

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2012

Volume I
Chapters 1 - 109

WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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



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FOREWORD

These volumes contain the Acts of the Second Regular Session of the 80th Legislature, 2012; the First Extraordinary Session, 2012; and the Fourth Extraordinary Session, 2011.

Second Regular Session, 2012

The Second Regular Session of the 80th Legislature convened on January 11, 2012. The Constitutional sixty-day limit on the duration of the session was midnight, March 10, 2012. The Governor issued a proclamation on March 7, 2012, extending the session for a period not to exceed three days for the purpose of considering the Budget and supplementary appropriation bills. A subsequent proclamation was issued on March 13, 2012, and the Legislature adjourned *sine die* on March 16, 2012.

Bills totaling 2,026 were introduced in the two houses during the session (1,348 House, of which 690 were carryover bills from the 2011 Regular Session, and 678 Senate). The Legislature passed 214 bills, 101 House and 113 Senate.

The Governor vetoed 8 bills (**Com. Sub. for H. B. 2278**, Authorizing the use of additional medium for use in archiving government records; **Com. Sub. for H. B. 4068**, Providing that antique motor vehicles be valued at their salvage value for personal property tax purposes; **Com. Sub. for H. B. 4239**, Increasing the membership of the West Virginia Board of Osteopathy, **Com. Sub. for H. B. 4279**, Permitting municipalities to stagger the terms of elected officers, **Com. Sub. for H. B. 4489**, Strengthening authority of the West Virginia Municipal Pensions Oversight Board, **Com. Sub. for S. B. 212**, Creating criminal offense for disrupting communications and public utility services; **Com. Sub. for S. B. 371**, Providing school system under declared state of emergency participate as collaborative innovation zone; and **Com. Sub. for S. B. 379**, Authorizing Board of Examiners for Registered Professional Nurses designate certain treatment and recovery programs for licensees and applicants). Of the vetoed bills, the

Legislature amended and again passed Com. Sub. for H. B. 2278, Com. Sub. for H. B. 4239, Com. Sub. for H. B.4279, Com. Sub. for S. B.212, Com. Sub. for S. B.371 and Com. Sub. for S. B. 379. The Governor again vetoed Com. Sub. for H. B. 2278, leaving a net total of 206 bills, 98 House and 108 Senate, which became law.

There were 256 Concurrent Resolutions introduced during the session, 151 House and 105 Senate, of which 71 House and 34 Senate were adopted. Fifty-one House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 44 House Resolutions, and the Senate introduced 64 Senate Resolutions, of which 33 House and 62 Senate were adopted.

The Senate failed to pass 66 House bills passed by the House, and 72 Senate bills failed passage by the House. Four bills died in conference, 2 House and 2 Senate: **Com. Sub. for H. B. 4078**, Extending certain deadlines for mandated actions regarding higher education personnel; **Com. Sub. for H. B. 4310**, Prohibiting sex offenders from living or working within one thousand feet of the outer perimeter of a school, child care facility, playground or a victim’s home; **Com. Sub. for S. B. 340**, Relating to interscholastic athletics concussions and head injuries; and **Com. Sub. for S. B. 501**, Requiring health insurance coverage of certain hearing aids.

* * * * *

First Extraordinary Session, 2012

The Proclamation calling the Legislature into Extraordinary Session immediately upon *sine die* adjournment of the Second Regular Session on March 16, 2012, contained three items for consideration.

Of the three bills introduced during the Extraordinary Session, 1 House Bill (**H. B. 101**, Creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act) and 1 Senate Bill (**S. B.**

1002, Making supplementary appropriation from State Fund, General Revenue, to Governor’s Office, Civil Contingent Fund) was passed by the Legislature. The Senate also adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned *sine die* 5:02 P.M. that same day.

* * * * *

Fourth Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M. on December 11, 2011, contained 3 items for consideration.

The Legislature passed **H. B. 401**, Establishing the Natural Gas Horizontal Wells Control Act, and the Senate adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned *sine die* on December 14, 2011.

* * * * *

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

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

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR AND EXTRAORDINARY SESSIONS, 2012

OFFICERS

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

District	Name	Address	Legislative Service
First.	Ronnie D. Jones (D)	Weirton	80 th
	Randy Swartzmiller (D)	New Cumberland	75 th - 80 th
Second.	*Phil Diserio (D)	Follansbee	80 th
	Roy Givens (D)	Wellsburg	76 th - 80 th
Third.	Ryan Ferns (D)	Wheeling	80 th
	Erikka Storch (R)	Wheeling	80 th
Fourth.	Michael T. Ferro (D)	McMechen	79 th - 80 th
	Scott G. Varner (D)	Moundsville	71 st - 80 th
Fifth.	Dave Pethlet (D)	Hundred	69 th - 71 st ; 74 th - 80 th
Sixth.	William Roger Romine (R)	Sistersville	75 th - 80 th
Seventh.	Lynwood "Woody" Ireland (R)	Pullman	78 th - 80 th
Eighth.	Everette W. Anderson, Jr. (R)	Williamstown	71 st - 80 th
Ninth.	Anna Border (R)	Davisville	Appt. 6/21/11, 80 th
Tenth.	Tom Azinger (R)	Vienna	72 nd - 80 th
	John Ellem (R)	Parkersburg	75 th - 80 th
	Daniel Poling (D)	Parkersburg	78 th - 80 th
Eleventh.	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 80 th
Twelfth.	Mitch Carmichael (R)	Ripley	75 th - 80 th
Thirteenth.	Helen Martin (D)	Poca	Appt. 5/17/11, 80 th
	Brady Paxton (D)	Liberty	71 st ; Appt. 4/22/1999, 74 th ; 75 th - 80 th
Fourteenth.	Troy Andes (R)	Hurricane	78 th - 80 th
	Brian Savilla (R)	Hurricane	80 th
Fifteenth.	Kevin J. Craig (D)	Huntington	75 th - 80 th
	Jim Morgan (D)	Huntington	69 th ; 70 th ; Appt. 2/23/2001, 75 th ; 76 th - 80 th
	Carol Miller (R)	Huntington	78 th - 80 th
Sixteenth.	Kelli Sobonya (R)	Huntington	76 th - 80 th
	Dale Stephens (D)	Huntington	75 th ; 77 th - 80 th
	Doug Reynolds (D)	Huntington	78 th - 80 th
Seventeenth.	Richard Thompson (D)	Lavelette	65 th , Resigned 6/1981; 76 th - 80 th
	Don C. Perdue (D)	Prichard	74 th - 80 th
Eighteenth.	Larry W. Barker (D)	Madison	77 th - 80 th
Nineteenth.	Greg Butcher (D)	Chapmanville	73 rd - 77 th ; 79 th - 80 th
	Rupert Phillips, Jr., (D)	Lundale	80 th
	Ralph Rodighiero (D)	Logan	78 th - 80 th
	Josh Stowers (D)	Alum Creek	79 th - 80 th
	**Justin J. Marcum (D)	Williamson	80 th
Twentieth.	Harry Keith White (D)	Gilbert	Appt. 9/11/1992, 70 th ; 71 st - 80 th
Twenty-second.	Daniel J. Hall (D)	Oceana	79 th - 80 th
	Linda Goode Phillips (D)	Pineville	79 th - 80 th
Twenty-third.	Clif Moore (D)	Thorpe	77 th - 80 th
Twenty-fourth.	Marty Gearheart (R)	Bluefield	80 th
Twenty-fifth.	John R. Frazier (D)	Princeton	65 th ; 79 th - 80 th
	Joe Ellington (R)	Princeton	80 th
Twenty-sixth.	Gerald Crosier (D)	Union	76 th - 80 th
Twenty-seventh.	Virginia Mahan (D)	Green Sulphur Springs	73 rd - 80 th
	Ricky Moye (D)	Crab Orchard	78 th - 80 th
	John D. O'Neal, IV (R)	Beckley	80 th
	Rick Snuffer (R)	Beaver	80 th
	Linda Sumner (R)	Beckley	76 th - 80 th

