, and from involuntary
31 conversions, as determined under subsection (g), section
32 thirteen-d of this article;

33 (E) Its nonbusiness income or loss allocable to this state,
34 determined under the provisions for allocation of nonbusiness
35 income set forth in this article;

36 (F) Its income or loss allocated or apportioned in an
37 earlier year, required to be taken into account as state source

38 income during the income year, other than a net operating
39 loss; and

40 (G) Its net operating loss carryover. If the taxable income
41 computed pursuant to this section and section thirteen-d of
42 this article results in a loss for a taxpayer member of the
43 combined group, that taxpayer member has a West Virginia
44 net operating loss, subject to the net operating loss
45 limitations, and carryover provisions of this article. This
46 West Virginia net operating loss is applied as a deduction in
47 a prior or subsequent year only if that taxpayer has West
48 Virginia source positive net income, whether or not the
49 taxpayer is or was a member of a combined reporting group
50 in the prior or subsequent year.

51 (2) Except where otherwise provided, no tax credit or
52 post-apportionment deduction earned by one member of the
53 group, but not fully used by or allowed to that member, may
54 be used, in whole or in part, by another member of the group
55 or applied, in whole or in part, against the total income of the
56 combined group; and a post-apportionment deduction carried
57 over into a subsequent year as to the member that incurred it,
58 and available as a deduction to that member in a subsequent
59 year, will be considered in the computation of the income of
60 that member in the subsequent year regardless of the
61 composition of that income as apportioned, allocated or
62 wholly within this state.

63 (c) *Determination of taxpayer's share of the business*
64 *income of a combined group apportionable to this state. --*

65 The taxpayer's share of the business income
66 apportionable to this State of each combined group of which
67 it is a member shall be the product of:

68 (1) The business income of the combined group,
69 determined under section thirteen-d of this article; and

70 (2) The taxpayer member's apportionment percentage,
71 determined in accordance with this article, associated with
72 the combined group's unitary business in this state, and
73 including in the denominator the property, payroll and sales
74 of all members of the combined group, including the
75 taxpayer, which property, payroll and sales are associated
76 with the combined group's unitary business wherever
77 located. The property, payroll and sales of a partnership shall
78 be included in the determination of the partner's
79 apportionment percentage in proportion to a ratio the
80 numerator of which is the amount of the partner's distributive
81 share of partnership's unitary income included in the income
82 of the combined group in accordance with section thirteen-d
83 of this article and the denominator of which is the amount of
84 the partnership's total unitary income.

**§11-24-13d. Determination of the business income of the
combined group.**

1 The business income of a combined group is determined
2 as follows:

3 (a) From the total income of the combined group,
4 determined under subsection (b) of this section, subtract any
5 income and add any expense or loss, other than the business
6 income, expense or loss of the combined group.

7 (b) Except as otherwise provided, the total income of the
8 combined group is the sum of the income of each member of
9 the combined group determined under federal income tax
10 laws, as adjusted for state purposes, as if the member were

11 not consolidated for federal purposes. The income of each
12 member of the combined group shall be determined as
13 follows:

14 (1) For any member incorporated in the United States, or
15 included in a consolidated federal corporate income tax
16 return, the income to be included in the total income of the
17 combined group shall be the taxable income for the
18 corporation after making allowable adjustments under this
19 article.

20 (2) For any member not included in subdivision (1) of
21 this subsection, the income to be included in the total income
22 of the combined group shall be determined as follows:

23 (A) A profit and loss statement shall be prepared for each
24 foreign branch or corporation in the currency in which the
25 books of account of the branch or corporation are regularly
26 maintained.

27 (B) Adjustments shall be made to the profit and loss
28 statement to conform it to the accounting principles generally
29 accepted in the United States for the preparation of such
30 statements except as modified by this regulation.

31 (C) Adjustments shall be made to the profit and loss
32 statement to conform it to the tax accounting standards
33 required by this article.

34 (D) Except as otherwise provided by regulation, the profit
35 and loss statement of each member of the combined group,
36 and the apportionment factors related thereto, whether United

37 States or foreign, shall be translated into the currency in
38 which the parent company maintains its books and records.

39 (E) Income apportioned to this state shall be expressed in
40 United States dollars.

41 (3) In lieu of the procedures set forth in subdivision (2)
42 of this subsection, and subject to the determination of the Tax
43 Commissioner that it reasonably approximates income as
44 determined under this article, any member not included in
45 subdivision (1) of this subsection may determine its income
46 on the basis of the consolidated profit and loss statement
47 which includes the member and which is prepared for filing
48 with the Securities and Exchange Commission by related
49 corporations. If the member is not required to file with the
50 Securities and Exchange Commission, the Tax Commissioner
51 may allow the use of the consolidated profit and loss
52 statement prepared for reporting to shareholders and subject
53 to review by an independent auditor. If above statements do
54 not reasonably approximate income as determined under this
55 article, the Tax Commissioner may accept those statements
56 with appropriate adjustments to approximate that income.

57 (c) If a unitary business includes income from a
58 partnership, the income to be included in the total income of
59 the combined group shall be the member of the combined
60 group's direct and indirect distributive share of the
61 partnership's unitary business income.

62 (d) All dividends paid by one to another of the members
63 of the combined group shall, to the extent those dividends are
64 paid out of the earnings and profits of the unitary business

65 included in the combined report, in the current or an earlier
66 year, be eliminated from the income of the recipient. This
67 provision shall not apply to dividends received from
68 members of the unitary business which are not a part of the
69 combined group.

70 (e) Except as otherwise provided by regulation, business
71 income from an intercompany transaction between members
72 of the same combined group shall be deferred in a manner
73 similar to 26 CFR 1.1502-13. Upon the occurrence of any of
74 the following events, deferred business income resulting from
75 an intercompany transaction between members of a
76 combined group shall be restored to the income of the seller,
77 and shall be apportioned as business income earned
78 immediately before the event:

79 (1) The object of a deferred intercompany transaction is:

80 (A) Resold by the buyer to an entity that is not a member
81 of the combined group;

82 (B) Resold by the buyer to an entity that is a member of
83 the combined group for use outside the unitary business in
84 which the buyer and seller are engaged; or

85 (C) Converted by the buyer to a use outside the unitary
86 business in which the buyer and seller are engaged; or

87 (2) The buyer and seller are no longer members of the
88 same combined group, regardless of whether the members
89 remain unitary.

90 (f) A charitable expense incurred by a member of a
91 combined group shall, to the extent allowable as a deduction
92 pursuant to Internal Revenue Code Section 170, be subtracted
93 first from the business income of the combined group
94 (subject to the income limitations of that section applied to
95 the entire business income of the group) and any remaining
96 amount shall then be treated as a nonbusiness expense
97 allocable to the member that incurred the expense (subject to
98 the income limitations of that section applied to the
99 nonbusiness income of that specific member). Any charitable
100 deduction disallowed under the foregoing rule, but allowed
101 as a carryover deduction in a subsequent year, shall be treated
102 as originally incurred in the subsequent year by the same
103 member and the rules of this section shall apply in the
104 subsequent year in determining the allowable deduction in
105 that year.

106 (g) Gain or loss from the sale or exchange of capital
107 assets, property described by Internal Revenue Code Section
108 1231(a)(3) and property subject to an involuntary conversion
109 shall be removed from the total separate net income of each
110 member of a combined group and shall be apportioned and
111 allocated as follows:

112 (1) For each class of gain or loss (short term capital, long
113 term capital, Internal Revenue Code Section 1231 and
114 involuntary conversions) all members' business gain and loss
115 for the class shall be combined (without netting between such
116 classes) and each class of net business gain or loss separately
117 apportioned to each member using the member's
118 apportionment percentage determined under subsection (c),
119 section thirteen-c of this article.

120 (2) Each taxpayer member shall then net its apportioned
121 business gain or loss for all classes, including any such
122 apportioned business gain and loss from other combined
123 groups, against the taxpayer member's nonbusiness gain and
124 loss for all classes allocated to this state, using the rules of
125 Internal Revenue Code Sections 1222 and 1231, without
126 regard to any of the taxpayer member's gains or losses from
127 the sale or exchange of capital assets, Section 1231 property
128 and involuntary conversions which are nonbusiness items
129 allocated to another state.

130 (3) Any resulting state source income (or loss, if the loss
131 is not subject to the limitations of Internal Revenue Code
132 Section 1211) of a taxpayer member produced by the
133 application of the preceding subsections shall then be applied
134 to all other state source income or loss of that member.

135 (4) Any resulting state source loss of a member that is
136 subject to the limitations of Section 1211 shall be carried
137 over by that member and shall be treated as state source
138 short-term capital loss incurred by that member for the year
139 for which the carryover applies.

140 (h) Any expense of one member of the unitary group
141 which is directly or indirectly attributable to the nonbusiness
142 or exempt income of another member of the unitary group
143 shall be allocated to that other member as corresponding
144 nonbusiness or exempt expense, as appropriate.

§11-24-13e. Designation of surety.

1 As a filing convenience, and without changing the
2 respective liability of the group members, members of a
3 combined reporting group may annually elect to designate
4 one taxpayer member of the combined group to file a single

5 return in the form and manner prescribed by the department,
6 in lieu of filing their own respective returns, provided that the
7 taxpayer designated to file the single return consents to act as
8 surety with respect to the tax liability of all other taxpayers
9 properly included in the combined report and agrees to act as
10 agent on behalf of those taxpayers for the year of the election
11 for tax matters relating to the combined report for that year.
12 If for any reason the surety is unwilling or unable to perform
13 its responsibilities, tax liability may be assessed against the
14 taxpayer members.

§11-24-13f. Water's-edge election; initiation and withdrawal.

1 (a) *Water's-edge election.* --

2 Taxpayer members of a unitary group that meet the
3 requirements of subsection (b) of this section may elect to
4 determine each of their apportioned shares of the net business
5 income or loss of the combined group pursuant to a water's-
6 edge election. Under such election, taxpayer members shall
7 take into account all or a portion of the income and
8 apportionment factors of only the following members
9 otherwise included in the combined group pursuant to section
10 thirteen-a of this article:

11 (1) The entire income and apportionment factors of any
12 member incorporated in the United States or formed under
13 the laws of any state, the District of Columbia or any territory
14 or possession of the United States;

15 (2) The entire income and apportionment factors of any
16 member, regardless of the place incorporated or formed, if

17 the average of its property, payroll and sales factors within
18 the United States is twenty percent or more;

19 (3) The entire income and apportionment factors of any
20 member which is a domestic international sales corporation
21 as described in Internal Revenue Code Sections 991 to 994,
22 inclusive; a foreign sales corporation as described in Internal
23 Revenue Code Sections 921 to 927, inclusive; or any member
24 which is an export trade corporation, as described in Internal
25 Revenue Code Sections 970 to 971, inclusive;

26 (4) Any member not described in subdivision (1), (2) or
27 (3) of this subsection shall include the portion of its income
28 derived from or attributable to sources within the United
29 States, as determined under the Internal Revenue Code
30 without regard to federal treaties, and its apportionment
31 factors related thereto;

32 (5) Any member that is a “controlled foreign
33 corporation”, as defined in Internal Revenue Code Section
34 957, to the extent of the income of that member that is
35 defined in Section 952 of Subpart F of the Internal Revenue
36 Code (“Subpart F income”) not excluding lower-tier
37 subsidiaries’ distributions of such income which were
38 previously taxed, determined without regard to federal
39 treaties, and the apportionment factors related to that income;
40 any item of income received by a controlled foreign
41 corporation shall be excluded if such income was subject to
42 an effective rate of income tax imposed by a foreign country
43 greater than ninety percent of the maximum rate of tax
44 specified in Internal Revenue Code Section 11;

45 (6) Any member that earns more than twenty percent of
46 its income, directly or indirectly, from intangible property or
47 service-related activities that are deductible against the

48 business income of other members of the combined group, to
49 the extent of that income and the apportionment factors
50 related thereto; and

51 (7) The entire income and apportionment factors of any
52 member that is doing business in a tax haven, where “doing
53 business in a tax haven” is defined as being engaged in
54 activity sufficient for that tax haven jurisdiction to impose a
55 tax under United States constitutional standards. If the
56 member’s business activity within a tax haven is entirely
57 outside the scope of the laws, provisions and practices that
58 cause the jurisdiction to meet the criteria set forth in the
59 definition of a tax haven, the activity of the member shall be
60 treated as not having been conducted in a tax haven.

61 (b) *Initiation and withdrawal of election.* --

62 (1) A water’s-edge election is effective only if made on
63 a timely filed, original return for a tax year by every member
64 of the unitary business subject to tax under this article. The
65 Tax Commissioner shall develop rules and regulations
66 governing the impact, if any, on the scope or application of
67 a water’s-edge election, including termination or deemed
68 election, resulting from a change in the composition of the
69 unitary group, the combined group, the taxpayer members
70 and any other similar change.

71 (2) Such election shall constitute consent to the
72 reasonable production of documents and taking of
73 depositions in accordance with the provisions of this code.

74 (3) In the discretion of the Tax Commissioner, a water’s-
75 edge election may be disregarded, in part or in whole, and the
76 income and apportionment factors of any member of the
77 taxpayer’s unitary group may be included in the combined

78 report without regard to the provisions of this section, if any
79 member of the unitary group fails to comply with any
80 provision of this article or if a person otherwise not included
81 in the water's-edge combined group was availed of with a
82 substantial objective of avoiding state income tax.

83 (4) A water's-edge election is binding for and applicable
84 to the tax year it is made and all tax years thereafter for a
85 period of ten years. It may be withdrawn or reinstated after
86 withdrawal, prior to the expiration of the ten-year period,
87 only upon written request for reasonable cause based on
88 extraordinary hardship due to unforeseen changes in state tax
89 statutes, law or policy and only with the written permission
90 of the Tax Commissioner. If the Tax Commissioner grants a
91 withdrawal of election, he or she shall impose reasonable
92 conditions as necessary to prevent the evasion of tax or to
93 clearly reflect income for the election period prior to or after
94 the withdrawal. Upon the expiration of the ten-year period, a
95 taxpayer may withdraw from the water's-edge election. Such
96 withdrawal must be made in writing within one year of the
97 expiration of the election and is binding for a period of ten
98 years, subject to the same conditions as applied to the
99 original election. If no withdrawal is properly made, the
100 water's-edge election shall be in place for an additional ten-
101 year period, subject to the same conditions as applied to the
102 original election.

§11-24-24. Credit for income tax paid to another state.

1 (a) Effective for taxable years beginning on or after the
2 first day of January, one thousand nine hundred ninety-one,
3 and notwithstanding any provisions of this code to the

4 contrary, any financial organization, the business activities of
5 which take place, or are deemed to take place, entirely within
6 this state, shall be allowed a credit against the tax imposed by
7 this article for any taxable year for taxes paid to another state.
8 That credit shall be equal in amount to the lesser of:

9 (1) The taxes such financial organization shall actually
10 have paid, which payments were made on or before the filing
11 date of the annual return required by this article, to any other
12 state and which tax was based upon or measured by the
13 financial organization's net income and was paid with respect
14 to the same taxable year; or

15 (2) The amount of such tax the financial organization
16 would have paid if the rate of tax imposed by this article is
17 applied to the tax base determined under the laws of such
18 other state.

19 (b) Any additional payments of such tax to other states,
20 or to political subdivisions thereof, by a financial
21 organization described in this section and any refunds of such
22 taxes made or received by such financial organization with
23 respect to the taxable year, but after the due date of the
24 annual return required by this article for the taxable year,
25 including any extensions, shall likewise be accounted for in
26 the taxable year in which such additional payment is made or
27 such refund is received by the financial organization.

28 (c) For tax years beginning on or after the first day of
29 January, two thousand nine, the provisions of this section are
30 null and void and of no force or effect.

CHAPTER 248

**(Com. Sub. for H.B. 2314 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed February 16, 2007; in effect from passage.]
[Approved by the Governor on February 28, 2007.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income

9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 two thousand five, but prior to the first day of January, two
12 thousand seven, shall be given effect in determining the taxes
13 imposed by this article to the same extent those changes are
14 allowed for federal income tax purposes, whether the changes
15 are retroactive or prospective, but no amendment to the laws of
16 the United States made on or after the first day of January, two
17 thousand seven, shall be given any effect.

18 (b) The term "Internal Revenue Code of 1986" means the
19 Internal Revenue Code of the United States enacted by the
20 federal Tax Reform Act of 1986 and includes the provisions of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the
24 federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* -- The amendments to this section enacted
32 in the year two thousand seven are retroactive to the extent
33 allowable under federal income tax law. With respect to taxable
34 years that began prior to the first day of January, two thousand
35 seven, the law in effect for each of those years shall be fully
36 preserved as to that year, except as provided in this section.

CHAPTER 249

(S.B. 540 - By Senators Helmick, Minard and Guills)

[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-24-11b, relating to providing tax credits for utility taxpayers with a net operating loss prior to the thirty-first day of December, two thousand six.

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 §11-24-11b, to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11b. Credit for utility taxpayers with net operating loss carryovers.

1 (a) *General.* -- There shall be allowed to every eligible
2 taxpayer a nonrefundable credit against its primary tax liability
3 imposed under this article for any net operating loss carryovers
4 that exist as of the thirty-first day of December, two thousand
5 six.

6 (b) (1) "Eligible taxpayer" means any person subject to the
7 business and occupation taxes prescribed by article thirteen of
8 this chapter and exercising any privilege taxable under section
9 two-o of this article.

10 (2) “Eligible taxpayer” also includes an affiliated group of
11 taxpayers if the group elects to file a consolidated corporation
12 net income tax return under this article if one or more affiliates
13 included in the affiliated group would qualify as an eligible
14 taxpayer under subdivision (1) of this subsection.

15 (c) *Amount of credit.* — The amount of credit allowed shall
16 be equal to one-quarter percent of the eligible taxpayer’s West
17 Virginia net operating loss carryovers allowed by subsection (d),
18 section six of this article that exist as of the thirty-first day of
19 December, two thousand six.

20 (d) *Application of credit.* — The amount of credit allowed
21 shall be taken against the tax liabilities of the eligible taxpayer
22 under this article as shown on its annual return for the taxable
23 year in which its net operating loss carryovers are utilized, as
24 provided in subsection (d), section six of this article. Any credit
25 remaining after application against the eligible taxpayer’s tax
26 liabilities for the current year may be carried forward to
27 subsequent tax years until used.

CHAPTER 250

**(H.B. 2992 - By Delegates White, Kominar, Reynolds,
Perdue, Marshall, Iaquina, Stalnaker, Ashley, Evans,
Border and Walters)**

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to decreasing the health care provider tax imposed on gross receipts of providers of nursing facility services and setting forth effective date.

Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

1 (a) *Imposition of tax.* -- For the privilege of engaging or
2 continuing within this state in the business of providing nursing
3 facility services, other than those services of intermediate care
4 facilities for the mentally retarded, there is hereby levied and
5 shall be collected from every person rendering such service an
6 annual broad-based health care-related tax: *Provided*, That
7 hospitals which provide nursing facility services may adjust
8 nursing facility rates to the extent necessary to compensate for
9 the tax without first obtaining approval from the health care
10 authority: *Provided, however*, That the rate adjustment is
11 limited to a single adjustment during the initial year of the
12 imposition of the tax which adjustment shall be exempt from
13 prospective review by the health care authority and further
14 which is limited to an amount not to exceed the amount of the
15 tax which is levied against the hospital for the provision of
16 nursing facility services pursuant to this section. The health
17 care authority shall retroactively review the rate increases
18 implemented by the hospitals under this section during the
19 regular rate review process. A hospital which fails to meet the
20 criteria established by this section for a rate increase exempt
21 from prospective review shall be subject to the penalties
22 imposed under article twenty-nine-b, chapter sixteen of the
23 code.

24 (b) *Rate and measure of tax.* -- The tax imposed in
25 subsection (a) of this section shall be five and one-half percent
26 of the gross receipts derived by the taxpayer from furnishing
27 nursing facility services in this state, other than services of
28 intermediate care facilities for the mentally retarded. This rate
29 shall be increased to five and ninety-five one hundredths percent
30 of the gross receipts received or receivable by providers of
31 nursing facility services after the thirtieth day of June, two
32 thousand four and shall again be decreased to five and one-half
33 percent of the gross receipts received or receivable by providers
34 of nursing services after the thirty-first day of October, two
35 thousand seven.

36 (c) *Definitions.* --

37 (1) "Gross receipts" means the amount received or
38 receivable, whether in cash or in kind, from patients, third-party
39 payors and others for nursing facility services furnished by the
40 provider, including retroactive adjustments under
41 reimbursement agreements with third-party payors, without any
42 deduction for any expenses of any kind: *Provided*, That accrual
43 basis providers shall be allowed to reduce gross receipts by their
44 bad debts, to the extent the amount of such bad debts was
45 previously included in gross receipts upon which the tax
46 imposed by this section was paid.

47 (2) "Nursing facility services" means those services that are
48 nursing facility services for purposes of Section 1903(w) of the
49 Social Security Act.

50 (d) *Effective date.* -- The tax imposed by this section shall
51 apply to gross receipts received or receivable by providers after
52 the thirty-first day of May, one thousand nine hundred ninety-
53 three.

CHAPTER 251

**(Com. Sub. for S.B. 185 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all relating to legislative appropriation of tobacco settlement funds; setting forth legislative findings and purposes; receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund; receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund; creating Tobacco Settlement Finance Authority and providing for general powers; establishing governing board of the authority; defining staff of the authority; limiting liability; providing certain definitions; authorizing sale of rights in a master settlement agreement; authorizing bonds of the authority; providing for the use of proceeds of bonds of the authority; providing an exemption from state purchasing provisions; providing bankruptcy provisions; establishing the dissolution of the authority; ensuring a revenue source remains for the unfunded liabilities of the Old Fund to replace previous legislative appropriation of tobacco settlement funds for the benefit of the Old Fund; and construction of article.

Be it enacted by the Legislature of West Virginia:

That §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all to read as follows:

**ARTICLE 11A. LEGISLATIVE APPROPRIATION OF
TOBACCO SETTLEMENT FUNDS;
CREATION OF TOBACCO
SETTLEMENT FINANCE
AUTHORITY.**

- §4-11A-1. Legislative findings and purpose.
- §4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers' Compensation Debt Reduction Fund.
- §4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.
- §4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.
- §4-11A-6. Creation of Tobacco Settlement Finance Authority.
- §4-11A-7. Definitions.
- §4-11A-8. Governing board.
- §4-11A-9. Staff; assistance by state officers; agencies and departments.
- §4-11A-10. Limitation of liability.
- §4-11A-11. General powers.
- §4-11A-12. Authorization of the sale of rights in the master settlement agreement.
- §4-11A-13. Authorization of bonds of the authority.
- §4-11A-14. Exemption from purchasing provisions.
- §4-11A-15. Bankruptcy.
- §4-11A-16. Dissolution of the authority; distribution of assets.
- §4-11A-17. Construction.
- §4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.

§4-11A-1. Legislative findings and purpose.

1 (a) On the twenty-third day of November, one thousand
2 nine hundred ninety-eight, tobacco product manufacturers
3 entered into a settlement agreement with the state. This
4 master settlement agreement releases those manufacturers
5 from past, present and specific future claims against them in
6 return for payment of annual sums of money to the state,
7 obligates the manufacturers to change their advertising and
8 marketing practices and requires the establishment by the
9 manufacturers of a national foundation for the interests of
10 public health.

11 (b) The revenues received pursuant to the master
12 settlement agreement are directly related to the past, present
13 and future costs incurred by the state for the treatment of
14 tobacco-related illnesses. The receipt of revenues in the
15 future is subject to the ongoing risk of litigation against
16 manufacturers or other events that may adversely affect the
17 financial strength of the manufacturers. The purpose of this
18 article is to preserve the revenues received from the
19 settlement.

20 (c) The receipt of funds in accordance with the master
21 settlement agreement shall be deposited only in accordance
22 with the provisions of this article.

23 (d) The state receives revenue each year under the terms
24 of the master settlement agreement with the tobacco
25 manufacturers. This revenue is used to fund programs of
26 vital importance to the people of West Virginia and the
27 Legislature finds that it is in the best interest of the people of
28 this state to protect these revenues by the sale of the state's
29 share to the Tobacco Settlement Finance Authority created in
30 section six of this article.

§4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers' Compensation Debt Reduction Fund.

1 (a) In December, two thousand five, the Governor issued
2 a proclamation regarding the privatization of the workers'
3 compensation system pursuant to section eleven, article two-
4 c, chapter twenty-three of this code, thereby proclaiming that
5 a revenue source had been secured to satisfy the Old Fund
6 liabilities as they occur;

7 (b) A portion of the revenue source secured to satisfy the
8 Old Fund liabilities as they occur was the first thirty million
9 dollars received pursuant to section IX(c)(1) of the master
10 settlement agreement and the anticipated strategic
11 compensation payments to be received pursuant to section
12 IX(c)(2) of the master settlement agreement;

13 (c) For purposes of the proclamation, it was assumed that
14 the first thirty million dollars received pursuant to section
15 IX(c)(1) of the master settlement agreement and the
16 anticipated strategic compensation payments to be received
17 pursuant to section IX(c)(2) of the master settlement
18 agreement as calculated pursuant to subsection (a), section
19 twelve of this article would on a calendar year basis provide
20 a maximum of forty-five million dollars per year to satisfy
21 the Old Fund liabilities as they occur;

22 (d) The Legislature finds and declares that replacing the
23 first thirty million dollars received pursuant to section
24 IX(c)(1) of the master settlement agreement and the
25 anticipated strategic compensation payments to be received
26 pursuant to section IX(c)(2) of the master settlement
27 agreement with fifty million four hundred thousand dollars

28 pursuant to section eighteen of this article for the benefit of
29 the Old Fund, in combination with the remaining portions of
30 the revenue sources secured for the unfunded liabilities of the
31 Old Fund as established in Enrolled Senate Bill No. 1004
32 during the first extraordinary session of the Legislature, two
33 thousand five, will ensure that a revenue source has been and
34 will continue to remain secured to satisfy the Old Fund
35 liabilities as they occur; and thus all conditions precedent to
36 the issuance of the proclamation by the Governor remain in
37 effect.

**§4-11A-2. Receipt of settlement funds and required deposit in
West Virginia Tobacco Settlement Medical
Trust Fund until the first day of June, two
thousand five, then to Workers' Compensation
Debt Reduction Fund; deposit of strategic
compensation payments; transfer of trust fund
moneys.**

1 (a) The Legislature finds and declares that certain
2 dedicated revenues should be preserved in trust for the
3 purpose of stabilizing the state's health-related programs and
4 delivery systems. It further finds and declares that these
5 dedicated revenues should be preserved in trust for the
6 purpose of educating the public about the health risks
7 associated with tobacco usage and establishing a program
8 designed to reduce and stop the use of tobacco by the citizens
9 of this state and in particular by teenagers.

10 (b) There is hereby created a special account in the State
11 Treasury, designated the West Virginia Tobacco Settlement
12 Medical Trust Fund, which shall be an interest-bearing
13 account and may be invested in the manner permitted by
14 section nine, article six, chapter twelve of this code, with the
15 interest income a proper credit to the fund. Unless contrary
16 to federal law, fifty percent of all revenues received pursuant

17 to the master settlement agreement shall be deposited in this
18 fund. Funds paid into the account may also be derived from
19 the following sources:

20 (1) All interest or return on investment accruing to the
21 fund;

22 (2) Any gifts, grants, bequests, transfers or donations
23 which may be received from any governmental entity or unit
24 or any person, firm, foundation or corporation;

25 (3) Any appropriations by the Legislature which may be
26 made for this purpose; and

27 (4) Any funds or accrued interest remaining in the Board
28 of Risk and Insurance Management Physicians' Mutual
29 Insurance Company account created pursuant to section
30 seven, article twenty-f, chapter thirty-three of this code on or
31 after the first day of July, two thousand four.

32 (c) (1) The moneys from the principal in the trust fund
33 may not be expended for any purpose, except that on the first
34 day of April, two thousand three, the Treasurer shall transfer
35 to the Board of Risk and Insurance Management Physicians'
36 Mutual Insurance Company account created by section seven,
37 article twenty-f, chapter thirty-three of this code, twenty-four
38 million dollars from the West Virginia Tobacco Settlement
39 Medical Trust Fund for use as the initial capital and surplus
40 of the Physicians' Mutual Insurance Company created
41 pursuant to said article. The remaining moneys in the trust
42 fund resulting from interest earned on the moneys in the fund
43 and the return on investments of the moneys in the fund shall
44 be available only upon appropriation by the Legislature as
45 part of the state budget and expended in accordance with the
46 provisions of section three of this article.

47 (2) Notwithstanding any other provision of this code to
48 the contrary, on the effective date of the amendment and
49 reenactment of this section during the regular session of the
50 Legislature in two thousand six, all moneys in the trust fund
51 and any interest or other return earned thereon shall be
52 transferred to the revenue shortfall reserve fund - Part B
53 created in section twenty, article two, chapter eleven-b of this
54 code and the trust fund shall be closed. No provisions of the
55 amendments made to this section during the regular session
56 of the Legislature in two thousand six may be construed to
57 change the requirements of this section for the deposit of
58 revenues received pursuant to the master settlement
59 agreement into the Workers' Compensation Debt Reduction
60 Fund.

61 (d) Notwithstanding the preceding subsections to the
62 contrary, the first thirty million dollars of all revenues
63 received after the thirtieth day of June, two thousand five,
64 pursuant to section IX(c)(1) of the master settlement
65 agreement shall in the fiscal year beginning the first day of
66 July, two thousand five, and each fiscal year thereafter, be
67 deposited in the Workers' Compensation Debt Reduction
68 Fund established in the State Treasury in section five, article
69 two-d, chapter twenty-three of this code. Receipts in excess
70 of thirty million dollars shall be deposited into the tobacco
71 settlement fund provided in section three of this article.

72 (e) Notwithstanding anything in this code to the contrary,
73 strategic compensation payments received pursuant to section
74 IX(c)(2) of the master settlement agreement, beginning in
75 two thousand eight, shall be deposited in their entirety in the
76 Workers' Compensation Debt Reduction Fund.

77 (f) Notwithstanding anything in this code to the contrary,
78 on the effective date of the sale of the state's share to the
79 authority as authorized in this article, the deposits and
80 transfers provided in this section shall cease and no longer be
81 required.

**§4-11A-3. Receipt of settlement funds and required deposit in
the West Virginia Tobacco Settlement Fund.**

1 (a) There is hereby created in the State Treasury a special
2 revenue account, designated the Tobacco Settlement Fund,
3 which shall be an interest-bearing account and may be
4 invested in the manner permitted by the provisions of article
5 six, chapter twelve of this code, with the interest income a
6 proper credit to the fund. Unless contrary to federal law, fifty
7 percent of all revenues received pursuant to the master
8 settlement agreement shall be deposited in this fund. These
9 funds shall be available only upon appropriation by the
10 Legislature as part of the state budget: *Provided*, That for the
11 fiscal year two thousand, the first five million dollars
12 received into the fund shall be transferred to the Public
13 Employees Insurance Reserve Fund created in article two,
14 chapter five-a of this code.

15 (b) Appropriations from the Tobacco Settlement Fund are
16 limited to expenditures for the following purposes:

17 (1) Reserve funds for continued support of the programs
18 offered by the Public Employees Insurance Agency
19 established in article sixteen, chapter five of this code;

20 (2) Funding for expansion of the federal-state Medicaid
21 program as authorized by the Legislature or mandated by the
22 federal government;

23 (3) Funding for public health programs, services and
24 agencies; and

25 (4) Funding for any state-owned or -operated health
26 facilities.

27 (c) Notwithstanding anything in this code to the contrary,
28 on the effective date of the sale of the state's share to the
29 authority as authorized in this article, the deposits and
30 transfers provided in this section shall cease and no longer be
31 required.

§4-11A-6. Creation of Tobacco Settlement Finance Authority.

1 (a) The Tobacco Settlement Finance Authority is hereby
2 created and constitutes a body corporate and politic,
3 constituting a public corporation and government
4 instrumentality of the state and the exercise of its powers
5 pursuant to this article is an essential governmental function.

6 (b) The authority shall not create any obligation of this
7 state or any political subdivision of this state within the
8 meaning of any constitutional or statutory debt limitation.

9 (c) The authority shall not pledge the credit or taxing
10 power of the state or any political subdivision of this state, or
11 make its debts payable out of any moneys except those of the
12 authority specifically pledged for their payment.

§4-11A-7. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (a) "Authority" means the Tobacco Settlement Finance
4 Authority created in this article.

5 (b) "Board" means the governing board of the authority.

6 (c) "Bonds" means bonds, notes and other obligations and
7 financing arrangements issued or entered into by the
8 authority pursuant to this article.

9 (d) "Complementary legislation" means article nine-d,
10 chapter sixteen of this code.

11 (e) "Interest rate agreement" means an interest rate swap
12 or exchange agreement, an agreement establishing an interest
13 rate floor or ceiling or both, or any similar agreement. Any
14 agreement may include the option to enter into or cancel the
15 agreement or to reverse or extend the agreement.

16 (f) "Master settlement agreement" means the master
17 settlement agreement as defined in section one of this article.

18 (g) "Net proceeds" means the amount of proceeds
19 remaining following each sale of bonds which are not
20 required by the authority to establish and fund reserve funds,
21 to fund an operating expense reserve for the authority, to
22 fund capitalized interest, if any, and to pay the costs of
23 issuance and other expenses and fees related to the
24 authorization and issuance of bonds.

25 (h) "Notes" means notes, warrants, loan agreements and
26 all other forms of evidence of indebtedness authorized under
27 this article.

28 (i) "Qualified investments" means investments of the
29 authority authorized pursuant to this article as established by
30 the authority pursuant to subdivision (11), subsection (a),
31 section eleven of this article.

32 (j) "Qualifying statute" has the meaning given that term
33 in the master settlement agreement, constituting article nine-
34 b, chapter sixteen of this code.

35 (k) "Sales agreement" means any agreement authorized
36 pursuant to this article in which the state provides for the sale
37 of all or a portion of the state's share to the authority.

38 (l) "State's share" means all of the following:

39 (1) All payments required to be made by tobacco product
40 manufacturers to the state, and the state's rights to receive the
41 payments, under the master settlement agreement.

42 (2) The state's rights in any collateral securing or
43 otherwise assuring the receipt of the moneys.

§4-11A-8. Governing board.

1 (a) The powers of the authority are vested in and shall be
2 exercised by a board of five individuals, consisting of the
3 Secretary of the Department of Administration, who shall act
4 as chairperson, the Treasurer of the State of West Virginia,

5 and three individuals, each appointed by the Governor, who
6 shall have skill and experience in finance.

7 (b) Three members of the board constitute a quorum.

8 (c) The members shall elect a vice chairperson and
9 secretary, annually, and other officers as the members
10 determine necessary.

11 (d) Meetings of the board shall be held at the call of the
12 chairperson or when a majority of the members request a
13 meeting.

14 (e) The members of the board shall not receive
15 compensation by reason of their membership on the board.

16 (f) Of the initial appointments made by the Governor to
17 the authority, two shall be for a term of two years and two
18 shall be for a term of three years. Members appointed to the
19 authority subsequent to the initial appointments shall serve
20 for terms of four years. Any member whose term has expired
21 shall serve until his or her successor has been duly appointed
22 and qualified. Any person appointed to fill a vacancy shall
23 serve only for the unexpired term.

**§4-11A-9. Staff; assistance by state officers, agencies and
departments.**

1 (a) The Secretary of the Department of Administration
2 shall furnish to the authority any secretarial, clerical,
3 technical, research and other services that are necessary to the
4 conduct of the business of the authority.

5 (b) State officers, agencies and departments may render
6 services to the authority within their respective functions, as
7 requested by the authority.

§4-11A-10. Limitation of liability.

1 Members of the board and persons acting on the
2 authority's behalf, while acting within the scope of their
3 employment or agency, are not subject to personal liability
4 resulting from carrying out the powers and duties conferred
5 on them under this article.

§4-11A-11. General powers.

1 (a) The authority has all the general powers necessary to
2 carry out its purposes and duties and to exercise its specific
3 powers, including, but not limited to, the power to:

4 (1) Enter into sales agreements and acquire by purchase,
5 grant, lease, gift or otherwise from the state its right, title and
6 interest in and to the state's share, including, without
7 limitation, the rights of the state to receive the moneys due to
8 it under this article and the rights in any collateral securing or
9 otherwise assuring the receipt of the moneys;

10 (2) Sell, pledge or assign, as security or consideration, the
11 state's share sold to the authority pursuant to one or more
12 sales agreements, to provide for and secure the issuance and
13 repayment of its bonds or to implement alternative funding
14 options;

15 (3) Issue and sell one or more series or classes of bonds,
16 notes or other obligations through public bidding, private

17 placement or negotiated underwriting to finance the
18 acquisition referred to in this article;

19 (4) Refund and refinance the authority's debts and
20 obligations and to manage its funds, obligations and
21 investments as necessary and if consistent with its purpose;

22 (5) Enter into funding options consistent with this article,
23 including refunding and refinancing its debt and obligations;

24 (6) Enter into credit enhancements, liquidity agreements
25 or interest rate agreements;

26 (7) Have perpetual succession as a public instrumentality
27 and agency of the state, until dissolved in accordance with
28 this article;

29 (8) Sue and be sued in its own name;

30 (9) Make and execute agreements, contracts and other
31 instruments with any public or private person, in accordance
32 with this chapter;

33 (10) Retain or employ counsel, auditors, investment
34 bankers, trustees, economic experts and any other private
35 consultants and advisors, on a contract basis or otherwise,
36 necessary or desirable for rendering legal, banking, financial
37 or other professional, management or technical services or
38 advice in connection with the acquisition and financing
39 referred to in this article and pay for all of the services from
40 the proceeds of the bonds;

41 (11) Establish investment guidelines, designate qualified
42 investments and invest funds;

43 (12) Procure insurance, other credit enhancements,
44 liquidity agreements and other financing arrangements and to
45 execute instruments and contracts and to enter into
46 agreements convenient or necessary to facilitate financing
47 arrangements of the authority; and to fulfill the purposes of
48 the authority under this article, including, but not limited to,
49 any arrangements, instruments, contracts and agreements as
50 municipal bond insurance, liquidity facilities, interest rate
51 agreements and letters of credit;

52 (13) Determine, in connection with the issuance of bonds,
53 and subject to the sales agreement, the terms, documentation
54 and other details of the financing;

55 (14) Hold, use, sell, convey, mortgage, pledge, exchange
56 or otherwise dispose of the state's share and any proceeds or
57 further rights associated with the state's share;

58 (15) Establish a trust which is entitled to receive revenues
59 and bond proceeds of the authority that are in excess of the
60 authority's expenses, debt service and contractual obligations
61 and to transfer its ownership interest in the trust to the state
62 as the noncash portion of the purchase price for the state's
63 share; and

64 (16) Include in its agreements with the holders of the
65 bonds the nonimpairment pledge as described in subdivision
66 (8), subsection (c), section twelve of this article.

67 (b) Other than the payments of debt service on its bonds,
68 the authority may not make payments or distributions to
69 private interests or private individuals unless those payments
70 are reasonable in amount and paid in exchange for the
71 performance of services.

§4-11A-12. Authorization of the sale of rights in the master settlement agreement.

1 (a) The sale of the state's share shall be authorized by an
2 executive order issued by the Governor as authorized in this
3 section. The executive order shall be received by the
4 Secretary of State and filed in the State Register pursuant to
5 section three, article two, chapter twenty-nine-a of this code:
6 *Provided*, That the Governor shall not issue the executive
7 order unless the aggregate collective amount of net sale
8 proceeds received by the state from the sale of the state's
9 share is more than eight hundred million dollars.

10 (b) The Governor may sell and assign all or a portion of
11 the state's share to the authority pursuant to one or more sales
12 agreements for the purpose of securitization of the amounts
13 received by the state under the master settlement agreement.

14 (c) The terms and conditions of the sale established in
15 any sales agreement shall include the following:

16 (1) A requirement that the state enforce its right to collect
17 all moneys due from the participating tobacco manufacturers
18 pursuant to the provisions of the master settlement
19 agreement, including, without limitation, the state's share that
20 has been sold to the authority under a sales agreement, and,
21 in addition, that the state shall diligently enforce the
22 qualifying statute as contemplated in section IX (d)(2)(b) of
23 the master settlement agreement and the complementary
24 legislation against all tobacco product manufacturers selling
25 tobacco products in the state and that are not in compliance
26 with the qualifying statute or the complementary legislation,
27 in each case in the manner and to the extent considered
28 necessary in the judgment of the Attorney General of the
29 state;

30 (2) A requirement that the state not agree to any
31 amendment of the master settlement agreement, the
32 qualifying statute, the complementary legislation, this article
33 or the sales agreement that materially and adversely affects
34 the authority's ability or rights to receive the state's share that
35 has been sold to the authority or the authority's rights and
36 powers under this article and the sales agreement;

37 (3) An agreement that the anticipated use by the state of
38 sale proceeds received pursuant to the sales agreement shall
39 be for the purposes set forth in this article;

40 (4) A requirement that the aggregate collective amount of
41 net sale proceeds received by the state from the sale of the
42 state's share shall not be less than eight hundred million
43 dollars;

44 (5) A requirement that the proceeds received by the state
45 from the sale of the state's share be applied by the state upon
46 receipt to the Consolidated Public Retirement Board for
47 deposit into the State Teachers Retirement System to redeem
48 a portion of the unfunded actuarial accrued liability;

49 (6) A requirement that the state may receive from the
50 authority, as the purchase price for the sale, any combination
51 of cash, securities and direct or beneficial ownership interests
52 in property, including, but not limited to, the allocable
53 beneficial interest in the residual state's share cash flows not
54 needed to meet the bond debt service allocable to the state's
55 share purchased by the authority from the state, whether by
56 an initial sale or sales of the authority's bonds;

57 (7) A requirement that the cost of issuance excluding fees
58 for bond insurance, credit enhancements, liquidity facilities
59 and rating agency fees, plus underwriter's discount and any
60 other costs associated with the issuance shall not exceed, in

61 the aggregate, the sum of one percent of the aggregate
62 principal amount of the bonds issued; and

63 (8) A requirement that the state will pledge to and agree
64 with the holders of the authority's bonds and with any person
65 or entity that contracts with the authority in connection with
66 the issuance of the bonds that the state will not alter, limit or
67 impair: (i) The rights vested in the authority to receive the
68 state's share, to exercise its powers, or the ability to fulfill the
69 terms of any contract entered into with the holders of the
70 authority's bonds or any person or entity with reference to the
71 authority's bonds; and (ii) the rights and remedies of the
72 holders of any of the authority's bonds. The state's pledge
73 and agreement shall continue in full force and effect until the
74 authority's legal commitments with respect to the authority's
75 bonds and contracts have been discharged in full.

76 (d) Any sale made under this section shall be irrevocable.
77 Any sale shall constitute and be treated as a true and absolute
78 sale and absolute transfer of the property transferred and not
79 as a pledge or other security interest for any borrowing.

80 (e) On or after the effective date of any sale, the state
81 shall not have any right, title or interest in the portion of the
82 state's share sold, and the portion of the state's share sold
83 shall be the property of the authority and not the state. None
84 of the property sold by the state pursuant to this section shall
85 be subject to garnishment, levy, execution, attachment or
86 other process, or remedy in connection with the assertion or
87 enforcement of any debt, claim, settlement or judgment
88 against the state.

89 (f) On or before the effective date of any sale, the state
90 shall notify the escrow agent under the master settlement
91 agreement of the sale and shall irrevocably direct the escrow
92 agent under the master settlement agreement that, subsequent

93 to that date, all payments constituting the state's share or a
94 portion thereof shall be made directly to the authority or its
95 designee.

§4-11A-13. Authorization of bonds of the authority.

1 (a) The authority may issue bonds in more than one series
2 and, if bonds are issued, shall use the net proceeds to
3 purchase the state's share pursuant to the sales agreement to
4 be applied as set forth in section twelve of this article. In
5 connection with the issuance of bonds and subject to the
6 terms of the sales agreement, the authority shall determine
7 the terms and other details of the financing. Bonds issued
8 pursuant to this section may be secured by a pledge of the
9 state's share purchased by the authority. The authority may
10 also issue refunding bonds, including advance refunding
11 bonds, for the purpose of refunding previously issued bonds,
12 and may issue other types of bonds, notes or other debt
13 obligations and financing arrangements necessary to fulfill its
14 purposes or the purposes of this article.

15 (b) The authority may issue its bonds in principal
16 amounts which, in the opinion of the authority, are necessary
17 to provide sufficient funds for achievement of its purposes,
18 the payment of interest on its bonds, the establishment of
19 reserves to secure the bonds, the costs of issuance of its
20 bonds and all other expenditures of the authority incident to
21 and necessary to carry out its purposes or powers. The bonds
22 are investment securities and negotiable instruments within
23 the meaning of and for the purposes of article eight, chapter
24 forty-six of this code, subject only to the provisions of the
25 notes or bonds for registration, unless otherwise provided by
26 resolution of the authority.

27 (c) Bonds issued by the authority are payable solely and
28 only out of the moneys, assets or revenues pledged by the

29 authority and are not a general obligation or indebtedness of
30 the authority or an obligation or indebtedness of the state or
31 any subdivision of the state. The authority shall not pledge
32 the credit or taxing power of the state or any political
33 subdivision of the state, or create a debt or obligation of the
34 state, or make its debts payable out of any moneys except
35 those of the authority.

36 (d) Bonds of the authority shall state on their face that
37 they are payable both as to principal and interest solely out of
38 the assets of the authority pledged for their purpose and do
39 not constitute an indebtedness of the state or any political
40 subdivision of the state; are secured solely by and payable
41 solely from assets of the authority pledged for such purpose;
42 constitute neither a general, legal nor moral obligation of the
43 state or any of its political subdivisions; and that the state has
44 no obligation or intention to satisfy any deficiency or default
45 of any payment of the bonds.

46 (e) Any amount pledged by the authority to be received
47 under any sales agreement is valid and binding at the time the
48 pledge is made. Amounts pledged and then or thereafter
49 received by the authority are immediately subject to the lien
50 of the pledge without any physical delivery thereof or further
51 act. The lien of any pledge is valid and binding as against all
52 parties having claims of any kind against the authority
53 whether the parties have notice of the lien or not.
54 Notwithstanding any other provision of law, the pledge is not
55 subject to article nine, chapter forty-six of this code.
56 Notwithstanding any other provision to the contrary, the
57 resolution of the authority or any other instrument by which
58 a pledge is created need not be recorded or filed to perfect the
59 pledge.

60 (f) The proceeds of bonds issued by the authority may be
61 invested in any security or obligation approved by the board

62 and specified in the trust indenture or resolution pursuant to
63 which the bonds must be issued, notwithstanding any other
64 provision to the contrary provided that any sales proceeds
65 derived from tax exempt bonds are invested in a manner
66 prescribed by the board so as to maintain the tax exempt
67 status of the bonds.

68 (g) The exercise of the powers granted to the authority by
69 this article will be in all respects an essential governmental
70 function and for the benefit of the people of the state and is
71 a public purpose. The authority, its property, income and all
72 bonds and all interest and income thereon are exempt from all
73 taxation by this state and any county, municipality, political
74 subdivision or agency thereof.

75 (h) Bonds of the authority shall comply with all of the
76 following:

77 (1) The bonds may be issued in one or more series and
78 shall be in a form, issued in denominations, carry such
79 registration privileges and payable over terms and with rights
80 of redemption as the board prescribes in the trust indenture or
81 resolution authorizing their issuance;

82 (2) The bonds shall be fully negotiable instruments under
83 the laws of this state and may be sold at prices, at public or
84 private sale, and in a manner as prescribed by the board; and

85 (3) The bonds are subject to the terms, conditions and
86 covenants providing for the payment of the principal,
87 redemption premiums, if any, interest which may be fixed or
88 variable, including, but not limited to, zero coupon bonds and
89 capital appreciation bonds, during any period the bonds are
90 outstanding, and other terms, conditions, covenants and
91 protective provisions safeguarding payment as determined by

92 the trust indenture or resolution of the board authorizing their
93 issuance.

94 (i) The bonds issued under this article are securities in
95 which insurance companies and associations and other
96 persons engaged in the business of insurance; banks, trust
97 companies, savings associations, savings and loan
98 associations and investment companies; administrators,
99 guardians, executors, trustees and other fiduciaries; and other
100 persons authorized to invest in bonds or other obligations of
101 the state may properly and legally invest funds, including
102 capital, in their control or belonging to them.

103 (j) Bonds must be authorized by a resolution of the board.
104 A resolution authorizing the issuance of bonds may delegate
105 to an officer of the authority the power to negotiate and fix
106 the details of an issue of bonds and of their sale by an
107 appropriate certificate of the authorized officer or by
108 execution and delivery of a trust indenture or bond purchase
109 agreement. The bonds and notes shall be executed by the
110 chairperson and secretary of the authority, both of whom may
111 use facsimile signatures. In case any officer whose signature,
112 or a facsimile of whose signature, appears on any bonds or
113 notes ceases to be an officer before delivery of the bonds or
114 notes, the signature or facsimile is nevertheless sufficient for
115 all purposes the same as if he or she had remained in office
116 until the delivery.

117 (k) The authority may issue one or more series of bonds
118 at any time or times so that interest on the bonds may be or
119 remain exempt from federal taxation or to comply with the
120 purposes specified in this article: *Provided*, That the state
121 shall covenant and agree to invest any funds received from
122 the sales agreement which were derived from tax exempt

123 bonds issued by the authority in a manner prescribed from the
124 authority.

125 (l) In connection with the issuance of any bonds
126 authorized and issued pursuant to this section, and in addition
127 to the funds and accounts established elsewhere in this
128 article, the board may, under the trust indenture or resolution
129 pursuant to which the bonds are issued, establish any other
130 accounts, subaccounts or reserves determined necessary by
131 the board.

132 (m) While bonds of the authority are outstanding, the
133 state shall not agree to any amendment of the master
134 settlement agreement, the qualifying statute, the
135 complementary legislation, this article or the sales agreement
136 that materially and adversely affects the authority's ability or
137 rights to receive the state's share that has been sold to the
138 authority or the authority's rights and powers under this
139 article and the sales agreement. The provision of this section
140 shall be part of the contractual obligation owed to the holders
141 of the authority's bonds.

§4-11A-14. Exemption from purchasing provisions.

1 The provisions of article three, chapter five-a of this code
2 shall not apply to the authority with respect to contracts
3 entered into by the authority in carrying out the public and
4 essential governmental functions set forth in this article and
5 are exempt from the laws of the state which provide for
6 competitive bids and hearings in connection with contracts
7 and for review as to the form of contracts by the office of the
8 Attorney General of the state.

§4-11A-15. Bankruptcy.

1 Notwithstanding any other provision of law, the authority
2 is not authorized, and no governmental officer or
3 organization shall authorize the authority to become a debtor
4 in a case under the United States bankruptcy code, Title 11 of
5 the United States Code, to make an assignment for the benefit
6 of creditors or to become the subject of any similar case or
7 proceeding. The provisions of this section shall be part of
8 any contractual obligation owed to holders of any bonds
9 issued pursuant to this article and shall not be modified by
10 the state prior to the date which is three hundred sixty-six
11 days after which the authority no longer has any bonds
12 outstanding.

§4-11A-16. Dissolution of the authority; distribution of assets.

1 The authority shall dissolve not sooner than three
2 hundred sixty-six days after it no longer has any bonds
3 outstanding and no later than two years from the date of final
4 payment of all outstanding bonds and the satisfaction of all
5 outstanding obligations of the authority, except to the extent
6 necessary to remain in existence to fulfill any outstanding
7 covenants or provisions with bondholders or third parties
8 made in accordance with this article. Upon dissolution of the
9 authority, all assets of the authority shall be transferred to the
10 state, and the authority shall execute any necessary
11 assignments or instruments, including any assignment of any
12 right, title or ownership to the state for receipt of payments
13 under the master settlement agreement. In no event shall the
14 authority dissolve while any bonds of the authority are
15 outstanding.

§4-11A-17. Construction.

1 This article, being considered necessary for the welfare
2 of the state and its people, shall be liberally construed to
3 affect its purpose.

§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.

1 (a) There is hereby dedicated an annual amount of fifty
2 million four hundred thousand dollars from annual
3 collections of the tax imposed by article twenty-one, chapter
4 eleven of this code as a portion of the revenue source
5 dedicated to satisfy the Old Fund liabilities as they occur to
6 provide a dollar for dollar replacement of the first thirty
7 million dollars received pursuant to section IX(c)(1) of the
8 master settlement agreement and the anticipated strategic
9 compensation payments to be received pursuant to section
10 IX(c)(2) of the master settlement agreement as previously
11 dedicated to the Old Fund prior to the sale of state's share to
12 the Tobacco Settlement Finance Authority. No portion of
13 this amount may be pledged for payment of debt service on
14 revenue bonds issued pursuant to article two-d, chapter
15 twenty-three of this code.

16 (b) Notwithstanding any other provision of this code to
17 the contrary, beginning immediately after the sale of the
18 state's share to the Tobacco Settlement Finance Authority,
19 fifty million four hundred thousand dollars from collections
20 of the tax imposed by article twenty-one, chapter eleven of
21 this code shall be deposited each calendar year to the credit
22 of the Old Fund created in article two-d, chapter twenty-three
23 of this code in accordance with the following schedule. Each

24 calendar month, except for July, August and September each
25 year, five million six hundred thousand dollars shall be
26 transferred, on or before the twenty-eighth day of the month,
27 to the Workers' Compensation Debt Reduction Fund created
28 in article two-d, chapter twenty-three of this code. The
29 transfers pursuant to this section are in addition to the
30 transfers pursuant to section ninety-six, article twenty-one,
31 chapter eleven of this code.

32 (c) *Expiration.* -- The transfers required by this section
33 shall continue to be made until the Governor certifies to the
34 Legislature that an independent actuary study determined that
35 the unfunded liability of the Old Fund, as defined in chapter
36 twenty- three of this code, has been paid or provided for in its
37 entirety. No transfer pursuant to this section shall be made
38 thereafter.



CHAPTER 252

**(Com. Sub. for H.B. 2309 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5,
§5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9 and §5B-2E-11 of
the Code of West Virginia, 1931, as amended; and to amend
said code by adding thereto a new section, designated §5B-2E-
7a, all relating to tourism development act tax credits;
providing definitions; making certain entities ineligible for the

credit; modifying total amount of tourism development project tax credit available on or near reclaimed surface mining operation; setting certain deadlines; modifying total amount of tourism development project tax credit available during calendar years; creating a tourism development expansion project credit; implementing a one million five hundred thousand dollar tax credit maximum availability for tourism development expansion projects; authorizing the promulgation of rules to establish a tourism development expansion project application process; and establishing a termination date for action on applications for tourism development projects and validity of such projects not previously approved.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9 and §5B-2E-11 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 §5B-2E-7a, all to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

- §5B-2E-3. Definitions.
- §5B-2E-4. Additional powers and duties of the development office.
- §5B-2E-5. Project application; evaluation standards; consulting services; preliminary and final approval of projects.
- §5B-2E-6. Agreement between development office and approved company.
- §5B-2E-7. Amount of credit allowed for tourism development project; approved projects.
- §5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.
- §5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.
- §5B-2E-9. Promulgation of rules.
- §5B-2E-11. Termination.

§5B-2E-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 otherwise:

3 (1) "Agreement" means a tourism development
4 agreement entered into, pursuant to section six of this article,
5 between the development office and an approved company
6 with respect to a project.

7 (2) "Approved company" means any eligible company
8 approved by the development office pursuant to section five
9 of this article seeking to undertake a project.

10 (3) "Approved costs" means:

11 (a) *Included costs*:

12 (i) Obligations incurred for labor and to vendors,
13 contractors, subcontractors, builders, suppliers, delivery
14 persons and material persons in connection with the
15 acquisition, construction, equipping or installation of a
16 project;

17 (ii) The costs of acquiring real property or rights in real
18 property and any costs incidental thereto;

19 (iii) The cost of contract bonds and of insurance of all
20 kinds that may be required or necessary during the course of
21 the acquisition, construction, equipping, or installation of a
22 project which is not paid by the vendor, supplier, delivery
23 person, contractor or otherwise provided;

24 (iv) All costs of architectural and engineering services,
25 including, but not limited to: Estimates, plans and
26 specifications, preliminary investigations and supervision of

27 construction, installation, as well as for the performance of
28 all the duties required by or consequent to the acquisition,
29 construction, equipping or installation of a project;

30 (v) All costs required to be paid under the terms of any
31 contract for the acquisition, construction, equipping or
32 installation of a project;

33 (vi) All costs required for the installation of utilities,
34 including, but not limited to: Water, sewer, sewer treatment,
35 gas, electricity, communications and off-site construction of
36 utility extensions to the boundaries of the real estate on which
37 the facilities are located, all of which are to be used to
38 improve the economic situation of the approved company in
39 a manner that allows the approved company to attract
40 persons; and

41 (vii) All other costs comparable with those described in
42 this subdivision;

43 (b) *Excluded costs.* -- The term "approved costs" does not
44 include any portion of the cost required to be paid for the
45 acquisition, construction, equipping or installation of a
46 project that is financed with governmental incentives, grants
47 or bonds or for which the eligible taxpayer elects to qualify
48 for other tax credits, including, but not limited to, those
49 provided by article thirteen-q, chapter eleven of this code.

50 (4) "Base tax revenue amount" means the average
51 monthly amount of consumer sales and service tax collected
52 by an approved company, based on the twelve-month period
53 ending immediately prior to the opening of a new tourism
54 development project for business or a tourism development
55 expansion project, as certified by the State Tax
56 Commissioner.

57 (5) "Development office" means the West Virginia
58 Development Office as provided in article two of this
59 chapter.

60 (6) "Crafts and products center" means a facility
61 primarily devoted to the display, promotion and sale of West
62 Virginia products and at which a minimum of eighty percent
63 of the sales occurring at the facility are of West Virginia arts,
64 crafts or agricultural products.

65 (7) "Eligible company" means any corporation, limited
66 liability company, partnership, limited liability partnership,
67 sole proprietorship, business trust, joint venture or any other
68 entity operating or intending to operate a project, whether
69 owned or leased, within the state that meets the standards
70 required by the development office. An eligible company
71 may operate or intend to operate directly or indirectly
72 through a lessee.

73 (8) "Ineligible company" means any West Virginia pari-
74 mutuel racing facility licensed to operate multiple video
75 lottery machines as authorized by article twenty-two-a,
76 chapter twenty-nine of this code or any limited lottery retailer
77 holding a valid license issued under article seven, chapter
78 sixty of this code.

79 (9) "Entertainment destination center" means a facility
80 containing a minimum of two hundred thousand square feet
81 of building space adjacent or complementary to an existing
82 tourism attraction, an approved project, or a major
83 convention facility and which provides a variety of
84 entertainment and leisure options that contain at least one
85 major theme restaurant and at least three additional
86 entertainment venues, including, but not limited to, live
87 entertainment, multiplex theaters, large-format theaters,
88 motion simulators, family entertainment centers, concert

89 halls, virtual reality or other interactive games, museums,
90 exhibitions or other cultural and leisure time activities.
91 Entertainment and food and drink options shall occupy a
92 minimum of sixty percent of total gross area, as defined in
93 the application, available for lease and other retail stores shall
94 occupy no more than forty percent of the total gross area
95 available for lease.

96 (10) "Final approval" means the action taken by the
97 executive director of the development office qualifying the
98 eligible company to receive the tax credits provided in this
99 article.

100 (11) "Preliminary approval" means the action taken by
101 the executive director of the development office conditioning
102 final approval.

103 (12) "Project" means a tourism development project
104 and/or a tourism development expansion project administered
105 in accordance with the provisions of this article.

106 (13) "State agency" means any state administrative body,
107 agency, department, division, board, commission or
108 institution exercising any function of the state that is not a
109 municipal corporation or political subdivision.

110 (14) "Tourism attraction" means a cultural or historical
111 site, a recreation or entertainment facility, an area of natural
112 phenomenon or scenic beauty, a West Virginia crafts and
113 products center or an entertainment destination center. A
114 project or tourism attraction does not include any of the
115 following:

116 (A) Lodging facility, unless:

117 (i) The facility constitutes a portion of a project and
118 represents less than fifty percent of the total approved cost of
119 the project, or the facility is to be located on recreational
120 property owned or leased by the state or federal government
121 and the facility has received prior approval from the
122 appropriate state or federal agency;

123 (ii) The facility involves the restoration or rehabilitation
124 of a structure that is listed individually in the national register
125 of historic places or is located in a national register historic
126 district and certified by the state historic preservation officer
127 as contributing to the historic significance of the district and
128 the rehabilitation or restoration project has been approved in
129 advance by the state historic preservation officer; or

130 (iii) The facility involves the construction, reconstruction,
131 restoration, rehabilitation or upgrade of a full-service lodging
132 facility or the reconstruction, restoration, rehabilitation or
133 upgrade of an existing structure into a full-service lodging
134 facility having not less than five hundred guest rooms, with
135 construction, reconstruction, restoration, rehabilitation or
136 upgrade costs exceeding ten million dollars;

137 (B) A facility that is primarily devoted to the retail sale of
138 goods, other than an entertainment destination center, a West
139 Virginia crafts and products center or a project where the sale
140 of goods is a secondary and subordinate component of the
141 project; and

142 (C) A recreational facility that does not serve as a likely
143 destination where individuals who are not residents of the
144 state would remain overnight in commercial lodging at or
145 near the project or existing attraction.

146 (15) "Tourism development project" means the
147 acquisition, including the acquisition of real estate by a

148 leasehold interest with a minimum term of ten years,
149 construction and equipping of a tourism attraction; the
150 construction and installation of improvements to facilities
151 necessary or desirable for the acquisition, construction,
152 installation of a tourism attraction, including, but not limited
153 to, surveys, installation of utilities, which may include water,
154 sewer, sewage treatment, gas, electricity, communications
155 and similar facilities; and off-site construction of utility
156 extensions to the boundaries of the real estate on which the
157 facilities are located, all of which are to be used to improve
158 the economic situation of the approved company in a manner
159 that allows the approved company to attract persons, but does
160 not include a project that will be substantially owned,
161 managed or controlled by an eligible company with an
162 existing project located within a ten mile radius, or by a
163 person or persons related by a family relationship, including
164 spouses, parents, children or siblings, to an owner of an
165 eligible company with an existing project located within a ten
166 mile radius.

167 (16) “Tourism development expansion project” means the
168 acquisition, including the acquisition of real estate by a
169 leasehold interest with a minimum term of ten years; the
170 construction and installation of improvements to facilities
171 necessary or desirable for the expansion of an existing
172 tourism attraction including, but not limited to, surveys,
173 installation of utilities, which may include water, sewer,
174 sewage treatment, gas, electricity, communications and
175 similar facilities; and off-site construction of utility extension
176 to the boundaries of real estate on which the facilities are
177 located, all of which are to be used to improve the economic
178 situation of the approved company in a manner that allows
179 the approved company to attract persons.

180 (17) "Tourism development project tax credit" means the
181 tourism development project tax credit allowed by section
182 seven of this article.

183 (18) "Tourism development expansion project tax credit"
184 means the tourism development expansion project tax credit
185 allowed by section seven-a of this article.

**§5B-2E-4. Additional powers and duties of the development
office.**

1 The development office has the following powers and
2 duties, in addition to those set forth in this case, necessary to
3 carry out the purposes of this article including, but not
4 limited to:

5 (1) Make preliminary and final approvals of all
6 applications for projects and enter into agreements pertaining
7 to projects with approved companies;

8 (2) Employ fiscal consultants, attorneys, appraisers and
9 other agents as the executive director of the development
10 office finds necessary or convenient for the preparation and
11 administration of agreements and documents necessary or
12 incidental to any project; and

13 (3) Impose and collect fees and charges in connection
14 with any transaction.

**§5B-2E-5. Project application; evaluation standards;
consulting services; preliminary and final
approval of projects.**

1 (a) Each eligible company that seeks to qualify a project
2 for the tourism development project tax credit provided by
3 section seven of this article, or for the tourism development

4 expansion project tax credit provided by section seven-a of
5 this article, as applicable, must file a written application for
6 approval of the project with the development office.

7 (b) With respect to each eligible company making an
8 application to the development office for a tourism
9 development project tax credit or a tourism development
10 expansion project tax credit, the development office shall
11 make inquiries and request documentation, including a
12 completed application, from the applicant that shall include:
13 A description and location of the project; capital and other
14 anticipated expenditures for the project and the sources of
15 funding therefor; the anticipated employment and wages to
16 be paid at the project; business plans that indicate the average
17 number of days in a year in which the project will be in
18 operation and open to the public; and the anticipated
19 revenues and expenses generated by the project. The
20 executive director of the development office shall act to grant
21 or not to grant any preliminary approval of an application
22 within forty-five days following its receipt or receipt of
23 additional information requested by the development office,
24 whichever is later.

25 (c) Based upon a review of the application and additional
26 documentation provided by the eligible company, if the
27 executive director of the development office determines that
28 the applicant and the project may reasonably satisfy the
29 criteria for final approval set forth in subsection (d) of this
30 section, then the executive director of the development office
31 may grant a preliminary approval of the applicant and the
32 project.

33 (d) After preliminary approval by the executive director
34 of the development office, the development office shall
35 engage the services of a competent consulting firm or firms
36 to analyze the data made available by the applicant and to

37 collect and analyze additional information necessary to
38 determine that, in the independent judgment of the
39 consultant, the project:

40 (1) Likely will attract at least twenty-five percent of its
41 visitors from outside of this state;

42 (2) Will have approved costs in excess of one million
43 dollars;

44 (3) Will have a significant and positive economic impact
45 on the state considering, among other factors, the extent to
46 which the project will compete directly with or complement
47 existing tourism attractions in the state and the amount by
48 which increased tax revenues from the project will exceed the
49 credit given to the approved company;

50 (4) Will produce sufficient revenues and public demand
51 to be operating and open to the public for a minimum of one
52 hundred days per year; and

53 (5) Will provide additional employment opportunities in
54 the state.

55 (e) The applicant shall pay to the development office,
56 prior to the engagement of the services of a competent
57 consulting firm or firms pursuant to the provisions of
58 subsection (d) of this section, for the cost of the consulting
59 report or reports and shall cooperate with the consulting firm
60 or firms to provide all of the data that the consultant
61 considers necessary or convenient to make its determination
62 under subsection (d) of this section.

63 (f) The executive director of the development office,
64 within sixty days following receipt of the consultant's final,
65 written report or reports, shall review, in light of the

66 consultant's report or reports, the reasonableness of the
67 project's budget and timetable for completion and, in addition
68 to the criteria for final approval set forth in subsection (d) of
69 this section, the following criteria:

70 (1) The quality of the proposed project and how it
71 addresses economic problems in the area in which the project
72 will be located;

73 (2) Whether there is substantial and credible evidence
74 that the project is likely to be started and completed in a
75 timely fashion;

76 (3) Whether the project will, directly or indirectly,
77 improve the opportunities in the area where the project will
78 be located for the successful establishment or expansion of
79 other industrial or commercial businesses;

80 (4) Whether the project will, directly or indirectly, assist
81 in the creation of additional employment opportunities in the
82 area where the project will be located;

83 (5) Whether the project helps to diversify the local
84 economy;

85 (6) Whether the project is consistent with the goals of this
86 article;

87 (7) Whether the project is economically and fiscally
88 sound using recognized business standards of finance and
89 accounting; and

90 (8) The ability of the eligible company to carry out the
91 project.

92 (g) The development office may establish other criteria
93 for consideration when approving the applications.

94 (h) The executive director of the development office may
95 give its final approval to the applicant's application for a
96 project and may grant to the applicant the status of an
97 approved company. The executive director of the
98 development office shall act to approve or not approve any
99 application within sixty days following the receipt of the
100 consultant's final, written report or reports or the receipt of
101 any additional information requested by the development
102 office, whichever is later. The decision by the executive
103 director of the development office is final.

**§5B-2E-6. Agreement between development office and
approved company.**

1 The development office, upon final approval of an
2 application by the executive director, may enter into an
3 agreement with any approved company with respect to its
4 project. The terms and provisions of each agreement shall
5 include, but not be limited to:

6 (1) The amount of approved costs of the project that
7 qualify for a sales tax credit, as provided in section seven or
8 section seven-a of this article, as applicable. Within three
9 months of the completion date, the approved company shall
10 document the actual cost of the project through a certification
11 of the costs to the development office by an independent
12 certified public accountant acceptable to the development
13 office; and

14 (2) A date certain by which the approved company shall
15 have completed and opened the project to the public. Any

16 approved company that has received final approval may
17 request and the development office may grant an extension or
18 change, however, in no event shall the extension exceed three
19 years from the date of final approval to the completion date
20 specified in the agreement with the approved company.

**§5B-2E-7. Amount of credit allowed for tourism development
project; approved projects.**

1 (a) Approved companies are allowed a credit against the
2 West Virginia consumers sales and service tax imposed by
3 article fifteen, chapter eleven of this code and collected by
4 the approved company on sales generated by or arising from
5 the operations of the tourism development project: *Provided,*
6 That if the consumers sales and service tax collected by the
7 approved company is not solely attributable to sales resulting
8 from the operation of the new tourism development project,
9 the credit shall only be applied against that portion of the
10 consumers sales and service tax collected in excess of the
11 base tax revenue amount. The amount of this credit is
12 determined and applied as provided in this article.

13 (b) The maximum amount of credit allowable in this
14 article is equal to twenty-five percent of the approved
15 company's approved costs as provided in the agreement:
16 *Provided,* That, if the tourism development project site is
17 located within the permit area or an adjacent area of a surface
18 mining operation, as these terms are defined in section three,
19 article three, chapter twenty-two of this code, from which all
20 coal has been or will be extracted prior to the commencement
21 of the tourism development project, the maximum amount of
22 credit allowable is equal to thirty-five percent of the approved
23 company's approved costs as provided in the agreement.

24 (c) The amount of credit allowable must be taken over a
25 ten-year period, at the rate of one tenth of the amount thereof

26 per taxable year, beginning with the taxable year in which the
27 project is opened to the public, unless the approved company
28 elects to delay the beginning of the ten-year period until the
29 next succeeding taxable year. This election shall be made in
30 the first consumers sales and service tax return filed by the
31 approved company following the date the project is opened
32 to the public. Once made, the election cannot be revoked.

33 (d) The amount determined under subsection (b) of this
34 section is allowed as a credit against the consumers sales and
35 service tax collected by the approved company on sales from
36 the operation of the tourism development project. The
37 amount determined under said subsection may be used as a
38 credit against taxes required to be remitted on the approved
39 company's monthly consumers sales and service tax returns
40 that are filed pursuant to section sixteen, article fifteen,
41 chapter eleven of this code. The approved company shall
42 claim the credit by reducing the amount of consumers sales
43 and service tax required to be remitted with its monthly
44 consumers sales and service tax returns by the amount of its
45 aggregate annual credit allowance until such time as the full
46 current year annual credit allowance has been claimed. Once
47 the total credit claimed for the tax year equals the approved
48 company's aggregate annual credit allowance no further
49 reductions to its monthly consumers sales and service tax
50 returns will be permitted.

51 (e) If any credit remains after application of subsection
52 (d) of this section, the amount of credit is carried forward to
53 each ensuing tax year until used or until the expiration of the
54 third taxable year subsequent to the end of the initial ten-year
55 credit application period. If any unused credit remains after
56 the thirteenth year, that amount is forfeited. No carryback to
57 a prior taxable year is allowed for the amount of any unused
58 portion of any annual credit allowance.

§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

1 (a) Approved companies are allowed a credit against the
2 West Virginia consumers sales and service tax imposed by
3 article fifteen, chapter eleven of this code and collected by
4 the approved company on sales generated by or arising from
5 the operations of the tourism development expansion project:
6 *Provided*, That the tourism development expansion project
7 tax credit allowed under this section is separate and distinct
8 from any credit allowed for a tourism development project in
9 accordance with the provisions of section seven of this
10 article: *Provided, however*, That if the consumers sales and
11 service tax collected by the approved company is not solely
12 attributable to sales resulting from the operation of the
13 tourism development expansion project, the credit shall only
14 be applied against that portion of the consumers sales and
15 service tax collected in excess of the base tax revenue
16 amount. The amount of this credit is determined and applied
17 as provided in this article.

18 (b) The maximum amount of credit allowable in this
19 article is equal to twenty-five percent of the approved
20 company's approved costs as provided in the agreement:
21 *Provided*, That, if the tourism development expansion project
22 site is located within the permit area or an adjacent area of a
23 surface mining operation, as these terms are defined in
24 section three, article three, chapter twenty-two of this code,
25 from which all coal has been or will be extracted prior to the
26 commencement of the tourism development project, the
27 maximum amount of credit allowable is equal to thirty-five
28 percent of the approved company's approved costs as
29 provided in the agreement.

30 (c) The amount of credit allowable must be taken over a
31 ten-year period, at the rate of one tenth of the amount thereof

32 per taxable year, beginning with the taxable year in which the
33 project is opened to the public, unless the approved company
34 elects to delay the beginning of the ten-year period until the
35 next succeeding taxable year. This election shall be made in
36 the first consumers sales and service tax return filed by the
37 approved company following the date the project is opened
38 to the public. Once made, the election cannot be revoked.

39 (d) The amount determined under subsection (b) of this
40 section is allowed as a credit against the consumers sales and
41 service tax collected by the approved company on sales from
42 the operation of the tourism development expansion project.
43 The amount determined under said subsection may be used
44 as a credit against taxes required to be remitted on the
45 approved company's monthly consumers sales and service tax
46 returns that are filed pursuant to section sixteen, article
47 fifteen, chapter eleven of this code. The approved company
48 shall claim the credit by reducing the amount of consumers
49 sales and service tax required to be remitted with its monthly
50 consumers sales and service tax returns by the amount of its
51 aggregate annual credit allowance until such time as the full
52 current year annual credit allowance has been claimed. Once
53 the total credit claimed for the tax year equals the approved
54 company's aggregate annual credit allowance no further
55 reductions to its monthly consumers sales and service tax
56 returns will be permitted.

57 (e) If any credit remains after application of subsection
58 (d) of this section, the amount of credit is carried forward to
59 each ensuing tax year until used or until the expiration of the
60 third taxable year subsequent to the end of the initial ten-year
61 credit application period. If any unused credit remains after
62 the thirteenth year, that amount is forfeited. No carryback to
63 a prior taxable year is allowed for the amount of any unused
64 portion of any annual credit allowance.

65 (f) The total amount of tourism development expansion
66 project tax credits for all approved companies pursuant to this
67 section may not exceed one million five hundred thousand
68 dollars each calendar year.

**§5B-2E-8. Forfeiture of unused tax credits; credit recapture;
recapture tax imposed; information required to
be submitted annually to development office;
transfer of tax credits to successors.**

1 (a) The approved company shall forfeit the tourism
2 development project tax credit allowed by section seven of
3 this article, or the tourism development expansion tax credit
4 allowed by section seven-a of this article, as applicable, with
5 respect to any calendar year and shall pay the recapture tax
6 imposed by subsection (b) of this section, if:

7 (1) In any year following the first calendar year the
8 project is open to the public, the project fails to attract at least
9 twenty-five percent of its visitors from among persons who
10 are not residents of the state;

11 (2) In any year following the first year the project is open
12 to the public, the project is not operating and open to the
13 public for at least one hundred days; or

14 (3) The approved company, as of the beginning of each
15 calendar year, has an outstanding obligation to a Workers'
16 Compensation Fund, as defined in article two-c of chapter
17 twenty-three of this code, an outstanding obligation under the
18 West Virginia Unemployment Compensation Act, or an
19 outstanding obligation under the West Virginia state tax and
20 revenue laws.

21 (b) In addition to the loss of credit allowed under this
22 article for the calendar year, any approved company or

23 successor eligible company that forfeits the tourism
24 development project tax credit or the tourism development
25 expansion project credit under the provisions of subsection
26 (a) of this section, credit recapture shall apply and the
27 approved company, and successor eligible companies, shall
28 return to the state all previously claimed tourism
29 development project tax credit or tourism development
30 expansion project credit allowed by this article. An amended
31 return shall be filed with the State Tax Commissioner for the
32 prior calendar year, or calendar years, for which credit
33 recapture is required, along with interest, as provided in
34 section seventeen, article ten, chapter eleven of this code:
35 *Provided*, That the approved company and successor eligible
36 companies who previously claimed the tourism development
37 project tax credit or the tourism development expansion
38 project credit allowed by this article are jointly and severally
39 liable for payment of any recapture tax subsequently imposed
40 under this section.

41 (c) Within forty-five days after the end of each calendar
42 year during the term of the agreement, the approved company
43 shall supply the development office with all reports and
44 certifications the development office requires demonstrating
45 to the satisfaction of the development office that the
46 approved company is in compliance with applicable
47 provisions of law. Based upon a review of these materials
48 and other documents that are available, the development
49 office shall then certify to the Tax Commissioner that the
50 approved company is in compliance with this section.

51 (d) The tax credit allowed in this article is transferable,
52 subject to the written consent of the development office, to an
53 eligible successor company that continues to operate the
54 approved project.

§5B-2E-9. Promulgation of rules.

1 The executive director of the development office may
2 promulgate rules to implement the project application
3 approval process and to describe the criteria and procedures
4 it has established in connection therewith. These rules are
5 not subject to the provisions of chapter twenty-nine-a of this
6 code but shall be filed with the Secretary of State.

§5B-2E-11. Termination.

1 The development office may not accept any new project
2 application after the thirty-first day of December, two
3 thousand thirteen, and all applications submitted prior to the
4 first day of January, two thousand thirteen, that have not been
5 previously approved or not approved, shall be deemed not
6 approved and shall be null and void as of the first day of
7 January, two thousand thirteen.



CHAPTER 253

(Com. Sub. for S.B. 96 - By Senators Unger, Hunter and Jenkins)

[Passed February 26, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to authorizing fire department-owned apparatus to use yellow or amber flashing lights for safety.

Be it enacted by the Legislature of West Virginia:

That §17C-15-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor
2 vehicle other than head lamps, spot lamps, auxiliary lamps or
3 flashing front-direction signals which projects a beam of light
4 of an intensity greater than three hundred candlepower shall
5 be so directed that no part of the beam will strike the level of
6 the roadway on which the vehicle stands at a distance of
7 more than seventy-five feet from the vehicle.

8 (b) No person shall drive or move any vehicle or
9 equipment upon any highway with any lamp or device
10 thereon displaying other than a white or amber light visible
11 from directly in front of the center thereof except as
12 authorized by subsection (d) of this section.

13 (c) Except as authorized in subsections (d) and (f) of this
14 section and authorized in section nineteen of this article,
15 flashing lights are prohibited on motor vehicles: *Provided,*
16 That any vehicle as a means for indicating right or left turn or
17 any vehicle as a means of indicating the same is disabled or
18 otherwise stopped for an emergency may have blinking or
19 flashing lights.

20 (d) Notwithstanding any other provisions of this chapter,
21 the following colors of flashing warning lights are restricted
22 for the use of the type of vehicle designated:

23 (1) Blue flashing warning lights are restricted to police
24 vehicles. Authorization for police vehicles shall be

25 designated by the chief administrative official of each police
26 department.

27 (2) Except for standard vehicle equipment authorized by
28 section nineteen of this article, red flashing warning lights are
29 restricted to the following:

30 (A) Ambulances;

31 (B) Fire-fighting vehicles;

32 (C) Hazardous material response vehicles;

33 (D) Industrial fire brigade vehicles;

34 (E) Rescue squad vehicles not operating out of a fire
35 department;

36 (F) School buses;

37 (G) Class A vehicles, as defined by section one, article
38 ten, chapter seventeen-a of this code, of those firefighters
39 who are authorized by their fire chiefs to have the lights;

40 (H) Class A vehicles of members of duly chartered rescue
41 squads not operating out of a fire department;

42 (I) Class A vehicles of members of ambulance services
43 or duly chartered rescue squads who are authorized by their
44 respective chiefs to have the lights;

45 (J) Class A vehicles of out-of-state residents who are
46 active members of West Virginia fire departments,
47 ambulance services or duly chartered rescue squads who are
48 authorized by their respective chiefs to have the lights; and

49 (K) West Virginia Department of Agriculture emergency
50 response vehicles.

51 Red flashing warning lights attached to a Class A vehicle
52 shall be operated only when responding to or engaged in
53 handling an emergency requiring the attention of the
54 firefighters, members of the ambulance services or chartered
55 rescue squads.

56 (3) The use of red flashing warning lights shall be
57 authorized as follows:

58 (A) Authorization for all ambulances shall be designated
59 by the Department of Health and Human Resources and the
60 sheriff of the county of residence.

61 (B) Authorization for all fire department vehicles shall be
62 designated by the fire chief and the State Fire Marshal's
63 office.

64 (C) Authorization for all hazardous material response
65 vehicles and industrial fire brigades shall be designated by
66 the chief of the fire department and the State Fire Marshal's
67 office.

68 (D) Authorization for all rescue squad vehicles not
69 operating out of a fire department shall be designated by the
70 squad chief, the sheriff of the county of residence and the
71 Department of Health and Human Resources.

72 (E) Authorization for school buses shall be designated as
73 set out in section twelve, article fourteen of this chapter.

74 (F) Authorization for firefighters to operate Class A
75 vehicles shall be designated by their fire chiefs and the State
76 Fire Marshal's office.

77 (G) Authorization for members of ambulance services or
78 any other emergency medical service personnel to operate
79 Class A vehicles shall be designated by their chief official,
80 the Department of Health and Human Resources and the
81 sheriff of the county of residence.

82 (H) Authorization for members of duly chartered rescue
83 squads not operating out of a fire department to operate Class
84 A vehicles shall be designated by their squad chiefs, the
85 sheriff of the county of residence and the Department of
86 Health and Human Resources.

87 (I) Authorization for out-of-state residents operating
88 Class A vehicles who are active members of a West Virginia
89 fire department, ambulance services or duly chartered rescue
90 squads shall be designated by their respective chiefs.

91 (J) Authorization for West Virginia Department of
92 Agriculture emergency response vehicles shall be designated
93 by the Commissioner of the Department of Agriculture.

94 (4) Yellow or amber flashing warning lights are restricted
95 to the following:

96 (A) All other emergency vehicles, including tow trucks
97 and wreckers, authorized by this chapter and by section
98 twenty-seven of this article;

99 (B) Postal service vehicles and rural mail carriers, as
100 authorized in section nineteen of this article;

101 (C) Rural newspaper delivery vehicles;

- 102 (D) Flag car services;
- 103 (E) Vehicles providing road service to disabled vehicles;
- 104 (F) Service vehicles of a public service corporation;
- 105 (G) Snow removal equipment;
- 106 (H) School buses; and
- 107 (I) Automotive fire apparatus owned by a municipality or
108 other political subdivision, by a volunteer or part-volunteer
109 fire company or department or by an industrial fire brigade.
- 110 (5) The use of yellow or amber flashing warning lights
111 shall be authorized as follows:
- 112 (A) Authorization for tow trucks, wreckers, rural
113 newspaper delivery vehicles, flag car services, vehicles
114 providing road service to disabled vehicles, service vehicles
115 of a public service corporation and postal service vehicles
116 shall be designated by the sheriff of the county of residence.
- 117 (B) Authorization for snow removal equipment shall be
118 designated by the Commissioner of the Division of
119 Highways.
- 120 (C) Authorization for school buses shall be designated as
121 set out in section twelve, article fourteen of this chapter.
- 122 (D) Authorization for automotive fire apparatus shall be
123 designated by the fire chief in conformity with the NFPA
124 1901 standard for automotive fire apparatus as published by
125 the National Fire Protection Association (NFPA) on the

126 eighteenth day of July, two thousand three, and adopted by
127 the State Fire Commission by legislative rule (87 CSR 1, *et*
128 *seq.*), except as follows:

129 (i) With the approval of the State Fire Marshal, used
130 automotive fire apparatus may be conformed to the NFPA
131 standard in effect on the date of its manufacture or conformed
132 to a later NFPA standard; and

133 (ii) Automotive fire apparatus may be equipped with
134 blinking or flashing headlamps.

135 (e) Notwithstanding the foregoing provisions of this
136 section, any vehicle belonging to a county board of
137 education, an organization receiving funding from the state
138 or Federal Transit Administration for the purpose of
139 providing general public transportation or hauling solid waste
140 may be equipped with a white flashing strobotron warning
141 light. This strobe light may be installed on the roof of a
142 school bus, a public transportation vehicle or a vehicle
143 hauling solid waste not to exceed one-third the body length
144 forward from the rear of the roof edge. The light shall have
145 a single clear lens emitting light three hundred sixty degrees
146 around its vertical axis and may not extend above the roof
147 more than six and one-half inches. A manual switch and a
148 pilot light must be included to indicate the light is in
149 operation.

150 (f) It shall be unlawful for flashing warning lights of an
151 unauthorized color to be installed or used on a vehicle other
152 than as specified in this section, except that a police vehicle
153 may be equipped with either or both blue or red warning
154 lights.

CHAPTER 254**(H.B. 3272 - By Delegates Webster and Amores)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated § 44B-1-104a, relating to total return unitrusts.

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 § 44B-1-104a, to read as follows:

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.**§44B-1-104a. Total return unitrust.**

1 (a) As used in this section:

2 (1) "Disinterested person" means a person who is not a
3 "related or subordinate party", as defined in I. R. C. §672(c)
4 *et seq.*, with respect to the person then acting as trustee of the
5 trust, and excludes the grantor of the trust and any interested
6 trustee.

7 (2) "Income Trust" means a trust, created by either an
8 inter vivos or a testamentary instrument, which directs or
9 permits the trustee to distribute the net income of the trust to

10 one or more persons, either in fixed proportions or in
11 amounts or proportions determined by the trustee, and
12 regardless of whether the trust directs or permits the trustee
13 to distribute the principal of the trust to one or more such
14 persons.

15 (3) "Interested distributee" means a person to whom
16 distributions of income or principal can currently be made
17 who has the power to remove the existing trustee and
18 designate as successor a person who may be a "related or
19 subordinate party" as defined in I. R. C. §672(c) with respect
20 to such distributee.

21 (4) "Interested trustee" means: (i) An individual trustee
22 to whom the net income or principal of the trust can currently
23 be distributed or would be distributed if the trust were then to
24 terminate and be distributed; (ii) any individual trustee who
25 may be removed and replaced by an interested distributee; or
26 (iii) an individual trustee whose legal obligation to support a
27 beneficiary may be satisfied by distributions of income and
28 principal of the trust.

29 (5) "Total return unitrust" means an income trust, which
30 has been converted under and meets the provisions of this
31 section.

32 (6) "Trustee" means all persons acting as trustee of the
33 trust, except where expressly noted otherwise, whether acting
34 in their discretion or at the direction of one or more persons
35 acting in a fiduciary capacity.

36 (7) "Grantor" means an individual who created an inter
37 vivos or a testamentary trust.

38 (8) "Unitrust amount" means an amount computed as a
39 percentage of the fair market value of the trust.

40 (b) A trustee, other than an interested trustee, or where
41 two or more persons are acting as trustee a majority of the
42 trustees who are not an interested trustee, may, in its sole
43 discretion and without judicial approval: (i) Convert an
44 income trust to a total return unitrust; (ii) reconvert a total
45 return unitrust to an income trust; or (iii) change the
46 percentage used to calculate the unitrust amount or the
47 method used to determine the fair market value of the trust if:

48 (1) The trustee adopts a written policy for the trust
49 providing: (i) In the case of a trust being administered as an
50 income trust, that future distributions from the trust will be
51 unitrust amounts rather than net income; (ii) in the case of a
52 trust being administered as a total return unitrust, that future
53 distributions from the trust will be net income rather than
54 unitrust amounts; or (iii) that the percentage used to calculate
55 the unitrust amount or the method used to determine the fair
56 market value of the trust will be changed as stated in the
57 policy; and

58 (2) The trustee sends written notice of its intention to take
59 such action, along with copies of such written policy and this
60 section, to: (i) The grantor of the trust, if living; (ii) all living
61 persons who are currently receiving or eligible to receive
62 distributions of income of the trust; (iii) all living persons
63 who would receive principal of the trust if the trust were to
64 terminate at the time of the giving of such notice, without
65 regard to the exercise of any power of appointment, or, if the
66 trust does not provide for its termination, all living persons
67 who would receive or be eligible to receive distributions of
68 income or principal of the trust if the persons identified in
69 clause (ii) of this subdivision (2) were deceased; and (iv) all
70 persons acting as advisor or protector of the trust; and at least
71 one person receiving notice under each of clauses (ii) and (iii)
72 of subdivision (2) is legally competent.

73 (A) Notice of the proposed action need not be given to
74 any person who consents in writing to the proposed action.
75 The consent may be executed at any time before or after the
76 proposed action is taken.

77 (B) The notice of the proposed action shall state that it is
78 given pursuant to this section and shall state all of the
79 following:

80 (i) The name and mailing address of the trustee;

81 (ii) The name and telephone number of a person who may
82 be contacted for additional information;

83 (iii) A description of the action proposed to be taken and
84 an explanation of the reasons for the action;

85 (iv) The time within which objections to the proposed
86 action can be made, which shall be at least thirty days from
87 the mailing of the notice of proposed action; and

88 (v) The date on or after which the proposed action may
89 be taken or is effective.

90 (C) A beneficiary may object to the proposed action by
91 mailing a written objection to the trustee at the address stated
92 in the notice of proposed action within the time period
93 specified in the notice of proposed action.

94 (D) A trustee is not liable to a beneficiary for an action
95 regarding a matter governed by this chapter if the trustee does
96 not receive a written objection to the proposed action from
97 the beneficiary within the applicable period and the other
98 requirements of this section are satisfied. If no beneficiary
99 entitled to notice objects under this section, the trustee is not

100 liable to any current or future beneficiary with respect to the
101 proposed action.

102 (c) If there is no trustee of the trust other than an
103 interested trustee, the interested trustee or, where two or more
104 persons are acting as trustee and are interested trustees, a
105 majority of such interested trustees may, in its sole discretion
106 and without judicial approval: (i) Convert an income trust to
107 a total return unitrust; (ii) reconvert a total return unitrust to
108 an income trust; or (iii) change the percentage used to
109 calculate the unitrust amount or the method used to determine
110 the fair market value of the trust if:

111 (1) The trustee adopts a written policy for the trust
112 providing: (i) In the case of a trust being administered as an
113 income trust, that future distributions from the trust will be
114 unitrust amounts rather than net income; (ii) in the case of a
115 trust being administered as a total return unitrust, that future
116 distributions from the trust will be net income rather than
117 unitrust amounts; or (iii) that the percentage used to calculate
118 the unitrust amount or the method used to determine the fair
119 market value of the trust will be changed as stated in the
120 policy;

121 (2) The trustee appoints a disinterested person who, in its
122 sole discretion but acting in a fiduciary capacity, determines
123 for the trustee: (i) The percentage to be used to calculate the
124 unitrust amount; (ii) the method to be used in determining the
125 fair market value of the trust; and (iii) which assets, if any,
126 are to be excluded in determining the unitrust amount;

127 (3) The trustee sends written notice of its intention to take
128 such action, along with copies of such written policy and this
129 section, to: (i) The grantor of the trust, if living; (ii) all living
130 persons who are currently receiving or eligible to receive
131 distributions of income of the trust; (iii) all living persons

132 who would receive principal of the trust if the trust were to
133 terminate at the time of the giving of such notice, without
134 regard to the exercise of any power of appointment, or, if the
135 trust does not provide for its termination, all living persons
136 who would receive or be eligible to receive distributions of
137 income or principal of the trust if the persons identified in
138 clause (ii) of subdivision (2) of this section were deceased;
139 and (iv) all persons acting as advisor or protector of the trust;
140 and at least one person receiving notice under each of clauses
141 (ii) and (iii) of subdivision (2) of this section is legally
142 competent.

143 (A) Notice of the proposed action need not be given to
144 any person who consents in writing to the proposed action.
145 The consent may be executed at any time before or after the
146 proposed action is taken.

147 (B) The notice of the proposed action shall state that it is
148 given pursuant to this section and shall state all of the
149 following:

150 (i) The name and mailing address of the trustee;

151 (ii) The name and telephone number of a person who may
152 be contacted for additional information;

153 (iii) A description of the action proposed to be taken and
154 an explanation of the reasons for the action;

155 (iv) The time within which objections to the proposed
156 action can be made, which shall be at least thirty days from
157 the mailing of the notice of proposed action; and

158 (v) The date on or after which the proposed action may
159 be taken or is effective.

160 (C) A beneficiary may object to the proposed action by
161 mailing a written objection to the trustee at the address stated
162 in the notice of proposed action within the time period
163 specified in the notice of proposed action.

164 (D) A trustee is not liable to a beneficiary for an action
165 regarding a matter governed by this chapter if the trustee does
166 not receive a written objection to the proposed action from
167 the beneficiary within the applicable period and the other
168 requirements of this section are satisfied. If no beneficiary
169 entitled to notice objects under this section, the trustee is not
170 liable to any current or future beneficiary with respect to the
171 proposed action.

172 (d) If any trustee desires to convert an income trust to a
173 total return unitrust, reconvert a total return unitrust to an
174 income trust or change the percentage used to calculate the
175 unitrust amount or the method used to determine the fair
176 market value of the trust but does not have the ability to or
177 elects not to do it under the provisions of subsections (b) or
178 (c) of this section, the trustee may petition the circuit court of
179 the county in which the trustee or beneficiary resides, or if
180 the trustee is a corporate trustee and there is no resident
181 beneficiary, the circuit court of the county where the trust
182 account is administered, for such order as the trustee deems
183 appropriate. In the event, however, there is only one trustee
184 of the trust and the trustee is an interested trustee or in the
185 event there are two or more trustees of the trust and a
186 majority of them are interested trustees, the court, in its own
187 discretion or on the petition of such trustee or trustees or any
188 person interested in the trust, may appoint a disinterested
189 person who, acting in a fiduciary capacity, shall present such
190 information to the court as shall be necessary to enable the
191 court to make its determinations hereunder.