* Appointed January 28, 2012, to fill the vacancy created by the resignation of the Honorable Timothy Ennis.

** Appointed January 16, 2012, to fill the vacancy created by the resignation of the Honorable Steven Komnar.

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth.	Thomas W. Campbell (D)	Lewisburg	73 rd - 80 th
	Ray Canterbury (R)	Ronceverte	75 th - 80 th
Twenty-ninth.	David G. Perry (D)	Oak Hill	75 th - 80 th
	John Pino (D)	Oak Hill	67 th ; 71 st - 78 th ; 80 th
	Margaret Anne Stagers (D)	Fayetteville	78 th - 80 th
Thirtieth.	Bonnie Brown (D)	South Charleston	66 th - 68 th ; 70 th ; 75 th - 80 th
	Nancy Peoples Guthrie (D)	Charleston	78 th - 80 th
	Barbara Hatfield (D)	South Charleston	67 th - 69 th ; 74 th - 80 th
	Mark Hunt (D)	Charleston	72 nd - 74 th ; 77 th - 80 th
	Eric Nelson (R)	Charleston	80 th
	Doug Skaff, Jr. (D)	South Charleston	79 th - 80 th
	Danny Wells (D)	Charleston	77 th - 80 th
Thirty-first.	Meshea L. Poore (D)	Charleston	Appt. 12/18/2009; 79 th ; 80 th
Thirty-second.	Tim Armstead (R)	Elkview	Appt. 9/5/1998, 73 rd ; 74 th - 80 th
	Patrick Lane (R)	Cross Lanes	77 th - 80 th
	Ron Walters (R)	Charleston	71 st - 73 rd ; 75 th - 80 th
Thirty-third.	David L. Walker (D)	Clendenin	79 th - 80 th
Thirty-fourth.	Brent Boggs (D)	Gassaway	73 rd - 80 th
Thirty-fifth.	Harold Sigler (R)	Summersville	80 th
Thirty-sixth.	Joe Talbott (D)	Webster Springs	71 st - 72 nd ; 76 th - 80 th
Thirty-seventh.	Denise L. Campbell (D)	Elkins	80 th
	William G. Hartman (D)	Elkins	76 th - 80 th
Thirty-eighth.	Peggy Donaldson Smith (D)	Weston	79 th - 80 th
Thirty-ninth.	Bill Hamilton (R)	Buckhannon	76 th - 80 th
Fortieth.	Mary M. Poling (D)	Moatsville	75 th - 80 th
Forty-first.	Samuel J. Cann, Sr. (D)	Bridgeport	72 nd - 80 th
	Ron Fragale (D)	Clarksburg	70 th - 73 rd ; 75 th - 80 th
	Richard J. Iaquina (D)	Clarksburg	76 th - 80 th
	Tim Miley (D)	Bridgeport	77 th - 80 th
Forty-second.	Mike Manypenny (D)	Grafton	79 th - 80 th
Forty-third.	Michael Caputo (D)	Fairmont	73 rd - 80 th
	Linda Longstreth (D)	Fairmont	77 th - 80 th
	Tim Manchin (D)	Fairmont	76 th - 80 th
Forty-fourth.	Anthony Barill (D)	Morgantown	80 th
	Barbara Evans Fleischauer (D)	Morgantown	72 nd - 75 th ; 78 th - 80 th
	Charlene Marshall (D)	Morgantown	74 th - 80 th
	Amanda Pasdon (R)	Morgantown	80 th
Forty-fifth.	Larry A. Williams (D)	Tunnelton	Appt. 10/8/1993, 71 st ; 72 nd - 80 th
Forty-sixth.	Stan Shaver (D)	Tunnelton	74 th - 80 th
Forty-seventh.	Harold K. Michael (D)	Moorefield	69 th - 80 th
Forty-eighth.	Allen V. Evans (R)	Dorcas	70 th - 80 th
Forty-ninth.	Gary G. Howell (R)	Keyser	80 th
Fiftieth.	Ruth Rowan (R)	Points	77 th - 80 th
Fifty-first.	Daryl E. Cowles (R)	Berkeley Springs	78 th - 80 th
Fifty-second.	Larry D. Kump (R)	Falling Waters	80 th
Fifty-third.	Jonathan Miller (R)	Bunker Hill	78 th - 80 th
Fifty-fourth.	Walter E. Duke (R)	Martinsburg	76 th - 80 th
Fifty-fifth.	John Overington (R)	Martinsburg	67 th - 80 th
Fifty-sixth.	Eric L. Householder (R)	Martinsburg	80 th
Fifty-seventh.	John Doyle (D)	Shepherdstown	66 th ; 71 st - 80 th
Fifty-eighth.	Tiffany Elizabeth Lawrence (D)	Charlestown	79 th - 80 th

(D) Democrats 65
 (R) Republicans 35

TOTAL 100

MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2012

OFFICERS

President - Jeffrey V. Kessler, Glen Dale
Clerk - Darrell E. Holmes, Charleston
Sergeant at Arms - Howard Wellman, Bluefield
Doorkeeper - Tony Gallo, Charleston

District	Name	Address	Legislative Service
First.	Orphy Klempa (D)	Wheeling	(House 78 th - 79 th); 80 th
	Jack Yost (D)	Wellsburg	(House 76 th - 78 th); 79 th - 80 th
Second.	Larry J. Edgell (D)	New Martinsburg	74 th - 80 th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/1997, 73 rd ; 74 th - 80 th
Third.	Donna J. Boley (R)	St. Marys	Appt. 5/14/1985, 67 th ; 68 th - 80 th
	David C. Nohe (R)	Vienna	80 th
Fourth.	Karen L. Facemyer (R)	Ripley	(House 71 st - 74 th); 75 th - 80 th
	Mike Hall (R)	Hurricane	(House 72 nd - 74 th); 78 th - 80 th
Fifth.	Robert H. Plymale (D)	Ceredo	71 st - 80 th
	Evan H. Jenkins (D)	Huntington	76 th - 80 th
Sixth.	H. Truman Chafin (D)	Williamson	66 th - 80 th
	John Pat Fanning (D)	Jaeger	58 th - 64 th ; 67 th - 68 th ; 73 rd - 80 th
Seventh.	Earl Ray Tomblin (D)	Chapmanville	(House 62 nd - 64 th); 65 th - 80 th
	Ron Stollings (D)	Madison	78 th - 80 th
Eighth.	Corey Palumbo (D)	Charleston	(House 76 th - 78 th); 79 th - 80 th
	Erik P. Wells (D)	Charleston	78 th - 80 th
Ninth.	Richard Browning (D)	Oceana	(House 69 th - 72 nd); 75 th - 78 th ; 79 th - 80 th
	Mike Green (D)	Daniels	78 th - 80 th
Tenth.	Ronald F. Miller (D)	Lewisburg	80 th
	Mark Wills (D)	Princeton	(House 74 th - 75 th); 80 th
Eleventh.	William Laird IV (D)	Oak Hill	(House 73 rd - 75 th); 79 th - 80 th
	Gregory A. Tucker (D)	Summersville	80 th
Twelfth.	Douglas Facemire (D)	Sutton	79 th - 80 th
	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/1983; 66 th ; 67 th - 69 th); 70 th - 71 st ; 75 th - 80 th
Thirteenth.	Robert D. Beach (D)	Morgantown	(House Appt. 5/1998, 73 rd ; 74 th - 79 th); 80 th
Fourteenth.	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 th - 72 nd); 73 rd - 80 th
	Bob Williams (D)	Grafton	79 th - 80 th
Fifteenth.	Dave Sypolt (R)	Kingwood	78 th - 80 th
	Clark Barnes (R)	Randolph	77 th - 80 th
	Walt Helmick (D)	Marlinton	(House 1 yr., 69 th); Appt. 9/1989 69 th ; 70 th - 80 th
Sixteenth.	Herb Snyder (D)	Shenandoah Junctoion	73 rd - 76 th ; 79 th - 80 th
	John R. Unger II (D)	Martinsburg	74 th - 80 th
Seventeenth.	Brooks F. McCabe, Jr. (D)	Charleston	74 th - 80 th
	Dan Foster (D)	Charleston	(House 76 th); 77 th - 80 th

(D) Democrats 28
 (R) Republicans 6

TOTAL 34

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2012

STANDING

AGRICULTURE

Butcher (*Chair*), Walker (*Vice Chair*), Boggs, Guthrie, Hall, Manypenny, Martin, Morgan, L. Phillips, R. Phillips, M. Poling, Reynolds, Rodighiero, Swartzmiller, Wells, Williams, Evans (*Minority Chair*), Canterbury (*Minority Vice Chair*), Anderson, Border, Ireland, C. Miller, Overington, Romine and Storch.

BANKING AND INSURANCE

Moore (*Chair of Banking*), Reynolds (*Vice Chair of Banking*), Perry (*Chair of Insurance*), Hall (*Vice Chair of Insurance*), Cann, Ferns, Fragale, Frazier, Hartman, Hunt, Iaquinta, Mahan, Manchin, Michael, Morgan, Shaver, Walker, Azinger (*Minority Chair of Banking*), J. Miller, (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*), Carmichael, Nelson, O’Neal and Savilla.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Guthrie (*Vice Chair*), Brown, Caputo, Doyle, Ferro, Fragale, Frazier, Hatfield, Hunt, Marshall, Moore, Morgan, Perdue, Poore, Varner, Wells, Overington (*Minority Chair*), Romine (*Minority Vice Chair*), Armstead, Ellem, Householder, Kump, Lane and Sobonya.

EDUCATION

M. Poling (*Chair*), Paxton (*Vice Chair*), Barill, D. Campbell, Caputo, Craig, Crosier, Fragale, Lawrence, Marcum, Moye, Perry, Pethel, Rodighiero, Shaver, Smith, Duke (*Minority Chair*), Sumner

HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair), Armstead, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker *(Chair of Energy, Industry and Labor)*, Shaver *(Vice Chair of Energy, Industry and Labor)*, Skaff *(Chair of Economic Development and Small Business)*, Pino *(Vice Chair of Economic Development and Small Business)*, Barill, Butcher, Caputo, Diserio, Fleischauer, Mahan, Manypenny, Marshall, Martin, Moye, Paxton, D. Poling, Walker, Sobonya *(Minority Chair of Energy, Industry and Labor)*, C. Miller *(Minority Vice Chair of Energy, Industry and Labor)*, Andes *(Minority Chair of Economic Development and Small Business)*, Carmichael *(Vice Chair of Economic Development and Small Business)*, Savilla, Sigler, Snuffer and Storch.

FINANCE

White *(Chair)*, T. Campbell *(Vice Chair)*, Cann, Guthrie, Iaquinta, Mahan, Marshall, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Skaff, Stowers, Varner, Williams, Anderson *(Minority Chair)*, Carmichael *(Minority Vice Chair)*, Andes, Ashley, Canterbury, Cowles, Evans, C. Miller and Walters.

GOVERNMENT ORGANIZATION

Morgan *(Chair)*, Stephens *(Vice Chair)*, Boggs, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield, Jones, Martin, R. Phillips, Staggers, Swartzmiller, Talbott, Romine *(Minority Chair)*, Azinger *(Minority Vice Chair)*, Border, Householder, Howell, Kump, Nelson, Snuffer and Storch.

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Hatfield (*Vice Chair*), Barill, D. Campbell, T. Campbell, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Perry, L. Phillips, Poore, Rodighiero, Staggers, Ellington (*Minority Chair*), J. Miller (*Minority Vice Chair*), Andes, Border, Householder, Lane, C. Miller, Pasdon and Rowan.

INTERSTATE COOPERATION COMMITTEE

Doyle (*Chair*), Rodighiero (*Vice Chair*), Ferro, Frazier, Reynolds, Storch and Walters.