192 (e) The fair market value of the trust shall be determined
193 at least annually, using a valuation date or dates or averages
194 of valuation dates as are deemed appropriate. Assets for
195 which a fair market value cannot be readily ascertained shall
196 be valued using the valuation methods as are deemed
197 reasonable and appropriate. Assets may be excluded from
198 valuation, provided all income received with respect to the
199 assets is distributed to the extent distributable in accordance
200 with the terms of the governing instrument.

201 (f) The percentage to be used in determining the unitrust
202 amount shall be a reasonable current return from the trust, in
203 any event no less than three percent nor more than five
204 percent, taking into account the intentions of the grantor of
205 the trust as expressed in the governing instrument, the needs
206 of the beneficiaries, general economic conditions, projected
207 current earnings and appreciation for the trust and projected
208 inflation and its impact on the trust.

209 (g) Following the conversion of an income trust to a total
210 return unitrust, the trustee:

211 (1) Shall consider the unitrust amount as paid from net
212 accounting income determined as if the trust were not a
213 unitrust;

214 (2) Shall then consider the unitrust amount as paid from
215 ordinary income not allocable to net accounting income;

216 (3) After calculating the trust's capital gain net income
217 described in I. R. C. §1222(9), 26 U. S. C. §1222(9), may
218 consider the unitrust amount as paid from net short-term
219 capital gain described in I. R. C. §1222(5), 26 U. S. C.
220 §1222(5) and then from net long-term capital gain described
221 in I. R. C. §1222(7), 26 U. S. C. §1222(7); and

222 (4) Shall then consider the unitrust amount as coming
223 from the principal of the trust.

224 (h) In administering a total return unitrust, the trustee
225 may, in its sole discretion but subject to the provisions of the
226 governing instrument, determine: (i) The effective date of the
227 conversion; (ii) the timing of distributions, including
228 provisions for prorating a distribution for a short year in
229 which a beneficiary's right to payments commences or
230 ceases; (iii) whether distributions are to be made in cash or in
231 kind or partly in cash and partly in kind; (iv) if the trust is
232 reconverted to an income trust, the effective date of such
233 reconversion; and (v) such other administrative matters as
234 may be necessary or appropriate to carry out the purposes of
235 this section.

236 (i) In the case of a trust for which a marital deduction has
237 been taken for federal tax purposes under I. R. C. §2056 or
238 §2523, 26 U. S. C. §2056 or §2523, the spouse otherwise
239 entitled to receive the net income of the trust shall have the
240 right, by written instrument delivered to the trustee, to
241 compel the reconversion during his or her lifetime of the trust
242 from a total return unitrust to an income trust,
243 notwithstanding anything in this section to the contrary.

244 (j) Conversion to a total return unitrust under the
245 provisions of this section shall not affect any other provision
246 of the governing instrument, if any, regarding distributions of
247 principal.

248 (k) This section shall be construed as pertaining to the
249 administration of a trust and shall be available to any trust
250 that is administered under West Virginia law unless:

251 (1) The governing instrument reflects an intention that the
252 current beneficiary or beneficiaries are to receive an amount
253 other than a reasonable current return from the trust;

254 (2) The trust is a trust described in I. R. C. §170(f)(2)(B)
255 or I. R. C. §664 (d); or

256 (3) The governing instrument expressly prohibits use of
257 this section by specific reference to this section or expressly
258 reflects the grantor's intent that net income not be calculated
259 as a unitrust amount.

260 (l) Any trustee or disinterested person who in good faith
261 takes or fails to take any action under this section shall not be
262 liable to any person affected by the action or inaction,
263 regardless of whether such person received written notice as
264 provided in this section and regardless of whether the person
265 was under a legal disability at the time of the delivery of the
266 notice. The person's exclusive remedy shall be to obtain an
267 order of the court directing the trustee to convert an income
268 trust to a total return unitrust, to reconvert from a total return
269 unitrust to an income trust or to change the percentage used
270 to calculate the unitrust amount.

271 (m) The following provisions shall apply to a trust that,
272 by its governing instrument, requires or permits the
273 distribution, at least annually, of a unitrust amount equal to
274 a fixed percentage of not less than three nor more than five
275 percent per year of the fair market value of the trust's assets,
276 valued at least annually, the trust to be referred to in this
277 section as an "express total return unitrust."

278 (1) The unitrust amount for an express total return
279 unitrust may be determined by reference to the fair market
280 value of the trust's assets in one year or more than one year.

281 (2) Distribution of a fixed percentage unitrust amount is
282 considered a distribution of all of the income of the express
283 total return unitrust.

284 (3) An express total return unitrust may or may not
285 provide a mechanism for changing the unitrust percentage
286 similar to the mechanism provided under this section, based
287 upon the factors noted therein, and may or may not provide
288 for a conversion from a unitrust to an income trust and/or a
289 reconversion of an income trust to a unitrust similar to the
290 mechanism under this section.

291 (4) If an express total return unitrust does not specifically
292 or by reference to this section deny a power to change the
293 unitrust percentage or to convert to an income trust, then the
294 trustee shall have such power.

295 (5) The distribution of a fixed percentage of not less than
296 three percent nor more than five percent reasonably
297 apportions the total return of an express total return unitrust.

298 (6) The trust instrument may grant discretion to the
299 trustee to adopt a consistent practice of treating capital gains
300 as part of the unitrust distribution, to the extent that the
301 unitrust distribution exceeds the net accounting income, or it
302 may specify the ordering of such classes of income.

303 (7) Unless the terms of the trust specifically provide
304 otherwise, a distribution of the unitrust amount from an
305 express total return unitrust shall be considered to have been
306 made from the following sources in order of priority:

307 (A) From net accounting income determined as if the
308 trust were not a unitrust;

309 (B) From ordinary income not allocable to net accounting
310 income;

311 (C) After calculating the trust's capital gain net income as
312 described in Internal Revenue Code 26 U. S. C. §1, et seq.
313 §1222(9), 26 U. S. C. §1222(9), from net realized short-term
314 capital gain as described in I. R. C. §1222(5), 26 U. S. C. §
315 1222(5) and then from net realized long-term capital gain
316 described in I. R. C. §1222(7), 26 U. S. C. §1222(7); and

317 (D) From the principal of the trust.

318 (8) The trust instrument may provide that:

319 (A) Assets for which a fair market value cannot be
320 readily ascertained shall be valued using such valuation
321 methods as are deemed reasonable and appropriate; and

322 (B) Assets used by a trust beneficiary, such as a residence
323 property or tangible personal property, may be excluded from
324 the net fair market value for computing the unitrust amount.



CHAPTER 255

**(S.B. 387 - By Senators Prezioso, Oliverio, Minard, Stollings,
Kessler, Unger and Hunter)**

[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §24F-1-3a,
relating to the opportunity to install certain deceased
veterans' grave markers.

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 §24F-1-3a, to read as follows:

ARTICLE 1. VETERANS' GRAVE MARKERS.

§24F-1-3a. Setting of Department of Veterans' Affairs' grave markers by cemeteries and companies that set and install memorial monument markers.

1 All cemeteries, cemetery associations, cemetery
2 companies and perpetual care cemetery companies,
3 irrespective of how each may be defined in articles five, five-
4 a and five-b, chapter thirty-five of this code, and companies
5 that set and install memorial monument markers shall not
6 deny a person or entity the opportunity for installation and
7 maintenance of United States Department of Veterans'
8 Affairs' grave markers at the graves of deceased United
9 States armed forces veterans for the total charges authorized
10 by section two of this article.

CHAPTER 256

**(Com. Sub. for S.B. 518 - By Senators Prezioso, Hunter,
Caruth, Hall, Plymale, Unger and Foster)**

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections,

Ch. 256] WEST VIRGINIA WORKS PROGRAM

designated §9-9-21 and §9-9-22, all relating to bringing the West Virginia Works Program into compliance with federal law as required by the Deficit Reduction Act; providing for state funding of two- and four-year post-secondary education for West Virginia Works eligibility; and providing for state funding for two-parent families to remain eligible for West Virginia Works.

Be it enacted by the Legislature of West Virginia:

That §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 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 §9-9-21 and §9-9-22, all to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

- §9-9-3. Definitions.
- §9-9-6. Program participation.
- §9-9-7. Work requirements.
- §9-9-8. Exemptions.
- §9-9-9. Personal responsibility contract.
- §9-9-21. West Virginia Works Separate State College Program; eligibility; special revenue account.
- §9-9-22. West Virginia Works Separate State Two-Parent Families Program.

§9-9-3. Definitions.

1 In addition to the rules for the construction of statutes in
2 section ten, article two, chapter two of this code and the
3 words and terms defined in section two, article one of this
4 chapter, unless a different meaning appears from the context:

5 (a) "At-risk family" means a group of persons living in
6 the same household, living below the federally designated
7 poverty level, lacking the resources to become self-
8 supporting and consisting of a dependent minor child or

9 children living with a parent, stepparent or caretaker-relative;
10 an "at-risk family" may include an unmarried minor parent
11 and his or her dependent child or children who live in an
12 adult-supervised setting;

13 (b) "Beneficiary" or "participant" means any parent, work
14 eligible individuals or caretaker-relative in an at-risk family
15 who receives cash assistance for himself or herself and
16 family members;

17 (c) "Caretaker-relative" means grandparents or other
18 nonparental caretakers not included in the assistance group or
19 receiving cash assistance directly;

20 (d) "Cash assistance" means temporary assistance for
21 needy families;

22 (e) "Challenge" means any fact, circumstance or situation
23 that prevents a person from becoming self-sufficient or from
24 seeking, obtaining or maintaining employment of any kind,
25 including physical or mental disabilities, lack of education,
26 testing, training, counseling, child care arrangements,
27 transportation, medical treatment or substance abuse
28 treatment;

29 (f) "Community or personal development" means
30 activities designed or intended to eliminate challenges to
31 participation in self-sufficiency activities. These activities are
32 to provide community benefit and enhance personal
33 responsibility, including, but not limited to, classes or
34 counseling for learning life skills or parenting, dependent
35 care, job readiness, volunteer work, participation in sheltered
36 workshops or substance abuse treatment;

37 (g) "Department" means the state Department of Health
38 and Human Resources;

39 (h) "Education and training" means hours spent regularly
40 attending and preparing for classes in any approved course of
41 schooling or training;

42 (i) "Family assessments" means evaluation of the
43 following: Work skills, prior work experience, employability,
44 education and challenges to becoming self-sufficient such as
45 mental health and physical health issues along with lack of
46 transportation and child care;

47 (j) "Income" means money received by any member of an
48 at-risk family which can be used at the discretion of the
49 household to meet its basic needs: *Provided*, That income
50 does not include:

51 (1) Supplemental security income paid to any member or
52 members of the at-risk family;

53 (2) Earnings of minor children;

54 (3) Payments received from earned income tax credit or
55 tax refunds;

56 (4) Earnings deposited in an individual development
57 account approved by the department;

58 (5) Any educational grant or scholarship income
59 regardless of source; or

60 (6) Any moneys specifically excluded from countable
61 income by federal law;

62 (k) "Minor child head of household" means an
63 emancipated minor under the age of eighteen years;

64 (l) "Nonrecipient parent" means an adult or adults
65 excluded or disqualified by federal or state law from
66 receiving cash assistance;

67 (m) "Personal responsibility contract" means a written
68 agreement entered into by the department and a beneficiary
69 for purposes of participation in the West Virginia Works
70 Program;

71 (n) "Secretary" means the secretary of the state
72 Department of Health and Human Resources;

73 (o) "Subsidized employment" means employment with
74 earnings provided by an employer who receives a subsidy
75 from the department for the creation and maintenance of the
76 employment position;

77 (p) "Support services" includes, but is not limited to, the
78 following services: Child care; Medicaid; transportation
79 assistance; information and referral; resource development
80 services which includes assisting families to receive child
81 support and supplemental security income; family support
82 services which includes parenting, budgeting and family
83 planning; relocation assistance; and mentoring services;

84 (q) "Temporary assistance to needy families" is the
85 federal program funded under Part A, Title IV of the Social
86 Security Act, codified at 42 U. S. C. §601, *et. seq.*;

87 (r) "Transitional assistance" may include medical
88 assistance, food stamp assistance, child care and supportive
89 services as defined by the secretary and as funding permits;

90 (s) "Two-parent family" means two parents with a
91 common child residing in the same household and included
92 in a common West Virginia Works grant payment or, two
93 parents with a common child residing in the same home and
94 one or both of the parents are "work eligible individuals", as
95 that term is defined in this section, but are excluded from the
96 West Virginia Works payments unless the exclusion is due to
97 an exemption as provided in section eight of this article.

98 (t) "Unsubsidized employment" means employment with
99 earnings provided by an employer who does not receive a
100 subsidy from the department for the creation and
101 maintenance of the employment position;

102 (u) "Vocational educational training" means organized
103 educational programs, not to exceed twelve months for any
104 individual, that are directly related to the preparation of
105 individuals for employment in current or emerging
106 occupations requiring training other than a baccalaureate or
107 advance degree;

108 (v) "Work" means unsubsidized employment, subsidized
109 employment, work experience, community or personal
110 development and education and training;

111 (w) "Work eligible individual" means an adult or minor
112 child head-of-household receiving assistance under the West
113 Virginia Works Program or a nonrecipient parent living with
114 a child receiving the assistance; and

115 (x) "Work experience" means a publicly assisted work
116 activity, including work associated with the refurbishing of
117 publicly assisted housing, performed in return for program
118 benefits that provide general skills, training, knowledge and
119 work habits necessary to obtain employment. This activity
120 must be supervised daily and on an ongoing basis by an
121 employer, work site sponsor or other responsible party.

§9-9-6. Program participation.

1 (a) Unless otherwise noted in this article, all adult
2 beneficiaries of cash assistance and work eligible individuals
3 shall participate in the West Virginia Works Program in
4 accordance with the provisions of this article. The level of
5 participation, services to be delivered and work requirements
6 shall be defined through legislative rules established by the
7 secretary.

8 (b) Any individual exempt under the provisions of section
9 eight of this article may participate in the activities and
10 programs offered through the West Virginia Works Program.

11 (c) Support services other than cash assistance through
12 the West Virginia Works Program may be provided to at-risk
13 families to assist in meeting the work requirements or to
14 eliminate the need for cash assistance.

15 (d) Cash assistance through the West Virginia Works
16 Program may be provided to an at-risk family if the
17 combined family income, as defined in section three of this
18 article, is below the income test levels established by the
19 department, subject to the following:

20 (1) Any adult member of an at-risk family who receives
21 supplemental security income shall be excluded from the
22 benefit group;

23 (2) Within the limits of funds appropriated therefor, an at-
24 risk family that includes a married man and woman and
25 dependent children of either one or both may receive an
26 additional cash assistance benefit in an amount of one
27 hundred dollars or less; and

28 (3) An at-risk family shall receive an additional cash
29 assistance benefit in the amount of twenty-five dollars
30 regardless of the amount of child support collected in a
31 month on behalf of a child or children of the at-risk family,
32 as allowed by federal law.

§9-9-7. Work requirements.

1 (a) Unless otherwise exempted by the provisions of
2 section eight of this article, the West Virginia Works
3 Program shall require that anyone who possesses a high
4 school diploma, or its equivalent, or anyone who is of the age
5 of twenty years or more, to work or attend an educational or
6 training program for at least the minimum number of hours
7 per week required by federal law under the work participation
8 rate requirements for all families in order to receive any form
9 of cash assistance. Participation in any education or training

10 activity, as defined in section three of this article, shall be
11 counted toward satisfaction of the work requirement imposed
12 by this section to the extent permissible under federal law and
13 regulation: *Provided*, That the participant demonstrates
14 adequate progress toward completion of the program. In
15 accordance with federal law or regulation, the work,
16 education and training requirements of this section are
17 waived for any qualifying participant with a child under six
18 years of age if the participant is unable to obtain appropriate
19 and available child care services.

20 (b) The department and representatives of the Higher
21 Education Policy Commission and the West Virginia Council
22 for Community and Technical College Education shall
23 develop and implement a plan to use and expand the
24 programs available at the state's community and technical
25 colleges, colleges and universities to assist beneficiaries or
26 participants who are enrolled or wish to become enrolled in
27 vocational-educational training not to exceed twelve months
28 with respect to any individual to meet the work requirements
29 of this section. Vocational-educational training shall be
30 supervised daily and on an ongoing basis.

§9-9-8. Exemptions.

1 The secretary shall establish by rule categories of persons
2 exempt, but the exemption applies only to the work
3 requirements of the program: *Provided*, That a person who
4 is exempt from the work requirements may nevertheless
5 participate voluntarily in work activities. The categories of
6 exemptions are limited to the following:

- 7 (1) Undocumented aliens and aliens under the five-year
8 ban;
- 9 (2) Parents, or at state option on a case-by-case basis,
10 anyone receiving supplemental security income;
- 11 (3) A parent who is providing medically necessary care
12 for a disabled family member who resides in the home and is
13 not a full-time student;
- 14 (4) Minor parents who are not head of household
15 (spouses of the head of household); and
- 16 (5) Grandparents and other nonparental caretakers.

§9-9-9. Personal responsibility contract.

- 1 (a) (1) Every eligible adult beneficiary and work eligible
2 individual shall participate in a program orientation, family
3 assessments and in the development, and subsequent
4 revisions, of a personal responsibility contract. The contract
5 shall be defined based on the program time limits, support
6 services available, work requirements and family
7 assessments.
- 8 (2) The participant's contract shall include the following
9 requirements:
 - 10 (A) That the participant develop and maintain, with the
11 appropriate health care provider, a schedule of preventive
12 care for his or her dependent child or children, including
13 routine examinations and immunizations;

14 (B) Assurance of school attendance for school-age
15 children under his or her care;

16 (C) Assurance of properly supervised child care,
17 including after-school care;

18 (D) Establishment of paternity or active pursuit of child
19 support, or both, if applicable and if considered necessary;
20 and

21 (E) Nutrition or other counseling, parenting or family-
22 planning classes.

23 (3) If the participant is a teenage parent, he or she may
24 work, but the contract shall include the requirements that the
25 participant:

26 (A) Remain in an educational activity to complete high
27 school, obtain a general equivalency diploma or obtain
28 vocational training and make satisfactory scholastic progress;

29 (B) Attend parenting classes or participate in a
30 mentorship program, or both, if appropriate; and

31 (C) Live at home with his or her parent or guardian or in
32 some other adult-supervised arrangements if he or she is an
33 unemancipated minor.

34 (4) If the participant is under the age of twenty years and
35 does not have a high school diploma or its equivalent, the
36 contract shall include requirements to participate in
37 mandatory education or training which, if the participant is

38 unemployed, may include a return to high school, with
39 satisfactory scholastic progress required.

40 (b) In order to receive cash assistance, the participant
41 shall enter into a personal responsibility contract. If the
42 participant refuses to sign the personal responsibility
43 contract, the participant and family members are ineligible to
44 receive cash assistance: *Provided*, That a participant who
45 alleges that the terms of a personal responsibility contract are
46 inappropriate based on his or her individual circumstances
47 may request and shall be provided a fair and impartial
48 hearing in accordance with administrative procedures
49 established by the department and due process of law. A
50 participant who signs a personal responsibility contract or
51 complies with a personal responsibility contract does not
52 waive his or her right to request and receive a hearing under
53 this subsection.

54 (c) Personal responsibility contracts shall be drafted by
55 the department on a case-by-case basis; take into
56 consideration the individual circumstances of each
57 beneficiary; reviewed and reevaluated periodically, but not
58 less than on an annual basis; and, in the discretion of the
59 department, amended on a periodic basis.

**§9-9-21. West Virginia Works Separate State College Program;
eligibility; special revenue account.**

1 (a) There is established the West Virginia Works
2 Separate State College Program. The program shall provide
3 funding for participants who are enrolled in post-secondary
4 courses leading to a two- or four-year degree. There is
5 created within the State Treasury a special revenue account

6 to be known as the West Virginia Works Separate State
7 College Program Fund. Expenditures from the fund shall be
8 for the purposes set forth in this section and are not
9 authorized from collections but are to be made only in
10 accordance with appropriations by the Legislature and in
11 accordance with the provisions of article three, chapter
12 twelve of this code and upon fulfillment of the provisions of
13 article two, chapter eleven-b of this code. Necessary
14 expenditures include wage reimbursements to participating
15 employers, temporary assistance to needy families, payments
16 for support services, employment-related child care
17 payments, transportation expenses and administrative costs
18 directly associated with the operation of the program.

19 (b) All eligible adults attending post-secondary courses
20 leading to a two- or four-year degree and who are not
21 participating in vocational education training, as that term is
22 defined in this article, shall be enrolled in the West Virginia
23 Works Separate State College Program. Participants in the
24 program shall not be required to engage in more than ten
25 hours per week of federally defined work activities. The
26 work, education and training requirements of this article are
27 waived for any qualifying participant with a child under six
28 years of age if the participant is unable to obtain appropriate
29 and available child care services. All other requirements of
30 West Virginia Works apply to program administration for
31 adults enrolled in the program.

32 (c) The Department of Health and Human Resources
33 shall work with the Higher Education Policy Commission, as
34 set forth in article one-b, chapter eighteen-b of this code, and
35 the Council for Community and Technical College
36 Education, as set forth in article two-b, chapter eighteen-b of
37 this code, to develop and implement a plan to use and expend
38 funds for the programs available at the state's community and

39 technical colleges and colleges and universities to assist
40 participants who are enrolled, or wish to become enrolled, in
41 two- and four-year degree programs of post-secondary
42 education to meet the work requirements of this article.

§9-9-22. West Virginia Works Separate State Two-Parent Families Program.

1 (a) There is established the West Virginia Works
2 Separate State Two-Parent Families Program. The program
3 shall provide funding for participants who are a two-parent
4 family as that term is defined in this article. There is created
5 within the State Treasury a special revenue account to be
6 known as the West Virginia Works Separate State Two-
7 Parent Program Fund. Expenditures from the fund shall be
8 for the purposes set forth in this section and are not
9 authorized from collections but are to be made only in
10 accordance with appropriations by the Legislature and in
11 accordance with the provisions of article three, chapter
12 twelve of this code and upon fulfillment of the provisions of
13 article two, chapter eleven-b of this code. Necessary
14 expenditures include wage reimbursements to participating
15 employers, temporary assistance to needy families, payments
16 for support services, employment-related child care
17 payments, transportation expenses and administrative costs
18 directly associated with the operation of the program.

19 (b) All eligible two parent families, as that term is
20 defined in this article, shall enroll in the West Virginia Works
21 Separate State Two-Parent Families Program. All
22 requirements of West Virginia Works shall apply to program
23 administration for two-parent families enrolled in the
24 program.

CHAPTER 257**(Com. Sub. for S.B. 595 - By Senator Minard)**

[Passed March 10, 2007; in effect from passage.]

[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §23-1-1 and §23-1-1f of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2-9 of said code; to amend and reenact §23-2C-3, §23-2C-8, §23-2C-15, §23-2C-18 and §23-2C-19 of said code; to amend said code by adding thereto a new section, designated §23-2C-18a; and to amend and reenact §23-5-9 of said code, all relating to the transition to a private workers' compensation insurance system; expressing legislative intent; permitting the Insurance Commissioner to hire additional exempt employees; exempting the Insurance Commissioner from purchasing rules in some circumstances; changing requirements for approval of self-insured status and for reports from self-insured employers; making various technical changes necessitated by the transition to a private workers' compensation insurance system; reducing frequency of certain payments from self-insured employers and private carriers; authorizing the Insurance Commissioner to assess self-insured employers for certain funds; making certain assessments against self-insured employers discretionary with the Insurance Commissioner; clarifying how disputes related to claims against the Uninsured Employer Fund are resolved; increasing time that employers must report certain changes in coverage to the Insurance Commissioner; authorizing the Insurance Commissioner to promulgate exempt legislative rules; revising rate-making process; defining terms; providing for the designation of a single rating organization; deleting

provisions regarding private carrier premium collection; requiring agencies to terminate or revoke licenses, permits or certifications of employers in default to the state; clarifying persons subject to certain liens; removing requirement that the record of proceedings before the office of judges include certain documents; requiring the implementation of any benefit or award granted by a decision of the Office of Judges, unless stayed by explicit order; placing limitations on scope of permitted stay; and regarding the handling of resulting overpayments.

Be it enacted by the Legislature of West Virginia:

That §23-1-1 and §23-1-1f of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §23-2-9 of said code be amended and reenacted; that §23-2C-3, §23-2C-8, §23-2C-15, §23-2C-18 and §23-2C-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-2C-18a; and that §23-5-9 of said code be amended and reenacted, all to read as follows:

Article

1. **General Administration Provisions.**
2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
- 2C. **Employers' Mutual Insurance Company.**
5. **Review.**

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' Compensation Commission created; findings.

§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.

§23-1-1. Workers' Compensation Commission created; findings.

- 1 (a) The Legislature finds that a deficit exists in the
- 2 Workers' Compensation Fund of such critical proportions
- 3 that it constitutes an imminent threat to the immediate and

4 long-term solvency of the fund and constitutes a substantial
5 deterrent to the economic development of this state. The
6 Legislature further finds that addressing the workers'
7 compensation crisis requires the efforts of all persons and
8 entities involved and resolution of the crisis is in the best
9 interest of the public. Modification to the rate system,
10 alteration of the benefit structure, improvement of current
11 management practices and changes in perception must be
12 merged into a unified effort to make the workers'
13 compensation system viable and solvent through the
14 mutualization of the system and the opening of the market to
15 private workers' compensation insurance carriers. It was and
16 remains the intent of the Legislature that the amendments to
17 this chapter enacted in the year two thousand three be applied
18 from the date upon which the enactment was made effective
19 by the Legislature. The Legislature finds that an emergency
20 exists as a result of the combined effect of this deficit, other
21 state budgetary deficits and liabilities and other grave social
22 and economic circumstances currently confronting the state
23 and that unless the changes provided by the enactment of the
24 amendments to this chapter, as well as other legislation
25 designed to address the problem are made effective
26 immediately, the fiscal stability of this state will suffer
27 irreparable harm. Accordingly, the Legislature finds that the
28 need of the citizens of this state for the protection of the State
29 Treasury and the solvency of the Workers' Compensation
30 Funds requires the limitations on any expectations that may
31 have arisen from prior enactments of this chapter.

32 (b) It is the further intent of the Legislature that this
33 chapter be interpreted so as to assure the quick and efficient
34 delivery of indemnity and medical benefits to injured workers
35 at a reasonable cost to the employers who are subject to the
36 provisions of this chapter. It is the specific intent of the
37 Legislature that workers' compensation cases shall be decided

38 on their merits and that a rule of "liberal construction" based
39 on any "remedial" basis of workers' compensation legislation
40 shall not affect the weighing of evidence in resolving such
41 cases. The workers' compensation system in this state is
42 based on a mutual renunciation of common law rights and
43 defenses by employers and employees alike. Employees'
44 rights to sue for damages over and above medical and health
45 care benefits and wage loss benefits are to a certain degree
46 limited by the provisions of this chapter and employers' rights
47 to raise common law defenses, such as lack of negligence,
48 contributory negligence on the part of the employee, and
49 others, are curtailed as well. Accordingly, the Legislature
50 hereby declares that any remedial component of the workers'
51 compensation laws is not to cause the workers' compensation
52 laws to receive liberal construction that alters in any way the
53 proper weighing of evidence as required by section one-g,
54 article four of this chapter.

55 (c) The "Workers' Compensation Division of the Bureau
56 of Employment Programs" is, on or after the first day of
57 October, two thousand three, reestablished, reconstituted and
58 continued as the Workers' Compensation Commission, an
59 agency of the state. The purpose of the commission is to
60 ensure the fair, efficient and financially stable administration
61 of the workers' compensation system of the State of West
62 Virginia. The powers and duties heretofore imposed upon
63 the Workers' Compensation Division and the Commissioner
64 of the Bureau of Employment Programs as they relate to
65 workers' compensation are hereby transferred to and imposed
66 upon the Workers' Compensation Commission and its
67 executive director in the manner prescribed by this chapter.

68 (d) It is the intent of the Legislature that the transfer of
69 the administration of the workers' compensation system of
70 this state from the Workers' Compensation Division under
71 the Commissioner of the Bureau of Employment Programs to
72 the Workers' Compensation Commission under its executive
73 director and the workers' compensation board of managers is
74 to become effective the first day of October, two thousand
75 three. Any provisions of the enactment of Enrolled Senate
76 Bill No. 2013 in the year two thousand three relating to the
77 transfer of the administration of the workers' compensation
78 system of this state that conflict with the intent of the
79 Legislature as described in this subsection shall, to that
80 extent, become operative on the first day of October, two
81 thousand three, and until that date, prior enactments of this
82 code in effect on the effective date of Enrolled Senate Bill
83 No. 2013 relating to the administration of the workers'
84 compensation system of this state, whether amended and
85 reenacted or repealed by the passage of Enrolled Senate Bill
86 No. 2013, have full force and effect. All provisions of the
87 enactment of Enrolled Senate Bill No. 2013 in the year two
88 thousand three relating to matters other than the transfer of
89 the administration of the workers' compensation system of
90 this state shall become operative on the effective date of that
91 enactment, unless otherwise specifically provided in that
92 enactment.

93 (e) It is the intent of the Legislature, expressed through its
94 enactment of legislation, to transfer the regulation of the
95 workers' compensation system to the Insurance
96 Commissioner. By proclamation of the Governor, as
97 authorized by article two-c of this chapter, the Workers'
98 Compensation Commission was terminated on the thirty-first
99 day of December, 2005. To further the transition from the

100 state-operated workers' compensation system to a system of
101 private insurance, the duties and responsibilities of the
102 Workers' Compensation Commission and the board of
103 managers, including, but not limited to, ratemaking and
104 adjudication of claims now reside with the Insurance
105 Commissioner.

§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.

1 Notwithstanding any other provision of this code, upon
2 termination of the commission, the Insurance Commissioner
3 may:

4 (1) Exempt no more than twenty positions of the offices
5 of the Insurance Commissioner from the classified service of
6 the state, the employees of which positions shall serve at the
7 will and pleasure of the commissioner: *Provided*, That such
8 exempt positions shall be in addition to those positions in
9 classified-exempt service under the classification plan
10 adopted by the Division of Personnel. The Insurance
11 Commissioner shall report all exemptions made under this
12 section to the Director of the Division of Personnel no later
13 than the first day of July, two thousand seven, and thereafter
14 as the commissioner determines to be necessary; and

15 (2) Expend such sums for professional services as he or
16 she determines are necessary to perform those duties
17 transferred to the Insurance Commissioner upon the
18 termination of the commission. The provisions of article
19 three, chapter five-a of this code relating to the Purchasing
20 Division of the Department of Administration shall not apply

21 to these contracts, and the Insurance Commissioner shall
22 award the contract or contracts on a competitive basis.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT
TO CHAPTER; EXTRATERRITORIAL
COVERAGE.**

**§23-2-9. Election of employer or employers' group to be
self-insured and to provide own system of
compensation; exceptions; self administration;
rules; penalties; regulation of self-insurers.**

1 (a) Notwithstanding any provisions of this chapter to the
2 contrary, the following types of employers or employers'
3 groups may apply for permission to self-insure their workers'
4 compensation risk.

5 (1) The types of employers are:

6 (A) Any employer who is of sufficient capability and
7 financial responsibility to ensure the payment to injured
8 employees and the dependents of fatally injured employees
9 of benefits provided for in this chapter at least equal in value
10 to the compensation provided for in this chapter;

11 (B) Any employer or group of employers as provided in
12 paragraph (A) of this subdivision of such capability and
13 financial responsibility that maintains its own benefit fund or
14 system of compensation to which its employees are not
15 required or permitted to contribute and whose benefits are at
16 least equal in value to those provided in this chapter; or

17 (C) Any employer who is signatory to a collective
18 bargaining agreement that allows for participation in a group
19 workers' compensation insurance program may join with any
20 other employer or employers that are signatory to a collective
21 bargaining agreement or agreements that allow for
22 participation in a group workers' compensation program and
23 jointly apply to the Insurance Commissioner to collectively
24 self-insure their obligations under this chapter. The
25 employers must collectively meet the conditions set forth in
26 paragraph (A) or (B) of this subdivision. There shall be joint
27 and several liability for all employers who choose to jointly
28 self-insure under the provisions of this article.

29 (2) In order to be approved for self-insurance status, the
30 employer shall:

31 (A) Submit all information requested by the Insurance
32 Commissioner;

33 (B) Provide security or bond, in an amount and form
34 determined by the Insurance Commissioner, which shall
35 balance the employer's financial condition based upon an
36 analysis of its audited financial statements and the full
37 accrued value of current liability for future claim payments
38 based upon generally accepted actuarial and accounting
39 principles of the employer's existing and expected liability;

40 (C) Meet the financial responsibility requirements set
41 forth in rules promulgated by the board of managers or
42 industrial council;

43 (D) Obtain and maintain a policy of excess insurance if
44 required to do so by the Insurance Commissioner; and

45 (E) Have an effective health and safety program at its
46 workplaces.

47 (3) Upon a finding that the employer has met all of the
48 requirements of this section and any rules promulgated
49 thereunder, the employer may be permitted self-insurance
50 status. An annual review of each self-insurer's continuing
51 ability to meet its obligations and the requirements of this
52 section shall be made by the Insurance Commissioner. At the
53 time of such review, the Insurance Commissioner may
54 require that the self-insured employer post a bond or security
55 or obtain and maintain an excess insurance policy. This
56 review shall also include a recalculation of the amount of any
57 security, bond or policy of excess insurance previously
58 required to be posted or obtained under any provision of this
59 chapter or any rules promulgated thereunder. Failure to
60 provide the required amount or form of security or bond or to
61 obtain or maintain the required excess insurance policy may
62 cause the employer's self-insurance status to be terminated by
63 the Insurance Commissioner.

64 (4) Whenever a self-insured employer furnishes security
65 or bond, including replacement and amended bonds and other
66 securities, as surety to ensure the employer's or guarantor's
67 payment of all obligations under this chapter for which the
68 security or bond was furnished, the security or bond shall be
69 in the most current form or forms approved and authorized by
70 the commission or Insurance Commissioner for use by the
71 employer or its guarantors, surety companies, banks,
72 financial institutions or others in its behalf for that purpose.

73 (b) (1) Notwithstanding any provision in this chapter to
74 the contrary, self-insured employers shall, effective the first

75 day of July, two thousand four, administer their own claims.
76 The Insurance Commissioner shall, pursuant to rules
77 promulgated by the board of managers or industrial council,
78 regulate the administration of claims by employers granted
79 permission to self-insure their obligations under this chapter.
80 A self-insured employer shall comply with rules promulgated
81 by the board of managers or industrial council governing the
82 self-administration of its claims.

83 (2) An employer or employers' group that self-insures its
84 risk and self-administers its claims shall exercise all authority
85 and responsibility granted to the Insurance Commissioner or
86 private carriers in this chapter and provide notices of action
87 taken to effect the purposes of this chapter to provide benefits
88 to persons who have suffered injuries or diseases covered by
89 this chapter. An employer or employers' group granted
90 permission to self-insure and self-administer its obligations
91 under this chapter shall at all times be bound and shall
92 comply fully with all of the provisions of this chapter.
93 Furthermore, all of the provisions contained in article four of
94 this chapter pertaining to disability and death benefits are
95 binding on and shall be strictly adhered to by the self-insured
96 employer in its administration of claims presented by
97 employees of the self-insured employer. Violations of the
98 provisions of this chapter and such rules relating to this
99 chapter as may be approved by the board of managers or
100 industrial council may constitute sufficient grounds for the
101 termination of the authority for any employer to self-insure
102 its obligations under this chapter.

103 (c) Each self-insured employer shall, on or before the last
104 day of the first month of each quarter or other assigned
105 reporting period, file with the Insurance Commissioner a

106 certified statement of the total gross wages and earnings of all
107 of the employer's employees subject to this chapter for the
108 preceding quarter or other assigned reporting period.

109 (d) (1) If a self-insured employer defaults in the payment
110 of any portion of surcharges or assessments required under
111 this chapter or rules promulgated thereunder, or in any
112 payment required to be made as benefits provided by this
113 chapter to the employer's injured employees or dependants of
114 fatally injured employees, the Insurance Commissioner shall,
115 in an appropriate case, determine the full accrued value based
116 upon generally accepted actuarial and accounting principles
117 of the employer's liability, including the costs of all awarded
118 claims and of all incurred but not reported claims. The
119 amount determined may, in an appropriate case, be assessed
120 against the employer. The Insurance Commissioner may
121 demand and collect the present value of the defaulted
122 liability. Interest shall accrue upon the demanded amount as
123 provided in section thirteen of this article until the liability is
124 fully paid. Payment of all amounts then due to the Insurance
125 Commissioner and to the employer's employees is a
126 sufficient basis for reinstating the employer to good standing
127 with Insurance Commissioner and removing the employer
128 from default status.

129 (2) The assessments and surcharges required to be paid
130 by self-insured employers pursuant to the provisions of this
131 chapter and the rules promulgated thereunder are special
132 revenue taxes under and according to the provisions of state
133 workers' compensation law and are considered to be tax
134 claims, as priority claims or administrative expense claims
135 according to those provisions under the law provided in the
136 United States bankruptcy code, Title 11 of the United States

137 Code. In addition, as the same was previously intended by
138 the prior provisions of this section, this amendment and
139 reenactment is for the purpose of clarification of the taxing
140 authority of the Insurance Commissioner.

141 (e) The commission may create, implement, establish and
142 administer a perpetual self-insurance security risk pool of
143 funds, sureties, securities, insurance provided by private
144 insurance carriers or other states' programs, and other
145 property, of both real and personal properties, to secure the
146 payment of obligations of self-insured employers. If a pool
147 is created, the board of managers shall adopt rules for the
148 organizational plan, participation, contributions and other
149 payments which may be required of self-insured employers
150 under this section. The board of managers may adopt a rule
151 authorizing the commission to assess each self-insured
152 employer in proportion according to each employer's portion
153 of the unsecured obligation and liability or to assess
154 according to some other method provided by rule which shall
155 properly create and fund the risk pool to serve the needs of
156 employees, employers and the Workers' Compensation Fund
157 by providing adequate security. The board of managers
158 establishing a security risk pool may authorize the executive
159 director to use any assessments, premium taxes and revenues
160 and appropriations as may be made available to the
161 commission. Effective upon termination of the commission,
162 all statutory and regulatory authority provided to the
163 commission and board of managers over pools created
164 pursuant to this section, as such pools are defined in section
165 two, article two-c of this chapter, shall transfer to the
166 Insurance Commissioner.

167 (f) Any self-insured employer which has had a period of
168 inactivity due to the nonemployment of employees which
169 results in its reporting of no wages on reports to the Insurance
170 Commissioner for a period of four or more consecutive
171 quarters may have its status inactivated and shall apply for
172 reactivation to status as a self-insured employer prior to its
173 reemployment of employees. Despite the inactivation, the
174 self-insured employer shall continue to make payments on all
175 awards for which it is responsible. Upon application for
176 reactivation of its status as an operating self-insured
177 employer, the employer shall document that it meets the
178 eligibility requirements needed to maintain self-insured
179 employer status under this section and any rules adopted to
180 implement it. If the employer is unable to requalify and
181 obtain approval for reactivation, the employer shall, effective
182 with the date of employment of any employee, purchase
183 workers' compensation insurance as provided in article two-c
184 of this chapter, but shall continue to be a self-insurer as to the
185 prior period of active status and to furnish security or bond
186 and meet its prior self-insurance obligations.

187 (g) In any case under the provisions of this section that
188 requires the payment of compensation or benefits by an
189 employer in periodical payments and the nature of the case
190 makes it possible to compute the present value of all future
191 payments, the commission may, in its discretion, at any time
192 compute and permit to be paid into the Workers'
193 Compensation Fund an amount equal to the present value of
194 all unpaid future payments on the award or awards for which
195 liability exists in trust. Thereafter, the employer shall be
196 discharged from any further portion of premium tax liability
197 upon the award or awards and payment of the award or
198 awards shall be assumed by the commission. Upon

199 termination of the commission, the process herein described
200 will no longer be permitted. Self-insured employers may
201 thereafter withdraw from self-insured status and purchase
202 workers' compensation insurance as provided in article two-c
203 of this chapter, but said self-insured employers shall remain
204 liable for their self-insured employer claims liabilities for
205 each claim with a date of injury or last exposure prior to the
206 effective date of insurance coverage.

207 (h) Any employer subject to this chapter, who elects to
208 carry the employer's own risk by being a self-insured
209 employer and who has complied with the requirements of this
210 section and of any applicable rules, shall not be liable to
211 respond in damages at common law or by statute for the
212 injury or death of any employee, however occurring, after the
213 election's approval and during the period that the employer is
214 allowed to carry the employer's own risk.

215 (i) An employer may not hire any person or group to self-
216 administer claims under this chapter as a third-party
217 administrator unless the person or group has been determined
218 to be qualified to be a third-party administrator by the
219 Insurance Commissioner pursuant to rules adopted by the
220 board of managers or industrial council. Any person or
221 group whose status as a third-party administrator has been
222 revoked, suspended or terminated by the Insurance
223 Commissioner shall immediately cease administration of
224 claims and shall not administer claims unless subsequently
225 authorized by the Insurance Commissioner.

226 (j) All regulatory, oversight and document-gathering
227 authority provided to the commission under this section shall

228 transfer to the Insurance Commissioner and the industrial
229 council upon termination of the commission.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

- §23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.
- §23-2C-8. Workers' Compensation Uninsured Employer Fund.
- §23-2C-15. Mandatory coverage; changing of coverage.
- §23-2C-18. Ratemaking; Insurance Commissioner.
- §23-2C-18a. Designation of rating organization.
- §23-2C-19. Premium payment; employer default; special provisions as to employer default collection.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) On or before the first day of June, two thousand five,
2 the executive director may take such actions as are necessary
3 to establish an employers' mutual insurance company as a
4 domestic, private, nonstock, corporation to:

5 (1) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to chapter twenty-
8 three of this code and federal Longshore and Harbor
9 Workers' Compensation Act, 33 U. S. C. §901, *et seq.*;

10 (2) Provide employer's liability insurance incidental to
11 and provided in connection with the insurance specified in
12 subdivision (1) of this subdivision, including coal-workers'
13 pneumoconiosis coverage and employer excess liability
14 coverage as provided in this chapter; and

15 (3) Transact such other kinds of property and casualty
16 insurance for which the company is otherwise qualified under
17 the provisions of this code.

18 (4) The company shall not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic mutual
21 insurance company pursuant to subsection (a) of this section:

22 (1) As soon as practical, the company established
23 pursuant to the provisions of this article shall, through a vote
24 of a majority of its provisional board, file its corporate
25 charter and bylaws with the Insurance Commissioner and
26 apply for a license with the Insurance Commissioner to
27 transact insurance in this state. Notwithstanding any other
28 provision of this code, the Insurance Commissioner shall act
29 on the documents within fifteen days of the filing by the
30 company.

31 (2) In recognition of the workers' compensation insurance
32 liability insurance crisis in this state at the time of enactment
33 of this article and the critical need to expedite the initial
34 operation of the company, the Legislature hereby authorizes
35 the Insurance Commissioner to review the documentation
36 submitted by the company and to determine the initial capital
37 and surplus requirements of the company, notwithstanding
38 the provisions of section five-b, article three, chapter thirty-
39 three of this code. The company shall furnish the Insurance
40 Commissioner with all information and cooperate in all
41 respects necessary for the Insurance Commissioner to
42 perform the duties set forth in this section and in other
43 provisions of this chapter and chapter thirty-three of this

44 code. The Insurance Commissioner shall monitor the
45 economic viability of the company during its initial operation
46 on not less than a monthly basis, until such time as the
47 commissioner, in his or her discretion, determines that
48 monthly reporting is not necessary. In all other respects the
49 company shall be subject to comply with the applicable
50 provisions of chapter thirty-three of this code.

51 (3) Subject to the provisions of subdivision (4) of this
52 subsection, the Insurance Commissioner may waive other
53 requirements imposed on mutual insurance companies by the
54 provisions of chapter thirty-three of this code as the
55 Insurance Commissioner determines is necessary to enable
56 the company to begin insuring employers in this state at the
57 earliest possible date.

58 (4) Within forty months of the date of the issuance of its
59 license to transact insurance, the company shall comply with
60 the capital and surplus requirements set forth in subsection
61 (a), section five-b, article three, chapter thirty-three of this
62 code in effect on the effective date of this enactment, unless
63 said deadline is extended by the Insurance Commissioner.

64 (c) For the duration of its existence, the company is not
65 and shall not be considered a department, unit, agency or
66 instrumentality of the state for any purpose. All debts,
67 claims, obligations and liabilities of the company, whenever
68 incurred, shall be the debts, claims, obligations and liabilities
69 of the company only and not of the state or of any
70 department, unit, agency, instrumentality, officer or
71 employee of the state.

72 (d) The moneys of the company are not and shall not be
73 considered part of the General Revenue Fund of the state.
74 The debts, claims, obligations and liabilities of the company
75 are not and shall not be considered a debt of the state or a
76 pledge of the credit of the state.

77 (e) The company is not subject to provisions of article
78 nine-a, chapter six of this code; the provisions of chapter
79 twenty-nine-b of this code; the provisions of article three,
80 chapter five-a of this code; the provisions of article six,
81 chapter twenty-nine of this code; the provisions of article six-
82 a of said chapter; or the provisions of chapter twelve of this
83 code.

84 (f) If the commission has been terminated, effective upon
85 said termination, private carriers, including the company,
86 shall not be subject to payment of premium taxes, surcharges
87 and credits contained in article three, chapter thirty-three of
88 this code on premiums received for coverage under this
89 chapter. In lieu thereof, the workers' compensation insurance
90 market shall be subject to the following:

91 (1) Each fiscal year, the Insurance Commissioner shall
92 calculate a percentage surcharge to be collected by each
93 private carrier from its policyholders. The surcharge
94 percentage shall be calculated by dividing the previous fiscal
95 year's total premiums collected plus deductible payments by
96 all employers into the portion of the Insurance
97 Commissioner's budget amount attributable to regulation of
98 the private carrier market. This resulting percentage shall be
99 applied to each policyholder's premium payment and
100 deductible payments as a surcharge and remitted to the

101 Insurance Commissioner. Said surcharge shall be remitted
102 within ninety (90) days of receipt of premium payments;

103 (2) Each fiscal year, the Insurance Commissioner shall
104 calculate a percentage surcharge to be remitted on a quarterly
105 basis by self-insured employers and said percentage shall be
106 calculated by dividing previous year's self-insured payroll in
107 the state into the portion of the Insurance Commissioner's
108 budget amount attributable to regulation of the self-insured
109 employer market. This resulting percentage shall be applied
110 to each self-insured employer's payroll and the resulting
111 amount shall be remitted as a regulatory surcharge by each
112 self-insured employer. The Workers' Compensation Board
113 of Managers or industrial council may promulgate a rule for
114 implementation of this section. The company, all other
115 private carriers and all self-insured employers shall furnish
116 the Insurance Commissioner with all required information
117 and cooperate in all respects necessary for the Insurance
118 Commissioner to perform the duties set forth in this section
119 and in other provisions of this chapter and chapter thirty-
120 three of this code. The surcharge shall be calculated so as to
121 only defray the costs associated with the administration of
122 this chapter and the funds raised shall not be used for any
123 other purpose;

124 (3) Upon termination of the commission, the company
125 and all other private carriers shall collect a premiums
126 surcharge from their policyholders equal to ten percent, or
127 such higher or lower rate as annually determined, by the first
128 day of May of each year, by the Insurance Commissioner to
129 produce forty-five million dollars annually, of each
130 policyholder's periodic premium amount for workers'
131 compensation insurance. Additionally, by the first day of

132 May each year, the self-insured employer community shall be
133 assessed a cumulative total of nine million dollars. The
134 methodology for the assessment shall be fair and equitable
135 and determined by exempt legislative rule issued by the
136 workers' compensation board of managers or industrial
137 council. The amount collected shall be remitted to the
138 Insurance Commissioner for deposit in the Workers'
139 Compensation Debt Reduction Fund created in section five,
140 article two-d of this chapter.