JUDICIARY

Miley (*Chair*), Hunt (*Vice Chair*), Barker, Brown, Doyle, Ferro, Fleischauer, Frazier, Longstreth, Manchin, Manypenny, Michael, Moore, Pino, Poore, Walker, Wells, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Hamilton, Ireland, J. Miller, O'Neal, Overington and Sobonya.

NATURAL RESOURCES

Talbott (*Chair*), Crosier (*Vice Chair*), Fragale, Guthrie, Hall, Manypenny, Martin, L. Phillips, R. Phillips, Pino, Reynolds, Rodighiero, Shaver, Swartzmiller, Varner, Wells, Hamilton (*Minority Chair*), Ireland (*Minority Vice Chair*), Anderson, Canterbury, Duke, Ellem, Evans, Romine and Sigler.

PENSIONS AND RETIREMENT

Pethtel (*Chair*), Stowers (*Vice Chair*), Givens, Guthrie, D. Poling, Canterbury and Duke.

HOUSE OF DELEGATES COMMITTEES

POLITICAL SUBDIVISIONS

Manchin (*Chair*), Lawrence (*Vice Chair*), Cann, Doyle, Frazier, Hartman, Jones, Longstreth, Marcum, Morgan, R. Phillips, Poore, Smith, Stephens, Varner, Williams, Sumner (*Minority Chair*), Cowles (*Minority Vice Chair*), Duke, Ellington, Gearheart, Householder, Kump, O’Neal and Overington.

ROADS AND TRANSPORTATION

Staggers (*Chair*), L. Phillips (*Vice Chair*), Barker, Boggs, Butcher, T. Campbell, Crosier, Hall, Michael, D. Poling, Skaff, Smith, Stephens, Stowers, Walker, Wells, Cowles (*Minority Chair*), Evans (*Minority Vice Chair*), Ellington, Gearheart, Howell, Nelson, Pasdon, Savilla and Snuffer.

RULES

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

SENIOR CITIZEN ISSUES

Williams (*Chair*), Moye (*Vice Chair*), Butcher, D. Campbell, Craig, Ferro, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Pethtel, Pino, D. Poling, Stephens, Rowan (*Minority Chair*), Duke (*Minority Vice Chair*), Gearheart, Hamilton, Howell, Kump, Sigler, Snuffer and Sumner.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Iaquinta (*Chair of Veterans’ Affairs*), Longstreth (*Vice Chair of Veterans’ Affairs*), Swartzmiller (*Chair of Homeland Security*), Smith (*Vice Chair of Homeland Security*), Barill, Cann, Craig,

HOUSE OF DELEGATES COMMITTEES

Ferro, Fleischauer, Givens, Hatfield, Jones, Paxton, Pethtel, Staggers, Stephens, Azinger (*Minority Chair of Veterans' Affairs*), Rowan (*Minority Vice Chair of Veterans' Affairs*), Walters (*Minority Chair of Homeland Security*), Ashley (*Minority Vice Chair of Homeland Security*), Armstead, Howell, Nelson, O'Neal and Pasdon.

HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

EDUCATION

M. Poling (*Cochair*), Paxton (*Vice Cochair*), Armstead, Barill, D. Campbell, Caputo, Craig, Crosier, Duke, Ellington, Fragale, Gearheart, Lawrence, Marcum, Moye, Pasdon, Perry, Pethtel, Rodighiero, Rowan, Savilla, Shaver, Sigler, Smith and Sumner.

ENROLLED BILLS

Poore (*Cochair*), Ferro (*Vice Cochair*), Fragale and Overington.

FINANCE

White (*Cochair*), T. Campbell, Anderson, Andes, Ashley, Cann, Canterbury, Carmichael, Cowles, Evans, Guthrie, Iaquina, Mahan, Marshall, C. Miller, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Skaff, Stowers, Varner, Walters and Williams.

GOVERNMENT AND FINANCE

Thompson (*Cochair*), Armstead, Boggs, Caputo, Carmichael, Miley and White.

GOVERNMENT OPERATIONS

Morgan (*Cochair*), Stephens, Fragale, Nelson, Rowan and Varner (nonvoting).

GOVERNMENT ORGANIZATION

Morgan (*Cochair*), Stephens (*Vice Cochair*), Azinger, Boggs, Border, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield,

HOUSE OF DELEGATES COMMITTEES

Householder, Howell, Jones, Kump, Martin, Nelson, R. Phillips, Romine, Snuffer, Staggers, Storch, Swartzmiller and Talbott.

THE JUDICIARY

Miley (*Cochair*), Hunt (*Vice Cochair*), Barker, Brown, Doyle Ellem, Ferro, Fleischauer, Frazier, Hamilton, Ireland, Lane, Longstreth, Manchin, Manypenny, Michael, J. Miller, Moore, O'Neal, Overington, Pino, Poore, Sobonya, Walker and Wells.

LEGISLATIVE RULE-MAKING REVIEW

Brown (*Cochair*), D. Poling (*Vice Cochair*), Fleischauer, Overington, Sobonya and Talbott.

PENSIONS AND RETIREMENT

Pethtel (*Cochair*), Stowers (*Vice Cochair*), Canterbury, Duke, Givens, Guthrie and D. Poling.

RULES

Thompson (*Cochair*), Boggs and Armstead.

RULE-MAKING REVIEW

Brown (*Cochair*), D. Poling (*Vice Cochair*), Fleischauer, Overington, Sobonya and Talbott.

TECHNOLOGY

Varner (*Cochair*), Cann (*Vice Cochair*), Andes, Barker, T. Campbell, Canterbury, Guthrie, Hall, Mahan and Swartzmiller.

COMMITTEES OF THE SENATE
Regular Session, 2012

STANDING

AGRICULTURE

Miller (*Chair*), Williams (*Vice Chair*), Beach, Fanning, Helmick, Laird, Minard, Snyder, K. Facemyer, Nohe and Sypolt.

BANKING AND INSURANCE

Minard (*Chair*), Wills (*Vice Chair*), Chafin, Fanning, Green, Helmick, McCabe, Palumbo, Prezioso, Tucker, K. Facemyer, Hall and Nohe.

CONFIRMATIONS

Edgell (*Chair*), Chafin (*Vice Chair*), Browning, D. Facemire, Miller, Plymale, Snyder, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Browning (*Chair*), Klempa (*Vice Chair*), Chafin, D. Facemire, Helmick, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, K. Facemyer, Hall and Sypolt.

EDUCATION

Plymale (*Chair*), Wells (*Vice Chair*), Beach, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger, Wills, Barnes and Boley.

SENATE COMMITTEES

ENERGY, INDUSTRY AND MINING

D. Facemire (*Chair*), Kirkendoll (*Vice Chair*), Beach, Helmick, Jenkins, Klempa, Minard, Snyder, Stollings, Yost, K. Facemyer, Nohe and Sypolt.