141 (g) The new premiums surcharge imposed by subdivision
142 (3), subsection (f) of this section shall sunset and not be
143 collectible with respect to workers' compensation insurance
144 premiums paid when the policy is renewed on or after the
145 first day of the month following the month in which the
146 Governor certifies to the Legislature that the revenue bonds
147 issued pursuant to article two-d, chapter twenty-three of this
148 code have been retired and that the unfunded liability of the
149 old fund has been paid or has been provided for in its
150 entirety, whichever occurs last.

§23-2C-8. Workers' Compensation Uninsured Employer Fund.

1 (a) The Workers' Compensation Uninsured Employer
2 Fund shall be governed by the following:

3 (1) All money and securities in the fund must be held by
4 the State Treasurer as custodian thereof to be used solely as
5 provided in this article.

6 (2) The State Treasurer may disburse money from the
7 fund only upon written requisition of the Insurance
8 Commissioner.

9 (3) *Assessments*. -- The Insurance Commissioner shall
10 assess each private carrier and may assess self-insured
11 employers an amount to be deposited in the fund. The
12 assessment may be collected by each private carrier from its
13 policyholders in the form of a policy surcharge. To establish
14 the amount of the assessment, the Insurance Commissioner
15 shall determine the amount of money necessary to maintain
16 an appropriate balance in the fund for each fiscal year and
17 shall allocate a portion of that amount to be payable by each
18 of the groups subject to the assessment. After allocating the
19 amounts payable by each group, the Insurance Commissioner
20 shall apply an assessment rate to:

21 (A) Private carriers that reflects the relative hazard of the
22 employments covered by the private carriers, results in an
23 equitable distribution of costs among the private carriers and
24 is based upon expected annual premiums to be received;

25 (B) Self-insured employers, if assessed, that results in an
26 equitable distribution of costs among the self-insured
27 employers and is based upon expected annual expenditures
28 for claims; and

29 (C) Any other groups assessed that results in an equitable
30 distribution of costs among them and is based upon expected
31 annual expenditures for claims or premium to be received.

32 (4) The Workers' Compensation Board of Managers or
33 industrial council may adopt rules for the establishment and
34 administration of the assessment methodologies, rates,
35 payments and any penalties that it determines are necessary
36 to carry out the provisions of this section.

37 (b) *Payments from the fund.* --

38 (1) Except as otherwise provided in this subsection, an
39 injured employee of any employer required to be covered
40 under this chapter who has failed to obtain coverage may
41 receive compensation from the uninsured employers' fund if
42 such employee meets all jurisdictional and entitlement
43 provisions of this chapter, files a claim with the Insurance
44 Commissioner and makes an irrevocable assignment to the
45 Insurance Commissioner of a right to be subrogated to the
46 rights of the injured employee.

47 (2) Employees who are injured while employed by a self-
48 insured employer are ineligible for benefits from the
49 Workers' Compensation Uninsured Employer Fund.

50 (c) *Initial determination upon receipt of a claim.* --

51 (1) If the Insurance Commissioner determines that the
52 claimant's employer maintained a policy of workers'
53 compensation insurance pursuant to this chapter on the date
54 of injury or last exposure or that the employer was not
55 required to maintain such a policy on such date, then the
56 claim shall not be accepted into the fund; if the commissioner
57 determines that the employer was required to maintain such
58 a policy but failed to do so, the claim will be accepted into
59 the fund and the Insurance Commissioner may assign such a
60 claim to the third-party administrator of the fund for
61 administration.

62 (2) The Insurance Commissioner shall notify the injured
63 employee and the named employer of the determination made
64 pursuant to subdivision (1) of this subsection and any party

65 aggrieved thereby shall be entitled to protest such
66 determination in a hearing before the Insurance
67 Commissioner: *Provided*, That in any such proceeding, the
68 employer has the burden of proving that it either provided
69 mandatory workers' compensation insurance coverage or that
70 it was not required to maintain workers' compensation
71 insurance.

72 (d) *Employer liability.* --

73 (1) Any employer who has failed to provide mandatory
74 coverage required by the provisions of this chapter is liable
75 for all payments made and to be made on its behalf, including
76 any benefits, administrative costs and attorney's fees paid
77 from the fund or incurred by the Insurance Commissioner,
78 plus interest calculated in accordance with the provisions of
79 section thirteen, article two of this chapter.

80 (2) The Insurance Commissioner:

81 (A) May bring a civil action in a court of competent
82 jurisdiction to recover from the employer the amounts set
83 forth in subdivision (1) of this subsection. In any such
84 action, the Insurance Commissioner may also recover the
85 present value of the estimated future payments to be made on
86 the employer's behalf and the costs and attorney's fees
87 attributable to such claim: *Provided*, That the failure of the
88 Insurance Commissioner to include a claim for future
89 payments shall not preclude one or more subsequent actions
90 for such amounts;

91 (B) May enter into a contract with any person, including
92 the third-party administrator of the uninsured employer fund,

93 to assist in the collection of any liability of an uninsured
94 employer; and

95 (C) In lieu of a civil action, may enter into an agreement
96 or settlement regarding the collection of any liability of an
97 uninsured employer.

98 (3) In addition to any other liabilities provided in this
99 section, the Insurance Commissioner may impose an
100 administrative penalty of not more than ten thousand dollars
101 against an employer if the employer fails to provide
102 mandatory coverage required by this chapter. All penalties
103 and other moneys collected pursuant to this section shall be
104 deposited into the Workers' Compensation Uninsured
105 Employer Fund.

106 (e) *Protests to claims decisions.* -- Any party aggrieved
107 by a claims decision made by the Insurance Commissioner or
108 the third-party administrator in a claim that has been accepted
109 into the fund may object to that decision by filing a protest
110 with the office of judges as set forth in article five of this
111 chapter.

§23-2C-15. Mandatory coverage; changing of coverage.

1 (a) Effective upon termination of the commission, all
2 subscriber policies with the commission shall novate to the
3 company and all employers otherwise shall purchase workers'
4 compensation insurance from the company unless permitted
5 to self-insure their obligations. The company shall assume
6 responsibility for all new fund obligations of the subscriber
7 policies which novate to the company or which are issued
8 thereafter. Each subscriber whose policy novates to the

9 company shall also have its advanced deposit credited to its
10 account with the company. Employers purchasing workers'
11 compensation insurance from the company shall have the
12 right to designate a representative or agent to act on its behalf
13 in any and all matters relevant to coverage and claims as
14 administered by the company.

15 (b) Effective the first day of July, two thousand eight, an
16 employer may elect to: (1) Continue to purchase workers'
17 compensation insurance from the company; (2) purchase
18 workers' compensation insurance from another private carrier
19 licensed and otherwise authorized to transact workers'
20 compensation insurance in this state; or (3) self-insure its
21 obligations if it satisfies all requirements of this code to so
22 self-insure and is permitted to do so: *Provided*, That all state
23 and local governmental bodies, including, but not limited to,
24 all counties and municipalities and their subdivisions and
25 including all boards, colleges, universities and schools, shall
26 continue to purchase workers' compensation insurance from
27 the company through the thirtieth day of June, two thousand
28 twelve. The company and other private carriers shall be
29 permitted to sell workers' compensation insurance through
30 licensed agents in the state. To the extent that a private
31 carrier markets workers' compensation insurance through a
32 licensed agent, it shall be subject to all applicable provisions
33 of chapter thirty-three of this code.

34 (c) Every employer shall post a notice upon its premises
35 in a conspicuous place identifying its workers' compensation
36 insurer. The notice must include the insurer's name, business
37 address and telephone number and the name, business
38 address and telephone number of its nearest adjuster in this
39 state. The employer shall at all times maintain the notice

40 provided the information of his or her employees. Release of
41 employer policy information and status by the industrial
42 council and the Insurance Commissioner shall be governed
43 by section four, article one of this chapter. The Insurance
44 Commissioner shall collect and maintain information related
45 to officers, directors and ten percent or more owners of each
46 carrier's policyholders, and each private carrier shall provide
47 said information to the Insurance Commissioner within sixty
48 days of the issuance of a policy and any changes to the
49 information shall thereafter be reported within sixty days of
50 such change.

51 (d) Any rule promulgated by the board of managers or
52 industrial council empowering agencies of this state to revoke
53 or refuse to grant, issue or renew any contract, license,
54 permit, certificate or other authority to conduct a trade,
55 profession or business to or with any employer whose
56 account is in default with regard to any liability under this
57 chapter shall be fully enforceable by the Insurance
58 Commissioner against any such employer.

59 (e) Effective the first day of January, two thousand nine,
60 the company may decline to offer coverage to any applicant.
61 Effective the first day of January, two thousand nine, the
62 company and private carriers may cancel a policy or decline
63 to renew a policy upon the issuance of sixty days' written
64 advance notice to the policyholder: *Provided*, That
65 cancellation of the policy by the carrier for failure of
66 consideration to be paid by the policyholder is effective after
67 fifteen days advance written notice of cancellation to the
68 policyholder.

69 (f) Every private carrier shall notify the Insurance
70 Commissioner or his or her designee of: (i) The issuance or
71 renewal of insurance coverage, within ten calendar days of
72 the effective date of coverage; and (ii) a termination of
73 coverage due to lapse, refusal to renew or cancellation, within
74 three business days of the effective date of the termination;
75 such notifications shall be on forms developed by the
76 Insurance Commissioner.

§23-2C-18. Ratemaking; Insurance Commissioner.

1 (a) (1) The rate-making provisions and premium
2 provisions contained in article two of this chapter shall not be
3 applicable to the company or other private carriers. Rates for
4 workers' compensation insurance are subject to the
5 provisions of this section, section eighteen-a of this article
6 and article twenty, chapter thirty-three of this code.

7 (2) In the event of any conflict, the provisions of this
8 article shall have paramount effect, but the provisions in this
9 chapter and chapter thirty-three of this code shall be
10 construed as complementary and harmonious unless so
11 clearly in conflict that they cannot reasonably be reconciled.

12 (b) An insurer shall file its rates by filing a multiplier or
13 multipliers to be applied to prospective loss costs that have
14 been filed by the designated advisory organization on behalf
15 of the insurer in accordance with section eighteen-a of this
16 article and may also file carrier specific rating plans.

17 (c) Rates must not be excessive, inadequate or unfairly
18 discriminatory, nor may an insurer charge any rate which if

19 continued will have or tend to have the effect of destroying
20 competition or creating a monopoly.

21 (d) The Insurance Commissioner may disapprove rates if
22 there is not a reasonable degree of price competition at the
23 consumer level with respect to the class of business to which
24 they apply. In determining whether a reasonable degree of
25 price competition exists, the Insurance Commissioner shall
26 consider all relevant tests, including:

27 (1) The number of insurers actively engaged in the class
28 of business and their shares of the market;

29 (2) The existence of differentials in rates in that class of
30 business;

31 (3) Whether long-run profitability for private carriers
32 generally of the class of business is unreasonably high in
33 relation to its risk;

34 (4) Consumers' knowledge in regard to the market in
35 question; and

36 (5) Whether price competition is a result of the market or
37 is artificial. If competition does not exist, rates are excessive
38 if they are likely to produce a long-run profit that is
39 unreasonably high in relation to the risk of the class of
40 business, or if expenses are unreasonably high in relation to
41 the services rendered.

42 (e) Rates are inadequate if they are clearly insufficient,
43 together with the income from investments attributable to
44 them, to sustain projected losses and expenses in the class of
45 business to which they apply.

46 (f) One rate is unfairly discriminatory in relation to
47 another in the same class if it clearly fails to reflect equitably
48 the differences in expected losses and expenses. Rates are
49 not unfairly discriminatory because different premiums result
50 for policyholders with similar exposure to loss but different
51 expense factors, or similar expense factors but different
52 exposure to loss, so long as the rates reflect the differences
53 with reasonable accuracy. Rates are not unfairly
54 discriminatory if they are averaged broadly among persons
55 insured under a group, franchise or blanket policy.

§23-2C-18a. Designation of rating organization.

1 (a) For the purposes of this section:

2 (1) "Classification system" or "classification" means the
3 plan, system or arrangement for grouping risks with similar
4 characteristics or a specified class of risk by recognizing
5 differences in exposure to hazards.

6 (2) "Experience rating" means a statistical procedure
7 utilizing past risk experience to produce a prospective
8 premium credit, debit or unity modification.

9 (3) "Prospective loss costs" means historical aggregate
10 losses and loss adjustment expenses projected through
11 development to their ultimate value and through trending to
12 a future point in time. Prospective loss costs do not include
13 provisions for profit or expenses other than loss adjustment
14 expenses.

15 (4) "Statistical plan" means the plan, system or
16 arrangement used in collecting data for ratemaking or other
17 purposes.

18 (b) The Insurance Commissioner shall designate one
19 rating organization to:

20 (1) Assist the commissioner in gathering, compiling and
21 reporting relevant statistical information on an aggregate
22 basis;

23 (2) Develop and administer, subject to approval by the
24 commissioner, the uniform statistical plan, uniform
25 classification plan and uniform experience rating plan;

26 (3) Develop and file manual rules, subject to the approval
27 of the commissioner, that are reasonably related to the
28 recording and reporting of data pursuant to the uniform
29 statistical plan, uniform experience rating plan and the
30 uniform classification plan; and

31 (4) File with the commissioner for approval all
32 prospective loss costs, provisions for special assessments, all
33 supplementary rating information and any changes,
34 amendments or modification of the forgoing proposed in this
35 state.

36 (c) Each workers' compensation insurer shall:

37 (1) Record and report its workers' compensation
38 experience to the designated rating organization as set forth
39 in the uniform statistical plan approved by the commissioner;
40 and

41 (2) Adhere to the uniform classification plan and uniform
42 experience rating plan developed by the designated rating
43 organization and approved by the commissioner.

44 (d) The commissioner may promulgate exempt legislative
45 rules to implement the provisions of this section, including a
46 rule providing for the equitable sharing and recovery of the
47 expense of the designated rating organization in performing
48 the functions set forth in subsection (b) of this section.

§23-2C-19. Premium payment; employer default; special provisions as to employer default collection.

1 (a) Each employer who is required to purchase and
2 maintain workers' compensation insurance or who elects to
3 purchase workers' compensation insurance shall pay a
4 premium to a private carrier. Each carrier shall notify its
5 policyholders of the mandated premium payment
6 methodology and under what circumstances a policyholder
7 will be found to be in policy default.

8 (b) An employer who is required to purchase and
9 maintain workers' compensation insurance but fails to do so
10 or otherwise enters policy default shall be deprived of the
11 benefits and protection afforded by this chapter, including
12 section six, article two of this chapter, and the employer is
13 liable as provided in section eight of said article. The policy
14 defaulted employer's liability under these sections is
15 retroactive to the day the policy default occurs. The private
16 carrier shall notify the policy defaulted employer of the
17 method by which the employer may be reinstated with the
18 private carrier.

19 (c) In addition to any other liabilities provided in this
20 section, the Insurance Commissioner may impose an
21 administrative fine of not more than ten thousand dollars
22 against an employer if the employer fails to provide
23 mandatory coverage required by this chapter.

24 (d) The company and the Insurance Commissioner shall
25 be provided extraordinary powers to collect any premium
26 amounts payable to the workers' compensation fund or the
27 new fund and due from the first day of July, two thousand
28 five, through the thirtieth day of June, two thousand eight.
29 Those powers shall include: (1) Withholding of coverage
30 effective the first day of January, two thousand six.
31 Employers without coverage shall immediately be deprived
32 of the benefits and protection afforded by this chapter,
33 including section six, article two of this chapter and the
34 employer is liable as provided in section eight of said article;
35 (2) the right to maintain a civil action against all officers and
36 directors of the employer individually for collection of the
37 premium owed; and (3) the right to immediately report the
38 employers to the State Tax Department and other state
39 agencies to secure suspension of any and all licenses,
40 certificates, permits, registrations and other similar approval
41 documents necessary for the employer to conduct business in
42 this state.

43 (e) Every agency shall, upon notification of employer
44 default by the Insurance Commissioner, immediately begin
45 the process to revoke or terminate any contract, license,
46 permit, certificate or other authority to conduct a trade,
47 profession or business in this state and shall refuse to issue,
48 grant or renew any such contract, license, permit, certificate
49 or authority.

50 (1) The term “employer default” means having an
51 outstanding balance or liability to the old fund or to the
52 uninsured employers’ fund or being in policy default, as
53 defined in section two of this article, or failure to maintain
54 mandatory workers’ compensation coverage. An employer
55 is not in default if it has entered into a repayment agreement
56 with the Insurance Commissioner and remains in compliance
57 with the obligations under the repayment agreement.

58 (2) The term “agency” includes any unit of state
59 government such as officers, agencies, divisions,
60 departments, boards, commissions, authorities or public
61 corporations.

62 (f) Any amounts owed by an employer to the state as a
63 result of an employer default is a personal liability of the
64 employer, its officers, owners, partners and directors and is
65 immediately due and owing and shall, in addition, be a lien
66 enforceable against all the property of the employer, its
67 officers, owners, partners and directors: *Provided*, That the
68 lien shall not be enforceable as against a purchaser, including
69 a lien creditor, of real estate or personal property for a
70 valuable consideration without notice, unless docketed as
71 provided in section one, article ten-c, chapter thirty-eight of
72 this code: *Provided, however*, That the lien may be enforced
73 as other judgment liens are enforced through the provisions
74 of said chapter and the same is considered by the circuit
75 court to be a judgment lien for this purpose.

76 (g) The Insurance Commissioner shall propose rules for
77 adoption by the industrial council to effectuate the purposes
78 of this section including the conditions under which agencies
79 shall comply with the provisions of subsection (e) of this
80 section and specifying how notice of default shall be given by
81 the commissioner.

ARTICLE 5. REVIEW.**§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand.**

1 (a) Objections to a decision of the Insurance
2 Commissioner, private carrier or self-insured employer,
3 whichever is applicable, made pursuant to the provisions of
4 section one of this article shall be filed with the office of
5 judges. Upon receipt of an objection, the office of judges
6 shall notify the Insurance Commissioner, private carrier or
7 self-insured employer, whichever is applicable, and all other
8 parties of the filing of the objection. The office of judges
9 shall establish by rule promulgated in accordance with the
10 provisions of subsection (e), section eight of this article an
11 adjudicatory process that enables parties to present evidence
12 in support of their positions and provides an expeditious
13 resolution of the objection. The employer, the claimant, the
14 Insurance Commissioner, private carrier or self-insured
15 employer, whichever are applicable, shall be notified of any
16 hearing at least ten days in advance. The office of judges
17 shall review and amend, or modify, as necessary, its
18 procedural rules by the first day of July, two thousand seven.

19 (b) The office of judges shall establish a program for
20 mediation to be conducted in accordance with the
21 requirements of rule twenty-five of the West Virginia Trial
22 Court Rules. The parties may agree that the result of the
23 mediation is binding. A case may be referred to mediation by
24 the administrative law judge on his or her own motion, on
25 motion of a party or by agreement of the parties. Upon
26 issuance of an order for mediation, the office of judges shall
27 assign a mediator from a list of qualified mediators
28 maintained by the West Virginia State Bar.

29 (c) The office of judges shall keep full and complete
30 records of all proceedings concerning a disputed claim.
31 Subject to the rules of practice and procedure promulgated
32 pursuant to section eight of this article, the record upon
33 which the matter shall be decided shall include any evidence
34 submitted by a party to the office of judges and evidence
35 taken at hearings conducted by the office of judges. The
36 record may include evidence or documents submitted in
37 electronic form or other appropriate medium in accordance
38 with the rules of practice and procedure. The office of judges
39 is not bound by the usual common law or statutory rules of
40 evidence.

41 (d) All hearings shall be conducted as determined by the
42 chief administrative law judge pursuant to the rules of
43 practice and procedure promulgated pursuant to section eight
44 of this article. Upon consideration of the designated record,
45 the chief administrative law judge or other authorized
46 adjudicator within the office of judges shall, based on the
47 determination of the facts of the case and applicable law,
48 render a decision affirming, reversing or modifying the action
49 protested. The decision shall contain findings of fact and
50 conclusions of law and shall be mailed to all parties.

51 (e) The office of judges may remand a claim to the
52 Insurance Commissioner, private carrier or self-insured
53 employer, whichever is applicable, for further development
54 of the facts or administrative matters as, in the opinion of the
55 administrative law judge, may be necessary for a full and
56 complete disposition of the case. The administrative law
57 judge shall establish a time within which the Insurance
58 Commissioner, private carrier or self-insured employer,
59 whichever is applicable, must report back to the
60 administrative law judge.

61 (f) The decision of the office of judges regarding any
62 objections to a decision of the Insurance Commissioner,
63 private carrier or self-insured employer, whichever is
64 applicable, is final and benefits shall be paid or denied in
65 accordance with the decision, unless an order staying the
66 payment of benefits is specifically entered by the Workers'
67 Compensation Board of Review created in section eleven of
68 this article or by the administrative law judge who granted
69 the benefits. No stay with respect to any medical treatment
70 or rehabilitation authorized by the office of judges may be
71 granted. If the decision is subsequently appealed and reversed
72 in accordance with the procedures set forth in this article, and
73 any overpayment of benefits occurs as a result of such
74 reversal, any such overpayment may be recovered pursuant
75 to the provisions of subsection (h), section one-c, article four
76 of this chapter or subsection (d), section one-d of said article,
77 as applicable.

CHAPTER 258

(S.B. 489 - By Senators McCabe, Kessler, Sprouse and Unger)

[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §5B-2B-4 and §5B-2B-6 of the Code of West Virginia, 1931, as amended, all relating to reports to the Legislative Oversight Commission on Workforce Investment for Economic Development and the Legislative Oversight Commission on Education Accountability generally; requiring a yearly report on the status and any memoranda of understanding which have

been entered into for West Virginia one-stop system operations; and requiring a yearly report on the success of efforts to link PROMISE scholarship graduates to West Virginia employment opportunities.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-4 and §5B-2B-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-4. Duties of the Workforce Investment Council.

§5B-2B-6. Administration of council.

§5B-2B-4. Duties of the Workforce Investment Council.

1 (a) The council shall assist the Governor in the:

2 (1) Development and revision of a strategic five-year
3 state workforce investment plan, including the establishment
4 of an overall workforce investment public agenda with goals
5 and benchmarks of success for the state, state agencies and
6 for local workforce investment boards;

7 (2) Development and continuous improvement of a
8 statewide system of workforce investment activities
9 including:

10 (A) Development of linkages in order to assure
11 coordination and nonduplication of services and activities of
12 workforce investment programs conducted by various entities
13 in the state; and

14 (B) The review of strategic plans created and submitted
15 by local workforce investment boards;

16 (3) Commenting at least annually on the measures taken
17 by the state pursuant to the Carl D. Perkins Vocational and
18 Applied Technology Education Act, 20 U. S. C. §2323;

19 (4) Designation and revision of local workforce
20 investment areas;

21 (5) Development and revision of allocation formulas for
22 the distribution of funds for adult employment and training
23 activities and youth activities to local areas;

24 (6) Development and continuous improvement of
25 comprehensive state performance measures, including state-
26 adjusted levels of performance, to assess the effectiveness of
27 the workforce investment activities in the state;

28 (7) Preparation of the annual report to the Secretary of
29 Labor as required by the Workforce Investment Act, 29 U. S.
30 C. §2871;

31 (8) Development and continued improvement of a
32 statewide employment statistics system; and

33 (9) Development and revision of an application for
34 workforce investment incentive grants.

35 (b) The council shall make a report to the Legislative
36 Oversight Commission on Workforce Investment for
37 Economic Development and the Legislative Oversight
38 Commission on Education Accountability on or before the
39 first day of November of each year detailing: (1) All the
40 publicly funded workforce investment programs operating in

41 the state, including the amount of federal and state funds
42 expended by each program, how the funds are spent and the
43 resulting improvement to the workforce; (2) the council's
44 recommendations concerning future use of funds for
45 workforce investment programs; (3) the council's analysis of
46 operations of local workforce investment programs; (4) the
47 council's recommendations for the establishment of an
48 overall workforce investment public agenda with goals and
49 benchmarks of success for the state, state agencies and for
50 local workforce investment boards; (5) the status of one-stop
51 system operations in the state, including all memoranda of
52 understanding entered into by the one-stop partners and local
53 workforce investment boards; (6) the status and outcome data
54 regarding the council and local workforce investment boards'
55 success in linking West Virginia PROMISE scholars to
56 employment with a West Virginia employer; and (7) any
57 other information the commission may require.

58 (c) To aid in the report required in subsection (b) of this
59 section, each local workforce investment board shall report
60 annually to the council on or before the first day of
61 September of each year on the status of one-stop centers
62 within the region each board represents, attaching all
63 memoranda of understanding entered into with one-stop
64 partners.

***§5B-2B-6. Administration of council.**

1 (a) Workforce West Virginia shall provide administrative
2 and other services to the council as the council requires.

3 (b) Workforce West Virginia shall facilitate the
4 coordination of council activities and local workforce
5 investment activities, including holding meetings with the
6 executive directors of each local workforce investment board

*CLERK'S NOTE: This section was also amended by S.B. 454 (Chapter 27), which passed subsequent to this act.

7 at least monthly. Any executive director of a local workforce
8 investment board who participates in a meeting held pursuant
9 to this subsection shall report to his or her board and the
10 county commission of each county represented by the board
11 regarding the meeting.

CHAPTER 259

**(Com. Sub. for H.B. 2741 - By Delegates Webster, Ellem,
Stemple, Mahan and Proudfoot)**

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, all relating to worthless checks; providing a defense for payment of worthless check within ten days; authorizing magistrate courts to accept certain criminal complaints from private citizens; preventing assessment of costs against a complainant in certain circumstances; requiring the defendant in a worthless check prosecution to pay court costs for each worthless check charge of which he or she stands convicted; and requiring the defendant to pay the additional court costs for each worthless check charge dismissed as a result of a plea agreement.

Be it enacted by the Legislature of West Virginia:

That §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

§61-3-39b. Payment as defense.

§61-3-39f. Manner of filing complaint for warrant; form.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

1 (a) It is unlawful for any person, firm or corporation to
 2 make, draw, issue, utter or deliver any check, draft or order
 3 for the payment of money or its equivalent on a preexisting
 4 debt upon any bank or other depository, knowing or having
 5 reason to know there is not sufficient funds on deposit in or
 6 credit with the bank or other depository with which to pay the
 7 check, draft or order upon presentation. The making,
 8 drawing, issuing, uttering or delivering of any check, draft or
 9 order on a preexisting debt, for or on behalf of any
 10 corporation, or its name, by any officer or agent of the
 11 corporation, shall subject the officer or agent to the penalty
 12 of this section to the same extent as though the check, draft
 13 or order was his or her own personal act.

14 (b) This section shall not apply to any check, draft or
 15 order when the payee or holder knows or has been expressly
 16 notified prior to the acceptance of same or has reason to
 17 believe that the drawer did not have on deposit or to his or
 18 her credit with the drawee sufficient funds to insure payment
 19 as aforesaid, nor shall this section apply to any postdated
 20 check, draft or order. This section shall not apply when the
 21 insufficiency of funds or credit is caused by any adjustment
 22 to the drawer's account by the bank or other depository
 23 without notice to the drawer or is caused by the dishonoring
 24 of any check, draft or order deposited in the account unless
 25 there is knowledge or reason to believe that the check, draft
 26 or order would be dishonored.

27 (c) Any person violating the provisions of this section is
 28 guilty of a misdemeanor and, upon conviction thereof, shall
 29 be fined not more than two hundred dollars; and upon a third
 30 or subsequent conviction thereof, shall be fined not more than
 31 two hundred dollars, or confined in the county or regional jail
 32 not more than ten days, or both.

§61-3-39b. Payment as defense.

1 Payment of a dishonored check, draft or order, made to
 2 the magistrate clerk within ten days after the notice mailed to
 3 the defendant pursuant to section thirty-nine-g of this article,
 4 constitutes a complete defense or ground for dismissal of
 5 charges brought under section thirty-nine or section thirty-
 6 nine-a of this article.

§61-3-39f. Manner of filing complaint for warrant; form.

1 (A) Notwithstanding the provisions of section one, article
 2 one, chapter sixty-two of this code, a complaint for warrant
 3 for violations of section thirty-nine or section thirty-nine-a of
 4 this article need not be made upon oath before a magistrate
 5 but may be made upon oath before any magistrate court clerk
 6 or other court officer authorized to administer oaths or before
 7 a notary public in any county of the state and may be
 8 delivered by mail or otherwise to the magistrate court of the
 9 county wherein venue lies: *Provided*, That nothing in this
 10 section changes the authority and responsibility of the
 11 prosecuting attorney to prosecute any person or persons for
 12 violations of section thirty-nine or section thirty-nine-a of this
 13 article.

14 (B) A complaint for warrant for violations of section
 15 thirty-nine-a of this article shall be deemed sufficient if it is
 16 in form substantially as follows:

WORTHLESS CHECKS

[Ch. 259

17 "State of West Virginia County of, to
18 wit:....., upon oath complains that:

19 (a) Within one year past, on the day of,
20 20...., in the county stated above,
21 ("the maker") unlawfully issued and delivered to
22 a check, draft or order with the
23 following words and figures:

24 20 ... No.....

25

26 (Name of Bank)

27 Pay to the Order of \$..... Dollars

28 For..... when the maker
29 did not have funds on deposit in or credit with this bank with
30 which to pay the check, draft or order upon presentation
31 against the peace and dignity of the State of West Virginia.
32 The complainant therefore prays a warrant issue and that the
33 maker be apprehended and held to answer the warrant and
34 dealt with in relation thereto according to the law.

35 (b) At the time the check, draft or order was delivered
36 and before it was accepted there was either on the check or
37 on a record in the possession of the complainant the
38 following information regarding the identity of the maker:

39 (1) Name.....

40 (2) Residence address.....

41 (3) Business address.....

42 (4) Mailing address.....

43 (5) Motor vehicle operator's number.....

44 (6) Home phone.....

45

46 (7) Work phone.....

47 (8) Place of employment.....

48 That since the time the check, draft or order was
49 delivered the complainant has ascertained to the best of his or
50 her knowledge and belief the following facts concerning the
51 maker:

52 Full name

53 Home address

54 Home phone no..... Business phone no.....

55 Place of employment

56 Race Sex Height

57 Date of birth.....

58 Day Month Year

59, Complainant

60

61 Address Phone No.

62 (c) The complainant's bank or financial institution has
63 imposed on or collected from the complainant a service
64 charge in the amount of \$..... in connection with
65 the check, draft or order described above.

66 Taken, subscribed and sworn to before me,

67 thisday of, 20....

68
69

(Title)

70 My commission expires the day of, 20....."

71 (C) The failure to supply information indicated in parts
72 (b) or (c) of the foregoing complaint for warrant shall not
73 affect the sufficiency of the complaint.

**§61-3-39h. Payment of costs in worthless check cases;
disposition of certain costs.**

1 (a) In any prosecution under section thirty-nine or thirty-
2 nine-a of this article, the costs that may otherwise be imposed
3 against the drawer of any check, draft or order shall be
4 imposed on the person initiating the prosecution if:

5 (1) Payment of the check, draft or order is accepted by
6 the payee or holder thereof after the filing of a complaint for
7 warrant and the charge is subsequently withdrawn or
8 dismissed at the request of the complainant: *Provided*, That
9 the provisions of this subdivision do not apply where a
10 charge is dismissed and restitution is paid as a condition of a
11 plea agreement. The defendant shall be assessed costs for the
12 prosecution of each charge of which he or she stands
13 convicted and the fee for court costs assessed pursuant to
14 section thirty-nine-g of this article for each charge dismissed
15 as a result of the plea agreement;

16 (2) The payee or holder had reason to believe that the
17 check, draft or order would be dishonored;

18 (3) The check, draft or order was postdated; or

19 (4) The matter is dismissed for failure to prosecute.

20 (b) Costs collected by magistrate court for issuance of
21 notice as authorized by section thirty-nine-g of this article
22 may not be paid into the special county fund created by the
23 provisions of section four, article three, chapter fifty of this
24 code but shall be accounted for separately and retained by the
25 county in a fund designated the Worthless Check Fund until
26 the sheriff issues warrants in furtherance of the allowable
27 expenses specifically provided for by this section. Such costs
28 may not be included in any calculation of the amount of
29 funds to be retained by the county under the provisions of
30 section four, article three, chapter fifty of this code.

31 (c) A county may, after agreement with the court
32 administrator's office of the Supreme Court of Appeals,
33 appropriate and spend from the Worthless Check Fund herein
34 established such sums as are necessary to pay or defray the
35 expenses of providing a deputy sheriff to serve warrants for
36 worthless check offenses and to pay or defray the expenses
37 of providing additional deputy clerks in the office of the
38 magistrate court clerk. After payment of these expenses, or
39 after a determination that these services are not necessary, a
40 county may appropriate and spend from the fund the sums
41 necessary to defray:

42 (1) The expenses of providing bailiff and service of
43 process services by the sheriff;

44 (2) The cost of acquiring or renting magistrate court
45 offices and providing utilities and telephones and telephone
46 service to such offices;

47 (3) The cost of complying with section thirty-nine-i of
48 this article; and

49 (4) The expenses of other services are provided to
50 magistrate courts by the county.

CHAPTER 260

(Com. Sub. for S.B. 475 - By Senator McCabe, original sponsor)

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, all relating to appeals to the Board of Zoning Appeals; clarifying time period for written decision by board; automatic dismissal if time period not met; clarifying stays; and authorizing stay exemptions.

Be it enacted by the Legislature of West Virginia:

That §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-11. Notice and hearing of appeal.

§8A-8-12. Stays; exception.

§8A-8-11. Notice and hearing of appeal.

- 1 (a) Within ten days of receipt of the appeal by the Board
- 2 of Zoning Appeals, the board shall set a time for the hearing
- 3 of the appeal and give notice. The hearing on the appeal must

4 be held within forty-five days of receipt of the appeal by the
5 board.

6 (b) At least fifteen days prior to the date set for the
7 hearing on the appeal, the Board of Zoning Appeals shall
8 publish a notice of the date, time and place of the hearing on
9 the appeal as a Class I legal advertisement in compliance
10 with the provisions of article three, chapter fifty-nine of this
11 code and written notice shall be given to the interested
12 parties. The publication area shall be the area covered in the
13 appeal.

14 (c) The Board of Zoning Appeals may require the party
15 taking the appeal to pay for the cost of public notice and
16 written notice to interested parties.

17 (d) At the hearing, any party may appear in person, by
18 agent or by an attorney licensed to practice in this state.

19 (e) Every decision by the board must be in writing and
20 state findings of fact and conclusions of law on which the
21 board based its decision. If the board fails to provide findings
22 of fact and conclusions of law adequate for decision by the
23 circuit court and as a result of the failure, the circuit court
24 returns an appealed matter to the board and dismisses
25 jurisdiction over an applicant's appeal without deciding the
26 matter, whether the court returns the matter with or without
27 restrictions, the board shall pay any additional costs for court
28 filing fees, service of process and reasonable attorneys' fees
29 required to permit the person appealing the board's decision
30 to return the matter to the circuit court for completion of the
31 appeal.

32 (f) The written decision by the board shall be rendered
33 within thirty days after the hearing. If the board fails to
34 render a written decision within thirty days after the hearing,
35 then any party may pursue additional legal remedies to obtain
36 a decision, including, but not limited to, seeking a writ of
37 mandamus.

§8A-8-12. Stays; exception.

1 (a) When an appeal has been filed with the Board of
2 Zoning Appeals, all proceedings and work on the premises in
3 question shall be stayed, except as provided in subsection (b)
4 of this section.

5 (b) A stay may not be had:

6 (1) If the official or board from where the appeal was
7 taken certifies in writing to the Board of Zoning Appeals that
8 a stay would cause imminent peril to life or property;

9 (2) Upon further administrative proceedings, including,
10 but not limited to, submissions to and reviews by the staff or
11 any administrative body; or

12 (3) Upon engineering or architectural work that does not
13 disturb the real estate beyond what is necessary to complete
14 engineering, survey work or other tests.

15 (c) If the written certification is filed pursuant to
16 subdivision (1), subsection (b) of this section, then
17 proceedings or work on the premises shall not be stayed.

18 (d) Nothing in this section prevents a party from
19 obtaining a restraining order.

CHAPTER 261

(S.B. 757 - By Senators Kessler, Foster, Green, Hunter, Jenkins, Oliverio, Stollings, Wells, White, Caruth, Deem, Hall and Yoder)

[Passed March 9, 2007; in effect from passage.]

[Approved by the Governor on March 28, 2007]

AN ACT to extend the time for the town council of the town of Smithers, Fayette County, to meet as a levying body for the purpose of presenting to the voters of the town an election to continue an additional town levy for solid waste services and retirement benefits from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of March, two thousand seven.

Be it enacted by the Legislature of West Virginia:

**THE TOWN COUNCIL OF THE TOWN OF SMITHERS
MEETING AS A LEVYING BODY EXTENDED.**

§1. Extending time for the town council of Smithers to meet as a levying body for election of additional levy for solid waste services and retirement benefits.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the town
4 council of Smithers is hereby authorized to extend the time

5 for its meeting as a levying body and certifying its actions to
6 the state auditor from between the seventh and twenty-eighth
7 days of March and the third Tuesday in April until the thirty-
8 first day of May, two thousand seven, for the purpose of
9 submitting to the voters of the town of Smithers the
10 continuation of an additional town levy for solid waste
11 services and retirement benefits.

CHAPTER 262

**(S.B. 217 - By Senators Bowman, Bailey, Jenkins, McCabe,
White, Plymale, Yoder, Sypolt, Minard, Foster, Stollings,
Boley and Barnes)**

[Passed February 2, 2007; in effect from passage.]

[Approved by the Governor on February 20, 2007.]

AN ACT to extend the time for the city council of the city of
Piedmont, Mineral County, to meet as a levying body for the
purpose of presenting to the voters of the city an election to
continue an additional municipal levy to maintain the existing
public streets, fire hydrants and lines for the city of Piedmont
and for payment of any obligation by the city due to higher
costs and for the purpose of paying all costs incurred in the
laying of this additional levy from between the seventh and
twenty-eighth days of March and the third Tuesday in April
until the thirty-first day of May, two thousand seven.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF THE CITY OF PIEDMONT
MEETING AS A LEVYING BODY EXTENDED.**

§1. Extending time for the city council for the city of Piedmont to meet as a levying body for an election continuing an additional levy to maintain the existing public streets, fire hydrants and lines for the city of Piedmont and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, the city council of the city
4 of Piedmont, Mineral County, is authorized to extend the
5 time for its meeting as a levying body, setting the levy rate
6 and certifying its actions to the State Auditor and the State
7 Tax Commissioner from between the seventh and
8 twenty-eighth days of March and the third Tuesday in April
9 until the thirty-first of May, two thousand seven, for the
10 purpose of submitting to the voters of the city of Piedmont
11 the question of continuing an additional municipal levy to
12 maintain the existing public streets, fire hydrants and lines for
13 the city of Piedmont and for payment of any obligation by the
14 city due to higher costs and for the purpose of paying all
15 costs incurred in the laying of this additional levy.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2007

CHAPTER 1

**(H.B. 102 - By Mr. Speaker, Mr. Thompson, and
Delegate Armstead)
[By Request of the Executive]**

[Passed March 18, 2007; in effect from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Agriculture, fund 0131, fiscal year 2007, organization 1400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2007,

APPROPRIATIONS

[Ch. 1

organization 1400, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2007, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2007, organization 0402, to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2007, organization 0442, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the eighteenth day of March, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, It appears from the statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0131, fiscal year 2007, organization 1400, be supplemented and amended by increasing existing items of appropriation and adding a new appropriation as follows:

Ch. 1]

APPROPRIATIONS

1

TITLE II – APPROPRIATIONS.

2

Section 1. Appropriations of General Revenue.

3

EXECUTIVE

4

10-Department of Agriculture

5

(WV Code Chapter 19)

6

Fund 0131 FY 2007 Org 1400

7

General

8

Act-

Revenue

9

ivity

Funds

10 7

Unclassified - Surplus (R) 097 \$100,000

11 21a

Threat Preparedness - Surplus 949 150,000

12

And, That the total appropriation for the fiscal year ending

13

the thirtieth day of June, two thousand seven, to fund 0132,

14

fiscal year 2007, organization 1400, be supplemented and

15

amended by adding a new item of appropriation as follows:

16

TITLE II – APPROPRIATIONS.

17

Section 1. Appropriations of General Revenue.

18

EXECUTIVE

19

11-West Virginia Conservation Agency

20

(WV Code Chapter 19)

21

Fund 0132 FY 2007 Org 1400

APPROPRIATIONS

[Ch. 1

22				
23			Act-	General
24			ivity	Revenue
				Funds
25	6a	Marlinton Flood Wall - Surplus (R)	948	\$1,500,000

26 Any unexpended balance remaining in the appropriation
 27 for Marlinton Flood Wall - Surplus (fund 0132, activity 948) at
 28 the close of fiscal year 2007 is hereby reappropriated for
 29 expenditure during fiscal year 2008.

30 And, That the total appropriation for the fiscal year ending
 31 the thirtieth day of June, two thousand seven, to fund 0226,
 32 fiscal year 2007, organization 0221, be supplemented and
 33 amended by increasing an existing item of appropriation as
 34 follows:

35 TITLE II – APPROPRIATIONS.

36 Section 1. Appropriations of General Revenue.

37 ADMINISTRATION

38 *26-Public Defender Services*

39 (WV Code Chapter 29)

40 Fund 0226 FY 2007 Org 0221

41				
42			Act-	General
43			ivity	Revenue
				Funds
44	10	Appointed Counsel Fees -		
45	10a	Surplus (R)	435	\$2,906,830

Ch. 1]

APPROPRIATIONS

46 Any unexpended balance remaining in the appropriation
47 for Appointed Counsel Fees - Surplus (fund 0226, activity 435)
48 at the close of the fiscal year 2007 is hereby reappropriated for
49 expenditure during the fiscal year 2008.

50 And, That the total appropriation for the fiscal year ending
51 the thirtieth day of June, two thousand seven, to fund 0313,
52 fiscal year 2007, organization 0402, be supplemented and
53 amended by increasing an existing item of appropriation as
54 follows:

55 TITLE II – APPROPRIATIONS.

56 Section 1. Appropriations of General Revenue.

57 DEPARTMENT OF EDUCATION

58 *44-State Department of Education*

59 (WV Code Chapters 18 and 18A)

60 Fund 0313 FY 2007 Org 0402

61	62	63	Act- ivity	General Revenue Funds
64	6	Increased Enrollment - Surplus (R)	059	\$1,838,147

65 Any unexpended balance remaining in the appropriation for
66 Increased Enrollment - Surplus (fund 0313, activity 059) at the
67 close of the fiscal year 2007 is hereby reappropriated for
68 expenditure during the fiscal year 2008.

69 And, That the total appropriation for the fiscal year ending
70 the thirtieth day of June, two thousand seven, to fund 0586,
71 fiscal year 2007, organization 0442, be supplemented and
72 amended by adding new items of appropriation as follows:

73 TITLE II – APPROPRIATIONS.

74 **Section 1. Appropriations of General Revenue.**

75 **HIGHER EDUCATION**

76 *89-Higher Education Policy Commission- System-*

77 *Control Account*

78 (WV Code Chapter 18B)

79 Fund 0586 FY 2007 Org 0442

80			General
81		Act-	Revenue
82		ivity	Funds

83 29a Blanchette Rockefeller

84 29b Neurosciences Institute

85 29c (BRNI) - Surplus (R) 947 \$1,000,000

86 29d Higher Education -

87 29e Special Projects - Surplus (R) . . . 946 1,400,000

88 Any unexpended balances remaining in the appropriations
 89 for Blanchette Rockefeller Neurosciences Institute (BRNI) -
 90 Surplus (fund 0586, activity 947) and Higher Education -
 91 Special Projects - Surplus (fund 0586, activity 946) at the close
 92 of fiscal year 2007 are hereby reappropriated for expenditure
 93 during the fiscal year 2008.

94 The purpose of this supplemental appropriation bill is to
 95 supplement, amend, increase and add items of appropriation in
 96 the aforesaid accounts for the designated spending units for
 97 expenditure during fiscal year two thousand seven.

CHAPTER 2

**(H.B. 103 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 18, 2007; in effect from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Division of General Services, fund 0230, fiscal year 2007, organization 0211, to the Department of Commerce - Division of Tourism, fund 0246, fiscal year 2007, organization 0304, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2007, organization 0310, to the Department of Commerce - Division of Miners Health, Safety and Training, fund 0277, fiscal year 2007, organization 0314, to the Department of Education - State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2007, organization 0402, to the Department of Education - State Department of Education, fund 0313, fiscal year 2007, organization 0402, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2007, organization 0506, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, to the Department of Military Affairs and Public Safety - Division of Homeland

Security and Emergency Management, fund 0443, fiscal year 2007, organization 0606, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2007, organization 0608, and to the Department of Revenue - Office of the Secretary, fund 0465, fiscal year 2007, organization 0701, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the eighteenth day of March, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, The Governor, by executive message dated the eighteenth day of March, two thousand seven, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand seven; and

WHEREAS, It appears from the Governor's statement of the State Fund - General Revenue and the executive message 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 seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0230, fiscal year 2007, organization 0211, be supplemented and amended by adding a new item of appropriation as follows:

Ch. 2]

APPROPRIATIONS

1

TITLE II – APPROPRIATIONS.

2

Section 1. Appropriations of General Revenue.

3

DEPARTMENT OF ADMINISTRATION

4

21-Division of General Services

5

(WV Code Chapter 5A)

6

Fund 0230 FY 2007 Org 0211

7

General

8

Act- Revenue

9

ivity Funds

10

6a Veterans Memorial Fund 690 \$75,000

11

That the total appropriation for the fiscal year ending the
thirtieth day of June, two thousand seven, to fund 0246, fiscal
year 2007, organization 0304, be supplemented, increased
and amended by adding a new item of appropriation as
follows:

16

TITLE II – APPROPRIATIONS.

17

Section 1. Appropriations of General Revenue.

18

DEPARTMENT OF COMMERCE

19

31-Division of Tourism

20

(WV Code Chapter 5B)

21

Fund 0246 FY 2007 Org 0304

APPROPRIATIONS

[Ch. 2

22						General
23						Revenue
24						Funds
25	1	Hatfield McCoy Recreational Trail . . .	960	\$210,000		

26 And, That the total appropriation for the fiscal year
 27 ending the thirtieth day of June, two thousand seven, to fund
 28 0256, fiscal year 2007, organization 0307, be supplemented
 29 and amended by adding a new item of appropriation as
 30 follows:

31 TITLE II – APPROPRIATIONS.

32 Section 1. Appropriations of General Revenue.

33 DEPARTMENT OF COMMERCE

34 *34-West Virginia Development Office*

35 (WV Code Chapter 5B)

36 Fund 0256 FY 2007 Org 0307

37						General
38						Revenue
39						Funds

40	44a	Mining Safety Technology (R)	945	\$1,000,000		
----	-----	--------------------------------------	-----	-------------	--	--

41 Any unexpended balances remaining in the appropriation
 42 for Mining Safety Technology (fund 0256, activity 945) at
 43 the close of fiscal year 2007 is hereby reappropriated for
 44 expenditure during the fiscal year 2008.

45 The appropriation above for Mining Safety Technology
 46 (fund 0256, activity 945) shall be used in developing,

Ch. 2]

APPROPRIATIONS

47 procuring and/or deploying technologies to assist in locating
48 and communicating with trapped miners, supporting life,
49 transporting rescue personnel and rescued individuals
50 through underground mines and otherwise assist with mine
51 rescue operations.

52 And, That the total appropriation from the State Fund,
53 General Revenue, to the Department of Commerce - Division
54 of Natural Resources, fund 0265, fiscal year 2007,
55 organization 0310, be amended and increased in the existing
56 line items as follows:

57 TITLE II – APPROPRIATIONS.

58 Section 1. Appropriations of General Revenue.

59 DEPARTMENT OF COMMERCE

60 *36-Division of Natural Resources*

61 (WV Code Chapter 20)

62 Fund 0265 FY 2007 Org 0310

63			General
64			Revenue
65			Funds
		Act- ivity	
66	1 Personal Services	001	\$439,591
67	3 Employee Benefits	010	142,337
68	6 Unclassified	099	501,987

69 And, That the total appropriation for the fiscal year
70 ending the thirtieth day of June, two thousand seven, to fund

APPROPRIATIONS

[Ch. 2

71 0277, fiscal year 2007, organization 0314, be supplemented
72 and amended by increasing an existing item of appropriation
73 as follows:

74 TITLE II – APPROPRIATIONS.

75 Section 1. Appropriations of General Revenue.

76 DEPARTMENT OF COMMERCE

77 37-Division of Miners’ Health, Safety and Training

78 (WV Code Chapter 22)

79 Fund 0277 FY 2007 Org 0314

80	General
81	Act- Revenue
82	ivity Funds
83	4 Unclassified 099 \$50,000

84 And, That the total appropriation for the fiscal year
85 ending the thirtieth day of June, two thousand seven, to fund
86 0306, fiscal year 2007, organization 0402, be supplemented
87 and amended by increasing an existing item of appropriation
88 as follows:

89 TITLE II – APPROPRIATIONS.

90 Section 1. Appropriations of General Revenue.

91 DEPARTMENT OF EDUCATION

Ch. 2]

APPROPRIATIONS

92 *43-State FFA-FHA Camp and Conference Center*

93 (WV Code Chapters 18 and 18A)

94 Fund 0306 FY 2007 Org 0402

95		General
96		Act- Revenue
97		ivity Funds

98 4 Unclassified (R) 099 \$2,000,000

99 Any unexpended balance remaining in the appropriation
100 for Unclassified (fund 0306, activity 099) at the close of
101 fiscal year 2007 is hereby reappropriated for expenditure
102 during the fiscal year 2008.

103 And, That the total appropriation for the fiscal year
104 ending the thirtieth day of June, two thousand seven, to fund
105 0313, fiscal year 2007, organization 0402, be supplemented
106 and amended by adding a new item of appropriation as
107 follows:

108 TITLE II – APPROPRIATIONS.

109 **Section 1. Appropriations of General Revenue.**

110 **DEPARTMENT OF EDUCATION**

111 *44-State Department of Education*

112 (WV Code Chapters 18 and 18A)

113 Fund 0313 FY 2007 Org 0402

APPROPRIATIONS

[Ch. 2

114					General
115					Act- Revenue
116					ivity Funds
117	36a	Tax Assessment Errors	353	\$1,650,922	

118 And, That the total appropriation for the fiscal year
 119 ending the thirtieth day of June, two thousand seven, to fund
 120 0407, fiscal year 2007, organization 0506, be supplemented
 121 and amended by increasing an existing item and adding new
 122 items of appropriation as follows:

123 TITLE II – APPROPRIATIONS.

124 Section 1. Appropriations of General Revenue.

125 DEPARTMENT OF HEALTH AND HUMAN
 126 RESOURCES

127 *59-Division of Health-*

128 *Central Office*

129 (WV Code Chapter 16)

130 Fund 0407 FY 2007 Org 0506

131					General
132					Act- Revenue
133					ivity Funds

134	5	Chief Medical Examiner	045	\$353,220	
135	42a	Capital Outlay and Maintenance (R) ..	755	500,000	
136	42b	Antiviral Vaccine Purchases (R)	955	713,000	

Ch. 2]

APPROPRIATIONS

137 Any unexpended balances remaining in the
138 appropriations for Capital Outlay and Maintenance (fund
139 0407, activity 755), and Antiviral Vaccine Purchases (fund
140 0407, activity 955) at the close of fiscal year 2007 are hereby
141 reappropriated for expenditure during the fiscal year 2008.

142 And, That the total appropriation for the fiscal year
143 ending the thirtieth day of June, two thousand seven, to fund
144 0525, fiscal year 2007, organization 0506, be supplemented
145 and amended by increasing existing items of appropriation as
146 follows:

147 TITLE II – APPROPRIATIONS.

148 **Section 1. Appropriations of General Revenue.**

149 **DEPARTMENT OF HEALTH AND HUMAN**
150 **RESOURCES**

151 *60-Consolidated Medical Service Fund*

152 (WV Code Chapter 16)

153 Fund 0525 FY 2007 Org 0506

154			General
155		Act-	Revenue
156		ivity	Funds

157	8 Institutional Facilities Operations . .	335	\$7,618,000
-----	---	-----	-------------

158 And, That the total appropriation for the fiscal year
159 ending the thirtieth day of June, two thousand seven, to fund
160 0443, fiscal year 2007, organization 0606, be supplemented
161 and amended by adding new items of appropriation as
162 follows:

163

TITLE II – APPROPRIATIONS.

164

Section 1. Appropriations of General Revenue.

165

DEPARTMENT OF MILITARY AFFAIRS

166

AND PUBLIC SAFETY

167

68-Division of Homeland Security and

168

Emergency Management

169

(WV Code Chapter 15)

170

Fund 0443 FY 2007 Org 0606

171

General

172

Act-

Revenue

173

ivity

Funds

174

3a Unclassified (R) 099 \$675,000

175

Any unexpended balance remaining in the appropriation

176

for Unclassified (fund 0443, activity 099) at the close of the

177

fiscal year 2007 is hereby reappropriated for expenditure

178

during the fiscal year 2008.

179

And, That the total appropriation for the fiscal year

180

ending the thirtieth day of June, two thousand seven, to fund

181

0450, fiscal year 2007, organization 0608, be supplemented

182

and amended by increasing existing items of appropriation as

183

follows:

Ch. 2]

APPROPRIATIONS

184

TITLE II – APPROPRIATIONS.

185

Section 1. Appropriations of General Revenue.

186

DEPARTMENT OF MILITARY AFFAIRS

187

AND PUBLIC SAFETY

188

70-Division of Corrections-

189

Correctional Units

190

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

191

Fund 0450 FY 2007 Org 0608

192

General

193

Act-

Revenue

194

ivity

Funds

195

11 Payments to Federal, County and/or

196

12 Regional Jails 555 \$5,449,590

197

That the total appropriation for the fiscal year ending the

198

thirtieth day of June, two thousand seven, to fund 0465, fiscal

199

year 2007, organization 0701, be supplemented and amended

200

by adding a new item of appropriation as follows:

201 TITLE II – APPROPRIATIONS.

202 Section 1. Appropriations of General Revenue.

203 DEPARTMENT OF REVENUE

204 78-Office of the Secretary

205 (WV Code Chapter 11)

206 Fund 0465 FY 2007 Org 0701

207		General
208		Act- Revenue
209		ivity Funds

210 4a Unclassified - Transfer (R) 482 \$6,500,000

211

212 Any unexpended balance remaining in the appropriation
213 for Unclassified - Transfer (fund 0465, activity 482) at the
214 close of fiscal year 2007 is hereby reappropriated for
215 expenditure during the fiscal year 2008.

216 The above appropriation for Unclassified - Transfer
217 (activity 482) shall be used and transferred to reconcile audit
218 issues in Workforce West Virginia and shall only be utilized
219 and transferred upon approval of the Secretary of Revenue.

220 The purpose of this supplemental appropriation bill is to
221 supplement, amend, increase and add items of appropriations
222 in the aforesaid accounts for the designated spending units
223 for expenditure during fiscal year two thousand seven.

CHAPTER 3

**(H.B. 101 - By Delegates Staggers, Webster, White, Shook,
Fleischauer, Moye, M. Poling, C. Miller, Perdue,
Wysong and Paxton)**

[Passed March 18, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §44-1-14a of the Code of West Virginia, 1931, as amended, relating to administration of estates by fiduciary commissioners; requiring commissioner to conclude administration of certain estates upon request by interested party; limiting notice required to creditors and payment of related fees by personal representatives; setting expiration of time period for unpaid creditors to file claims against estate; and requiring commissioner to conduct hearing on claim filed by unpaid creditor.

Be it enacted by the Legislature of West Virginia:

That §44-1-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

- 1 (a) Within thirty days of the filing of the appraisal of
- 2 any estate as required in section fourteen of this article, the

3 clerk of the county commission shall publish, once a week
4 for two successive weeks, in a newspaper of general
5 circulation within the county of the administration of the
6 estate, a notice, which is to include:

7 (1) The name of the decedent;

8 (2) The name and address of the county commission
9 before whom the proceedings are pending;

10 (3) The name and address of the personal representative;

11 (4) The name and address of any attorney representing
12 the personal representative;

13 (5) The name and address of the fiduciary commissioner,
14 if any;

15 (6) The date of first publication;

16 (7) A statement that claims against the estate must be
17 filed in accordance with the provisions of article two or
18 article three-a of this chapter;

19 (8) A statement that any person seeking to impeach or
20 establish a will must make a complaint in accordance with
21 the provisions of section eleven, twelve or thirteen, article
22 five, chapter forty-one of this code;

23 (9) A statement that an interested person objecting to the
24 qualifications of the personal representative or the venue or
25 jurisdiction of the court must be filed with the county
26 commission within three months after the date of first
27 publication or thirty days of service of the notice, whichever
28 is later; and

29 (10) If the appraisal of the assets of the estate shows
30 the value to be one hundred thousand dollars or less,
31 exclusive of real estate specifically devised and nonprobate
32 assets, or, if it appears to the clerk that there is only one
33 beneficiary of the probate estate and that the beneficiary is
34 competent at law, a statement substantially as follows:
35 “Settlement of the estate of the following named decedents
36 will proceed without reference to a fiduciary commissioner
37 unless within ninety days from the first publication of this
38 notice a reference is requested by a party in interest or an
39 unpaid creditor files a claim and good cause is shown to
40 support reference to a fiduciary commissioner.” If a party in
41 interest requests the fiduciary commissioner to conclude the
42 administration of the estate or an unpaid creditor files a
43 claim, no further notice to creditors shall be published in the
44 newspaper, and the personal representative shall be required
45 to pay no further fees, except to the fiduciary commissioner
46 for conducting any hearings, or performing any other duty as
47 a fiduciary commissioner. The time period for filing claims
48 against the estate shall expire upon the time period set out in
49 the notice to creditors published by the clerk of the county
50 commission as required in this subsection (a). In the event
51 that an unpaid creditor files a claim, the fiduciary
52 commissioner shall conduct a hearing on the claim filed by
53 the creditor, otherwise, the fiduciary commissioner shall
54 conclude the administration of the estate as requested by the
55 interested party.

56 (b) If no appraisal is filed within the time period
57 established pursuant to section fourteen of this article, the
58 county clerk shall send a notice to the personal representative
59 by first class mail, postage prepaid, indicating that the
60 appraisal has not been filed. Notwithstanding any other
61 provision of this code to the contrary, the county clerk shall
62 publish the notice required in subsection (a) of this section

63 within six months of the qualification of the personal
64 representative.

65 (c) The personal representative shall promptly make a
66 diligent search to determine the names and addresses of
67 creditors of the decedent who are reasonably ascertainable.

68 (d) The personal representative shall, within ninety days
69 after the date of first publication, serve a copy of the notice,
70 published pursuant to subsection (a) of this section, by first
71 class mail, postage prepaid, or by personal service on the
72 following persons:

73 (1) If the personal representative is not the decedent's
74 surviving spouse and not the sole beneficiary or sole heir, the
75 decedent's surviving spouse, if any;

76 (2) If there is a will and the personal representative is not
77 the sole beneficiary, any beneficiaries;

78 (3) If there is not a will and the personal representative is
79 not the sole heir, any heirs;

80 (4) The trustee of any trust in which the decedent was a
81 grantor, if any; and

82 (5) All creditors identified under subsection (c) of this
83 section, other than a creditor who filed a claim as provided in
84 article two of this chapter or a creditor whose claim has been
85 paid in full.

86 (e) Any person interested in the estate who objects to the
87 qualifications of the personal representative or the venue or
88 jurisdiction of the court, shall file notice of an objection with
89 the county commission within ninety days after the date of
90 the first publication as required in subsection (a) of this

Ch. 4]

PROFESSIONS AND OCCUPATIONS

91 section or within thirty days after service of the notice as
92 required by subsection (d) of this section, whichever is later.
93 If an objection is not timely filed, the objection is forever
94 barred.

95 (f) A personal representative acting in good faith is not
96 personally liable for serving notice under this section,
97 notwithstanding a determination that notice was not required
98 by this section. A personal representative acting in good
99 faith who fails to serve the notice required by this section is
100 not personally liable. The service of the notice in accordance
101 with this subsection may not be construed to admit the
102 validity or enforceability of a claim.

103

104 (g) The clerk of the county commission shall collect a fee
105 of twenty dollars for the publication of the notice required in
106 this section.

107 (h) For purposes of this section, the term beneficiary
108 means a person designated in a will to receive real or
109 personal property.



CHAPTER 4

**(S.B. 1001 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 18, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §30-5-1b, §30-5-12, §30-5-12b,
§30-5-16b and §30-5-29 of the Code of West Virginia, 1931,
as amended; to amend said code by adding thereto a new

section, designated §30-5-12c; to amend and reenact §30-7-15c of said code; and to amend and reenact §60A-3-308 of said code, all relating generally to the authorization of certain pharmacy-related practices; authorizing electronic prescribing; and extending the date for pharmacy collaborative agreements.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b, §30-5-12, §30-5-12b, §30-5-16b and §30-5-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-5-12c; that §30-7-15c of said code be amended and reenacted; and that §60A-3-308 of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.

60A. Uniformed Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

5. Pharmacists, Pharmacy Technicians, Pharmacy Interns and Pharmacies.

7. Registered Professional Nurses.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
P H A R M A C Y I N T E R N S A N D
P H A R M A C I E S.**

- | | |
|------------|---|
| §30-5-1b. | Definitions. |
| §30-5-12. | Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription. |
| §30-5-12b. | Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity. |
| §30-5-12c. | Electronic prescribing. |
| §30-5-16b. | Partial filling of prescriptions. |
| §30-5-29. | Collaborative pharmacy practice continuation. |

§30-5-1b. Definitions.

1 The following words and phrases, as used in this article,
2 have the following meanings, unless the context otherwise
3 requires:

4 (1) "Administer" means the direct application of a drug
5 to the body of a patient or research subject by injection,
6 inhalation, ingestion or any other means.

7 (2) "Board of Pharmacy" or "board" means the West
8 Virginia State Board of Pharmacy.

9 (3) "Collaborative pharmacy practice" is that practice of
10 pharmacy where one or more pharmacists have jointly
11 agreed, on a voluntary basis, to work in conjunction with one
12 or more physicians under written protocol where the
13 pharmacist or pharmacists may perform certain patient care
14 functions authorized by the physician or physicians under
15 certain specified conditions and limitations.

16 (4) "Collaborative pharmacy practice agreement" is a
17 written and signed agreement between a pharmacist, a
18 physician and the individual patient, or the patient's
19 authorized representative who has granted his or her
20 informed consent, that provides for collaborative pharmacy
21 practice for the purpose of drug therapy management of a
22 patient, which has been approved by the Board of Pharmacy,
23 the Board of Medicine in the case of an allopathic physician
24 or the West Virginia Board of Osteopathy in the case of an
25 osteopathic physician.

26 (5) "Compounding" means:

27 (A) The preparation, mixing, assembling, packaging or
28 labeling of a drug or device:

29 (i) As the result of a practitioner's prescription drug order
30 or initiative based on the practitioner/patient/pharmacist
31 relationship in the course of professional practice for sale or
32 dispensing; or

33 (ii) For the purpose of, or as an incident to, research,
34 teaching or chemical analysis and not for sale or dispensing;
35 and

36 (B) The preparation of drugs or devices in anticipation of
37 prescription drug orders based on routine, regularly observed
38 prescribing patterns.

39 (6) "Confidential information" means information
40 maintained by the pharmacist in the patient record or which
41 is communicated to the patient as part of patient counseling
42 or which is communicated by the patient to the pharmacist.
43 This information is privileged and may be released only to
44 the patient or to other members of the health care team and
45 other pharmacists where, in the pharmacists' professional
46 judgment, the release is necessary to the patient's health and
47 well-being; to health plans, as that term is defined in 45 CFR
48 §160.103, for payment; to other persons or governmental
49 agencies authorized by law to receive the privileged
50 information; as necessary for the limited purpose of peer
51 review and utilization review; as authorized by the patient or
52 required by court order. Appropriate disclosure, as permitted
53 by this section, may occur by the pharmacist either directly
54 or through an electronic data intermediary, as defined in
55 subdivision (14) of this section.

56 (7) "Deliver" or "delivery" means the actual, constructive
57 or attempted transfer of a drug or device from one person to
58 another, whether or not for a consideration.

59 (8) "Device" means an instrument, apparatus, implement
60 or machine, contrivance, implant or other similar or related
61 article, including any component part or accessory, which is
62 required under federal law to bear the label, "Caution:
63 Federal or state law requires dispensing by or on the order of
64 a physician".

65 (9) "Dispense" or "dispensing" means the preparation and
66 delivery of a drug or device in an appropriately labeled and
67 suitable container to a patient or patient's representative or
68 surrogate pursuant to a lawful order of a practitioner for
69 subsequent administration to, or use by, a patient.

70 (10) "Distribute" means the delivery of a drug or device
71 other than by administering or dispensing.

72 (11) "Drug" means:

73 (A) Articles recognized as drugs in the USP-DI, facts and
74 comparisons, physician's desk reference or supplements
75 thereto for use in the diagnosis, cure, mitigation, treatment or
76 prevention of disease in human or other animals;

77 (B) Articles, other than food, intended to affect the
78 structure or any function of the body of human or other
79 animals; and

80 (C) Articles intended for use as a component of any
81 articles specified in paragraph (A) or (B) of this subdivision.

82 (12) "Drug regimen review" includes, but is not limited
83 to, the following activities:

84 (A) Evaluation of the prescription drug orders and patient
85 records for:

- 86 (i) Known allergies;
- 87 (ii) Rational therapy-contraindications;
- 88 (iii) Reasonable dose and route of administration; and
- 89 (iv) Reasonable directions for use.
- 90 (B) Evaluation of the prescription drug orders and patient
91 records for duplication of therapy.
- 92 (C) Evaluation of the prescription drug for interactions
93 and/or adverse effects which may include, but are not limited
94 to, any of the following:
- 95 (i) Drug-drug;
- 96 (ii) Drug-food;
- 97 (iii) Drug-disease; and
- 98 (iv) Adverse drug reactions.
- 99 (D) Evaluation of the prescription drug orders and patient
100 records for proper use, including overuse and underuse, and
101 optimum therapeutic outcomes.
- 102 (13) "Drug therapy management" means the review of
103 drug therapy regimens of patients by a pharmacist for the
104 purpose of evaluating and rendering advice to a physician
105 regarding adjustment of the regimen in accordance with the
106 collaborative pharmacy practice agreement. Decisions
107 involving drug therapy management shall be made in the best
108 interest of the patient. Drug therapy management shall be
109 limited to:

Ch. 4]

PROFESSIONS AND OCCUPATIONS

110 (A) Implementing, modifying and managing drug therapy
111 according to the terms of the collaborative pharmacy practice
112 agreement;

113 (B) Collecting and reviewing patient histories;

114 (C) Obtaining and checking vital signs, including pulse,
115 temperature, blood pressure and respiration;

116 (D) Ordering screening laboratory tests that are dose
117 related and specific to the patient's medication or are protocol
118 driven and are also specifically set out in the collaborative
119 pharmacy practice agreement between the pharmacist and
120 physician.

121 (14) "Electronic data intermediary" means an entity that
122 provides the infrastructure to connect a computer system,
123 hand-held electronic device or other electronic device used
124 by a prescribing practitioner with a computer system or other
125 electronic device used by a pharmacist to facilitate the secure
126 transmission of:

127 (A) An electronic prescription order;

128 (B) A refill authorization request;

129 (C) A communication; or

130 (D) Other patient care information.

131 (15) "E-prescribing" means the transmission, using
132 electronic media, of prescription or prescription-related
133 information between a practitioner, pharmacist, pharmacy
134 benefit manager or health plan as defined in 45 CFR
135 §160.103, either directly or through an electronic data
136 intermediary. E-prescribing includes, but is not limited to,

137 two-way transmissions between the point of care and the
138 pharmacist. E-prescribing may also be referenced by the
139 terms “electronic prescription” or “electronic order”.

140 (16) "Intern" means an individual who is:

141 (A) Currently registered by this state to engage in the
142 practice of pharmacy while under the supervision of a
143 licensed pharmacist and is satisfactorily progressing toward
144 meeting the requirements for licensure as a pharmacist; or

145 (B) A graduate of an approved college of pharmacy or a
146 graduate who has established educational equivalency by
147 obtaining a foreign pharmacy graduate examination
148 committee (FPGEC) certificate who is currently licensed by
149 the board for the purpose of obtaining practical experience as
150 a requirement for licensure as a pharmacist; or

151 (C) A qualified applicant awaiting examination for
152 licensure; or

153 (D) An individual participating in a residency or
154 fellowship program.

155 (17) "Labeling" means the process of preparing and
156 affixing a label to a drug container exclusive, however, of a
157 labeling by a manufacturer, packer or distributor of a
158 nonprescription drug or commercially packaged legend drug
159 or device. Any label shall include all information required by
160 federal law or regulation and state law or rule.

161 (18) "Mail-order pharmacy" means a pharmacy,
162 regardless of its location, which dispenses greater than ten
163 percent prescription drugs via the mail.

164 (19) "Manufacturer" means a person engaged in the
165 manufacture of drugs or devices.

166 (20) "Manufacturing" means the production, preparation,
167 propagation or processing of a drug or device, either directly
168 or indirectly, by extraction from substances of natural origin
169 or independently by means of chemical or biological
170 synthesis and includes any packaging or repackaging of the
171 substance or substances or labeling or relabeling of its
172 contents and the promotion and marketing of the drugs or
173 devices. Manufacturing also includes the preparation and
174 promotion of commercially available products from bulk
175 compounds for resale by pharmacies, practitioners or other
176 persons.

177 (21) "Nonprescription drug" means a drug which may be
178 sold without a prescription and which is labeled for use by
179 the consumer in accordance with the requirements of the laws
180 and rules of this state and the federal government.

181 (22) "Patient counseling" means the oral communication
182 by the pharmacist of information, as defined in the rules of
183 the board, to the patient to improve therapy by aiding in the
184 proper use of drugs and devices.

185 (23) "Person" means an individual, corporation,
186 partnership, association or any other legal entity, including
187 government.

188 (24) "Pharmaceutical care" is the provision of drug
189 therapy and other pharmaceutical patient care services
190 intended to achieve outcomes related to the cure or
191 prevention of a disease, elimination or reduction of a patient's
192 symptoms or arresting or slowing of a disease process as
193 defined in the rules of the board.

194 (25) "Pharmacist" or "registered pharmacist" means an
195 individual currently licensed by this state to engage in the
196 practice of pharmacy and pharmaceutical care.

197 (26) "Pharmacist-in-charge" means a pharmacist
198 currently licensed in this state who accepts responsibility for
199 the operation of a pharmacy in conformance with all laws and
200 rules pertinent to the practice of pharmacy and the
201 distribution of drugs and who is personally in full and actual
202 charge of the pharmacy and personnel.

203 (27) "Pharmacist's scope of practice pursuant to the
204 collaborative pharmacy practice agreement" means those
205 duties and limitations of duties placed upon the pharmacist
206 by the collaborating physician, as jointly approved by the
207 Board of Pharmacy and the Board of Medicine or the Board
208 of Osteopathy.

209 (28) "Pharmacy" means any drugstore, apothecary or
210 place within this state where drugs are dispensed and sold at
211 retail or displayed for sale at retail and pharmaceutical care
212 is provided and any place outside of this state where drugs
213 are dispensed and pharmaceutical care is provided to
214 residents of this state.

215 (29) "Physician" means an individual currently licensed,
216 in good standing and without restrictions, as an allopathic
217 physician by the West Virginia Board of Medicine or an
218 osteopathic physician by the West Virginia Board of
219 Osteopathy.

220 (30) "Pharmacy technician" means registered supportive
221 personnel who work under the direct supervision of a
222 pharmacist who have passed an approved training program as
223 described in this article.

224 (31) "Practitioner" means an individual currently
225 licensed, registered or otherwise authorized by any state,
226 territory or district of the United States to prescribe and
227 administer drugs in the course of professional practices,
228 including allopathic and osteopathic physicians, dentists,
229 physician assistants, optometrists, veterinarians, podiatrists
230 and nurse practitioners as allowed by law.

231 (32) "Preceptor" means an individual who is currently
232 licensed as a pharmacist by the board, meets the
233 qualifications as a preceptor under the rules of the board and
234 participates in the instructional training of pharmacy interns.

235 (33) "Prescription drug" or "legend drug" means a drug
236 which, under federal law, is required, prior to being
237 dispensed or delivered, to be labeled with either of the
238 following statements:

239 (A) "Caution: Federal law prohibits dispensing without
240 prescription"; or

241 (B) "Caution: Federal law restricts this drug to use by, or
242 on the order of, a licensed veterinarian"; or a drug which is
243 required by any applicable federal or state law or rule to be
244 dispensed pursuant only to a prescription drug order or is
245 restricted to use by practitioners only.

246 (34) "Prescription drug order" means a lawful order of a
247 practitioner for a drug or device for a specific patient.

248 (35) "Prospective drug use review" means a review of the
249 patient's drug therapy and prescription drug order, as defined
250 in the rules of the board, prior to dispensing the drug as part
251 of a drug regimen review.

252 (36) "USP-DI" means the United States pharmacopeia-
253 dispensing information.

254 (37) "Wholesale distributor" means any person engaged
255 in wholesale distribution of drugs, including, but not limited
256 to, manufacturers' and distributors' warehouses, chain drug
257 warehouses and wholesale drug warehouses, independent
258 wholesale drug trader and retail pharmacies that conduct
259 wholesale distributions.

**§30-5-12. Responsibility for quality of drugs dispensed;
exception; falsification of labels; deviation from
prescription.**

1 (a) All persons, whether licensed pharmacists or not, shall
2 be responsible for the quality of all drugs, chemicals and
3 medicines they may sell or dispense, with the exception of
4 those sold in or dispensed unchanged from the original retail
5 package of the manufacturer, in which event the
6 manufacturer shall be responsible.

7 (b) Except as provided in section twelve-b of this article,
8 the following acts shall be prohibited: (1) The falsification of
9 any label upon the immediate container, box and/or package
10 containing a drug; (2) the substitution or the dispensing of a
11 different drug in lieu of any drug prescribed in a prescription
12 without the approval of the practitioner authorizing the
13 original prescription: *Provided*, That this shall not be
14 construed to interfere with the art of prescription
15 compounding which does not alter the therapeutic properties
16 of the prescription or appropriate generic substitute; (3) the
17 filling or refilling of any prescription for a greater quantity of
18 any drug or drug product than that prescribed in the original
19 prescription without a written or electronic order or an oral
20 order reduced to writing, or the refilling of a prescription

21 without the verbal, written or electronic consent of the
22 practitioner authorizing the original prescription.

**§30-5-12b. Definitions; selection of generic drug products;
exceptions; records; labels; manufacturing
standards; rules; notice of substitution;
complaints; notice and hearing; immunity.**

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or drug
4 product, its container, label or wrapping at the time of
5 packaging.

6 (2) "Generic name" means the official title of a drug or
7 drug combination for which a new drug application, or an
8 abbreviated new drug application, has been approved by the
9 United States Food and Drug Administration and is in effect.

10 (3) "Substitute" means to dispense without the
11 prescriber's express authorization a therapeutically equivalent
12 generic drug product in the place of the drug ordered or
13 prescribed.

14 (4) "Equivalent" means drugs or drug products which are
15 the same amounts of identical active ingredients and same
16 dosage form and which will provide the same therapeutic
17 efficacy and toxicity when administered to an individual and
18 is approved by the United States Food and Drug
19 Administration.

20 (b) A pharmacist who receives a prescription for a brand
21 name drug or drug product shall substitute a less expensive
22 equivalent generic name drug or drug product unless in the
23 exercise of his or her professional judgment the pharmacist

24 believes that the less expensive drug is not suitable for the
25 particular patient: *Provided*, That no substitution may be
26 made by the pharmacist where the prescribing practitioner
27 indicates that, in his or her professional judgment, a specific
28 brand name drug is medically necessary for a particular
29 patient.

30 (c) A written prescription order shall permit the
31 pharmacist to substitute an equivalent generic name drug or
32 drug product except where the prescribing practitioner has
33 indicated in his or her own handwriting the words "Brand
34 Medically Necessary". The following sentence shall be
35 printed on the prescription form. "This prescription may be
36 filled with a generically equivalent drug product unless the
37 words 'Brand Medically Necessary' are written, in the
38 practitioner's own handwriting, on this prescription form.":
39 *Provided*, That "Brand Medically Necessary" may be
40 indicated on the prescription order other than in the
41 prescribing practitioner's own handwriting unless otherwise
42 required by federal mandate.

43 (d) A verbal prescription order shall permit the
44 pharmacist to substitute an equivalent generic name drug or
45 drug product except where the prescribing practitioner shall
46 indicate to the pharmacist that the prescription is "Brand
47 Necessary" or "Brand Medically Necessary". The pharmacist
48 shall note the instructions on the file copy of the prescription
49 or chart order form.

50 (e) No person may by trade rule, work rule, contract or in
51 any other way prohibit, restrict, limit or attempt to prohibit,
52 restrict or limit the making of a generic name substitution
53 under the provisions of this section. No employer or his or
54 her agent may use coercion or other means to interfere with
55 the professional judgment of the pharmacist in deciding
56 which generic name drugs or drug products shall be stocked

57 or substituted: *Provided*, That this section shall not be
58 construed to permit the pharmacist to generally refuse to
59 substitute less expensive therapeutically equivalent generic
60 drugs for brand name drugs and that any pharmacist so
61 refusing shall be subject to the penalties prescribed in section
62 twenty-two of this article.

63 (f) A pharmacist may substitute a drug pursuant to the
64 provisions of this section only where there will be a savings
65 to the buyer. Where substitution is proper, pursuant to this
66 section, or where the practitioner prescribes the drug by
67 generic name, the pharmacist shall, consistent with his or her
68 professional judgment, dispense the lowest retail cost,
69 effective brand which is in stock.

70 (g) All savings in the retail price of the prescription shall
71 be passed on to the purchaser; these savings shall be equal to
72 the difference between the retail price of the brand name
73 product and the customary and usual price of the generic
74 product substituted therefor: *Provided*, That in no event shall
75 such savings be less than the difference in acquisition cost of
76 the brand name product prescribed and the acquisition cost of
77 the substituted product.

78 (h) Each pharmacy shall maintain a record of any
79 substitution of an equivalent generic name drug product for
80 a prescribed brand name drug product on the file copy of a
81 written, electronic or verbal prescription or chart order. Such
82 record shall include the manufacturer and generic name of
83 the drug product selected.

84 (i) All drugs shall be labeled in accordance with the
85 instructions of the practitioner.

86 (j) Unless the practitioner directs otherwise, the
87 prescription label on all drugs dispensed by the pharmacist

88 shall indicate the generic name using abbreviations, if
89 necessary, and either the name of the manufacturer or
90 packager, whichever is applicable in the pharmacist's
91 discretion. The same notation will be made on the original
92 prescription retained by the pharmacist.

93 (k) A pharmacist may not dispense a product under the
94 provisions of this section unless the manufacturer has shown
95 that the drug has been manufactured with the following
96 minimum good manufacturing standards and practices by:

97 (1) Labeling products with the name of the original
98 manufacturer and control number;

99 (2) Maintaining quality control standards equal to or
100 greater than those of the United States Food and Drug
101 Administration;

102 (3) Marking products with identification code or
103 monogram; and

104 (4) Labeling products with an expiration date.

105 (1) The West Virginia Board of Pharmacy shall
106 promulgate rules in accordance with the provisions of chapter
107 twenty-nine-a of this code which establish a formulary of
108 generic type and brand name drug products which are
109 determined by the board to demonstrate significant biological
110 or therapeutic inequivalence and which, if substituted, would
111 pose a threat to the health and safety of patients receiving
112 prescription medication. The formulary shall be promulgated
113 by the board within ninety days of the date of passage of this
114 section and may be amended in accordance with the
115 provisions of chapter twenty-nine-a of this code.

116 (m) No pharmacist shall substitute a generic-named
117 therapeutically equivalent drug product for a prescribed
118 brand name drug product if the brand name drug product or
119 the generic drug type is listed on the formulary established by
120 the West Virginia Board of Pharmacy pursuant to this article
121 or is found to be in violation of the requirements of the
122 United States Food and Drug Administration.

123 (n) Any pharmacist who substitutes any drug shall, either
124 personally or through his or her agent, assistant or employee,
125 notify the person presenting the prescription of such
126 substitution. The person presenting the prescription shall
127 have the right to refuse the substitution. Upon request the
128 pharmacist shall relate the retail price difference between the
129 brand name and the drug substituted for it.

130 (o) Every pharmacy shall post in a prominent place that
131 is in clear and unobstructed public view, at or near the place
132 where prescriptions are dispensed, a sign which shall read:
133 "West Virginia law requires pharmacists to substitute a less
134 expensive generic-named therapeutically equivalent drug for
135 a brand name drug, if available, unless you or your physician
136 direct otherwise". The sign shall be printed with lettering of
137 at least one and one-half inches in height with appropriate
138 margins and spacing as prescribed by the West Virginia
139 Board of Pharmacy.

140 (p) The West Virginia Board of Pharmacy shall
141 promulgate rules in accordance with the provisions of chapter
142 twenty-nine-a of this code setting standards for substituted
143 drug products, obtaining compliance with the provisions of
144 this section and enforcing the provisions of this section.

145 (q) Any person shall have the right to file a complaint
146 with the West Virginia Board of Pharmacy regarding any

147 violation of the provisions of this article. Such complaints
148 shall be investigated by the Board of Pharmacy.

149 (r) Fifteen days after the board has notified, by registered
150 mail, a person, firm, corporation or copartnership that such
151 person, firm, corporation or copartnership is suspected of
152 being in violation of a provision of this section, the board
153 shall hold a hearing on the matter. If, as a result of the
154 hearing, the board determines that a person, firm, corporation
155 or copartnership is violating any of the provisions of this
156 section, it may, in addition to any penalties prescribed by
157 section twenty-two of this article, suspend or revoke the
158 permit of any person, firm, corporation or copartnership to
159 operate a pharmacy.

160 (s) No pharmacist complying with the provisions of this
161 section shall be liable in any way for the dispensing of a
162 generic-named therapeutically equivalent drug, substituted
163 under the provisions of this section, unless the generic-named
164 therapeutically equivalent drug was incorrectly substituted.

165 (t) In no event where the pharmacist substitutes a drug
166 under the provisions of this section shall the prescribing
167 physician be liable in any action for loss, damage, injury or
168 death of any person occasioned by or arising from the use of
169 the substitute drug unless the original drug was incorrectly
170 prescribed.

171 (u) Failure of a practitioner to specify that a specific
172 brand name is necessary for a particular patient shall not
173 constitute evidence of negligence unless the practitioner had
174 reasonable cause to believe that the health of the patient
175 required the use of a certain product and no other.

§30-5-12c. Electronic prescribing.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, E-prescribing, as defined in subdivision (15),
3 section one-b of this article, is hereby permitted and
4 electronic prescriptions shall be treated as valid prescriptions
5 orders. E-prescribing of controlled substances shall not be
6 permitted, except as provided by emergency rules
7 promulgated by the board pursuant to the provisions of
8 section fifteen, article three, chapter twenty-nine-a of this
9 code, which such rules shall not be contrary to any applicable
10 federal law, rule or regulation.

11 (b) All electronic data intermediaries shall ensure the
12 integrity of all electronic prescriptions and confidential
13 information, such that the data or information are not altered
14 or destroyed in an unauthorized manner. Electronic data
15 intermediaries shall implement policies and procedures to
16 protect electronic prescriptions and all confidential
17 information from improper alteration or destruction.

18 (c) All electronic prescriptions shall be transmitted in a
19 manner consistent with applicable federal law, rules and
20 regulations, including, but not limited to, the Health
21 Insurance Portability and Accountability Act of 1996, 29 U.
22 S. C.§1181, as amended, the Medicare Prescription Drug,
23 Improvement and Modernization Act of 2003, 42 U. S.
24 C.§1395w, as amended, the Controlled Substances Act of
25 1970, 21 U. S. C.§801, as amended, the Drug Abuse
26 Prevention, Treatment and Rehabilitation Act, 21 U. S.
27 C.§1101, as amended, and the Comprehensive Alcohol
28 Abuse and Alcoholism Prevention, Treatment and
29 Rehabilitation Act of 1970, 42 U. S. C.§4541, as amended.

30 (d) The board shall promulgate emergency rules pursuant
31 to the provisions of article three, chapter twenty-nine-a of this
32 code to implement and enforce the provisions of this section.

§30-5-16b. Partial filling of prescriptions.

1 (a) The partial filling of a prescription for a controlled
2 substance listed in Schedule II is permissible if the
3 pharmacist is unable to supply the full quantity called for in
4 a written or emergency oral prescription and the pharmacist
5 makes a notation of the quantity supplied on the face of the
6 written prescription or on the written record of the emergency
7 oral prescription. The remaining portion of the prescription
8 may be filled within seventy-two hours of the first partial
9 filling: *Provided*, That if the remaining portion is not or
10 cannot be filled within the 72-hour period, the pharmacist
11 shall so notify the prescribing individual practitioner. No
12 further quantity may be supplied beyond seventy-two hours
13 without a new prescription.

14 (b) To the extent E-prescribing of controlled substances
15 is permitted by rules promulgated pursuant to the provisions
16 of subsection (d), section twelve of this article and not
17 contrary to any applicable federal law, rule or regulation, the
18 partial filling of an electronic prescription for a controlled
19 substance listed in Schedule II shall be permissible if the
20 pharmacist is unable to supply the full quantity called for in
21 an electronic prescription and the pharmacist makes a
22 notation on the quantity supplied within the electronic record.
23 The remaining portion of the prescription may be filled
24 consistent with the limitations set forth in subsection (a) of
25 this section.

§30-5-29. Collaborative pharmacy practice continuation.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, pharmacy collaborative agreements in community
3 settings shall continue to exist until the first day of July, two
4 thousand ten, unless sooner terminated, continued or
5 reestablished pursuant to said article.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

**§30-7-15c. Form of prescriptions; termination of authority;
renewal; notification of termination of
authority.**

1 (a) Prescriptions authorized by an advanced nurse
2 practitioner must comply with all applicable state and federal
3 laws; must be signed by the prescriber with the initials "A.
4 N. P." or the designated certification title of the prescriber;
5 and must include the prescriber's identification number
6 assigned by the board or the prescriber's national provider
7 identifier assigned by the National Provider System pursuant
8 to 45 CFR §162.408.

9 (b) Prescriptive authorization shall be terminated if the
10 advanced nurse practitioner has:

11 (1) Not maintained current authorization as an advanced
12 nurse practitioner; or

13 (2) Prescribed outside the advanced nurse practitioner's
14 scope of practice or has prescribed drugs for other than
15 therapeutic purposes; or

16 (3) Has not filed verification of a collaborative agreement
17 with the board.

18 (c) Prescriptive authority for an advanced nurse
19 practitioner must be renewed biennially. Documentation of
20 eight contact hours of pharmacology during the previous two
21 years must be submitted at the time of renewal.

22 (d) The board shall notify the Board of Pharmacy and the
23 Board of Medicine within twenty-four hours after termination
24 of, or change in, an advanced nurse practitioner's prescriptive
25 authority.

CHAPTER 60A. UNIFORMED CONTROLLED SUBSTANCES ACT.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-308. Prescriptions.

1 (a) Except when dispensed directly by a practitioner,
2 other than a pharmacy, to an ultimate user, no controlled
3 substance in Schedule II may be dispensed without the lawful
4 prescription 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

10 requirements of section three hundred six of this article. No
11 prescription for a Schedule II substance may be refilled.

12 (c) Except when dispensed directly by a practitioner,
13 other than a pharmacy, to an ultimate user, a controlled
14 substance included in Schedule III or IV, which is a
15 prescription drug as determined under appropriate state or
16 federal statute, shall not be dispensed without a lawful
17 prescription of a practitioner. The prescription shall not be
18 filled or refilled more than six months after the date thereof
19 or be refilled more than five times unless renewed by the
20 practitioner.

21 (d) (1) A controlled substance included in Schedule V
22 shall not be distributed or dispensed other than for a
23 medicinal purpose: *Provided*, That buprenorphine shall be
24 dispensed only by prescription pursuant to subsections (a),
25 (b) and (c) of this section: *Provided, however*, That the
26 controlled substances included in subsection (e), section two
27 hundred twelve, article two of this chapter shall be dispensed,
28 sold or distributed only by a physician, in a pharmacy by a
29 pharmacist or pharmacy technician, or health care
30 professional.

31 (2) If the substance described in subsection (e), section
32 two hundred twelve, article two of this chapter is dispensed,
33 sold or distributed in a pharmacy:

34 (A) The substance shall be dispensed, sold or distributed
35 only by a pharmacist or a pharmacy technician; and

36 (B) Any person purchasing, receiving or otherwise
37 acquiring any such substance shall produce a photographic
38 identification issued by a state or federal governmental entity
39 reflecting his or her date of birth.

CHAPTER 5**(S.B. 1002 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 18, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to the compensation of the membership of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.**§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

- 1 (a) The superintendent shall establish within the West
- 2 Virginia State Police a system to provide for: The promotion
- 3 of members to the supervisory ranks of sergeant, first
- 4 sergeant, second lieutenant and first lieutenant; the
- 5 classification of nonsupervisory members within the field
- 6 operations force to the ranks of trooper, senior trooper,
- 7 trooper first class or corporal; the classification of members

8 assigned to the forensic laboratory as criminalist I-VII; and
9 the temporary reclassification of members assigned to
10 administrative duties as administrative support specialist I-
11 VIII.

12 (b) The superintendent may propose legislative rules for
13 promulgation in accordance with article three, chapter
14 twenty-nine-a of this code for the purpose of ensuring
15 consistency, predictability and independent review of any
16 system developed under the provisions of this section.

17 (c) The superintendent shall provide to each member a
18 written manual governing any system established under the
19 provisions of this section and specific procedures shall be
20 identified for the evaluation and testing of members for
21 promotion or reclassification and the subsequent placement
22 of any members on a promotional eligibility or
23 reclassification recommendation list.