FINANCE

Prezioso (*Chair*), D. Facemire (*Vice Chair*), Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Boley, Hall and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (*Chair*), Miller (*Vice Chair*), Browning, Foster, Green, Jenkins, Kirkendoll, Klempa, McCabe, Minard, Williams, Yost, Boley and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (*Chair*), Laird (*Vice Chair*), Foster, Kirkendoll, Miller, Palumbo, Plymale, Prezioso, Tucker, Wills, Yost, Boley and Hall.

INTERSTATE COOPERATION

Klempa (*Chair*), Tucker (*Vice Chair*), Chafin, Palumbo, Wells, Nohe, Sypolt and Kessler (*ex officio*).

THE JUDICIARY

Palumbo (*Chair*), Wills (*Vice Chair*), Beach, Browning, Fanning, Foster, Jenkins, Kirkendoll, Klempa, Minard, Snyder, Tucker, Unger, Williams, Barnes, K. Facemyer and Nohe.

SENATE COMMITTEES

LABOR

Yost (*Chair*), Miller (*Vice Chair*), Edgell, Fanning, Foster, Green, Klempa, Williams, Wills, Barnes and Nohe.

MILITARY

Wells (*Chair*), Yost (*Vice Chair*), Edgell, Green, Jenkins, Laird, Williams, Barnes and Boley.

NATURAL RESOURCES

Laird (*Chair*), Fanning (*Vice Chair*), Beach, Edgell, D. Facemire, Green, Helmick, Prezioso, Williams, Wills, Barnes, Boley and K. Facemyer.

PENSIONS

Foster (*Chair*), Edgell (*Vice Chair*), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (*Chair*), Browning, Minard, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Boley and Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (*Chair*), Klempa (*Vice Chair*), D. Facemire, Fanning, Kirkendoll, Plymale, Tucker, Barnes and K. Facemyer.

SENATE COMMITTEES

JOINT COMMITTEES

EDUCATION

Plymale (*Cochair*), Wells (*Vice Cochair*), Barnes, Beach, Boley, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger and Wills.

ENROLLED BILLS

Tucker (*Cochair*), Jenkins (*Vice Cochair*), McCabe, Wells and Barnes.

FINANCE

Prezioso (*Chair*), D. Facemire (*Vice Cochair*), Boley, Chafin, Edgell, Green, Hall, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Sypolt, Unger, Wells and Yost.

GOVERNMENT AND FINANCE

Kessler (*Cochair*), Facemyer, Hall, Palumbo, Plymale, Prezioso and Unger.

GOVERNMENT OPERATIONS

Snyder (*Cochair*), Barnes, Facemire, Klempa and McCabe.

GOVERNMENT ORGANIZATION

Snyder (*Cochair*), Green (*Vice Cochair*), Boley, Browning, Chafin, Foster, Klempa, McCabe, Miller, Minard, Palumbo, Sypolt Williams and Yost.

SENATE COMMITTEES

THE JUDICIARY

Palumbo (*Chair*), Wills (*Vice Cochair*), Barnes, Beach, Browning, Facemyer, Fanning, Foster, Jenkins, Klempa, McCabe, Minard, Nohe, Snyder, Tucker, Unger and Williams.

LEGISLATIVE RULE-MAKING REVIEW

Minard (*Cochair*), Snyder (*Vice Cochair*), Boley, Facemyer, Laird and Under.

PENSIONS AND RETIREMENT

Foster (*Cochair*), Edgell (*Vice Cochair*), Hall, Jenkins, McCabe, Nohe and Plymale.

RULES

Kessler (*Cochair*), Unger and Hall.

RULE-MAKING REVIEW

Minard (*Cochair*), Snyder (*Vice Cochair*), Boley, Facemyer, Laird and Unger.

TECHNOLOGY

Green (*Cochair*), Chafin, Facemire, Fanning, Jenkins and Sypolt.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2012

CHAPTER 1

**(Com. Sub. for S. B. 185 - By Senators
Laird, Nohe and Foster)**

[Passed March 7, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT and reenact §5A-1A-4 of the Code of West Virginia, 1931, as amended, relating to the Employee Suggestion Award Program; increasing the maximum cash award; requiring the board to report to the Legislature every five years; and allowing the Governor to make a secondary award.

Be it enacted by the Legislature of West Virginia:

That §5A-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD PROGRAM.

§5A-1A-4. Awards.

- 1 (a) The maximum cash award approved is limited to
- 2 twenty percent of the first year's estimated savings, as
- 3 established by the head of the affected spending unit, or
- 4 \$16,000, whichever is less. A cash award approved by the
- 5 board shall be charged by the head of the affected spending
- 6 unit against the appropriation item or items to which the
- 7 estimated savings apply.

8 (b) Commencing December 2015, and every five years
9 thereafter, the board shall submit a report to the Joint
10 Committee on Government and Finance, including:

11 (1) Recommendations for the maximum award amount
12 adjusted for inflation; and

13 (2) Any other information concerning the maximum
14 award amount.

15 (c) After the board has made an award, the Governor may
16 make one secondary award of up to twenty percent of the
17 additional savings realized by implementing the suggestion
18 in other state agencies, not to exceed \$5,000. The Governor
19 shall pay the secondary awards from funds appropriated by
20 the Legislature for secondary awards.



CHAPTER 2

**(Com. Sub. for S. B. 564 - By Senators Prezioso,
Snyder, Chafin, Plymale, Barnes and Beach)**

[Passed March 1, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 12, 2012.]

AN ACT to amend and reenact §5A-3-52 of the Code of West Virginia, 1931, as amended, relating to special funds for travel management; creating the Aviation Fund and the Fleet Management Office Fund; providing the moneys in these funds do not expire; providing the funds are to be used for aviation and fleet management purposes; and requiring costs and expenses will be borne by the agency or department using the aviation or fleet services.

Be it enacted by the Legislature of West Virginia:

That §5A-3-52 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-52. Special funds for travel management created.

1 (a) The travel management special fund is terminated.
2 All deposits currently in this special fund from aviation fees
3 shall be transferred into the Aviation Fund created in
4 subsection c of this section. All funds in this special fund
5 from the monthly fee for vehicles shall be transferred into the
6 Fleet Management Office Fund created in subsection (b) of
7 this section.