24 (d) Beginning on the first day of November, two
25 thousand five, and continuing until and including the thirtieth
26 day of June, two thousand six, members shall receive annual
27 salaries as follows:

28 **ANNUAL SALARY SCHEDULE (BASE PAY)**

29 **SUPERVISORY AND NONSUPERVISORY RANKS**

30	Cadet During Training	\$2,218.50 Mo.	\$26,622
31	Cadet Trooper After Training	2,621.50 Mo.	31,458
32	Trooper Second Year		31,922
33	Trooper Third Year		32,294
34	Trooper Fourth & Fifth Year		32,594

STATE POLICE

[Ch. 5

35	Senior Trooper	34,682
36	Trooper First Class	36,770
37	Corporal	38,858
38	Sergeant	43,034
39	First Sergeant	45,122
40	Second Lieutenant	47,210
41	First Lieutenant	49,298
42	Captain	51,386
43	Major	53,474
44	Lieutenant Colonel	55,562

45 **ANNUAL SALARY SCHEDULE (BASE PAY)**

46 **ADMINISTRATION SUPPORT**

47 **SPECIALIST CLASSIFICATION**

48	I	\$32,594
49	II	34,682
50	III	36,770
51	IV	38,858
52	V	43,034
53	VI	45,122
54	VII	47,210
55	VIII	49,298

56 **ANNUAL SALARY SCHEDULE (BASE PAY)**

57 **CRIMINALIST CLASSIFICATION**

58	I	\$32,594
59	II	34,682
60	III	36,770
61	IV	38,858
62	V	43,044
63	VI	45,122
64	VII	47,210
65	VIII	49,298

66 Beginning on the first day of July, two thousand six, and
67 continuing until and including the thirtieth day of June, two
68 thousand seven, members shall receive annual salaries as
69 follows:

70 ANNUAL SALARY SCHEDULE (BASE PAY)

71 SUPERVISORY AND NONSUPERVISORY RANKS

72	Cadet During Training	\$2,343.50 Mo.	\$28,122
73	Cadet Trooper After Training	2,913.17 Mo.	34,958
74	Trooper Second Year		36,922
75	Trooper Third Year		37,294
76	Senior Trooper		37,682
77	Trooper First Class		38,270
78	Corporal		38,858
79	Sergeant		43,034
80	First Sergeant		45,122
81	Second Lieutenant		47,210
82	First Lieutenant		49,298
83	Captain		51,386
84	Major		53,474
85	Lieutenant Colonel		55,562

86 ANNUAL SALARY SCHEDULE (BASE PAY)

87 ADMINISTRATION SUPPORT

88 SPECIALIST CLASSIFICATION

89	I	\$37,294
90	II	37,682
91	III	38,270
92	IV	38,858
93	V	43,034
94	VI	45,122
95	VII	47,210
96	VIII	49,298

97 **ANNUAL SALARY SCHEDULE (BASE PAY)**98 **CRIMINALIST CLASSIFICATION**

99	I	.....	\$37,294
100	II	.....	37,682
101	III	.....	38,270
102	IV	.....	38,858
103	V	.....	43,044
104	VI	.....	45,122
105	VII	.....	47,210
106	VIII	.....	49,298

107 Beginning on the first day of July, two thousand seven,
 108 until and including the thirtieth day of June, two thousand
 109 eight, members shall receive annual salaries as follows:

110 **ANNUAL SALARY SCHEDULE (BASE PAY)**111 **SUPERVISORY AND NONSUPERVISORY RANKS**

112	Cadet During Training	.....	2,550.50 Mo.	\$ 30,606
113	Cadet Trooper After Training	.....	3,138.17 Mo.	37,658
114	Trooper Second Year	.....		39,122
115	Trooper Third Year	.....		39,494
116	Senior Trooper	.....		39,882
117	Trooper First Class	.....		40,470
118	Corporal	.....		41,058
119	Sergeant	.....		45,234
120	First Sergeant	.....		47,322
121	Second Lieutenant	.....		49,410
122	First Lieutenant	.....		51,498
123	Captain	.....		53,586
124	Major	.....		55,674
125	Lieutenant Colonel	.....		57,762

Ch. 5]

STATE POLICE

126	ANNUAL SALARY SCHEDULE (BASE PAY)	
127	ADMINISTRATION SUPPORT	
128	SPECIALIST CLASSIFICATION	
129	I	\$ 39,494
130	II	39,882
131	III	40,470
132	IV	41,058
133	V	45,234
134	VI	47,322
135	VII	49,410
136	VIII	51,498

137	ANNUAL SALARY SCHEDULE (BASE PAY)	
138	CRIMINALIST CLASSIFICATION	
139	I	\$ 39,494
140	II	39,882
141	III	40,470
142	IV	41,058
143	V	45,244
144	VI	47,322
145	VII	49,410
146	VIII	51,498

147 Beginning on the first day of July, two thousand eight,
148 and continuing thereafter, members shall receive annual
149 salaries as follows:

150	ANNUAL SALARY SCHEDULE (BASE PAY)	
151	SUPERVISORY AND NONSUPERVISORY RANKS	
152	Cadet During Training	\$ 2,675.50 Mo. \$ 32,106
153	Cadet Trooper After Training	3,263.17 Mo. 39,158
154	Trooper Second Year	40,122

STATE POLICE

[Ch. 5

155	Trooper Third Year	40,494
156	Senior Trooper	40,882
157	Trooper First Class	41,470
158	Corporal	42,058
159	Sergeant	46,234
160	First Sergeant	48,322
161	Second Lieutenant	50,410
162	First Lieutenant	52,498
163	Captain	54,586
164	Major	56,674
165	Lieutenant Colonel	58,762

166 **ANNUAL SALARY SCHEDULE (BASE PAY)**

167 **ADMINISTRATION SUPPORT**

168 **SPECIALIST CLASSIFICATION**

169	I	\$ 40,494
170	II	40,882
171	III	41,470
172	IV	42,058
173	V	46,234
174	VI	48,322
175	VII	50,410
176	VIII	52,498

177 **ANNUAL SALARY SCHEDULE (BASE PAY)**

178 **CRIMINALIST CLASSIFICATION**

179	I	\$ 40,494
180	II	40,882
181	III	41,470
182	IV	42,058

183	V	46,234
184	VI	48,322
185	VII	50,410
186	VIII	52,498

187 Each member of the West Virginia State Police whose
 188 salary is fixed and specified in this annual salary schedule is
 189 entitled to the length of service increases set forth in
 190 subsection (e) of this section and supplemental pay as
 191 provided in subsection (g) of this section.

192 (e) Each member of the West Virginia State Police whose
 193 salary is fixed and specified pursuant to this section shall
 194 receive, and is entitled to, an increase in salary over that set
 195 forth in subsection (d) of this section for grade in rank, based
 196 on length of service, including that service served before and
 197 after the effective date of this section with the West Virginia
 198 State Police as follows: At the end of two years of service
 199 with the West Virginia State Police, the member shall receive
 200 a salary increase of four hundred dollars to be effective
 201 during his or her next year of service and a like increase at
 202 yearly intervals thereafter, with the increases to be
 203 cumulative.

204 (f) In applying the salary schedules set forth in this
 205 section where salary increases are provided for length of
 206 service, members of the West Virginia State Police in service
 207 at the time the schedules become effective shall be given
 208 credit for prior service and shall be paid the salaries the same
 209 length of service entitles them to receive under the provisions
 210 of this section.

211 (g) The Legislature finds and declares that because of the
212 unique duties of members of the West Virginia State Police,
213 it is not appropriate to apply the provisions of state wage and
214 hour laws to them. Accordingly, members of the West
215 Virginia State Police are excluded from the provisions of
216 state wage and hour law. This express exclusion shall not be
217 construed as any indication that the members were or were
218 not covered by the wage and hour law prior to this exclusion.

219 In lieu of any overtime pay they might otherwise have
220 received under the wage and hour law, and in addition to
221 their salaries and increases for length of service, members
222 who have completed basic training and who are exempt from
223 federal Fair Labor Standards Act guidelines may receive
224 supplemental pay as provided in this section.

225 The authority of the superintendent to propose a
226 legislative rule or amendment thereto for promulgation in
227 accordance with article three, chapter twenty-nine-a of this
228 code to establish the number of hours per month which
229 constitute the standard work month for the members of the
230 West Virginia State Police is hereby continued. The rule
231 shall further establish, on a graduated hourly basis, the
232 criteria for receipt of a portion or all of supplemental
233 payment when hours are worked in excess of the standard
234 work month. The superintendent shall certify monthly to the
235 West Virginia State Police's payroll officer the names of
236 those members who have worked in excess of the standard
237 work month and the amount of their entitlement to
238 supplemental payment. The supplemental payment may not
239 exceed two hundred thirty-six dollars monthly. The
240 superintendent and civilian employees of the West Virginia
241 State Police are not eligible for any supplemental payments.

242 (h) Each member of the West Virginia State Police,
243 except the superintendent and civilian employees, shall
244 execute, before entering upon the discharge of his or her
245 duties, a bond with security in the sum of five thousand
246 dollars payable to the State of West Virginia, conditioned
247 upon the faithful performance of his or her duties, and the
248 bond shall be approved as to form by the Attorney General
249 and as to sufficiency by the Governor.

250 (i) In consideration for compensation paid by the West
251 Virginia State Police to its members during those members'
252 participation in the West Virginia State Police Cadet Training
253 Program pursuant to section eight, article twenty-nine,
254 chapter thirty of this code, the West Virginia State Police
255 may require of its members by written agreement entered into
256 with each of them in advance of such participation in the
257 program that, if a member should voluntarily discontinue
258 employment any time within one year immediately following
259 completion of the training program, he or she shall be
260 obligated to pay to the West Virginia State Police a pro rata
261 portion of such compensation equal to that part of such year
262 which the member has chosen not to remain in the employ of
263 the West Virginia State Police.

264 (j) Any member of the West Virginia State Police who is
265 called to perform active duty training or inactive duty training
266 in the National Guard or any reserve component of the armed
267 forces of the United States annually shall be granted, upon
268 request, leave time not to exceed thirty calendar days for the
269 purpose of performing the active duty training or inactive
270 duty training and the time granted may not be deducted from
271 any leave accumulated as a member of the West Virginia
272 State Police.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2006

CHAPTER 1

**(H.B. 212 - By Delegates Michael, Browning, Frederick,
Houston, Kominar, Palumbo, Proudfoot, Stalnaker,
Williams, Ashley and Border)**

[Passed November 13, 2006; in effect from passage.]

[Approved by the Governor on November 20, 2006.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the ninth day of November, two thousand six, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, It appears from the statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand seven; therefore,

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 Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, be supplemented, increased and amended by adding language and increasing an existing item of appropriation as follows:

1	TITLE II - APPROPRIATIONS.	
2	Section 1. Appropriations from General Revenue.	
3	DEPARTMENT OF ADMINISTRATION	
4	<i>19-Consolidated Public Retirement Board</i>	
5	(WV Code Chapter 5)	
6	Fund <u>0195</u> FY <u>2007</u> Org <u>0205</u>	
7		Act- General
8		ivity Revenue
9		Funds
10	1 Unclassified-Total-Transfer-Surplus . . . 682	\$80,000,000

Ch. 2]

TAXATION

11 The above appropriation for Unclassified-Total-Transfer-
12 Surplus (fund 0195, activity 682) shall be transferred to the
13 Consolidated Public Retirement Board - West Virginia
14 Teachers' Retirement System Employers Accumulation Fund
15 (fund 2601, organization 0205).

16 The purpose of this bill is to supplement, amend, and
17 increase an item of appropriation in the aforesaid account for the
18 designated spending unit for expenditure during the fiscal year
19 two thousand seven.

CHAPTER 2

(S.B. 2001 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-21-21 of the Code of West Virginia, 1931, as amended, relating to personal income taxes generally; increasing the amount of the senior citizens' and disabled persons' refundable personal income tax credit for certain ad valorem property taxes paid; and authorizing the Tax Commissioner to not provide a refund of the credit if the amount of the refund is less than ten dollars.

Be it enacted by the Legislature of West Virginia:

That §11-21-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-21. Senior citizens' tax credit for property tax paid on first ten thousand dollars of taxable assessed value of a homestead in this state; tax credit for property tax paid on first twenty thousand dollars of value for property tax years after December 31, 2006.**

1 (a) *Allowance of credit.* --

2 (1) A low-income person who is allowed a twenty
3 thousand-dollar homestead exemption from the assessed
4 value of his or her homestead for ad valorem property tax
5 purposes, as provided in section three, article six-b of this
6 chapter, shall be allowed a refundable credit against the taxes
7 imposed by this article equal to the amount of ad valorem
8 property taxes paid on up to the first ten thousand dollars of
9 taxable assessed value of the homestead for property tax
10 years that begin on or after the first day of January, two
11 thousand three, except as provided in subdivision (2) of this
12 subsection.

13 (2) For tax years beginning on or after the first day of
14 January, two thousand seven, a low-income person who is
15 allowed a twenty thousand-dollar homestead exemption from
16 the assessed value of his or her homestead for ad valorem
17 property tax purposes, as provided in section three, article
18 six-b of this chapter, shall be allowed a refundable credit
19 against the taxes imposed by this article equal to the amount
20 of ad valorem property taxes paid on up to the first twenty
21 thousand dollars of taxable assessed value of the homestead
22 for property tax years that begin on or after the first day of
23 January, two thousand seven.

24 (3) Due to the administrative cost of processing, the

25 refundable credit authorized by this section may not be
26 refunded if less than ten dollars.

27 (4) The credit for each property tax year shall be claimed
28 by filing a claim for refund within three years after the due
29 date for the personal income tax return upon which the credit
30 is first available.

31 (b) *Terms defined.* --

32 For purposes of this section:

33 (1) "Low income" means federal adjusted gross income
34 for the taxable year that is one hundred fifty percent or less
35 of the federal poverty guideline for the year in which
36 property tax was paid, based upon the number of individuals
37 in the family unit residing in the homestead, as determined
38 annually by the United States Secretary of Health and Human
39 Services.

40 (2) (A) For tax years beginning before the first day of
41 January, two thousand seven, "taxes paid" means the
42 aggregate of regular levies, excess levies and bond levies
43 extended against not more than ten thousand dollars of the
44 taxable assessed value of a homestead that are paid during the
45 calendar year determined after application of any discount for
46 early payment of taxes but before application of any penalty
47 or interest for late payment of property taxes for a property
48 tax year that begins on or after the first day of January, two
49 thousand three, except as provided in paragraph (B) of this
50 subdivision.

51 (B) For tax years beginning on or after the first day of
52 January, two thousand seven, "taxes paid" means the
53 aggregate of regular levies, excess levies and bond levies
54 extended against not more than twenty thousand dollars of

55 the taxable assessed value of a homestead that are paid during
56 the calendar year determined after application of any discount
57 for early payment of taxes but before application of any
58 penalty or interest for late payment of property taxes for a
59 property tax year that begins on or after the first day of
60 January, two thousand seven.

61 (c) *Legislative rule.* --

62 The Tax Commissioner shall propose a legislative rule
63 for promulgation as provided in article three, chapter twenty-
64 nine-a of this code to explain and implement this section.

65 (d) *Confidentiality.* --

66 The Tax Commissioner shall utilize property tax
67 information in the statewide electronic data processing
68 system network to the extent necessary for the purpose of
69 administering this section, notwithstanding any provision of
70 this code to the contrary.

CHAPTER 3

(S.B. 2002 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-24-6 of the Code of West Virginia, 1931, as amended, relating to the elimination of the corporation net income tax adjustment for pre-1967 gains on the sale of property.

Be it enacted by the Legislature of West Virginia:

That §11-24-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* -- In determining West Virginia taxable
2 income of a corporation, its taxable income as defined for
3 federal income tax purposes shall be adjusted and determined
4 before the apportionment provided by section seven of this
5 article, by the items specified in this section.

6 (b) *Adjustments increasing federal taxable income.* --
7 There shall be added to federal taxable income, unless
8 already included in the computation of federal taxable
9 income, the following items:

10 (1) Interest or dividends on obligations or securities of
11 any state or of a political subdivision or authority of the state;

12 (2) Interest or dividends, less related expenses to the
13 extent not deducted in determining federal taxable income, on
14 obligations or securities of any authority, commission or
15 instrumentality of the United States which the laws of the
16 United States exempt from federal income tax but not from
17 state income taxes;

18 (3) Income taxes and other taxes, including franchise and
19 excise taxes, which are based on, measured by, or computed
20 with reference to net income, imposed by this state or any
21 other taxing jurisdiction, to the extent deducted in
22 determining federal taxable income;

23 (4) The amount of unrelated business taxable income as
24 defined by Section 512 of the Internal Revenue Code of
25 1986, as amended, of a corporation which by reason of its
26 purposes is generally exempt from federal income taxes;

27 (5) The amount of any net operating loss deduction taken
28 for federal income tax purposes under Section 172 of the
29 Internal Revenue Code of 1986, as amended;

30 (6) Any amount included in federal taxable income which
31 is a net operating loss from sources without the United States
32 after making the decreasing adjustments provided in
33 subdivisions (5) and (7), subsection (c) of this section for
34 Section 951 income and Section 78 income. Federal taxable
35 income from sources without the United States shall be
36 determined in accordance with the provisions of Sections
37 861, 862 and 863 of the Internal Revenue Code of 1986, as
38 amended; and

39 (7) The amount of foreign taxes deducted in determining
40 federal taxable income.

41 (c) *Adjustments decreasing federal taxable income.* --
42 There shall be subtracted from federal taxable income to the
43 extent included therein:

44 (1) Any gain from the sale or other disposition of
45 property having a higher fair market value on the first day of
46 July, one thousand nine hundred sixty-seven, than the
47 adjusted basis at said date for federal income tax purposes:
48 *Provided,* That the amount of this adjustment is limited to
49 that portion of any gain which does not exceed the difference
50 between the fair market value and the adjusted basis:
51 *Provided, however,* That for tax years beginning after the
52 thirty-first day of December, two thousand eight, no amount
53 of gain from the sale or other disposition of property having

54 a higher fair market value on the first day of July, one
55 thousand nine hundred sixty-seven, than the adjusted basis at
56 said date for federal income tax purposes may be subtracted
57 from federal taxable income to the extent included therein;

58 (2) The amount of any refund or credit for overpayment
59 of income taxes and other taxes, including franchise and
60 excise taxes, which are based on, measured by, or computed
61 with reference to net income, imposed by this state or any
62 other taxing jurisdiction, to the extent properly included in
63 gross income for federal income tax purposes;

64 (3) The amount added to federal taxable income due to
65 the elimination of the reserve method for computation of the
66 bad debt deduction;

67 (4) The full amount of interest expense actually
68 disallowed in determining federal taxable income which was
69 incurred or continued to purchase or carry obligations or
70 securities of any state or of any political subdivision of the
71 state;

72 (5) The amount required to be added to federal taxable
73 income as a dividend received from a foreign (non-United
74 States) corporation under Section 78 of the Internal Revenue
75 Code of 1986, as amended, by a corporation electing to take
76 the foreign tax credit for federal income tax purposes;

77 (6) The amount of salary expenses disallowed as a
78 deduction for federal income tax purposes due to claiming
79 the federal jobs credit under Section 51 of the Internal
80 Revenue Code of 1986, as amended;

81 (7) The amount included in federal adjusted gross income
82 by the operation of Section 951 of the Internal Revenue Code
83 of 1986, as amended;

84 (8) Employer contributions to medical savings accounts
85 established pursuant to section fifteen, article sixteen, chapter
86 thirty-three of this code to the extent included in federal
87 adjusted gross income for federal income tax purposes less
88 any portion of employer contributions withdrawn for
89 purposes other than payment of medical expenses: *Provided*,
90 That the amount subtracted pursuant to this subsection for
91 any one taxable year may not exceed the maximum amount
92 that would have been deductible from the corporation's
93 federal adjusted gross income for federal income tax
94 purposes if the aggregate amount of the corporation's
95 contributions to individual medical savings accounts
96 established under section fifteen, article sixteen, chapter
97 thirty-three of this code had been contributed to a qualified
98 plan as defined under the Employee Retirement Income
99 Security Act of 1974, as amended; and

100 (9) Any amount included in federal taxable income which
101 is foreign source income. Foreign source income is any
102 amount included in federal taxable income which is taxable
103 income from sources without the United States, less the
104 adjustments provided in subdivisions (5) and (7) of this
105 subsection.

106 In determining "foreign source income", the provisions
107 of Sections 861, 862 and 863 of the Internal Revenue Code
108 of 1986, as amended, shall be applied.

109 (d) *Net operating loss deduction.* -- Except as otherwise
110 provided in this subsection, there is allowed as a deduction
111 for the taxable year an amount equal to the aggregate of: (1)
112 The West Virginia net operating loss carryovers to that year;
113 plus (2) the net operating loss carrybacks to that year:
114 *Provided*, That no more than three hundred thousand dollars
115 of net operating loss from any taxable year beginning after
116 the thirty-first day of December, one thousand nine hundred

117 ninety-two, may be carried back to any previous taxable year.
118 For purposes of this subsection, the term "West Virginia net
119 operating loss deduction" means the deduction allowed by
120 this subsection, determined in accordance with Section 172
121 of the Internal Revenue Code of 1986, as amended.

122 (1) *Special rules.* --

123 (A) When the corporation further adjusts its adjusted
124 federal taxable income under section seven of this article, the
125 West Virginia net operating loss deduction allowed by this
126 subsection shall be deducted after the section seven
127 adjustments are made;

128 (B) The Tax Commissioner shall prescribe the transition
129 regulations as he or she deems necessary for fair and
130 equitable administration of this subsection as amended by
131 this act.

132 (2) *Effective date.* -- The provisions of this subsection, as
133 amended by chapter one hundred nineteen, Acts of the
134 Legislature, one thousand nine hundred eighty-eight, apply to
135 all taxable years ending after the thirtieth day of June, one
136 thousand nine hundred eighty-eight; and to all loss carryovers
137 from taxable years ending on or before said thirtieth day of
138 June.

139 (e) *Special adjustments for expenditures for water and*
140 *air pollution control facilities.* --

141 (1) If the taxpayer so elects under subdivision (2) of this
142 subsection, there shall be:

143 (A) Subtracted from federal taxable income the total of
144 the amounts paid or incurred during the taxable year for the
145 acquisition, construction or development within this state of

146 water pollution control facilities or air pollution control
147 facilities as defined in Section 169 of the Internal Revenue
148 Code of 1986, as amended; and

149 (B) Added to federal taxable income the total of the
150 amounts of any allowances for depreciation and amortization
151 of the water pollution control facilities or air pollution control
152 facilities, as so defined, to the extent deductible in
153 determining federal taxable income.

154 (2) The election referred to in subdivision (1) of this
155 subsection shall be made in the return filed within the time
156 prescribed by law, including extensions of the time, for the
157 taxable year in which the amounts were paid or incurred.
158 The election shall be made in that manner, and the scope of
159 application of that election shall be defined, as the Tax
160 Commissioner may by rule prescribe, and shall be
161 irrevocable when made as to all amounts paid or incurred for
162 any particular water pollution control facility or air pollution
163 control facility.

164 (3) Notwithstanding any other provisions of this
165 subsection or of section seven of this article to the contrary,
166 if the taxpayer's federal taxable income is subject to
167 allocation and apportionment under said section, the
168 adjustments prescribed in paragraphs (A) and (B),
169 subdivision (1) of this subsection shall, instead of being made
170 to the taxpayer's federal taxable income before allocation and
171 apportionment thereof as provided in section seven of this
172 article, be made to the portion of the taxpayer's net income,
173 computed without regard to the adjustments, allocated and
174 apportioned to this state in accordance with said section.

175 (f) *Allowance for certain government obligations and*
176 *obligations secured by residential property.* -- The West
177 Virginia taxable income of a taxpayer subject to this article

178 as adjusted in accordance with subsections (b), (c) and (e) of
179 this section shall be further adjusted by multiplying the
180 taxable income after the adjustment by said subsections by a
181 fraction equal to one minus a fraction:

182 (1) The numerator of which is the sum of the average of
183 the monthly beginning and ending account balances during
184 the taxable year (account balances to be determined at cost in
185 the same manner that obligations, investments and loans are
186 reported on Schedule L of the Federal Form 1120) of the
187 following:

188 (A) Obligations or securities of the United States, or of
189 any agency, authority, commission or instrumentality of the
190 United States and any other corporation or entity created
191 under the authority of the United States Congress for the
192 purpose of implementing or furthering an objective of
193 national policy;

194 (B) Obligations or securities of this state and any political
195 subdivision or authority of the state;

196 (C) Investments or loans primarily secured by mortgages,
197 or deeds of trust, on residential property located in this state
198 and occupied by nontransients; and

199 (D) Loans primarily secured by a lien or security
200 agreement on residential property in the form of a mobile
201 home, modular home or double-wide located in this state and
202 occupied by nontransients.

203 (2) The denominator of which is the average of the
204 monthly beginning and ending account balances of the total
205 assets of the taxpayer which are shown on Schedule L of
206 Federal Form 1120, which are filed by the taxpayer with the
207 Internal Revenue Service.

208 (g) The amendments to the provisions of this section
209 made during the regular session of the Legislature in the year
210 one thousand nine hundred ninety-eight apply to all taxable
211 years beginning on or after the thirty-first day of December,
212 one thousand nine hundred ninety-seven.

CHAPTER 4

**(S.B. 2003 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15-3b, all relating to the consumers sales and service tax generally; reducing the consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption; and providing exceptions to the reduced rate of tax.

Be it enacted by the Legislature of West Virginia:

That §11-15-3a 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 §11-15-3b, all to read as follows:

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions of tax beginning January 1, 2006, July 1, 2007, and July 1, 2008.

§11-15-3b. Exceptions to reduced rate of tax on food and food ingredients intended for human consumption.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions of tax beginning January 1, 2006, July 1, 2007, and July 1, 2008.

1 (a) *Rate of tax on food and food ingredients.* --
2 Notwithstanding any provision of this article or article
3 fifteen-a of this chapter to the contrary, the rate of tax on
4 sales, purchases and uses of food and food ingredients
5 intended for human consumption after the thirty-first day of
6 December, two thousand five, shall be five percent of its
7 sales price, as defined in section two, article fifteen-b of this
8 chapter: *Provided*, That the rate of tax on sales, purchases
9 and uses of food and food ingredients, as defined in said
10 section, that is intended for human consumption after the
11 thirtieth day of June, two thousand seven, shall be four
12 percent of its sales price, as defined in said section: *Provided*,
13 *however*, That the rate of tax on sales, purchases and uses of
14 food and food ingredients as defined in said section that is
15 intended for human consumption after the thirtieth day of
16 June, two thousand eight, shall be three percent of its sales
17 price, as defined in said section.

18 (b) *Calculation of tax on fractional parts of a dollar.* --
19 The tax computation under this section shall be carried to the
20 third decimal place and the tax rounded up to the next whole
21 cent whenever the third decimal place is greater than four and
22 rounded down to the lower whole cent whenever the third

23 decimal place is four or less. The seller may elect to compute
24 the tax due on a transaction on a per item basis or on an
25 invoice basis provided the method used is consistently used
26 during the reporting period.

27 (c) *Federal food stamp and women, infants and children*
28 *programs, other exemptions.* -- Nothing in this section shall
29 affect application of the exemption from tax provided in
30 section nine of this article for food purchased by an eligible
31 person using food stamps, electronic benefits transfer cards
32 or vouchers issued by or pursuant to authorization of the
33 United States Department of Agriculture to individuals
34 participating in the federal food stamp program, by whatever
35 name called, or the women, infants and children (WIC)
36 program, or application of any other exemption from tax set
37 forth in this article or article fifteen-a of this chapter.

§11-15-3b. Exceptions to reduced rate of tax on food and food ingredients intended for human consumption.

1 The reduced rate of tax provided on food and food
2 ingredients intended for human consumption provided in
3 section three-a of this article shall not apply to sales,
4 purchases and uses by consumers of “prepared food”, as
5 defined in article fifteen-b of this chapter, which shall remain
6 taxable at the general rate of tax specified in section three of
7 this article and section two, article fifteen-a of this chapter:
8 *Provided*, That after the thirtieth day of June, two thousand
9 seven, the reduced rate of tax provided in section three-a of
10 this article shall not apply to sales, purchases and uses by
11 consumers of “prepared food”, “food sold through vending
12 machines” and “soft drinks” as defined in article fifteen-b of
13 this chapter, which shall be taxed at the general rate of tax
14 specified in section three of this article and section two,
15 article fifteen-a of this chapter.



CHAPTER 5

**(S.B. 2004 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-23-6 of the Code of West Virginia, 1931, as amended, relating to reducing the rate of the business franchise tax.

Be it enacted by the Legislature of West Virginia:

That §11-23-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General.* -- An annual business franchise tax is hereby
2 imposed on the privilege of doing business in this state and
3 in respect of the benefits and protection conferred. Such tax
4 shall be collected from every domestic corporation, every
5 corporation having its commercial domicile in this state,
6 every foreign or domestic corporation owning or leasing real
7 or tangible personal property located in this state or doing
8 business in this state and from every partnership owning or
9 leasing real or tangible personal property located in this state
10 or doing business in this state, effective on and after the first
11 day of July, one thousand nine hundred eighty-seven.

12 (b) *Amount of tax and rate; effective date.* --

13 (1) On and after the first day of July, one thousand nine
14 hundred eighty-seven, the amount of tax shall be the greater
15 of fifty dollars or fifty-five one hundredths of one percent of
16 the value of the tax base, as determined under this article:
17 *Provided*, That when the taxpayer's first taxable year under
18 this article is a short taxable year, the taxpayer's liability shall
19 be prorated based upon the ratio which the number of months
20 in which such short taxable year bears to twelve: *Provided*,
21 *however*, That this subdivision shall not apply to taxable
22 years beginning on or after the first day of January, one
23 thousand nine hundred eighty-nine.

24 (2) *Taxable years after December 31, 1988.* -- For
25 taxable years beginning on or after the first day of January,
26 one thousand nine hundred eighty-nine, the amount of tax
27 due under this article shall be the greater of fifty dollars or
28 seventy-five one hundredths of one percent of the value of
29 the tax base as determined under this article.

30 (3) *Taxable years after June 30, 1997.* -- For taxable
31 years beginning on or after the first day of July, one thousand
32 nine hundred ninety-seven, the amount of tax due under this
33 article shall be the greater of fifty dollars or seventy
34 hundredths of one percent of the value of the tax base as
35 determined under this article.

36 (4) *Taxable years after December 31, 2006.* -- For
37 taxable years beginning on or after the first day of January,
38 two thousand seven, the amount of tax due under this article
39 shall be the greater of fifty dollars or fifty-five one
40 hundredths of one percent of the value of the tax base as

41 determined under this article.

42 (c) *Short taxable years.* -- When the taxpayer's taxable
43 year for federal income tax purposes is a short taxable year,
44 the tax determined by application of the tax rate to the
45 taxpayer's tax base shall be prorated based upon the ratio
46 which the number of months in such short taxable year bears
47 to twelve: *Provided*, That when the taxpayer's first taxable
48 year under this article is less than twelve months, the
49 taxpayer's liability shall be prorated based upon the ratio
50 which the number of months the taxpayer was doing business
51 in this state bears to twelve but in no event shall the tax due
52 be less than fifty dollars.

CHAPTER 6

(S.B. 2005 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 13, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-24-4 of the Code of West Virginia, 1931, as amended, relating to reducing the rate of corporation net income tax.

Be it enacted by the Legislature of West Virginia:

That §11-24-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.**

1 *Primary tax.* --

2 (1) In the case of taxable periods beginning after the
3 thirtieth day of June, one thousand nine hundred sixty-
4 seven, and ending prior to the first day of January, one
5 thousand nine hundred eighty-three, a tax is hereby
6 imposed for each taxable year at the rate of six percent per
7 annum on the West Virginia taxable income of every
8 domestic or foreign corporation engaging in business in
9 this state or deriving income from property, activity or
10 other sources in this state, except corporations exempt
11 under section five.

12 (2) In the case of taxable periods beginning on or after
13 the first day of January, one thousand nine hundred eighty-
14 three, and ending prior to the first day of July, one
15 thousand nine hundred eighty-seven, a tax is hereby
16 imposed for each taxable year on the West Virginia
17 taxable income of every domestic or foreign corporation
18 engaging in business in this state or deriving income from
19 property, activity or other sources in this state, except
20 corporations exempt under section five of this article, and
21 any banks, banking associations or corporations, trust
22 companies, building and loan associations, and savings
23 and loan associations, at the rates which follow:

24 (A) On taxable income not in excess of fifty thousand
25 dollars, the rate of six percent; and

26 (B) On taxable income in excess of fifty thousand
27 dollars, the rate of seven percent.

28 (3) In the case of taxable periods beginning on or after
29 the first day of July, one thousand nine hundred eighty-
30 seven, a tax is hereby imposed for each taxable year on the
31 West Virginia taxable income of every domestic or foreign
32 corporation engaging in business in this state or deriving
33 income from property, activity or other sources in this
34 state, except corporations exempt under section five of this
35 article, at the rate of nine and three-quarters percent.
36 Beginning the first day of July, one thousand nine hundred
37 eighty-eight, and on each first day of July thereafter for
38 four successive calendar years, the rate shall be reduced by
39 fifteen one hundredths of one percent per year, with such
40 rate to be nine percent on and after the first day of July,
41 one thousand nine hundred ninety-two.

42 (4) In the case of taxable periods beginning on or after
43 the first day of January, two thousand seven, a tax is
44 hereby imposed for each taxable year on the West Virginia
45 taxable income of every domestic or foreign corporation
46 engaging in business in this state or deriving income from
47 property, activity or other sources in this state, except
48 corporations exempt under section five of this article, at
49 the rate of eight and three-quarters percent

CHAPTER 7

**(S.B. 2006 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5E-1-23; and to amend said code by adding thereto a new section, designated §5E-2-5, all relating to terminating authorization for certain tax credits for investment in capital companies and venture capital companies made after the thirty-first day of December, two thousand six.

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 §5E-1-23; and that said code be amended by adding thereto a new section, designated §5E-2-5, all to read as follows:

Article

- 1. West Virginia Capital Company Act.**
- 2. West Virginia Venture Capital Act.**

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**§5E-1-23. Elimination of credit; effective date.**

1 Notwithstanding any other provision of this article to the
2 contrary, no entitlement to any tax credit under this article
3 shall result from, and no tax credit shall be available to, any
4 taxpayer for any investment in a West Virginia capital
5 company made after the thirty-first day of December, two
6 thousand six: *Provided*, That the provisions of this article
7 shall continue to apply to the investments for which tax
8 credits were authorized and allocated pursuant to the
9 provisions of this article in effect prior to the first day of
10 January, two thousand seven.

ARTICLE 2. WEST VIRGINIA VENTURE CAPITAL ACT.**§5E-2-5. Elimination of credit; effective date.**

1 Notwithstanding any other provision of this article to the
2 contrary, no entitlement to any tax credit under this article
3 shall result from, and no tax credit shall be available to, any
4 taxpayer for any venture capital investment made after the
5 thirty-first day of December, two thousand six: *Provided*,
6 That the provisions of this article shall continue to apply to
7 the investments for which tax credits were authorized and
8 allocated pursuant to the provisions of this article in effect
9 prior to the first day of January, two thousand seven.

CHAPTER 8

**(S.B. 2007 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 14, 2006; in effect from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §5B-2E-11 of the Code of West Virginia, 1931, as amended, relating to extending period in which applications for tourism development project tax credits may be received and considered.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2E. WEST VIRGINIA TOURISM
DEVELOPMENT ACT.**

§5B-2E-11. Termination.

1 The development office may not accept any new
2 application after the thirtieth day of June, two thousand
3 seven, and all applications submitted prior to the first day of
4 July, two thousand seven, that have not been previously
5 approved or not approved, shall be deemed not approved and
6 shall be null and void as of the first day of July, two thousand
7 seven.

CHAPTER 9

**(S.B. 2008 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 13, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-21-71a of the Code of West Virginia, 1931, as amended, relating to increasing the rate of personal income tax withholding for certain nonresidents of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §11-21-71a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

- 1 (a) *General rule.* -- For the privilege of doing business in
2 this state or deriving rents or royalties from real or tangible
3 personal property located in this state, including, but not
4 limited to, natural resources in place and standing timber, a
5 partnership, S corporation, estate or trust, which is treated as

6 a pass-through entity for federal income tax purposes and
7 which has taxable income for the taxable year derived from
8 or connected with West Virginia sources any portion of
9 which is allocable to a nonresident partner, nonresident
10 shareholder, or nonresident beneficiary, as the case may be,
11 shall pay a withholding tax under this section, except as
12 provided in subsections (c) and (k) of this section.

13 (b) *Amount of withholding tax.* --

14 (1) *In general.* -- The amount of withholding tax payable
15 by any partnership, S corporation, estate or trust, under
16 subsection (a) of this section, shall be equal to four percent of
17 the effectively connected taxable income of the partnership,
18 S corporation, estate or trust, as the case may be, which may
19 lawfully be taxed by this state and which is allocable to a
20 nonresident partner, nonresident shareholder, or nonresident
21 beneficiary of a trust or estate: *Provided,* That for taxable
22 years commencing on or after the first day of January, two
23 thousand eight, the amount of withholding tax payable by any
24 partnership, S corporation, estate or trust, under subsection
25 (a) of this section, shall be equal to six and one-half percent
26 of the effectively connected taxable income of the
27 partnership, S corporation, estate or trust, as the case may be,
28 which may lawfully be taxed by this state and which is
29 allocable to a nonresident partner, nonresident shareholder,
30 or nonresident beneficiary of a trust or estate.

31 (2) *Credits against tax.* -- When determining the amount
32 of withholding tax due under this section, the pass-through
33 entity may apply any tax credits allowable under this chapter
34 to the pass-through entity which pass through to the
35 nonresident distributees: *Provided,* That in no event may the

36 application of any credit or credits reduce the tax liability of
37 the distributee under this article to less than zero.

38 (c) *When withholding is not required.* -- Withholding
39 shall not be required:

40 (1) On distribution to a person, other than a corporation,
41 who is exempt from the tax imposed by this article. For
42 purposes of this subdivision, a person is exempt from the tax
43 imposed by this article only if such person is, by reason of
44 such person's purpose or activities, exempt from paying
45 federal income taxes on such person's West Virginia source
46 income. The pass-through entity may rely on the written
47 statement of the person claiming to be exempt from the tax
48 imposed by this article provided the pass-through entity
49 discloses the name and federal taxpayer identification
50 number for all such persons in its return for the taxable year
51 filed under this article or article twenty-four of this chapter;
52 or

53 (2) On distributions to a corporation which is exempt
54 from the tax imposed by article twenty-four of this chapter.
55 For purposes of this subdivision, a corporation is exempt
56 from the tax imposed by article twenty-four of this chapter
57 only if the corporation, by reason of its purpose or activities
58 is exempt from paying federal income taxes on the
59 corporation's West Virginia source income. The pass-
60 through entity may rely on the written statement of the person
61 claiming to be exempt from the tax imposed by article
62 twenty-four of this chapter provided the pass-through entity
63 discloses the name and federal taxpayer identification
64 number for all such corporations in its return for the taxable

65 year filed under this article or article twenty-four of this
66 chapter; or

67 (3) On distributions when compliance will cause undue
68 hardship on the pass-through entity: *Provided*, That no pass-
69 through entity shall be exempt under this subdivision from
70 complying with the withholding requirements of this section
71 unless the Tax Commissioner, in his or her discretion,
72 approves in writing the pass-through entity's written petition
73 for exemption from the withholding requirements of this
74 section based on undue hardship. The Tax Commissioner
75 may prescribe the form and contents of such a petition and
76 specify standards for when a pass-through entity will not be
77 required to comply with the withholding requirements of this
78 section due to undue hardship. Such standards shall take into
79 account (among other relevant factors) the ability of a pass-
80 through entity to comply at reasonable cost with the
81 withholding requirements of this section and the cost to this
82 state of collecting the tax directly from a nonresident
83 distributee who does not voluntarily file a return and pay the
84 amount of tax due under this article with respect to such
85 distributions; or

86 (4) On distributions by nonpartnership ventures. An
87 unincorporated organization that has elected, under Section
88 761 of the Internal Revenue Code, to not be treated as a
89 partnership for federal income tax is not treated as a
90 partnership under this article and is not required to withhold
91 under this section. However, such unincorporated
92 organizations shall make and file with the Tax Commissioner
93 a true and accurate return of information under subsection
94 (c), section fifty-eight of this article, under such regulations
95 and in such form and manner as the Tax Commissioner may

96 prescribe, setting forth: (A) The amount of fixed or
97 determinable gains, profits and income; and (B) the name,
98 address and taxpayer identification number of persons
99 receiving fixed or determinable gains, profits or income from
100 the nonpartnership venture.

101 (d) *Payment of withheld tax.* --

102 (1) *General rule.* -- Each partnership, S corporation,
103 estate or trust, required to withhold tax under this section,
104 shall pay the amount required to be withheld to the Tax
105 Commissioner no later than:

106 (A) *S corporations.* -- The fifteenth day of the third
107 month following the close of the taxable year of the S
108 corporation along with the annual information return due
109 under article twenty-four of this chapter, unless paragraph
110 (C) of this subdivision applies.

111 (B) *Partnerships, estates and trusts.* -- The fifteenth day
112 of the fourth month following the close of the taxable year of
113 the partnership, estate or trust, with the annual return of the
114 partnership, estate or trust due under this article, unless
115 paragraph (C) of this subdivision applies.

116 (C) *Composite returns.* -- The fifteenth day of the fourth
117 month of the taxable year with the composite return filed
118 under section fifty-one-a of this article.

119 (2) *Special rules.* --

120 (A) *Where there is extension of time to file return.* -- An
121 extension of time for filing the returns referenced in

122 subdivision (1) of this subsection does not extend the time for
123 paying the amount of withholding tax due under this section.
124 In this situation, the pass-through entity shall pay, by the date
125 specified in subdivision (1) of this subsection, at least ninety
126 percent of the withholding tax due for the taxable year, or one
127 hundred percent of the tax paid under this section for the
128 prior taxable year, if such taxable year was a taxable year of
129 twelve months and tax was paid under this section for that
130 taxable year. The remaining portion of the tax due under this
131 section, if any, shall be paid at the time the pass-through
132 entity files the return specified in subdivision (1) of this
133 subsection. If the balance due is paid by the last day of the
134 extension period for filing such return and the amount of tax
135 due with such return is ten percent or less of the tax due
136 under this section for the taxable year, no additions to tax
137 shall be imposed under article ten of this chapter with respect
138 to balance so remitted. If the amount of withholding tax due
139 under this section for the taxable year is less than the
140 estimated withholding taxes paid for the taxable year by the
141 pass-through entity, the excess shall be refunded to the pass-
142 through entity or, at its election, established as a credit
143 against withholding tax due under this section for the then
144 current taxable year.

145 (B) *Deposit in trust for Tax Commissioner.* -- The Tax
146 Commissioner may, if the commissioner believes such action
147 is necessary for the protection of trust fund moneys due this
148 state, require any pass-through entity to pay over to the Tax
149 Commissioner the tax deducted and withheld under this
150 section, at any earlier time or times.

151 (e) *Effectively connected taxable income.* -- For purposes
152 of this section, the term "effectively connected taxable

153 income" means the taxable income or portion thereof of a
154 partnership, S corporation, estate or trust, as the case may be,
155 which is derived from or attributable to West Virginia
156 sources as determined under section thirty-two of this article
157 and such regulations as the Tax Commissioner may
158 prescribe, whether such amount is actually distributed or is
159 deemed to have been distributed for federal income tax
160 purposes.

161 (f) *Treatment of nonresident partners, S corporation*
162 *shareholders or beneficiaries of a trust or estate. --*

163 (1) *Allowance of credit.* -- Each nonresident partner,
164 nonresident shareholder, or nonresident beneficiary shall be
165 allowed a credit for such partner's or shareholder's or
166 beneficiary's share of the tax withheld by the partnership, S
167 corporation, estate or trust under this section: *Provided*, That
168 when the distribution is to a corporation taxable under article
169 twenty-four of this chapter, the credit allowed by this section
170 shall be applied against the distributee corporation's liability
171 for tax under article twenty-four of this chapter.

172 (2) *Credit treated as distributed to partner, shareholder*
173 *or beneficiary.* -- Except as provided in regulations, a
174 nonresident partner's share, a nonresident shareholder's share,
175 or a nonresident beneficiary's share of any withholding tax
176 paid by the partnership, S corporation, estate or trust under
177 this section shall be treated as distributed to such partner by
178 such partnership, or to such shareholder by such S
179 corporation, or to such beneficiary by such estate or trust on
180 the earlier of:

181 (A) The day on which such tax was paid to the Tax
182 Commissioner by the partnership, S corporation, estate or
183 trust; or

184 (B) The last day of the taxable year for which such tax
185 was paid by the partnership, S corporation, estate or trust.

186 (g) *Regulations.* -- The Tax Commissioner shall prescribe
187 such regulations as may be necessary to carry out the
188 purposes of this section.

189 (h) *Information statement.* --

190 (1) Every person required to deduct and withhold tax
191 under this section shall furnish to each nonresident partner,
192 or nonresident shareholder, or nonresident beneficiary, as the
193 case may be, a written statement, as prescribed by the Tax
194 Commissioner, showing the amount of West Virginia
195 effectively connected taxable income, whether distributed or
196 not distributed for federal income tax purposes by such
197 partnership, S corporation, estate or trust, to such nonresident
198 partner, or nonresident shareholder, or nonresident
199 beneficiary, the amount deducted and withheld as tax under
200 this section; and such other information as the Tax
201 Commissioner may require.

202 (2) A copy of the information statements required by this
203 subsection must be filed with the West Virginia return filed
204 under this article (or article twenty-four of this chapter in the
205 case of S corporations) by the pass-through entity for its
206 taxable year to which the distribution relates. This
207 information statement must be furnished to each nonresident
208 distributee on or before the due date of the pass-through

209 entity's return under this article or article twenty-four of this
210 chapter for the taxable year, including extensions of time for
211 filing such return, or such later date as may be allowed by the
212 Tax Commissioner.

213 (i) *Liability for withheld tax.* -- Every person required to
214 deduct and withhold tax under this section is hereby made
215 liable for the payment of the tax due under this section for
216 taxable years (of such persons) beginning after the thirty-first
217 day of December, one thousand nine hundred ninety-one,
218 except as otherwise provided in this section. The amount of
219 tax required to be withheld and paid over to the Tax
220 Commissioner shall be considered the tax of the partnership,
221 estate or trust, as the case may be, for purposes of articles
222 nine and ten of this chapter. Any amount of tax withheld
223 under this section shall be held in trust for the Tax
224 Commissioner. No partner, S corporation shareholder, or
225 beneficiary of a trust or estate, shall have a right of action
226 against the partnership, S corporation, estate or trust, in
227 respect to any moneys withheld from such person's
228 distributive share and paid over to the Tax Commissioner in
229 compliance with or in intended compliance with this section.

230 (j) *Failure to withhold.* -- If any partnership, S
231 corporation, estate or trust fails to deduct and withhold tax as
232 required by this section and thereafter the tax against which
233 such tax may be credited is paid, the tax so required to be
234 deducted and withheld under this section shall not be
235 collected from the partnership, S corporation, estate or trust,
236 as the case may be, but the partnership, S corporation, estate
237 or trust shall not be relieved from liability for any penalties
238 or interest on additions to tax otherwise applicable in respect
239 of such failure to withhold.

240 (k) *Distributee agreements.* —

241 (1) The Tax Commissioner shall permit a nonresident
242 distributee to file with a pass-through entity, on a form
243 prescribed by the Tax Commissioner, the agreement of such
244 nonresident distributee: (A) To timely file returns and make
245 timely payment of all taxes imposed by this article or article
246 twenty-four of this chapter in the case of a C corporation, on
247 the distributee with respect to the effectively connected
248 taxable income of the pass-through entity; and (B) to be
249 subject to personal jurisdiction in this state for purposes of
250 the collection of any unpaid income tax under this article (or
251 article twenty-four of this chapter in the case of a C
252 corporation), together with related interest, penalties,
253 additional amounts and additions to tax, owed by the
254 nonresident distributee.

255 (2) A nonresident distributee electing to execute an
256 agreement under this subsection must file a complete and
257 properly executed agreement with each pass-through entity
258 for which this election is made, on or before the last day of
259 the first taxable year of the pass-through entity in respect of
260 which the agreement applies. The pass-through entity shall
261 file a copy of that agreement with the Tax Commissioner as
262 provided in subdivision (5) of this subsection.

263 (3) After an agreement is filed with the pass-through
264 entity, that agreement may be revoked by a distributee only
265 in accordance with regulations promulgated by the Tax
266 Commissioner.

267 (4) Upon receipt of such an agreement properly executed
268 by the nonresident distributee, the pass-through entity shall

269 not withhold tax under this section for the taxable year of the
270 pass-through entity in which the agreement is received by the
271 pass-through entity and for any taxable year subsequent
272 thereto until either the nonresident distributee notifies the
273 pass-through entity, in writing, to begin withholding tax
274 under this section or the Tax Commissioner directs the pass-
275 through entity, in writing, to begin withholding tax under this
276 section because of the distributee's continuing failure to
277 comply with the terms of such agreement.

278 (5) The pass-through entity shall file with the Tax
279 Commissioner a copy of all distributee agreements received
280 by the pass-through entity during any taxable year with this
281 annual information return filed under this article, or article
282 twenty-four of this chapter in the case of S corporations. If
283 the pass-through entity fails to timely file with the Tax
284 Commissioner a copy of an agreement executed by a
285 distributee and furnished to the pass-through entity in
286 accordance with this section, then the pass-through entity
287 shall remit to the Tax Commissioner an amount equal to the
288 amount that should have been withheld under this section
289 from the nonresident distributee. The pass-through entity
290 may recover payment made pursuant to the preceding
291 sentence from the distributee on whose behalf the payment
292 was made.

293 (l) *Definitions.* -- For purposes of this section, the
294 following terms mean:

295 (1) *Corporation.* -- The term "corporation" includes
296 associations, joint stock companies and other entities which
297 are taxed as corporations for federal income tax purposes.

298 (A) *C corporation*. -- The term "C corporation" means a
299 corporation which is not an S corporation for federal income
300 tax purposes.

301 (B) *S corporation*. -- The term "S corporation" means a
302 corporation for which a valid election under Section 1362(a)
303 of the Internal Revenue Code is in effect for the taxable
304 period. All other corporations are C corporations.

305 (2) *Distributee*. -- The term "distributee" includes any
306 partner of a partnership, any shareholder of an S corporation
307 and any beneficiary of an estate or trust that is treated as a
308 pass-through entity for federal income tax purposes for the
309 taxable year of the entity, with respect to all or a portion of its
310 income.

311 (3) *Internal Revenue Code*. -- The term "Internal Revenue
312 Code" means the Internal Revenue Code of 1986, as
313 amended, through the date specified in section nine of this
314 article.

315 (4) *Nonresident distributee*. -- The term "nonresident
316 distributee" includes any individual who is treated as a
317 nonresident of this state under this article; and any
318 partnership, estate, trust or corporation whose commercial
319 domicile is located outside this state.

320 (5) *Partner*. -- The term "partner" includes a member of
321 a partnership as that term is defined in this section.

322 (6) *Partnership*. -- The term "partnership" includes a
323 syndicate, group, pool, joint venture, or other unincorporated
324 organization through or by means of which any business,
325 financial operation, or venture is carried on and which is not
326 a trust or estate, a corporation or a sole proprietorship.
327 "Partnership" does not include an unincorporated

328 organization which, under Section 761 of the Internal
329 Revenue Code, is not treated as a partnership for the taxable
330 year for federal income tax purposes.

331 (7) *Taxable period.* -- The term "taxable period" means,
332 in the case of an S corporation, any taxable year or portion of
333 a taxable year during which a corporation is an S corporation.

334 (8) *Taxable year of the pass-through entity.* -- The term
335 "taxable year of the pass-through entity" means the taxable
336 year of the pass-through entity for federal income tax
337 purposes. If a pass-through entity does not have a taxable
338 year for federal tax purposes, its tax year for purposes of this
339 article shall be the calendar year.

340 (m) *Effective date.* -- The provisions of this section shall
341 first apply to taxable years of pass-through entities beginning
342 after the thirty-first day of December, one thousand nine
343 hundred ninety-one.

CHAPTER 10

(S.B. 2009 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-21-71b, relating
to requiring certain amounts to be withheld and paid to the Tax

Commissioner from total payments made for the sale or exchange of real property and associated tangible personal property owned by a nonresident or nonresident entity; providing exceptions; providing penalties; and providing for administration.

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 §11-21-71b, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-71b. Withholding tax on West Virginia source income of nonresidents.

1 (a) (1) In this section the following words have the
2 meanings indicated.

3 (2) (A) Except as provided in paragraph (B) of this
4 subdivision, “net proceeds” means the total sales price paid
5 to the transferor less:

6 (i) Debts of the transferor secured by a mortgage or other
7 lien on the property being transferred that are being paid
8 upon the sale or exchange of the property; and

9 (ii) Other expenses of the transferor arising out of the sale
10 or exchange of the property and disclosed on a settlement
11 statement prepared in connection with the sale or exchange
12 of the property, not including adjustments in favor of the
13 transferee.

14 (B) “Net proceeds” does not include adjustments in favor
15 of the transferor that are disclosed on a settlement statement

16 prepared in connection with the sale or exchange of the
17 property.

18 (3) “Nonresident entity” means an entity that:

19 (A) Is not formed under the laws of the state; and

20 (B) Is not qualified by or registered with the Tax
21 Commissioner to do business in the state.

22 (4) “Resident entity” means an entity that:

23 (A) Is formed under the laws of the state; or

24 (B) Is formed under the laws of another state and is
25 qualified by or registered with the Tax Commissioner to do
26 business in the state.

27 (5) “Total payment” means the net proceeds of a sale
28 actually paid to a transferor, including the fair market value
29 of any property transferred to the transferor.

30 (6) “Transfer pursuant to a deed in lieu of foreclosure”
31 includes:

32 (A) A transfer by the owner of the property to:

33 (i) With respect to a deed in lieu of foreclosure of a
34 mortgage, the mortgagee, the assignee of the mortgage, or
35 any designee or nominee of the mortgagee or assignee of the
36 mortgage;

37 (ii) With respect to a deed in lieu of foreclosure of a deed
38 of trust, the holder of the debt or other obligation secured by
39 the deed of trust or any designee, nominee, or assignee of the

40 holder of the debt or other obligation secured by the deed of
41 trust;

42 (iii) With respect to a deed in lieu of foreclosure of any
43 other lien instrument, the holder of the debt or other
44 obligation secured by the lien instrument or any designee,
45 nominee, or assignee of the holder of the debt secured by the
46 lien instrument; and

47 (B) A transfer by any of the persons described in
48 subparagraph (i) of this paragraph to a subsequent purchaser
49 for value.

50 (7) “Transfer pursuant to a foreclosure of a mortgage,
51 deed of trust, or other lien instrument” includes:

52 (A) With respect to the foreclosure of a mortgage:

53 (i) A transfer by the mortgagee, the assignee of the
54 mortgage, the attorney named in the mortgage, or the
55 attorney or trustee conducting a foreclosure sale pursuant to
56 the mortgage to:

57 (I) The mortgagee or the assignee of the mortgage;

58 (II) Any designee, nominee, or assignee of the mortgagee
59 or assignee of the mortgage; or

60 (III) Any purchaser, substituted purchaser, or assignee of
61 any purchaser or substituted purchaser of the foreclosed
62 property; and

63 (ii) A transfer by any of the persons described in
64 subparagraph (i) of this paragraph to a subsequent purchaser
65 for value;

66 (B) With respect to the foreclosure of a deed of trust:

67 (i) A transfer by the trustees, successor trustees,
68 substituted trustees under the deed of trust, or trustees
69 conducting a foreclosure sale pursuant to the deed of trust to:

70 (I) The holder of the debt or other obligation secured by
71 the deed of trust;

72 (II) Any designee, nominee, or assignee of the holder of
73 the debt secured by the deed of trust; or

74 (III) Any purchaser, substituted purchaser, or assignee of
75 any purchaser or substituted purchaser of the foreclosed
76 property; and

77 (ii) A transfer by any of the persons described in
78 subparagraph (i) of this paragraph to a subsequent purchaser
79 for value; and

80 (C) With respect to the foreclosure of any other lien
81 instrument:

82 (i) A transfer by the party authorized to make the sale to:

83 (I) The holder of the debt or other obligation secured by
84 the lien instrument;

85 (II) Any designee, nominee, or assignee of the holder of
86 the debt secured by the lien instrument; or

87 (III) Any purchaser, substituted purchaser, or assignee of
88 any purchaser or substituted purchaser of the foreclosed
89 property; and

90 (ii) A transfer by any of the persons described in
91 subparagraph (i) of this paragraph to a subsequent purchaser
92 for value.

93 (b) (1) For every deed or other instrument of writing that
94 effects a change of ownership on the land books of a county
95 assessor and for which an amount is required to be withheld
96 under subsection (c) of this section, the total payment shall be
97 described on the form prescribed by the Tax Commissioner.

98 (2) The form required under subdivision (1) of this
99 subsection shall be signed under oath by:

100 (i) The transferor of the property;

101 (ii) An agent of the transferor; or

102 (iii) The real estate reporting person, as defined under
103 Section 6045 of the Internal Revenue Code.

104 (c) (1) Except as otherwise provided in this section, in a
105 sale or exchange of real property and associated tangible
106 personal property owned by a nonresident or nonresident
107 entity occurring on during taxable years beginning on or after
108 the first day of January, two thousand eight, the real estate
109 reporting person, as defined under Section 6045 of the
110 Internal Revenue Code, shall withhold an amount equal to
111 two and one-half percent of the total payment to a
112 nonresident or nonresident entity. In lieu thereof, the real
113 estate reporting person may withhold an amount equal to six
114 and one-half percent of the estimated capital gain derived
115 from the sale or exchange. The amounts withheld shall be
116 paid to the Tax Commissioner by the real estate reporting
117 person within thirty days of the date the amounts were
118 withheld.

119 (2) The Tax Commissioner may propose alternatives to
120 the percentages of payments or capital gains set forth in this
121 section that may, based upon experience and application of
122 this section, more accurately represent the value of capital
123 gains subject to taxation in this state and, upon enactment of
124 any such rules, those alternatives to the percentages shall
125 supersede the percentages set forth in this subsection.

126 (d) Subsection (c) of this section does not apply when:

127 (1) A certification under penalties of perjury that the
128 transferor is a resident of the state or is a resident entity is
129 provided by each transferor in:

130 (A) The recitals or the acknowledgment of the deed or
131 other instrument of writing transferring the property to the
132 transferee; or

133 (B) An affidavit signed by the transferor or by an agent
134 of the transferor that accompanies and is recorded with the
135 deed or other instrument of writing transferring the property;

136 (2) The transferor presents to the real estate reporting
137 person, as defined under Section 6045 of the Internal
138 Revenue Code, a certificate issued by the Tax Commissioner
139 stating that:

140 (A) No tax is due from that transferor in connection with
141 that sale or exchange of property;

142 (B) A reduced amount of tax is due from that transferor
143 in connection with that sale or exchange of property and
144 stating the reduced amount that should be collected by the
145 real estate reporting person, as defined under Section 6045 of
146 the Internal Revenue Code, before recordation or filing; or

147 (C) The transferor has provided adequate security to
148 cover the amount required to be withheld under subsection
149 (c) of this section;

150 (3) The property transfer is:

151 (A) A transfer pursuant to a foreclosure of a mortgage,
152 deed of trust, or other lien instrument; or

153 (B) A transfer pursuant to a deed in lieu of foreclosure;

154 (4) The property is transferred by the United States, the
155 state, or a unit or political subdivision of the state;

156 (5) A certification under penalties of perjury that the
157 property being transferred is the transferor's principal
158 residence is provided by each transferor in:

159 (A) The recitals or the acknowledgment of the deed or
160 other instrument of writing transferring the property to the
161 transferee; or

162 (B) An affidavit signed by the transferor or by an agent
163 of the transferor that accompanies and is recorded with the
164 deed or other instrument of writing transferring the property;
165 or

166 (6) The property is transferred pursuant to a deed or other
167 instrument of writing that includes a statement of
168 consideration required in section six, article twenty-two of
169 this code indicating that the consideration payable is zero.

170 (e) Except as provided in this section, the amounts
171 described in subsection (c) of this section shall be collected
172 by the real estate reporting person before the deed or other
173 instrument of writing is presented for recordation or filing.

174 (f) (1) Amounts collected under subsection (c) of this
175 section and paid over to the Tax Commissioner under
176 subsection (e) of this section shall be deemed to have been
177 paid to the Tax Commissioner on behalf of the transferor
178 from whom the amounts were withheld.

179 (2) The transferor shall be credited with having paid the
180 amounts for the taxable year in which the transaction that is
181 the subject of the tax occurred against any tax owed by the
182 transferor to the State of West Virginia on gains resulting
183 from the transaction and is entitled to a refund from the Tax
184 Commissioner of any amount in excess of the amount owed,
185 except as provided in subsection (i) of this section.

186 (g) The real estate reporting person is subject to the
187 requirements and penalties prescribed for the failure to pay
188 the amount of a tax prescribed by article ten of this chapter
189 for the failure to pay to the Tax Commissioner amounts
190 withheld pursuant to provisions of this section.

191 (h) This section does not:

192 (1) Impose any tax on a transferor or affect any liability
193 of the transferor for any tax; or

194 (2) Prohibit the Tax Commissioner from collecting any
195 taxes due from a transferor in any other manner authorized by
196 law.

197 (i) (1) The Tax Commissioner shall propose legislative
198 rules for promulgation in accordance with the provisions of
199 article three, chapter twenty-nine-a of this code to implement
200 and administer this section.

201 (2) The Tax Commissioner shall establish procedures for
202 the issuance of the certificate referred to in subdivision (2),
203 subsection (d) of this section.

204 (3) The Tax Commissioner shall establish a procedure by
205 which a transferor may apply for an early refund of the tax
206 collected under this section if the transferor establishes that
207 no tax will be owed or less tax than collected will be owed.

208 (4) If the amount withheld and paid to the Tax
209 Commissioner under this section equals or exceeds the
210 amount of tax owed by the transferor, the transferor may, at
211 his or her discretion, not file the return required by this
212 article: *Provided*, That failure to file a return is deemed to be
213 a final decision to not claim a refund for an overpayment of
214 the tax imposed by this article, and no claim for refund shall
215 be granted and no refund paid with relation to tax withheld
216 pursuant to this section for which no return was filed by the
217 taxpayer.

CHAPTER 11

(S.B. 2010 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto four new sections, designated §11-21-22,
§11-21-22a, §11-21-22b and §11-21-22c, all relating to

personal income tax generally; enacting a low-income family tax credit; defining terms; establishing dates upon which credit becomes available and amounts of credit; and providing for administration of credit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto four new sections, designated §11-21-22, §11-21-22a, §11-21-22b and §11-21-22c, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

- §11-21-22. Low-income family tax credit.
- §11-21-22a. Definitions.
- §11-21-22b. Amount of credit.
- §11-21-22c. Administration.

§11-21-22. Low-income family tax credit.

1 In order to eliminate West Virginia personal income tax
2 on families with incomes below the federal poverty
3 guidelines and to reduce the West Virginia personal income
4 tax on families with incomes that are immediately above the
5 federal poverty guidelines, there is hereby created a
6 nonrefundable tax credit, to be known as the low-income
7 family tax credit, against the West Virginia personal income
8 tax. The low-income family tax credit is based upon family
9 size and the federal poverty guidelines and reduces the tax
10 imposed by the provisions of this article on families with
11 modified federal adjusted gross income below or near the
12 federal poverty guidelines.

§11-21-22a. Definitions.

1 When used in this section and sections twenty-two,
2 twenty-two-b and twenty-two-c of this article, the following

3 terms shall have the meaning ascribed herein, unless a
4 different meaning is clearly provided by the context in which
5 the term is used.

6 (a) “Federal poverty guidelines” means the U. S.
7 Department of Health and Human Services poverty
8 guidelines updated periodically in the Federal Register under
9 the authority of 42 U. S. C. §9902(c) and available each year
10 on the thirtieth day of June.

11 (b) “Family size” means the total number of exemptions
12 that may be legally claimed on the West Virginia resident
13 personal income tax return for the taxable year for which the
14 tax credit is claimed: *Provided*, That family size shall not
15 include the additional exemption that may be claimed by a
16 surviving spouse pursuant to subsection (c), section sixteen
17 of this chapter: *Provided, however*, That if the total number
18 of exemptions that may be legally claimed on the West
19 Virginia resident personal income tax return for the taxable
20 year for which the tax credit is claimed exceeds eight, the
21 family size shall be deemed eight.

22 (c) “Indexed tax credit tables” means the two tables
23 annually developed and published by the Tax Commissioner
24 pursuant to the requirements of section twenty-two-b of this
25 article.

26 (d) “Modified federal adjusted gross income” means the
27 federal adjusted gross income plus any applicable increasing
28 West Virginia modifications plus any tax exempt interest
29 income reported on the federal tax return.

30 (e) “Qualified taxpayer” means a taxpayer:

31 (1) Who files the West Virginia personal income tax
32 return required by this article;

33 (2) Who files as an individual, as a head of household, as
34 a husband and wife who file a joint return, as an individual
35 entitled to file as a surviving spouse, or as a husband and
36 wife who file separate returns; and

37 (3) Whose modified federal adjusted gross income does
38 not exceed:

39 (A) The federal poverty guidelines amount for the family
40 size of the taxpayer plus two thousand seven hundred dollars
41 for those taxpayers who file as an individual, as a head of
42 household, as a husband and wife who file a joint return, or
43 as an individual entitled to file as a surviving spouse; or

44 (B) Fifty percent of the federal poverty guidelines amount
45 for the family size of the taxpayer plus one thousand three
46 hundred fifty dollars for those taxpayers who are husband
47 and wife and who file separate returns.

48 (f) "Tax credit" means the low-income family tax credit
49 authorized by this article.

§11-21-22b. Amount of credit.

1 (a) For each taxable year beginning on or after the first
2 day of January, two thousand seven, the tax credit authorized
3 by section twenty-two of this article may be used by every
4 qualified taxpayer and shall be calculated in accordance with
5 subsections (b) and (c) of this section: *Provided*, That for the
6 taxable year beginning on the first day of January, two
7 thousand seven, the qualified taxpayer shall be allowed to
8 claim only fifty percent of the amount of the tax credit.

9 (b) Qualified taxpayers who file as an individual, as a
10 head of household, as a husband and wife who file a joint

11 return, or as an individual entitled to file as a surviving
12 spouse shall be entitled to a tax credit based on the following:

13 (1) If modified federal adjusted gross income is at or
14 below the federal poverty guidelines based on family size, the
15 credit shall be an amount equal to the amount of tax owed
16 under this article by the qualified taxpayer;

17 (2) If modified federal adjusted gross income is greater
18 than the federal poverty guidelines but does not exceed three
19 hundred dollars above the federal poverty guidelines based
20 on family size, the amount of credit allowable shall be ninety
21 percent of the amount of tax owed under this article by the
22 qualified taxpayer;

23 (3) If modified federal adjusted gross income is greater
24 than three hundred dollars above the federal poverty
25 guidelines but does not exceed six hundred dollars above the
26 federal poverty guidelines based on family size, the amount
27 of credit allowable shall be eighty percent of the amount of
28 tax owed under this article by the qualified taxpayer;

29 (4) If modified federal adjusted gross income is greater
30 than six hundred dollars above the federal poverty guidelines
31 but does not exceed nine hundred dollars above the federal
32 poverty guidelines based on family size, the amount of credit
33 allowable shall be seventy percent of the amount of tax owed
34 under this article by the qualified taxpayer;

35 (5) If modified federal adjusted gross income is greater
36 than nine hundred dollars above the federal poverty
37 guidelines but does not exceed one thousand two hundred
38 dollars above the federal poverty guidelines based on family
39 size, the amount of credit allowable shall be sixty percent of
40 the amount of tax owed under this article by the qualified
41 taxpayer;

42 (6) If modified federal adjusted gross income is greater
43 than one thousand two hundred dollars above the federal
44 poverty guidelines but does not exceed one thousand five
45 hundred dollars above the federal poverty guidelines based
46 on family size, the amount of credit allowable shall be fifty
47 percent of the amount of tax owed under this article by the
48 qualified taxpayer;

49 (7) If modified federal adjusted gross income is greater
50 than one thousand five hundred dollars above the federal
51 poverty guidelines but does not exceed one thousand eight
52 hundred dollars above the federal poverty guidelines based
53 on family size, the amount of credit allowable shall be forty
54 percent of the amount of tax owed under this article by the
55 qualified taxpayer;

56 (8) If modified federal adjusted gross income is greater
57 than one thousand eight hundred dollars above the federal
58 poverty guidelines but does not exceed two thousand one
59 hundred dollars above the federal poverty guidelines based
60 on family size, the amount of credit allowable shall be thirty
61 percent of the amount of tax owed under this article by the
62 qualified taxpayer;

63 (9) If modified federal adjusted gross income is greater
64 than two thousand one hundred dollars above the federal
65 poverty guidelines but does not exceed two thousand four
66 hundred dollars above the federal poverty guidelines based
67 on family size, the amount of credit allowable shall be twenty
68 percent of the amount of tax owed under this article by the
69 qualified taxpayer; or

70 (10) If modified federal adjusted gross income is greater
71 than two thousand four hundred dollars above the federal
72 poverty guidelines but does not exceed two thousand seven
73 hundred dollars above the federal poverty guidelines based

74 on family size, the amount of credit allowable shall be ten
75 percent of the amount of tax owed under this article by the
76 qualified taxpayer.

77 (c) Qualified taxpayers who are husband and wife and
78 who file separate returns shall be entitled to a tax credit based
79 on the following:

80 (1) If modified federal adjusted gross income is at or
81 below fifty percent of the federal poverty guidelines based on
82 family size, the credit shall be an amount equal to the amount
83 of tax owed under this article by the qualified taxpayer;

84 (2) If modified federal adjusted gross income is greater
85 than fifty percent of the federal poverty guidelines but does
86 not exceed one hundred fifty dollars above fifty percent of
87 the federal poverty guidelines based on family size, the
88 amount of credit allowable shall be ninety percent of the
89 amount of tax owed under this article by the qualified
90 taxpayer;

91 (3) If modified federal adjusted gross income is greater
92 than one hundred fifty dollars above fifty percent of the
93 federal poverty guidelines but does not exceed three hundred
94 dollars above fifty percent of the federal poverty guidelines
95 based on family size, the amount of credit allowable shall be
96 eighty percent of the amount of tax owed under this article by
97 the qualified taxpayer;

98 (4) If modified federal adjusted gross income is greater
99 than three hundred dollars above fifty percent of the federal
100 poverty guidelines but does not exceed four hundred fifty
101 dollars above fifty percent of the federal poverty guidelines
102 based on family size, the amount of credit allowable shall be
103 seventy percent of the amount of tax owed under this article
104 by the qualified taxpayer;

105 (5) If modified federal adjusted gross income is greater
106 than four hundred fifty dollars above fifty percent of the
107 federal poverty guidelines but does not exceed six hundred
108 dollars above fifty percent of the federal poverty guidelines
109 based on family size, the amount of credit allowable shall be
110 sixty percent of the amount of tax owed under this article by
111 the qualified taxpayer;

112 (6) If modified federal adjusted gross income is greater
113 than six hundred dollars above fifty percent of the federal
114 poverty guidelines but does not exceed seven hundred fifty
115 dollars above fifty percent of the federal poverty guidelines
116 based on family size, the amount of credit allowable shall be
117 fifty percent of the amount of tax owed under this article by
118 the qualified taxpayer;

119 (7) If modified federal adjusted gross income is greater
120 than seven hundred fifty dollars above fifty percent of the
121 federal poverty guidelines but does not exceed nine hundred
122 dollars above fifty percent of the federal poverty guidelines
123 based on family size, the amount of credit allowable shall be
124 forty percent of the amount of tax owed under this article by
125 the qualified taxpayer;

126 (8) If modified federal adjusted gross income is greater
127 than nine hundred dollars above fifty percent of the federal
128 poverty guidelines but does not exceed one thousand fifty
129 dollars above fifty percent of the federal poverty guidelines
130 based on family size, the amount of credit allowable shall be
131 thirty percent of the amount of tax owed under this article by
132 the qualified taxpayer;

133 (9) If modified federal adjusted gross income is greater
134 than one thousand fifty dollars above fifty percent of the
135 federal poverty guidelines but does not exceed one thousand
136 two hundred dollars above fifty percent of the federal poverty

137 guidelines based on family size, the amount of credit
138 allowable shall be twenty percent of the amount of tax owed
139 under this article by the qualified taxpayer; or

140 (10) If modified federal adjusted gross income is greater
141 than one thousand two hundred dollars above fifty percent of
142 the federal poverty guidelines but does not exceed one
143 thousand three hundred hundred fifty dollars above fifty
144 percent of the federal poverty guidelines based on family
145 size, the amount of credit shall be ten percent of the amount
146 of tax owed under this article by the qualified taxpayer.

147 (d) The Tax Commissioner shall develop and publish on
148 an annual basis two indexed tax credit tables. One tax table
149 shall be for qualified taxpayers who file as an individual, as
150 a head of household, as a husband and wife who file a joint
151 return, or as an individual entitled to file as a surviving
152 spouse and one tax table shall be for qualified taxpayers who
153 are husband and wife and who file separate returns. The
154 indexed tax credit tables shall be based on subsections (b)
155 and (c) of this section.

§11-21-22c. Administration.

1 The Tax Commissioner may propose legislative rules for
2 promulgation in accordance with article three, chapter
3 twenty-nine-a of this code for the administration of the
4 provisions of sections twenty-two, twenty-two-a and twenty-
5 two-b of this article, file administrative notices in the State
6 Register in accordance with section three, article two, chapter
7 twenty-nine-a of this code, and develop and publish any
8 instructions, any or all of which as may be determined to be
9 necessary to provide to taxpayers guidance and assistance
10 when claiming this tax credit.

CHAPTER 12

**(S.B. 2011 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 14, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to providing an exemption from consumers sales and service tax for purchases by a contractor when the purchased materials will be used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure to be primarily used for manufacturing.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

1 (a) Persons who perform “contracting” as defined in
2 section two of this article, or persons acting in an agency
3 capacity, may not assert any exemption to which the
4 purchaser of such contracting services or the principal is

5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled shall be invalid unless the tangible personal
7 property or taxable service is actually purchased by such
8 taxpayer and is directly invoiced to and paid by such
9 taxpayer: *Provided*, That this section shall not apply to
10 purchases by an employee for his or her employer; purchases
11 by a partner for his or her partnership; or purchases by a duly
12 authorized officer of a corporation, or unincorporated
13 organization, for his or her corporation or unincorporated
14 organization, so long as the purchase is invoiced to and paid
15 by such employer, partnership, corporation or unincorporated
16 organization.

17 (b) Notwithstanding any provision of subsection (a) of
18 this section to the contrary, effective the first day of July, two
19 thousand seven, a person who performs "contracting", as
20 defined in section two of this article, may assert an
21 exemption to which the purchaser of such contracting
22 services is entitled if:

23 (A) The exemption is asserted as to purchases of services,
24 machinery, supplies or materials, except gasoline and special
25 fuel, to be directly used or consumed in the construction,
26 alteration, repair or improvement of a new or existing
27 building or structure;

28 (B) The building or structure is to be primarily used for
29 manufacturing, which may include the generation of electric
30 power, by the purchaser of the contracting services; and

31 (C) The exemption is available to the purchaser of the
32 contracting services for those purposes under subdivision (2),
33 subsection (b), section nine of this article.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2007

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2007	..... 12	2526	.... 163	2764	.... 139
2048	.... 160	2527	.... 203	2770	..... 63
2051	.... 181	2544	..... 84	2775	.... 173
2078	.... 130	2568	.... 213	2776	.... 172
2105	..... 92	2571	..... 75	2777	..... 95
2120	.... 184	2574	.... 223	2781	.... 182
2130	..... 77	2575	..... 41	2791	..... 70
2141	.... 141	2578	.... 140	2800	.... 206
2145	.... 109	2583	.... 123	2801	.... 225
2181	..... 10	2585	..... 85	2804	.... 215
2189	..... 86	2586	.... 220	2808	.... 178
2204	.... 185	2587	.... 218	2825	..... 9
2206	..... 78	2588	..... 94	2831	..... 56
2253	..... 51	2590	.... 155	2840	.... 191
2285	.... 246	2616	.... 151	2870	..... 80
2309	.... 252	2670	.... 158	2875	.... 108
2314	.... 248	2703	.... 193	2877	.... 126
2332	.... 171	2709	.... 187	2908	.... 192
2348	.... 210	2710	.... 145	2917	.... 244
2349	.... 221	2712	..... 26	2926	..... 81
2380	.... 243	2714	.... 199	2931	..... 20
2406	.... 127	2717	.... 119	2938	.... 211
2422	..... 52	2718	.... 226	2940	.... 134
2436	.... 198	2741	.... 259	2944	.... 110
2481	.... 179	2745	..... 8	2945	.... 239
2498	..... 65	2747	.... 148	2955	.... 240
2525	..... 28	2763	.... 138	2956	..... 1

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2007

HOUSE BILLS

Page Two

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2973	..... 36	3057	.... 121	3117	.... 146
2986	.... 122	3072	.... 227	3141	.... 230
2988	.... 234	3073	..... 23	3145	.... 116
2989	.... 237	3074	..... 42	3161	..... 64
2990	.... 235	3090	..... 3	3184	.... 167
2991	.... 228	3093	.... 125	3223	.... 124
2992	.... 250	3094	..... 67	3228	..... 66
3006	.... 205	3097	..... 74	3270	.... 115
3048	.... 238	3106	..... 61	3271	.... 113
				3272	.... 254

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2007

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
18.....	133	178.....	128	386.....	117
21.....	147	180.....	43	387.....	255
55.....	162	181.....	25	388.....	30
59.....	143	182.....	24	389.....	190
66.....	71	185.....	251	393.....	166
67.....	90	186.....	217	396.....	194
68.....	170	187.....	200	398.....	175
70.....	144	190.....	222	403.....	46
76.....	34	192.....	55	405.....	22
82.....	114	194.....	11	406.....	231
96.....	253	196.....	32	411.....	50
100.....	93	203.....	212	412.....	180
104.....	44	204.....	142	414.....	161
105.....	59	205.....	82	415.....	165
117.....	168	206.....	72	416.....	83
121.....	21	208.....	62	425.....	132
129.....	208	217.....	262	428.....	45
134.....	89	218.....	13	431.....	4
138.....	40	274.....	156	435.....	169
139.....	188	276.....	154	436.....	57
140.....	164	278.....	153	438.....	209
141.....	60	314.....	152	441.....	232
142.....	47	319.....	157	442.....	207
149.....	39	335.....	2	447.....	120
169.....	176	337.....	6	454.....	27
171.....	219	360.....	159	460.....	197
172.....	224	361.....	53	465.....	73
175.....	48	376.....	195	475.....	260
177.....	111	381.....	136	484.....	37

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2007

SENATE BILLS

Page Two

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
489.....	258	582.....	214	619.....	99
490.....	112	588.....	236	626.....	31
505.....	150	589.....	201	631.....	241
511.....	38	591.....	14	643.....	135
512.....	69	592.....	15	657.....	87
518.....	256	593.....	16	667.....	189
521.....	118	594.....	17	672.....	233
523.....	174	595.....	257	690.....	242
524.....	216	596.....	97	697.....	58
526.....	149	599.....	91	707.....	54
528.....	5	601.....	177	708.....	29
529.....	68	603.....	88	709.....	33
531.....	49	606.....	102	712.....	7
539.....	76	607.....	98	713.....	106
540.....	249	610.....	103	746.....	202
541.....	229	611.....	196	747.....	183
542.....	96	612.....	131	749.....	247
550.....	79	613.....	129	753.....	104
557.....	35	615.....	186	754.....	107
559.....	137	616.....	101	757.....	261
569.....	245	617.....	100	758.....	18
573.....	204	618.....	105	759.....	19

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

Regular Session, 2007

House Bills = 4 Digits

Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	2956	29	708	57	436
2	335	30	388	58	697
3	3090	31	626	59	105
4	431	32	196	60	141
5	528	33	709	61	3106
6	337	34	76	62	208
7	712	35	557	63	2770
8	2745	36	2973	64	3161
9	2825	37	484	65	2498
10	2181	38	511	66	3228
11	194	39	149	67	3094
12	2007	40	138	68	529
13	218	41	2575	69	512
14	591	42	3074	70	2791
15	592	43	180	71	66
16	593	44	104	72	206
17	594	45	428	73	465
18	758	46	403	74	3097
19	759	47	142	75	2571
20	2931	48	175	76	539
21	121	49	531	77	2130
22	405	50	411	78	2206
23	3073	51	2253	79	550
24	182	52	2422	80	2870
25	181	53	361	82	205
26	2712	54	707	83	416
27	454	55	192	84	2544
28	2525	56	2831	85	2585

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

Regular Session, 2007

Page Two

House Bills = 4 Digits

Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
86	2189	113	3271	141	2141
87	657	114	82	142	204
88	603	115	3270	143	59
89	134	116	3145	144	70
90	67	117	386	145	2710
91	599	118	521	146	3117
92	2105	119	2717	147	21
93	100	120	447	148	2747
94	2588	121	3057	149	526
95	2777	122	2986	150	505
96	542	123	2583	151	2616
97	596	124	3223	119	2717
98	607	125	3093	152	314
99	619	126	2877	153	278
100	617	127	2406	154	276
101	616	128	178	155	2590
102	606	129	613	156	274
103	610	130	2078	157	319
104	753	131	612	158	2670
105	618	132	425	159	360
106	713	133	18	160	2048
107	754	134	2940	161	414
108	2875	135	643	162	55
109	2145	136	381	163	2526
110	2944	137	559	164	140
111	177	138	2763	165	415
112	490	139	2764	166	393
		140	2578	167	3184

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

Regular Session, 2007
Page Three

House Bills = 4 Digits

Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
168	117	193	2703	220	2586
169	435	194	396	221	2349
170	68	195	376	222	190
171	2332	196	611	223	2574
172	2776	197	460	224	172
173	2775	198	2436	225	2801
174	523	199	2714	226	2718
175	398	200	187	227	3072
176	169	201	589	228	2991
177	601	202	746	229	541
178	2808	203	2527	230	3141
179	2481	204	573	231	406
180	412	205	3006	232	441
181	2051	206	2800	233	672
182	2781	207	442	234	2988
183	747	208	129	235	2990
184	2120	209	438	236	588
185	2204	210	2348	237	2989
186	615	211	2938	238	3048
187	2709	212	203	239	2945
188	139	213	2568	240	2955
189	667	214	582	241	631
190	389	215	2804	242	690
191	2840	216	524	243	2380
192	2908	217	186	244	2917
		218	2587	245	569
		219	171	246	2285

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2007 Page Four

House Bills = 4 Digits

Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
247	..... 749	252	..... 2309	257	..... 595
248	..... 2314	253	..... 96	258	..... 489
249	..... 540	254	..... 3272	259	..... 2741
250	..... 2992	255	..... 387	260	..... 475
251	..... 185	256	..... 518	261	..... 757

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2007

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
102	..... 1	103	..... 2	101	..... 3

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2007

SENATE BILLS

Bill No.	Chapter
1001	..... 4
1002	..... 5

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the
second column gives the bill number.

First Extraordinary Session, 2007

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	..... 102	3	..... 101	5	..... 1002
2	..... 103	4	..... 1004		

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2006

HOUSE BILLS

	Bill No.	Chapter	
	212	..... 1	

WEST VIRGINIA HOUSE OF DELEGATES

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2006

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2001	..... 2	2005	..... 6	2009	..... 10
2002	..... 3	2006	..... 7	2010	..... 11
2003	..... 4	2007	..... 8	2011	..... 12
2004	..... 5	2008	..... 9		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2006

House Bills = 3 Digits

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	..... 212	5	..... 2004	9	..... 2008
2	..... 2001	6	..... 2005	10	..... 2009
3	..... 2002	7	..... 2006	11	..... 2010
4	..... 2003	8	..... 2007	12	..... 2011

INDEX

Regular Session, 2007

	Ch.	Page
ACTIONS AND SUITS:		
Civil actions		
Venue	1	2
Corporations		
Class action suits		
Service of process	49	485
AFFORDABLE HOUSING TRUST FUND:		
Providing funding for	2	7
AGRICULTURE:		
Agricultural liming materials		
Definitions	4	16
Labeling		
Required	4	19
Fees		
Disposition	4	25

INDEX

	Ch.	Page
AGRICULTURE—(Continued):		
Inspection	4	21
Registration	4	19
Cancellation	4	22
Pesticide		
Business license		
Fees	5	26
Pesticide Control Fund		
Continuation	5	28
Weston State Hospital		
Institutional farm		
Transferring to Health and Human Resources	3	11
AIR POLLUTION:		
Net Greenhouse Gas Inventory Program		
Establishing	6	29
ALCOHOLIC LIQUORS:		
Minors		
Furnishing alcohol		
Fine		
Increasing	8	86
Private clubs		
Racial discrimination		
Prohibited	9	88
Wine		
Regulations	7	33

INDEX

	Ch.	Page
ANNUAL REPORTS:		
Recorded electronically	10	91
 APPALACHIAN REGION INTERSTATE COMPACT:		
Agreement	58	513
Compact Commission		
Chairman	58	514
Established	58	514
Funding and compensation	58	514
Membership	58	514
Powers and duties	58	515
Report	58	514
Established	58	513
Form of compact	58	513
Short title	58	513
 APPEAL BONDS:		
Amount		
Limitation	11	94
 APPROPRIATIONS:		
Budget Bill	12	97
Index to, by accounts	12	103
Health and Human Resources, Department of		
Health, Division of	19	314
Human Services, Division of	18	312
Military Affairs and Public Safety		
Department of	15	305
Pharmacy, Board of	16	307
Transportation, Department of	14	302
Various accounts	13, 17	299, 308

INDEX

	Ch.	Page
ARMED FORCES:		
National Guard		
Active duty		
Licensure or registration requirement		
Tolled	21	323
Members and spouses		
Educational opportunities	20	317
AUDITOR:		
Electronic requisitions		
Standards	22	324
BANKS AND BANKING:		
Banking and Financial Institutions, Board of		
Compensation	25	337
Banking institutions		
Powers generally	23	330
Branch banking		
Application to establish	26	339
Definitions	23	325
Locations		
Certain prohibitions	23	334
Examination schedules		
Frequency	24	334
BOARDS AND COMMISSIONS:		
Employment Programs, Bureau of		
Changing name	27	347
Restructuring	27	350
Statewide Addressing and Mapping Board		

INDEX

	Ch.	Page
BOARDS AND COMMISSIONS—(Continued):		
Composition	28	363
Termination of		
Extending	28	365
CHARITABLE ORGANIZATIONS:		
Registration requirements		
Exemptions	29	371
Modifying	29	367
CHILD WELFARE:		
Child advocacy centers		
Abuse and neglect		
Definitions	31	378
Child support orders		
Correctional Center Nursery Act		
Collection	50	491
Medical support		
Cost of	30	377
Court-ordered	30	375
Enforcement	30	373
Juvenile proceedings		
Improvement periods		
Custodial and noncustodial	33	400
Judicial review	35	404
Juvenile Services, Division of		
Juvenile custody	32	396
Underage drinking		
Penalties	34	402
CLAIMS:		
Claims against the State	36, 37	409, 414

INDEX

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
3	1	2 a	SB596	842
3	1	9	SB607	844
3	1	20	SB616	879
3	1	21	SB616	881
3	1	34	SB619	850
3	1	41	SB616	883
3	2	4 a	SB617	860
3	2	5	SB617	864
3	2	6	SB617	868
3	2	11	SB617	869
3	2	13	SB617	871
3	2	30	SB617	875
3	3	5	SB606	915
3	4 A	1	SB610	922
3	4 A	8	SB610	923
3	4 A	11 a	SB616	885
3	4 A	15	SB616	887
3	4 A	16	SB619	857
3	4 A	23	SB610	924
3	4 A	26	SB610	925
3	4 A	28	SB610	928
3	4 A	30	SB619	858
3	5	7	SB616	888
3	5	10	SB616	892
3	5	13	SB616	896
3	5	19	SB753	930

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
			SB616	901
3	6	2	SB616	904
3	6	3	SB616	910
3	6	4 a	SB618	934
3	8	1 a	SB713	938
3	8	2	SB713	946
3	8	2 b	SB713	948
3	8	3	SB713	951
3	8	4	SB713	952
3	8	5	SB713	954
3	8	5 a	SB713	955
3	8	5 b	SB713	961
3	8	5 e	SB713	962
3	8	9	SB754	965
3	10	7	HB2875	969
4	1	23	HB2181	91
4	10	1	SB187	1747
4	10	2	SB187	1747
4	10	3	SB187	1748
4	10	4	SB187	1750
4	10	5	SB187	1751
4	10	6	SB187	1752
4	10	7	SB187	1755
4	10	8	SB187	1756
4	10	9	SB187	1757
4	10	10	SB187	1759

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
4	10	11	SB187	1760
4	10	12	SB187	1761
4	10	13	SB187	1762
4	10	14	SB187	1762
4	11 A	1	SB185	2297
4	11 A	1 a*	SB185	2298
4	11 A	2	SB185	2299
4	11 A	3	SB185	2302
4	11 A	6*	SB185	2303
4	11 A	7*	SB185	2304
4	11 A	8*	SB185	2305
4	11 A	9*	SB185	2306
4	11 A	10*	SB185	2307
4	11 A	11*	SB185	2307
4	11 A	12*	SB185	2310
4	11 A	13*	SB185	2313
4	11 A	14*	SB185	2317
4	11 A	15*	SB185	2318
4	11 A	16*	SB185	2318
4	11 A	17*	SB185	2319
4	11 A	18*	SB185	2319
5	1	20	HB2181	92
5	5	4	SB442	1836
5	5	5	SB442	1837
5	10 A	2	HB2717	1034
5	10 B	3 a*	HB3097	564
5	10 B	10 a*	HB3097	565
5	10 D	1	HB2717	1037

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
5	10 D	6 a*	SB180	461
5	10 D	9*	SB104	463
5	11 A	3	SB59	1256
5	11 A	3 a	SB59	1259
5	16	2	HB2585	614
			SB129	1893
5	16	5	SB129	1896
5	16	7	SB129	1901
			SB18	1198
5	16	9	SB18	1202
5	16	13	HB2940	1212
5	16	25	SB129	1905
5	16 D	1	SB129	1905
5	16 D	6	SB129	1909
5 A	3	58*	SB203	1942
5 A	10*		SB582	1951
5 A	11*		SB582	1962
5 B	1	1 a*	SB393	1478
5 B	1	2	SB454	348
			SB177	976
5 B	2	5	SB442	1838
5 B	2	12	HB2877	1124
5 B	2 A	1	SB177	978
5 B	2 A	3	SB177	980
5 B	2 A	4	SB177	980
5 B	2 A	5	SB177	981
5 B	2 A	12	SB177	982

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
5 B	2 B	4	SB489	2408
5 B	2 B	6	SB454	350
			SB489	2410
5 B	2 B	9	SB454	350
5 B	2 E	3	HB2309	2322
5 B	2 E	4	HB2309	2328
5 B	2 E	5	HB2309	2328
5 B	2 E	6	HB2309	2332
5 B	2 E	7	HB2309	2333
5 B	2 E	7 a*	HB2309	2335
5 B	2 E	8	HB2309	2337
5 B	2 E	9	HB2309	2339
5 B	2 E	11	HB2309	2339
5 B	2 F*		SB177	982
5 D	1	4	SB177	986
5 F	2	1	SB454	352
			SB177	989
			SB442	1839
			SB582	1979
5 F	2	2	SB582	1988
5 H*			HB2801	2013
6 C	2*		SB442	1848
6 C	3*		SB442	1864
7	1	3 r	SB436	507
7	1	3mm	HB2831	504
7	12	7	SB697	510
7	14	15	SB526	1300

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
7	14 D	2	SB539	576
7	14 D	9	SB539	585
7	14 D	11	SB539	585
7	14 D	14	HB2130	587
7	14 E	2	SB105	519
7	15	16	SB403	475
7	18	2	SB178	1157
7	18	14	SB178	1158
7	24*		SB697	513
7 A	1	4	SB435	1502
7 A	4	1	SB435	1502
7 A	7	6	SB435	1504
8	1	5 a*	SB747	1684
8	1	7	SB747	1689
8	10	2	HB2120	1690
8	13	5	HB3072	2089
8	14	19	SB526	1303
8	14	24	HB2204	1693
8	19	2*	SB615	1695
8	19	21	HB2709	1698
8 A	8	11	SB475	2418
8 A	8	12	SB475	2420
9	5	20*	SB18	1206
9	9	3	SB518	2359
9	9	6	SB518	2364
9	9	7	SB518	2365
9	9	8	SB518	2366

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
9	9	9	SB518	2367
9	9	21*	SB518	2369
9	9	22*	SB518	2371
10	1	5	HB2048	1459
11	1	1	HB2991	2108
11	1 A	23	HB3072	2093
11	1 C	5 b*	SB541	2112
11	3	5	HB3141	2130
11	4	3	SB406	2132
11	6 A	5 a	SB441	2137
11	6 C	1	SB672	2154
11	6 C	2	SB672	2155
11	6 C	3	SB672	2158
11	6 C	4	SB672	2159
11	6 C	5	SB672	2159
11	8	6 f	SB541	2113
11	8	9	SB360	1458
11	10	4	HB2988	2160
11	10	5 d	HB3072	2095
11	10	5 s	SB712	35
11	10	11	HB2990	2163
11	10 A	8	SB442	1870
11	10 E	6	HB2989	2182
11	10 E	8	HB2989	2184
11	10 E	9	HB2989	2186
11	13	2 f	SB588	2171
11	13	2 o	SB441	2138

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	13	2 p*	SB441	2147
11	13 Q	10 a*	HB3048	2188
11	13 W*		HB2945	2194
11	13 X*		HB3145	1015
11	14 C	5	HB2955	2197
11	14 C	47	HB2955	2201
11	15	3 c*	HB2775	1540
11	15	4 c*	SB335	8
11	15	8 d	SB631	2202
11	15	9	SB690	2204
11	15	9 i*	HB2380	2223
11	15	16	HB2917	2225
11	15	18 b	SB569	2233
11	21	9	HB2285	2238
11	21	23*	SB541	2116
11	21	74	HB2917	2228
11	22	2	SB335	8
11	23	5 b*	SB749.....	2241
11	23	6	SB749.....	2241
11	23	27	SB749.....	2244
11	24	1	SB749	2245
11	24	3	HB2314	2289
11	24	3 a	SB749	2246
11	24	7	SB749	2254
11	24	11 b*	SB540	2291
11	24	13 a	SB749.....	2268
11	24	13 c*	SB749.....	2275

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	24	13 d*	SB749	2278
11	24	13 e*	SB749	2283
11	24	13 f*	SB749	2284
11	24	24	SB749	2287
11	24	43 a*	SB569	2236
11	27	11	HB2992	2293
11 A	2	2	HB3072	2107
11 A	2	18	HB2571	570
11 A	3	2	HB2571	571
12	3	5	SB405	324
12	3	10 a	SB203	1942
12	3	10 d	SB203	1944
12	3	10 e	SB203	1945
12	6	2	SB438	1915
12	6	4	SB438	1917
12	6	5	SB438	1920
12	6	9 c	SB438	1923
12	6	12	SB438	1923
12	6	14	SB438	1928
12	6	18*	SB438	1929
15	1 B	21	SB667	1703
			HB2931	318
15	1 F	1 b*	SB121	323
15	2	12	HB2877	1126
15	2	25 a	SB505	1309
15	2	25 b	SB505	1309
15	2	26	SB505	1312

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
15	2	27	SB505	1314
15	2	27 a	SB505	1316
15	2	28	SB505	1317
15	2	29	SB505	1320
15	2	30	SB505	1323
15	2	31	SB505	1324
15	2	31 a	SB505	1326
15	2	31 b	SB505	1329
15	2	32	SB505	1330
15	2	33	SB505	1331
15	2	34	SB505	1333
15	2	35	SB505	1334
15	2	37	SB505	1335
15	2	38	SB505	1337
15	2	39	SB505	1338
15	2	44	SB505	1338
15	5	6	HB2348	1930
15	5	19 a*	HB2348	1932
16	1	4	SB447	1087
16	2 K*		HB3057	1097
16	5 B	16*	HB2986	1099
16	5 C	20*	HB2944	974
16	5 V*		HB2717	1041
16	13 E	2	SB425	1179
16	13 E	4	SB425	1182
16	13 E	6	SB425	1185
16	22	3	HB2583	1101