8 (b) There is created in the State Treasury a special
9 revenue account, to be known as the Fleet Management
10 Office Fund. Expenditures are authorized from collections,
11 but are to be made only in accordance with appropriation by
12 the Legislature and in accordance with the provisions of
13 article three, chapter twelve of this code and upon fulfillment
14 of the provisions of article two, chapter eleven-b of this code.
15 Any balance remaining in the special revenue account at the
16 end of any state fiscal year does not revert to the General
17 Revenue Fund but remains in the special revenue account and
18 shall be used solely in a manner consistent with this article.
19 All costs and expenses incurred pursuant to this section,
20 including administrative, shall be paid from those funds.
21 Charges for operating, repairing and servicing motor vehicles
22 made against any institution, agency or department shall be
23 paid into the Fleet Management Office Fund by that
24 institution, department or agency.

25 (c) There is created in the State Treasury a special
26 revenue account, to be known as the Aviation Fund.

27 Expenditures from this fund are authorized from collections
28 but are to be made only in accordance with appropriation by
29 the Legislature and in accordance with the provisions of
30 article three, chapter twelve of this code and upon fulfillment
31 of the provisions of article two, chapter eleven-b of this code.
32 Any balance remaining in the special revenue account at the
33 end of any state fiscal year does not revert to the General
34 Revenue Fund but remains in the special revenue account and
35 shall be used solely in a manner consistent with this article.
36 All costs and expenses incurred pursuant to this section,
37 including administrative, shall be paid from those funds.
38 Charges for operating, repairing and servicing aircraft made
39 against any institution, agency or department shall be paid
40 into the Aviation Fund by that institution, department or
41 agency.



CHAPTER 3

**(Com. Sub. for S. B. 563 - By Senators
Prezioso, Beach and Snyder)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Chief Technology Officer is responsible for the cleansing of information technology equipment prior to retirement or transfer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. OFFICE OF TECHNOLOGY.**§5A-6-4. Powers and duties of the Chief Technology Officer generally.**

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information
4 resource management for this state;

5 (2) Provide technical assistance to the administrators of
6 the various state spending units in the design and
7 management of information systems;

8 (3) Evaluate the economic justification, system design
9 and suitability of information equipment and related services,
10 and review and make recommendations on the purchase,
11 lease or acquisition of information equipment and contracts
12 for related services by the state spending units;

13 (4) Develop a mechanism for identifying those instances
14 where systems of paper forms should be replaced by direct
15 use of information equipment and those instances where
16 applicable state or federal standards of accountability demand
17 retention of some paper processes;

18 (5) Develop a mechanism for identifying those instances
19 where information systems should be linked and information
20 shared, while providing for appropriate limitations on access
21 and the security of information;

22 (6) Create new technologies to be used in government,
23 convene conferences and develop incentive packages to
24 encourage the utilization of technology;

25 (7) Engage in any other activities as directed by the
26 Governor;

27 (8) Charge a fee to the state spending units for
28 evaluations performed and technical assistance provided
29 under the provisions of this section. All fees collected by the
30 Chief Technology Officer shall be deposited in a special
31 account in the State Treasury to be known as the Chief
32 Technology Officer Administration Fund. Expenditures from
33 the fund shall be made by the Chief Technology Officer for
34 the purposes set forth in this article and are not authorized
35 from collections but are to be made only in accordance with
36 appropriation by the Legislature and in accordance with the
37 provisions of article three, chapter twelve of this code and
38 upon the fulfillment of the provisions set forth in article two,
39 chapter eleven-b of this code: *Provided*, That the provisions
40 of section eighteen, article two, chapter eleven-b of this code
41 do not operate to permit expenditures in excess of the
42 spending authority authorized by the Legislature. Amounts
43 collected which are found to exceed the funds needed for
44 purposes set forth in this article may be transferred to other
45 accounts or funds and redesignated for other purposes by
46 appropriation of the Legislature;

47 (9) Monitor trends and advances in information
48 technology and technical infrastructure;

49 (10) Direct the formulation and promulgation of policies,
50 guidelines, standards and specifications for the development
51 and maintenance of information technology and technical
52 infrastructure, including, but not limited to:

53 (A) Standards to support state and local government
54 exchange, acquisition, storage, use, sharing and distribution
55 of electronic information;

56 (B) Standards concerning the development of electronic
57 transactions, including the use of electronic signatures;

58 (C) Standards necessary to support a unified approach to
59 information technology across the totality of state

60 government, thereby assuring that the citizens and businesses
61 of the state receive the greatest possible security, value and
62 convenience from investments made in technology;

63 (D) Guidelines directing the establishment of statewide
64 standards for the efficient exchange of electronic information
65 and technology, including technical infrastructure, between
66 the public and private sectors;

67 (E) Technical and data standards for information
68 technology and related systems to promote efficiency and
69 uniformity;

70 (F) Technical and data standards for the connectivity,
71 priorities and interoperability of technical infrastructure used
72 for homeland security, public safety and health and systems
73 reliability necessary to provide continuity of government
74 operations in times of disaster or emergency for all state,
75 county and local governmental units; and

76 (G) Technical and data standards for the coordinated
77 development of infrastructure related to deployment of
78 electronic government services among state, county and local
79 governmental units;

80 (11) Periodically evaluate the feasibility of
81 subcontracting information technology resources and
82 services, and to subcontract only those resources that are
83 feasible and beneficial to the state;

84 (12) Direct the compilation and maintenance of an
85 inventory of information technology and technical
86 infrastructure of the state, including infrastructure and
87 technology of all state, county and local governmental units,
88 which may include personnel, facilities, equipment, goods
89 and contracts for service, wireless tower facilities, geographic
90 information systems and any technical infrastructure or
91 technology that is used for law enforcement, homeland
92 security or emergency services;

93 (13) Develop job descriptions and qualifications
94 necessary to perform duties related to information technology
95 as outlined in this article; and

96 (14) Promulgate legislative rules, in accordance with the
97 provisions of chapter twenty-nine-a of this code, as may be
98 necessary to standardize and make effective the
99 administration of the provisions of article six of this chapter.

100 (b) With respect to executive agencies, the Chief
101 Technology Officer may:

102 (1) Develop a unified and integrated structure for
103 information systems for all executive agencies;

104 (2) Establish, based on need and opportunity, priorities
105 and time lines for addressing the information technology
106 requirements of the various executive agencies of state
107 government;

108 (3) Exercise authority delegated by the Governor by
109 executive order to overrule and supersede decisions made by
110 the administrators of the various executive agencies of
111 government with respect to the design and management of
112 information systems and the purchase, lease or acquisition of
113 information equipment and contracts for related services;

114 (4) Draw upon staff of other executive agencies for
115 advice and assistance in the formulation and implementation
116 of administrative and operational plans and policies;

117 (5) Recommend to the Governor transfers of equipment
118 and human resources from any executive agency and the
119 most effective and efficient uses of the fiscal resources of
120 executive agencies, to consolidate or centralize information-
121 processing operations; and

122 (6) Ensure information technology equipment is properly
123 cleansed before disposal or transfer to another agency or
124 organization, and is responsible for the retirement or transfer
125 of information technology equipment that may contain
126 confidential or privileged electronic data. Information
127 technology equipment shall be cleansed using appropriate
128 and effective methods that are commensurate with the data,
129 the decommissioning agency and the planned disposition of
130 the information technology equipment. Following the
131 cleansing, the Chief Technology Officer may distribute the
132 information technology equipment for reuse by another state
133 spending unit, send the information technology equipment to
134 a state authorized recycler or send the information
135 technology equipment to a certified information technology
136 equipment refurbisher. Transfers and disposal of information
137 technology equipment are specifically exempt from the
138 surplus property requirements enumerated in sections forty-
139 three through forty-six, article three of this chapter.

140 (c) The Chief Technology Officer may employ the
141 personnel necessary to carry out the work of the Office of
142 Technology and may approve reimbursement of costs
143 incurred by employees to obtain education and training.

144 (d) The Chief Technology Officer shall develop a
145 comprehensive, statewide, four-year strategic information
146 technology and technical infrastructure policy and
147 development plan to be submitted to the Governor and the
148 Joint Committee on Government and Finance. A preliminary
149 plan shall be submitted by December 1, 2006, and the final
150 plan shall be submitted by June 1, 2007. The plan shall
151 include, but not be limited to:

152 (A) A discussion of specific projects to implement the
153 plan;

154 (B) A discussion of the acquisition, management and use
155 of information technology by state agencies;

156 (C) A discussion of connectivity, priorities and
157 interoperability of the state's technical infrastructure with the
158 technical infrastructure of political subdivisions and
159 encouraging the coordinated development of facilities and
160 services regarding homeland security, law enforcement and
161 emergency services to provide for the continuity of
162 government operations in times of disaster or emergency;

163 (D) A discussion identifying potential market demand
164 areas in which expanded resources and technical
165 infrastructure may be expected;

166 (E) A discussion of technical infrastructure as it relates to
167 higher education and health;

168 (F) A discussion of the use of public-private partnerships
169 in the development of technical infrastructure and technology
170 services; and

171 (G) A discussion of coordinated initiatives in website
172 architecture and technical infrastructure to modernize and
173 improve government to citizen services, government to
174 business services, government-to-government relations and
175 internal efficiency and effectiveness of services, including a
176 discussion of common technical data standards and common
177 portals to be utilized by state, county and local governmental
178 units.

179 (e) The Chief Technology Officer shall oversee
180 telecommunications services used by state spending units for
181 the purpose of maximizing efficiency to the fullest possible
182 extent. The Chief Technology Officer shall establish
183 microwave or other networks and LATA hops; audit
184 telecommunications services and usage; recommend and
185 develop strategies for the discontinuance of obsolete or
186 excessive utilization; participate in the renegotiation of
187 telecommunications contracts; and encourage the use of

188 technology and take other actions necessary to provide the
189 greatest value to the state.

CHAPTER 4

(S. B. 500 - By Senators Prezioso and Snyder)

[Passed March 10, 2012; in effect July 1, 2012.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §5A-7-4a of the Code of West Virginia, 1931, as amended, relating to monthly statements of spending units; and allowing certain monthly statements to accumulate and be mailed in one statement.

Be it enacted by the Legislature of West Virginia:

That §5A-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

- 1 (a) The Legislature finds that it is in the best interest of
- 2 the state, its spending units and those vendors supplying
- 3 telecommunications services to the state and its spending
- 4 units that any properly registered and qualified vendor
- 5 supplying telecommunications services to two or more
- 6 spending units under a shared account is entitled to prompt

7 payment upon presentation of a legitimate uncontested
8 invoice for telecommunications services to the division, as
9 provided in the following subsections.

10 (b) To facilitate the administration and payment of
11 telecommunications services, there is continued in the State
12 Treasury a special revenue account to be known as the
13 Telecommunications Services Payment and Reserve Fund.
14 All moneys transferred from state spending units pursuant to
15 the requirements of this section shall be deposited in the
16 account. Expenditures from the fund shall be made by the
17 director for the exclusive purposes set forth in this section:
18 *Provided*, That no more than \$150,000 or the actual amount
19 collected pursuant to subsection (j) of this section in any
20 fiscal year, whichever is less, may be expended from the fund
21 in any fiscal year to defray the costs of administration of this
22 section.

23 (c) Upon receipt of any telecommunications charges from
24 a properly registered and qualified vendor, the division shall
25 conduct a preliminary review of the charges. If the division
26 determines during this preliminary review that: (1) Any of
27 the charges are not authorized by law or by the contract
28 under which the telecommunications services are provided;
29 (2) no specific spending unit is designated for any charge; or
30 (3) any charge or service is not in accordance with contract
31 pricing, the division shall reject those charges. Within
32 fourteen days of receipt of any telecommunications charge,
33 the director shall notify a vendor of any rejected charges and
34 shall include in the notice a description of the rejected
35 charges, the reasons a charge was rejected and a proposed
36 resolution of the rejected charge. The director and the
37 vendor shall attempt to resolve the matter in good faith.
38 Within ninety days of the receipt of the vendor's invoice or
39 a time period mutually agreed to by the vendor and secretary,
40 the secretary shall make the final decision as to the
41 legitimacy of the rejected amount and determine if payment

42 is warranted. If the final decision of the secretary is to
43 require payment of the rejected amount, the secretary shall
44 cause the division to bill that amount to the appropriate
45 spending unit which shall remit payment of the amount as
46 required in subsection (d) of this section. If the final decision
47 of the secretary is to refuse to pay any amount, the vendor
48 may proceed in accordance with the provisions of article two,
49 chapter fourteen of this code.

50 (d) Following the preliminary review of the charges, the
51 director shall fully apportion all telecommunications charges
52 not rejected during the preliminary review required by
53 subsection (c) of this section among spending units based on
54 the spending unit's service and usage, as determined by the
55 director. The director shall send each spending unit a
56 statement of the spending unit's proportionate share of any
57 telecommunications charges within thirty days of receipt by
58 the division of the invoice detailing the telecommunications
59 charges. Monthly statements for a spending unit of less than
60 \$75 may be accumulated and sent to the spending unit on one
61 statement near the end of the fiscal year. The director shall
62 continue to pay any vendor invoices based upon the
63 requirements of subsection (b) of this section. The statement
64 is to provide a date of no more than thirty calendar days from
65 the date the division sends the statement by which the
66 spending unit shall submit payment or transfer to the
67 telecommunications services payment and reserve fund all
68 funds necessary to pay for the spending unit's charges in full:
69 *Provided*, That the statement sent in last month of the fiscal
70 year shall provide that the transfer shall be made by July 31.
71 If feasible for the spending unit, the preferable method of
72 payment is by intergovernmental transfer.