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
16	29 I*		HB3223	1104
16	30	4	HB3093	1110
17	4	17 b	HB2804	2001
17	16 B	7 a*	SB569	2237
17	16 B	7 b*	SB569	2237
17	22	7	SB712	39
17 A	2	21	SB523	1557
17 A	2	23	SB523	1558
17 A	3	3	SB523	1558
17 A	3	4	HB2775	1546
17 A	3	7	SB398	1637
17 A	3	14	SB523	1563
17 A	4	10	SB523	1604
			SB169	1643
17 A	6 A	3	SB601	1649
17 A	6 A	10	SB601	1652
17 A	6 A	12	SB601	1663
17 A	7	2	HB2808	1666
17 A	9	5	SB398	1639
17 A	9	7	SB523	1610
			SB398	1640
17 A	10	3	HB2481	1668
17 A	10	8	SB523	1613
17 B	2	3 a	SB412	1671
17 B	2	7 c	SB523	1615
17 C	5	2	HB2544	604
17 C	5 A	2 a	SB523	1617

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
17 C	5 A	3	SB523	1618
17 C	5 A	3 a	SB523	1623
17 C	6	7	HB2051	1679
17 C	6	7 a	HB2051	1680
17 C	13	6	HB2714	1734
17 C	15	26	SB96	2340
17 C	17	4	HB2781	1681
17 C	17 B	3	HB2877	1131
17 C	17 B	4	HB2877	1132
17 E	1	3	HB2575	419
17 E	1	6	HB2575	427
17 E	1	7	HB2575	428
17 E	1	8	HB2575	429
17 E	1	13	HB2575	430
17 E	1	20	HB2575	448
17 E	1	23	SB523	1631
17 E	1	25	HB2575	449
17 G	2	3	HB2568	1946
18	1	1	HB2189	640
18	2 E	5	SB657	711
18	2 E	7	SB603	750
18	5	13	HB2189	642
18	7 A	3	HB2585	619
18	7 A	13 a	SB134	761
18	7 A	14	SB134	763
18	7 A	23	SB134	764
18	7 B	2	HB2585	624

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
18	9 A	2	SB541	2118
18	9 A	2 a*	SB541	2121
18	9 A	10	SB603	758
18	9 A	11	SB541	2122
18	9 A	15	SB541	2127
18	9 D	2	SB67	767
18	9 D	15	SB67	771
18	9 D	20*	SB67	779
18	9 F*		SB67	780
18	19	1	HB2931	320
18	19	2	HB2931	321
18	19	3	HB2931	322
18	20	2	HB2189	652
18	23	4 a	HB2585	627
18 A	1	1	HB2189	654
			SB129	1910
18 A	2	2	SB599	792
18 A	2	3	HB2105	797
18 A	2	5 a*	SB599	796
18 A	2	8	SB442	1871
18 A	2	14*	SB100	803
18 A	3	3	HB2585	631
18 A	3	3 a	HB2588	804
18 A	3	11*	HB2585	633
18 A	4	2	HB2777	809
18 A	4	2 a	HB2777	811
18 A	4	7 c*	HB2189	659

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
18 A	4	8	HB2189	660
			HB2777	813
18 A	4	8 a	HB2777	831
18 A	4	8 b	HB2189	678
18 A	4	8 f	HB2189	685
18 A	4	8 g	HB2189	688
18 A	4	10	HB2189	693
18 A	4	10 f*	HB2189	698
18 A	4	15	HB2189	701
18 A	5	8	HB2189	706
18 B	2 A	4	SB442	1872
18 B	7	4	SB442	1878
18 B	10	10*	SB667	1705
18 B	17	2	SB542	840
18 B	17	3	SB542	841
19	12 A	1 a	HB3090	11
19	15 A	1	SB431	16
19	15 A	2	SB431	19
19	15 A	3	SB431	19
19	15 A	4	SB431	21
19	15 A	5	SB431	22
19	15 A	6	SB431	22
19	15 A	7	SB431	24
19	15 A	8	SB431	24
19	15 A	9	SB431	25
19	15 A	10	SB431	25
19	16 A	7	SB528	26

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
19	16 A	23	SB528	28
19	20	12	HB2206	589
19	23	3	HB2406	1134
19	23	10	HB2406	1138
19	23	13 b	HB2406	1148
20	1	2	SB389	1706
20	1	7	SB582	1993
20	2	5	SB613	1166
20	2	12	HB2840	1712
20	2	22	HB2078	1174
20	2	22 a	HB2908	1714
20	2	28	HB2703	1719
20	2	29*	SB396	1723
20	2	50	SB376	1725
20	5	16	SB611	1726
20	5	22*	SB460	1728
20	7	9	SB612	1176
20	7	12	SB523	1632
20	14	8	SB521	1031
21	1 B	2	SB70	1267
21	1 B	3	SB70	1268
21	1 B	5	SB70	1269
21	1 B	6*	SB70	1270
21	1 B	7*	SB70	1270
21	3 C	1	HB2145	971
21	3 C	2 a*	HB2145	972
21	5 E	4	SB442	1879

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
21	5 F	3	HB2436	1730
21	5 F	4	HB2436	1732
21	9	2	HB2710	1272
21	11	3	SB59	1259
21	11	6	HB3117	1275
21	11	10 a*	SB59	1264
21	11	14	SB21	1278
21	14*		HB2747	1284
21 A	1	4	SB454	361
22	3 A	7	SB177	998
22	5	19*	SB337	29
22	14	3	SB465	558
22	14	19*	SB465	562
22	17	22	SB490	1000
22 A	1	15	SB68	1506
22 A	2	4 a*	SB68	1510
22 A	2	5	SB68	1513
22 A	7	5	SB68	1517
22 A	7	7*	SB68	1519
22 A	11*		SB68	1522
22 C	2	1	SB425	1191
22 C	2	5	SB425	1194
22 C	4	10	SB524	2005
22 C	7	2	SB442	1880
23	1	1	SB595	2373
23	1	1 f	SB595	2377
23	2	9	SB595	2378

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
23	2 C	3	SB595	2386
23	2 C	8	SB595	2391
23	2 C	15	SB595	2395
23	2 C	18	SB595	2398
23	2 C	18 a*	SB595	2400
23	2 C	19	SB595	2402
23	5	9	SB595	2405
24 E	1	3	HB2525	362
24 E	1	11	HB2525	365
24 F	1	3 a*	SB387	2358
25	1	4*	HB2422	495
25	1 B*		SB411	488
27	3	1	HB3184	1480
27	3	2	HB3184	1482
27	5	9	HB3184	1482
27	6 A	1	SB117	1485
27	6 A	2	SB117	1487
27	6 A	3	SB117	1489
27	6 A	4	SB117	1494
27	6 A	5	SB117	1497
27	6 A	6	SB117	1499
27	6 A	8	SB117	1500
27	6 A	9	SB117	1500
27	6 A	10*	SB117	1500
27	6 A	11*	SB117	1501
29	3 D*		HB2747	1292
29	6	7	SB589	1763

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
29	6	7 a*	SB746	1766
29	19	5	SB708	367
29	19	6	SB708	371
29	22	18	HB2718	2018
29	22 A	10 c	HB2718	2024
29	22 C*		HB2718	2027
29	25	1	HB2718	2086
29 A	3 B	9	SB657	744
29 A	3 B	10	SB657	747
29 B	1	4	SB386	1026
30	1	17*	HB2181	93
30	1 A	2	HB2527	1768
30	1 A	3	HB2527	1770
30	1 A	5	HB2527	1772
30	1 A	6	HB2527	1772
30	3	7 a*	HB2800	1801
30	3	9	SB573	1774
30	3	12	SB573	1778
30	3	16	SB573	1781
30	3 D*		SB573	1791
30	6	32	SB186	2007
30	8	11	HB2587	2007
30	9	32	SB171	2008
30	10	20	HB2586	2009
30	14	11 a*	SB573	1794
30	17	16*	HB2349	2010
30	20	4	HB3006	1798

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
30	21	16	SB190	2010
30	23	1	HB2800	1802
30	23	2	HB2800	1802
30	23	3	HB2800	1803
30	23	4	HB2800	1803
30	23	5	HB2800	1806
30	23	6	HB2800	1808
30	23	7	HB2800	1810
30	23	8	HB2800	1811
30	23	9	HB2800	1811
30	23	10	HB2800	1812
30	23	11	HB2800	1813
30	23	12	HB2800	1814
30	23	13	HB2800	1815
30	23	14	HB2800	1815
30	23	15*	HB2800	1817
30	23	16*	HB2800	1818
30	23	17*	HB2800	1822
30	23	18*	HB2800	1823
30	23	19*	HB2800	1825
30	23	20*	HB2800	1826
30	23	21*	HB2800	1828
30	23	22*	HB2800	1828
30	23	23*	HB2800	1829
30	23	24*	HB2800	1829
30	23	25*	HB2800	1831
30	23	26*	HB2800	1832

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
30	23	27*	HB2800	1833
30	23	28*	HB2800	1833
30	23	29*	HB2800	1834
30	23	30*	HB2800	1834
30	29	1	HB2938	1933
30	29	5	HB2938	1935
30	30	14*	HB2574	2011
30	34	17	SB172	2012
31	17	1	HB2776	1532
31	17	2	HB2776	1536
31	17	11	HB2776	1538
31	20	27	HB2253	493
			SB442	1884
31	20	30*	HB2422	496
31	20	31*	SB361	497
31	20	32*	SB707	501
31 A	1	2	HB3073	326
31 A	2	6	SB182	334
31 A	3	1	SB181	337
31 A	4	13	HB3073	330
31 A	8	12	HB2712	340
31 A	8	12 d	HB2712	346
31 B	13	1301	HB2526	1472
31 D	5	504	SB531	485
33	2	3 a*	SB643	1223
33	2	7	SB643	1224
33	2	19	SB643	1225

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
33	4	8	SB381	1228
33	4	21*	SB559	1234
33	7	3	HB2763	1235
33	12	37*	HB2764	1240
33	15	4 i*	SB18	1208
33	16	1 a	HB2940	1219
33	16	3 a	HB2578	1244
33	16	3 s*	SB18	1208
33	24	7 i*	SB18	1209
33	25	8 g*	SB18	1210
33	25 A	8 h*	SB18	1210
33	33	2	HB2763	1236
33	33	6	HB2763	1237
33	41	8	SB381	1228
33	41	8 b*	SB381	1231
33	41	11	SB381	1232
33	48	2	SB442	1885
36	1	18	HB3271	1004
36	8	13	HB3097	568
38	5 B	4	SB414	1462
43	2	1	SB55	1467
43	2	2	SB55	1471
43	2	3	SB55	1471
44	4	12 a*	HB3270	1012
44 B	1	104 a*	HB3272	2346
46 A	6 L*		SB428	465
48	2	402	SB550	592

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
48	12	101	SB388	373
48	12	102	SB388	375
48	12	103	SB388	377
48	25	101	SB139	1700
48	25	103	SB139	1701
48	26	603	HB2870	595
48	27	401	HB2926	596
48	27	902	SB205	598
48	27	903	SB205	599
49	1	3	SB626	378
49	1	4	SB626	386
49	5	2	HB2332	1528
49	5	8	SB196	396
49	5	9	SB709	400
49	5	13 c*	SB76	403
49	5	21	SB557	404
49	5 D	2	SB626	391
49	5 D	3	SB626	392
49	5 E	5 a	SB442	1891
49	6	5 a	SB557	405
49	6	8	SB557	406
50	3	4	SB140	1473
50	3	7	SB415	1476
51	2 A	2	SB141	520
51	2 A	3	HB3106	524
51	2 A	5	HB3106	530
51	9	9	SB208	531

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
52	1	8	HB2141	1248
52	1	17	SB204	1252
56	1	1	HB2956	2
56	1	1 a*	HB2956	3
58	5	14	SB194	94
59	1	11	SB414	1462
60	1	5 a	SB712	40
60	3 A	18	SB712	41
60	3 A	24	HB2745	86
60	4	2	SB712	41
60	4	3	SB712	42
60	4	3 a	SB712	43
60	4	3 b*	SB712	44
60	4	15	SB712	46
60	4	22	SB712	46
60	6	1	SB712	49
60	6	2	SB712	50
60	7	4	HB2825	88
60	8	1	SB712	51
60	8	2	SB712	52
60	8	3	SB712	56
60	8	4	SB712	64
60	8	5	SB712	65
60	8	6	SB712	65
60	8	6 a*	SB712	67
60	8	7	SB712	70
60	8	16	SB712	71

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
60	8	18	SB712	73
60	8	19	SB712	76
60	8	20	SB712	76
60	8	23	SB712	78
60	8	24	SB712	80
60	8	25	SB712	81
60	8	26	SB712	81
60	8	28	SB712	82
60	8	29	SB712	82
60	8	30	SB712	83
60	8	31	SB712	84
60	8	32	SB712	84
60	8	34	SB712	85
60 A	4	412*	SB416	601
60 A	10	15	SB142	477
60 A	11*		SB175	480
61	2	10 b	HB2770	533
61	3	39 a	HB2741	2412
61	3	39 b	HB2741	2413
61	3	39 f	HB2741	2413
61	3	39 h	HB2741	2416
61	3	45	HB3161	537
61	7	4	HB3074	451
61	7	6	HB3074	457
61	7	6 a*	HB3074	458
61	8	9	HB2498	539
61	8 B	1	HB2498	539

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
61	8 B	10	HB3228	542
61	8 B	16	SB529	548
61	10	15	HB3094	544
62	1 E*		SB82	1006
62	6	8*	SB512	550
62	8	8*	SB192	503
62	10	1	HB2791	552
62	10	3	HB2791	552
62	11 C	4	SB66	553
62	11 C	9	SB206	556
64	1	1	HB2616	1340
64	2	1	HB2616	1341
64	2	2	HB2616	1363
64	2	3	HB2616	1365
64	2	4	HB2616	1366
64	4	1	SB314	1367
64	4	2	SB314	1369
64	5	1	SB278	1371
64	5	2	SB278	1373
64	5	3	SB278	1375
64	6	1	SB276	1384
64	6	2	SB276	1385
64	6	3	SB276	1386
64	6	4	SB276	1388
64	6	5	SB276	1389
64	7	1	HB2590	1391
64	7	2	HB2590	1394

*Indicates new chapter, article or section

INDEX

CODE AMENDED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
64	7	3	HB2590	1396
64	7	4	HB2590	1397
64	8	1	SB274	1399
64	8	2	SB274	1400
64	9	1	SB319	1405
64	9	2	SB319	1406
64	9	3	SB319	1407
64	9	4	SB319	1407
64	9	5	SB319	1407
64	9	6	SB319	1410
64	9	7	SB319	1410
64	9	8	SB319	1421
64	9	9	SB319	1421
64	9	10	SB319	1422
64	9	11	SB319	1422
64	9	12	SB319	1422
64	9	13	SB319	1422
64	9	14	SB319	1442
64	9	15	SB319	1443
64	9	16	SB319	1447
64	10	1	HB2670	1450
64	10	2	HB2670	1454
64	10	3	HB2670	1454
64	10	4	HB2670	1455

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
3	4 A	11	SB616	878
3	4 A	12	SB616	878

*Indicates new chapter, article or section

INDEX

CODE REPEALED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
4	10	4 a	SB187	1746
4	10	5 a	SB187	1746
4	10	5 b	SB187	1746
4	10	6 a	SB187	1746
4	10	10 a	SB187	1746
4	10	11 a	SB187	1746
5 A	3	38	SB582	1949
5 A	3	39	SB582	1949
5 A	3	40	SB582	1949
5 A	3	40 a	SB582	1949
5 A	3	41	SB582	1949
7	8	13	SB707	501
18	29	1	SB442	1834
18	29	2	SB442	1834
18	29	3	SB442	1834
18	29	4	SB442	1834
18	29	5	SB442	1834
18	29	6	SB442	1834
18	29	7	SB442	1834
18	29	8	SB442	1834
18	29	9	SB442	1834
18	29	10	SB442	1834
18	29	11	SB442	1834
18 A	3	11	HB2585	613
20	1 A	1	SB582	1949
20	1 A	2	SB582	1949

*Indicates new chapter, article or section

INDEX

CODE REPEALED—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
20	1 A	3	SB582	1949
20	1 A	4	SB582	1949
20	1 A	5	SB582	1949
20	1 A	6	SB582	1949
20	1 A	8	SB582	1949
20	1 A	9	SB582	1949
20	14	10	SB511	416
29	6 A	1	SB442	1834
29	6 A	2	SB442	1834
29	6 A	3	SB442	1834
29	6 A	4	SB442	1834
29	6 A	5	SB442	1834
29	6 A	6	SB442	1834
29	6 A	7	SB442	1834
29	6 A	8	SB442	1834
29	6 A	9	SB442	1834
29	6 A	10	SB442	1834
29	6 A	11	SB442	1834
29	6 A	12	SB442	1834
30	1 A	2 a	HB2527	1767
30	23	6 a	HB2800	1800
30	23	6 b	HB2800	1800
43	2	4	SB55	1467
43	2	5	SB55	1467
49	7	31	SB149	417
50	3	5	SB138	417
62	6	2	HB2791	551

*Indicates new chapter, article or section

INDEX

	Ch.	Page
CODE REPEALED (STATUTORY):		
Child Assessment or In-State Placement Fund		
§49-7-31	39	417
Insurance policies		
§20-14-10	38	416
Security bond for costs		
§50-3-5	40	418
COMMERCIAL DRIVER'S LICENSE:		
Disqualifications	41	430
Employer responsibility	41	427
Hazardous materials		
Definitions	41	419
Penalties	41	449
Reciprocity	41	448
Requirements	41	429
Valid license		
Required	41	428
CONCEALED WEAPONS:		
License to carry		
How to obtain	42	451
Prohibitions		
Exemptions	42	457
Reciprocity	42	458
CONSOLIDATED PUBLIC RETIREMENT BOARD:		
Annuities		
When paid	44	463
Public safety officers		

INDEX

	Ch.	Page
CONSOLIDATED PUBLIC RETIREMENT BOARD—(Continued):		
Health insurance premiums		
Distribution from retirement plans	43	461
CONSUMER PROTECTION:		
Consumer identity		
Theft protections		
Establishing	45	464
CONTRACTS:		
Emergency ambulance service authorities		
Sealed bids		
Limitation		
Increasing	46	475
School personnel		
Pecuniary interest		
Prohibited	67	544
CONTROLLED SUBSTANCES:		
Clandestine Drug Laboratory Remediation Act		
Definitions	48	481
Law-enforcement responsibility	48	483
Legislative findings and purpose	48	480
Iodine matrix or iodine crystals		
Two percent or greater		
Prescription or permit required	47	477
CORPORATIONS:		
Class action suits		
Service of process	49	485

INDEX

	Ch.	Page
CORRECTIONAL CENTER NURSERY ACT:		
Authorization	50	488
Child support		
Collection	50	491
Correctional Center Nursery Fund	50	491
Definitions	50	488
Eligibility	50	489
Participation		
Termination	50	490
Terms	50	489
Regulation	50	492
 CORRECTIONAL EMPLOYEES:		
Civil Service System		
Transferring into	51	493
 CORRECTIONS:		
Division of Corrections		
Commissioner		
Issuance of warrants	55	502
Jail processing fees		
Increasing	54	501
Regional jails		
Medical coverage		
Cost-saving measures	52	494
Work programs		
Establishing	53	497
 COUNTY COMMISSIONS:		
Appalachian Region Interstate Compact		
Agreement	58	513
Compact Commission		
Chairman	58	514

INDEX

	Ch.	Page
COUNTY COMMISSIONS—(Continued):		
Established	58	514
Funding and compensation	58	514
Membership	58	514
Powers and duties	58	515
Report	58	514
Established	58	513
Form of compact	58	513
Short title	58	513
County Commissions on Crime, Delinquency and Correction		
Executive Secretary		
Selecting	57	507
Deputy Sheriff Retirement Fund		
Payment of fees		
Delinquent		
Surcharge	59	518
Development rights		
Transferring	56	504
Waiting period		
Eliminating	56	504
 COURTS AND THEIR OFFICERS:		
Family Court		
Judges		
Number		
Increasing	61	524
Realigning circuits	61	524
Sibling visitation proceedings		
Jurisdiction	60	520
Judicial retirement		

INDEX

	Ch.	Page
COURTS AND THEIR OFFICERS—(Continued):		
Supreme Court of Appeals		
Notification	62	531
Magistrate and circuit courts		
Concurrent jurisdiction		
Minors in possession of tobacco		
Laws prohibiting	171	1527
Magistrate court		
Petit juries		
Assessing costs	142	1251
 CRIMES AND THEIR PUNISHMENT:		
Contracts		
School personnel		
Pecuniary interest		
Prohibited	67	544
Court security personnel		
Crimes against		
Penalties		
Increasing	63	532
Forensic medical examination		
Costs		
Alleged victim not to pay	68	548
Indecent exposure		
Breast feeding not considered	65	539
Oil, natural gas, water, electric, etc.		
Theft of services		
Maximum fine		
Increasing	64	537
Public Service Commission		
Motor carrier inspectors		

INDEX

	Ch.	Page
CRIMES AND THEIR PUNISHMENT—(Continued):		
Crimes against		
Penalties		
Increasing	63	532
Sexual contact		
Expanding definition	65	539
Incarcerated persons		
Prohibited	66	542
 CRIMINAL PROCEDURE:		
Community Corrections Fund		
Fee amount	71	553
Peace bonds		
Violating		
Penalties	70	551
Pretrial Diversion Programs		
Court Costs		
Assessing	72	556
Sexual offense allegations		
Polygraph examination		
Prohibiting	69	550
 DAM REHABILITATION REVOLVING FUND:		
Establishing	73	558
 DEFERRED COMPENSATION:		
Government employees		
Automatic enrollment		
Authorizing	74	564
Matching contribution program	74	565

INDEX

	Ch.	Page
DELINQUENT LANDS:		
Redeeming		
Deadline		
Clarifying	75	570
DEPUTY SHERIFFS:		
Deputy Sheriff Retirement Fund		
Payment of fees		
Delinquent		
Surcharge	59	518
Deputy Sheriff Retirement System Act		
Annuity start date		
Definition		
Amending	76	576
Benefits		
Commencement	76	585
Reduction		
Eliminating	77	587
DOGS:		
Registered dogs		
Protection of	78	589
Tag removal		
Prohibiting	78	591
DOMESTIC RELATIONS:		
Domestic Violence Legal Services Fund		
Authorizing payment into	80	594
Domestic violence protective orders		
Extended		
Notification required	81	596
Violation of		

INDEX

	Ch.	Page
DOMESTIC RELATIONS—(Continued):		
Penalties	82	598
Marriages		
Persons authorized to perform		
Registry		
Registration or renewal	79	592
DRUG AND ALCOHOL TESTS:		
Adulteration		
Offenses	83	601
D. U. I.:		
Causing death		
Penalties		
Increasing	84	604
EDUCATION:		
21st Century Learners Fellows		
Designation of	85	633
21st Century Skills Initiative		
Incorporation of		
Requiring	87	710
21st Century Tools for 21st Century Schools Technology Initiative		
Establishing	88	749
Council for Community and Technical College Education		
Legislative rules		
Authorizing	96	841
County Boards of Education		
School personnel		
Personal vehicle		
Mileage		
Reimbursement	93	803

INDEX

	Ch.	Page
EDUCATION—(Continued):		
Higher Education Policy Commission		
Legislative rules		
Authorizing	96	840
National Guard members		
Student financial aid		
Providing	189	1702
Tuition and fees		
Providing	189	1703
Waiver	189	1705
School Access Safety Act		
Definitions	90	781
Fund	90	781
Allocation of	90	788
Legislative findings and intent	90	780
New schools		
Requirements	90	790
School access safety plan	90	783
Guidelines	90	785
School Building Authority		
Definitions	90	767
Legislative intent	90	771
Rules	90	779
School buses		
Length		
Statutory limitation		
Modifying	182	1681
State Teachers Retirement System		
Contributions due		
Remittance		
Deadline	89	761

INDEX

	Ch.	Page
EDUCATION—(Continued):		
Substitute school personnel		
Seniority	86	638
Teachers		
Resignation		
Early notification		
Bonus		
Eliminating	91	791
Retired		
Employment		
Certain circumstances	92	796
Salaries		
Increasing	95	808
Teaching certificates		
Renewal	85	631
Fee reimbursement		
Certain circumstances	94	804
 ELECTIONS:		
Absentee voting		
Distributed and returned		
Electronic mail		
Authorized	102	915
Ballots		
Challenged and provisional		
Procedures	101	883
Form and content	101	896
Sample		
Posting	101	879
Printing of	101	881
Tabulated		

INDEX

	Ch.	Page
ELECTIONS—(Continued):		
Electronically	101	885
Use of		
Instruction	101	887
Campaign finance filing		
Definitions	106	938
Electioneering communications		
Disclosure	106	948
Filing date	106	961
Information required	106	955
Election day		
Procedures and preparation	99	850
Electronic voting systems	103	922
Municipal elections		
Training	97	842
Political committees		
Contributions		
Clarifying language	107	964
Political party executive committees		
Term of office		
Establishing	98	844
Statewide registration system		
Voter history		
Requiring	100	859
Vacancies		
County Commissioners		
Filling	108	968
Nominations		
Filling	104	930
Write-in candidates		
Filing requirements	105	934

INDEX

	Ch.	Page
ELEVATOR SAFETY:		
Limited use/limited access		
Definition	109	972
Installation		
Requirements	109	972
END-OF-LIFE CARE:		
Nursing homes		
Hospice palliative care		
Option	110	973
ENERGY:		
Division of Energy		
Creating	111	982
ENVIRONMENTAL RESOURCES:		
Underground Storage Tank Insurance Fund		
Expiration of	112	999
ESTATES AND TRUSTS:		
Spendthrift trusts		
Clarifying	113	1004
EYEWITNESS IDENTIFICATION ACT:		
Definitions	114	1006
Law-enforcement officers		
Training of	114	1011
Procedures	114	1006

INDEX

	Ch.	Page
FAYETTE COUNTY:		
Smithers, Town of		
Solid waste services		
Excess levy	261	2421
FIDUCIARIES:		
Compensation and expenses	115	1012
FILM INDUSTRY INVESTMENT ACT:		
Definitions	116	1016
Effective date	116	1026
Legislative findings and purpose	116	1015
Short title	116	1015
Tax credit		
Amount allowed	116	1019
Creating	116	1018
Limitation of	116	1020
Requirements	116	1021
Review and accountability	116	1025
Unused	116	1024
FREEDOM OF INFORMATION:		
Public utility plants and equipment		
Public disclosure		
Engineering plans		
Exempting	117	1026
HATFIELD-MCCOY RECREATION AREA:		
ATV rules, etc.		
Civil and criminal penalties	118	1031

INDEX

	Ch.	Page
HEALTH:		
All-inclusive care, PACE		
Legislative findings	121	1097
Program operation	121	1098
Emergency Medical Services Retirement System Act		
Annuity options	119	1072
Benefits		
Burial	119	1080
Commencement	119	1063
Dependent children	119	1079
Disability		
Duty related	119	1074
Prior	119	1076
Limitation	119	1064
Retirement	119	1070
Surviving spouse	119	1077
County liability	119	1086
Creation and administration	119	1053
Definitions	119	1043
Distributions		
Minimum required	119	1064
Federal qualification requirements	119	1054
Fund		
Contributions		
Employer	119	1058
Member	119	1058
Creation	119	1058
Members	119	1054
Notice requirements	119	1062

INDEX

	Ch.	Page
HEALTH—(Continued):		
Public Employees Retirement System		
Transfer from	119	1059
Rollovers	119	1066
Terms	119	1053
Title	119	1043
Health Care Authority Board		
Revolving fund		
Creating	124	1103
Health care facility		
Closure		
Public notice required	122	1099
Living will		
Combined form	125	1110
Medical power of attorney		
Combined form	125	1110
Newborn testing		
Expanding	123	1100
Opioid treatment centers		
Regulation	120	1086
 HIGHWAY SAFETY:		
Courtesy patrol		
Funding	126	1124
 HORSE AND DOG RACING:		
Greyhound Breeder Development Fund		
Distribution		
Changing formula	127	1134
Raiser of an accredited West Virginia horse		
Born in another state		
Yearling	127	1133

INDEX

	Ch.	Page
HOTEL OCCUPANCY TAX:		
Increase		
Counties		
Authorizing	128	1156
Proceeds	128	1158
HUNTING AND FISHING:		
Crossbows		
Restrictions	129	1165
Game		
Tagging		
Procedures	130	1174
Nonresidents		
Hunting and fishing laws		
Violation		
Criminal penalties		
Increasing	131	1176
INFRASTRUCTURE FUNDING:		
Public infrastructure funding sources		
Enhancement of	132	1178
Water Pollution Control Revolving Fund		
Eligibility		
Expanding	132	1191
INSURANCE:		
Fraud		
Penalties	136	1227
Group accident and sickness insurance		
Definitions	134	1219
Health insurance coverage		
Dependents		

INDEX

	Ch.	Page
INSURANCE—(Continued):		
Age		
Increasing	134	1213
Insurance laws		
Violations		
Investigations	135	1223
Insurance producers and solicitors		
Criminal history record checks		
Authorizing	139	1240
Insurers		
Financial examinations	138	1234
Kidney disease		
Screening		
Third party reimbursement		
Requiring	133	1196
Mental health		
Benefit packages		
Extending	140	1244
Military personnel		
Protection of		
Emergency legislative rules	137	1233
Parity		
Sunset provisions		
Removing	140	1244
JURIES:		
Jury duty		
Requesting to be excused from		
Age limit		
Increasing	141	1248
Magistrate court		
Petit juries		
Assessing costs	142	1251

INDEX

	Ch.	Page
LABOR:		
Legal employment status		
Definitions	144	1267
Unauthorized workers		
Employment prohibited	144	1268
Penalties	144	1269
Contractors		
Adverse judgment against		
Restricting work	147	1278
Manufactured housing		
Licensure exemption		
Elimination	145	1272
Safety standards		
Definitions	145	1272
State contract license	146	1275
Fire protection workers		
Regulating	148	1292
Plumbers		
Regulating	148	1284
Universal design		
Defining	143	1255
Volunteer services		
Immunity from civil liability	143	1259
LAW ENFORCEMENT:		
Deputy sheriffs and municipal police		
Political activities		
Prohibited activities		
Amending	149	1299
State Police Death, Disability and Retirement Fund		
Annuity adjustments		

INDEX

	Ch.	Page
LAW ENFORCEMENT—(Continued):		
Annual	150	1316
Awards and benefits	150	1314
Continuation	150	1312
Definitions	150	1309
Dependent child or children	150	1338
Disability		
Application	150	1326
Performance of duty	150	1320
Physical examinations	150	1324
Military service		
Credit	150	1317
 LEGISLATIVE RULES:		
Administration, Department of	151	1339
Commerce, Department of	158	1449
Education and the Arts, Department of	152	1367
Executive, administrative agencies	157	1402
Health and Human Resources,		
Department of	153	1370
Military Affairs and Public Safety,		
Department of	154	1383
Revenue, Department of	155	1390
Transportation, Department of	156	1400
 LEVIES:		
Local levying bodies		
Time extension	159	1458
 LIBRARIES:		
Public Library Board service areas		
Clarifying	160	1459

INDEX

	Ch.	Page
LIENS:		
Circuit clerks		
Services rendered		
Flat fee		
Establishing	161	1461
LIFE ESTATES:		
Inchoate right of dower		
Sections repealed	162	1467
Mortality tables		
Updating	162	1467
LIMITED LIABILITY COMPANIES:		
Acupuncturists		
Allowed to form	163	1472
LOCAL LAWS:		
Fayette County		
Smithers, Town of		
Solid waste services		
Excess levy	261	2421
Mineral County		
Piedmont, City of		
Maintenance of public street		
Municipal levy		
Continuation of	262	2422
MAGISTRATE COURTS:		
Criminal record checks		
Fee		
Authorizing	165	1476

INDEX

	Ch.	Page
MAGISTRATE COURTS—(Continued):		
Magistrate and circuit courts		
Concurrent jurisdiction		
Minors in possession of tobacco		
Laws prohibiting	171	1527
Moneys collected		
Disposition of	164	1473
Petit juries		
Assessing costs	142	1251
 MARKETING AND COMMUNICATIONS:		
Marketing and Communications Office		
Creating	166	1477
 MENTALLY ILL PERSONS:		
Competency to stand trial		
Determination	168	1484
Confidential information		
Definition	167	1480
Disclosure	167	1481
Authorization	167	1482
Involuntary hospitalization		
Rights of patients	167	1482
 METRO GOVERNMENT:		
Constitutional authority		
Clarifying	169	1501
 MINERAL COUNTY:		
Piedmont, City of		
Maintenance of public street		
Municipal levy		
Continuation of	262	2422

INDEX

	Ch.	Page
MINERS' HEALTH, SAFETY AND TRAINING:		
Miner Training, Education and Certification, Board of		
Powers and duties	170	1517
Mines		
Underground mines		
Belt air		
Use of	170	1510
Foreman-fire boss		
Continuing education		
Requirements	170	1519
Unused and abandoned	170	1513
MINORS:		
Magistrate and circuit courts		
Concurrent jurisdiction		
Minors in possession of tobacco products		
Laws prohibiting	171	1527
MORTGAGE LENDERS:		
Lender, broker and loan originator		
Licenses	172	1536
Exemptions	172	1536
MOTOR VEHICLES:		
Certificate of title		
Totaled vehicles	176	1643
Dealers		
Establishment or relocation	177	1648
Vehicle inventory		

INDEX

	Ch.	Page
MOTOR VEHICLES—(Continued):		
Appraising		
Special method	233	2153
Fees		
Consolidating and eliminating	174	1556
Registration		
Transfer	179	1667
Interstate commerce motor vehicles		
Registrations		
Suspend or revoke	175	1637
One-trip permits		
Fee		
Increasing	178	1666
School buses		
Length		
Statutory limitation		
Modifying	182	1681
Speed of vehicles		
Method of proving		
Lasers		
Including	181	1679
Taxation		
Privilege tax		
New residents		
Exempting	173	1539
Wireless communication device		
Minors		
Prohibited use by		
Penalties	180	1671

INDEX

	Ch.	Page
MUNICIPAL HOME RULE:		
Municipal Home Rule Pilot Program		
Creating	183	1683
MUNICIPAL JUDGES:		
Continuing legal education		
Requiring	184	1691
Criminal background checks		
Requiring	184	1691
Minimum standards		
Prescribing	184	1690
MUNICIPALITIES:		
Electric power		
Purchase contracts	186	1694
Municipal police officer		
Service revolver		
Right to keep	185	1693
Exceptions	185	1694
Waterworks systems		
Water mains		
Specifications	187	1698
NAME CHANGE:		
Petition		
Denying	188	1699
NATIONAL GUARD:		
National guard members		
Higher education		

INDEX

	Ch.	Page
NATIONAL GUARD—(Continued):		
Student financial aid		
Providing	189	1702
Tuition and fees		
Providing	189	1703
Waiver	189	1705
 NATURAL RESOURCES:		
Animal or plant species, rare		
Habitats		
Disclosure		
Freedom of Information Act		
Exempting	194	1723
Game fish		
Blue catfish		
Defining	190	1706
Fly fishing		
License		
Students under supervision		
Not required	193	1718
Gas and oil wells		
Road construction and maintenance		
Notice	197	1728
Criteria	197	1729
Livestock		
Killed by a bear		
Assessed value	192	1713
Recreational facilities and cabins		
Constructing		
Third party contracts	196	1726
Scientific collecting permits		

INDEX

	Ch.	Page
NATURAL RESOURCES—(Continued):		
Fee	195	1724
Wildlife		
Transportation		
Out of state	191	1711
NURSE OVERTIME AND PATIENT SAFETY ACT:		
Nurse's rights		
Notification		
Posting	198	1730
Procedure	198	1732
PARKING:		
Mobility impairment		
Parking areas		
Requirements		
Revising	199	1734
PERFORMANCE REVIEW ACT:		
Compliance review	200	1760
Definitions	200	1748
Government Operations, Joint Committee on	200	1750
Agency reviews	200	1755
Schedule	200	1756
Powers and duties	200	1751
Legislative findings	200	1747
Regulatory board review	200	1757
Schedule	200	1759
Short title	200	1747

INDEX

	Ch.	Page
PERSONNEL:		
Personnel, Division of		
Centralized personnel system		
Report on	202	1766
Director		
Powers and duties		
Expanding	201	1763
 PIEDMONT, CITY OF:		
Maintenance of public street		
Municipal levy		
Continuation of	262	2422
 PROFESSIONS AND OCCUPATIONS:		
Medical imaging and radiation therapy		
Applicable law	206	1803
Definitions	206	1803
License required	206	1802
Unlawful acts	206	1802
Medical Imaging and Radiation Therapy Technology Board of Examiners		
Continuation	206	1834
Powers and duties	206	1808
Radiologic Technology Board of Examiners		
Name change	206	1806
Rule making	206	1810
Physical Therapy, Board of		
Terms		
Number		
Limiting	205	1798
Physicians, podiatrists and physician assistants		
Recovering substance abusers		
Program to monitor		

INDEX

	Ch.	Page
PROFESSIONS AND OCCUPATIONS—(Continued):		
Creating	204	1773
Radiologic technology		
License		
Exemptions	206	1814
Requirements	206	1811
Temporary	206	1815
Scope of practice	206	1812
Sunset review		
Process		
Revising	203	1767
 PUBLIC EMPLOYEES GRIEVANCE:		
Education and State Employees Grievance Board		
Discontinuing	207	1834
Enforcement and appeal	207	1862
Grievance procedural levels		
Adjudication	207	1861
Alternative dispute resolution	207	1860
Chief administrator	207	1859
Public Employees Grievance Board	207	1864
Continuation	207	1870
Data collection and reporting		
Requirements	207	1868
Duties	207	1867
Rule-making authority	207	1869
Public employees grievance procedure		
Default	207	1853

INDEX

	Ch.	Page
TABLE GAMES:		
Limited gaming facility		
Authorization	226	2086
Lottery Racetrack Table Games Act		
Betting limits	226	2066
Posting	226	2067
Civil penalties	226	2085
Community Based Service Fund	226	2073
Complimentary services	226	2067
Definitions	226	2029
Election		
Local option	226	2041
Federal law		
Exemption	226	2086
Forfeiture of property	226	2084
Funds		
Community Based Service Fund	226	2073
Distribution	226	2073
Lottery Racetrack Table Games Fund	226	2073
State Debt Reduction Fund	226	2073
Gambling devices		
Shipment	226	2086
Game rules of play	226	2065
Inspection and seizure	226	2069
Law enforcement	226	2068
Legislative findings	226	2027
Licensed racetrack facilities		
Authorization	226	2027
Licensee		

INDEX

	Ch.	Page
TABLE GAMES—(Continued):		
Duties	226	2050
Gaming equipment		
Supplied by	226	2053
Management services	226	2057
Reports by	226	2053
License		
Denial, revocation, suspension and reprimand	226	2062
Hearing procedures	226	2062
Expiration and renewal		
Notice	226	2063
Miscellaneous provisions	226	2064
Operation	226	2043
Privilege of holding		
Tax	226	2070
Prohibitions	226	2060
Requirement	226	2039
Lottery Racetrack Table Games Fund	226	2073
Offenses and penalties	226	2079
Preemption	226	2086
Short title	226	2027
State Debt Reduction Fund	226	2073
State Lottery Commission		
Duties and powers	226	2035
Appointment	226	2038
Table games		
State ownership	226	2049
Wagering		
Unauthorized		
Prohibited	226	2078
Racetrack Video Lottery Act		

INDEX

	Ch.	Page
TABLE GAMES—(Continued):		
Capital Reinvestment Fund	226	2024
Surcharge	226	2024
State Lottery Fund	226	2018
 TAXATION:		
Business franchise tax		
Reducing	247	2241
Constructions trades		
Apprenticeship training		
Tax credits		
Providing	239	2193
Consumers sales and service tax		
Accelerated payment	244	2224
Contractor purchases		
Refundable exemption	241	2202
Drugs, durable medical goods, mobility enhancing equipment		
Exempting	243	2223
Corporation Net Income Tax Act		
Federal taxable income		
Updating meaning	248	2289
“Growth County”		
Definition		
Amending	229	2215
Health care provider tax		
Decreasing	250	2292
High technology manufactures		
Tax credit		
Providing	238	2187
Highway construction and maintenance		

INDEX

	Ch.	Page
TAXATION—(Continued):		
Materials		
Sales tax exemption	242	2204
Motor fuel		
Excise tax		
Flat rate		
Continuing	240	2196
Motor vehicles		
Dealer vehicle inventory		
Appraising		
Special method	233	2153
Privilege tax		
New residents		
Exempting	173	1539
Municipal business and occupational tax		
Charitable exemptions		
Defining	227	2088
Personal Income Tax Act		
Federal adjusted gross income		
Updating meaning	246	2238
Personal property taxes		
Proof of payment		
To whom assessors may issue	230	2130
Public school financing		
Local share		
Assessment	229	2112
Special Railroad and Intermodal Enhancement Fund		
Creating	245	2232
Synthetic fuel		

INDEX

	Ch.	Page
TAXATION—(Continued):		
Manufacturing or production		
Tax on		
Expiration date		
Removing	236	2170
State Tax Division		
Prospective employees		
Criminal background checks		
Authorizing	228	2108
Tax and Procedure and Administration Act		
Collection and administration of tax	235	2163
Definitions	234	2160
Tax credits		
Constructions trades		
Apprenticeship training		
Providing	239	2193
High technology manufactures		
Providing	239	2187
Tourism development	252	2320
Utility taxpayers		
Net operating loss	249	2291
Tax Limitations Amendment		
Qualified continuing care retirement communities		
Including	231	2132
Tax Shelter Voluntary Compliance Program		
Failure to register		
Penalties	237	2182
Investor lists	237	2186
Registration	237	2184
Wind power projects		
Tax treatment	232	2136

INDEX

	Ch.	Page
TOBACCO PRODUCTS:		
Magistrate and circuit courts		
Concurrent jurisdiction		
Minors in possession of tobacco products		
Laws prohibiting	171	1527
TOBACCO SETTLEMENT:		
Tobacco Settlement Finance Authority		
Bankruptcy	251	2318
Bonds		
Authorizing	251	2313
Creating	251	2303
Definitions	251	2304
Dissolution	251	2318
Governing board	251	2305
Liability		
Limitation	251	2307
Powers	251	2307
Sale of rights		
Authorization	251	2310
Staff	251	2306
TOURISM DEVELOPMENT:		
Tourism Development Act		
Definitions	252	2322
Development Office		
Powers and duties		
Additional	252	2328
Project application	252	2328
Approval	252	2329
Promulgation of rules	252	2339
Tax credit		

INDEX

	Ch.	Page
TOURISM DEVELOPMENT—(Continued):		
Amount of credit allowed	252	2333
Unused credit		
Forfeiture	252	2337
Termination	252	2339
 TRAFFIC REGULATIONS:		
Fire departments		
Department-owned apparatuses		
Yellow flashing lights		
Allowing	253	2339
 UNITRUSTS:		
Total return unitrust		
Definitions	254	2346
 VETERANS:		
Grave markers		
Guaranteeing certain	255	2357
 WEST VIRGINIA WORKS PROGRAM:		
Federal law requirements		
Conforming	256	2358
 WORKERS' COMPENSATION:		
Administrative procedures		
Insurance Commissioner		
Classified service		
Employees		

WORKERS' COMPENSATION—(Continued):

Exempting	257	2377
Purchasing rules		
Exempting	257	2377
Rate making	257	2398
Legislative intent	257	2374
Uninsured Employer Fund	257	2391

WORKFORCE AND PROMISE REPORTS:

Legislative Oversight Commission on Education

 Reports

Yearly	258	2407
--------------	-----	------

Legislative Oversight Commission on Workforce Investment

 for Economic Development

 Reports

Yearly	258	2407
--------------	-----	------

WORTHLESS CHECKS:

Payment as defense	259	2413
--------------------------	-----	------

Worthless check prosecution

 Court costs

Defendant to pay	259	2411
------------------------	-----	------

Disposition of certain	259	2416
------------------------------	-----	------

ZONING:

Board of Zoning Appeals

 Written decision

 Time period

Clarifying	260	2418
------------------	-----	------

INDEX

First Extraordinary Session, 2007

	Ch.	Page
APPROPRIATIONS:		
Supplemental		
Administration, Department of	2	2431
Agriculture, Department of	1	2425

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
15	2	5	SB1002	2470
30	5	1 b	SB1001	2449
30	5	12	SB1001	2458
30	5	12 b	SB1001	2459
30	5	12 c*	SB1001	2465
30	5	16 b	SB1001	2466
30	5	29	SB1001	2467
30	7	15 c	SB1001	2467
44	1	14 a	HB101	2443
60 A	3	308	SB1001	2468

ESTATES AND TRUSTS:

Fiduciary commissioners			
Estates			
Administration of	3	2443	

INDEX

PROFESSIONS AND OCCUPATIONS:

Pharmacists, pharmacy technicians, pharmacy interns	
Definitions	2449
Drugs dispensed	
Quality of	
Responsibility	2458
Electronic prescribing	2465
Generic drug products	
Selection of	2459
Prescriptions	
Partial filling	2466
STATE POLICE:	
Salary schedules	2470

Second Extraordinary Session, 2006

				Ch.	Page
APPROPRIATIONS:					
Supplemental					
			Administration, Department of	1	2481
CODE AMENDED:					
Ch.	Art.	Sec.	Bill No.		
5 B	2 E	11	SB2007		2504
5 E	1	23*	SB2006		2503
5 E	2	5*	SB2006		2503
11	15	3 a	SB2003		2495
11	15	3 b*	SB2003		2496

INDEX

CODE AMENDED:—(Continued):

Ch.	Art.	Sec.	Bill No.	Page
11	15	8 d	SB2011	2535
11	21	21	SB2001	2484
11	21	22*	SB2010	2527
11	21	22 a*	SB2010	2527
11	21	22 b*	SB2010	2529
11	21	22 c*	SB2010	2534
11	21	71 a	SB2008	2505
11	21	71 b*	SB2009	2518
11	23	6	SB2004	2497
11	24	4	SB2005	2500
11	24	6	SB2002	2487

TAXATION:

Business franchise tax rate				
Reducing	5			2497
Consumers sales and services tax				
Food and food ingredients				
Reducing tax	4			2494
Manufacturing buildings or structures				
Exemption	12			2535
Personal income tax				
Property sales				
Withholding tax				
Imposing	10			2517
Withholding rate				
Increasing	9			2505
Property sales				
Corporation Net Income Tax				
Pre-1967 gains				
Eliminating	3			2486
Rate				
Reducing	6			2499

INDEX

	Ch.	Page
TAXATION—(Continued):		
Tax credits		
Capital companies and venture capital companies		
Investments	7	2502
Low-income family		
Enacting	11	2526
Property tax		
Senior citizens and disabled persons		
Increasing	2	2483
Tourism development projects		
Applications		
Extending period	8	2504