73 (e) All spending units shall budget for telecommunications
74 service expenses. Prior to the date provided in each statement
75 sent to a spending unit pursuant to subsection (d) of this
76 section, each spending unit shall pay or transfer the statement

77 amount to the Telecommunications Services Payment and
78 Reserve Fund.

79 (f) If a spending unit fails to pay or transfer funds by the
80 date specified in the statement sent pursuant to subsection (d)
81 of this section, the Secretary of the Department of
82 Administration shall transfer to the Telecommunications
83 Services Payment and Reserve Fund the statement amount
84 plus an additional penalty in the amount of three percent of
85 the statement amount from any funds supporting the
86 administration of that spending unit: *Provided*, That the
87 secretary shall complete all such transfers by July 31 of each
88 fiscal year. Upon exercising a transfer under the authority of
89 this subsection, the director shall provide a notification to the
90 spending unit, including, but not limited to, the date, time,
91 total amount of the transfer, statement amount and penalty
92 amount. If a participating spending unit does not maintain
93 funds in the State Treasury, the secretary may transfer funds
94 by wire from any depository outside the State Treasury. A
95 participating spending unit maintaining funds in depositories
96 outside the State Treasury shall furnish the secretary access
97 to those funds for the exclusive purposes of this section.

98 (g) If a spending unit contests any portion of its
99 statement, it shall nonetheless remit payment for the entire
100 statement amount and notify the division in writing within
101 thirty days of statement receipt by the spending unit. The
102 secretary shall consider any contested apportionments of
103 charges and provide a final determination on the
104 apportionment of legitimate charges. Corrections or
105 adjustments to apportionments may be effected on future
106 transfer payments: *Provided*, That legitimate vendor charges
107 are to be fully apportioned. If the basis of the contest is
108 vendor error, overcharge, service failure, failure to terminate
109 services as required by the division or other failure of or error
110 in vendor performance, the director shall withhold the
111 contested amount from current or future vendor payments,

112 pending resolution by the secretary, and the director shall
113 bring the contested matter to the attention of the vendor. The
114 director and the vendor shall attempt to resolve the matter in
115 good faith. Within ninety days of the receipt of the vendor's
116 invoice or a time period mutually agreed to by the vendor and
117 secretary, the secretary shall make the final decision as to the
118 legitimacy of the contested amount and determine if payment
119 is warranted. If the final decision of the secretary is to refuse
120 to pay any amount, the vendor may proceed in accordance
121 with the provisions of article two, chapter fourteen of this
122 code.

123 (h) The director shall provide for full payment of
124 legitimate, uncontested telecommunications charges within
125 ninety days of receipt of an invoice detailing the
126 telecommunications charges by the division. Payment for the
127 charges shall be made by the director from the
128 Telecommunications Services Payment and Reserve Fund.

129 (i) The director may direct the discontinuance of
130 telecommunications services to any spending unit that fails
131 to comply with the provisions of this section and the vendor
132 supplying telecommunication services shall comply with the
133 written direction of the director on discontinuance of
134 services.

135 (j) To help defray the additional cost of administering this
136 section, the director may assess a proportional fee of up to
137 \$150,000 in aggregate per fiscal year to the participating
138 spending units based on each spending unit's portion of
139 service and usage. This fee is to be included in the statement
140 sent to spending units pursuant to subsection (d) of this
141 section and transferred to the Telecommunications Service
142 Payment and Reserve Fund by the date specified in the
143 statement for the transfer of payment.

144 (k) Notwithstanding any other provision of this code to the
145 contrary, for purposes of this section, an invoice is considered
146 received by the division on the date on which the invoice is
147 marked as received by the division, or three business days after
148 the date of the postmark made by the United States Postal
149 Service as evidenced on the envelope in which the invoice is
150 mailed, whichever is earlier: *Provided*, That if an invoice is
151 received by the division prior to the date on which the
152 telecommunications services covered by the invoice are
153 delivered or fully performed, for purposes of determining the
154 ninety-day time period for payment in subsection (h) of this
155 section, the invoice is considered received on the date on which
156 the telecommunications services covered by the invoice were
157 delivered or fully performed.

158 (l) For purposes of this section, “telecommunications
159 service” means and includes not only telephone service
160 regulated under chapter twenty-four of this code or under
161 federal law, but also may include, at the discretion of the
162 Secretary of Administration, wireless service, voice over
163 Internet protocol service, Internet service and any other
164 service or equipment used for the electronic transmission of
165 voice or data: *Provided*, That the service is provided under a
166 statewide contract.

167 (m) The director may propose rules for legislative
168 approval in accordance with the provisions of article three,
169 chapter twenty-nine-a of this code to effectuate the purposes
170 of this section.

●

CHAPTER 5

**(Com. Sub. for H. B. 4376 - By Delegates
Brown, Craig, D. Poling, R. Phillips, Hunt,
Swartzmiller, Michael, Skaff, Walters and Nelson)**

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to licensing wine sales at certain professional baseball stadiums; providing license fees; providing a definition of professional baseball stadium; providing standards for licensing and authority for the commissioner to regulate such sales; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

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

1 (a) No person may engage in business in the capacity of
2 a winery, farm winery, supplier, distributor, retailer, private
3 wine bed and breakfast, private wine restaurant, private wine
4 spa or wine specialty shop without first obtaining a license
5 from the commissioner, nor shall a person continue to engage
6 in any such activity after his or her license has expired, been
7 suspended or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer. No person,
9 except for a winery or farm winery, may be licensed

10 simultaneously as a supplier and a retailer. No person may
11 be licensed simultaneously as a supplier and a private wine
12 bed and breakfast, private wine restaurant or a private wine
13 spa. No person may be licensed simultaneously as a
14 distributor and a private wine bed and breakfast, a private
15 wine restaurant or a private wine spa. No person may be
16 licensed simultaneously as a retailer and a private wine bed
17 and breakfast, a private wine restaurant or a private wine spa.

18 (b) The commissioner shall collect an annual fee for
19 licenses issued under this article, as follows:

20 (1) One hundred fifty dollars per year for a supplier's
21 license;

22 (2) Twenty-five hundred dollars per year for a
23 distributor's license and each separate warehouse or other
24 facility from which a distributor sells, transfers or delivers
25 wine shall be separately licensed and there shall be collected
26 with respect to each such location the annual license fee of
27 \$2,500 as herein provided;

28 (3) One hundred fifty dollars per year for a retailer's
29 license;

30 (4) Two hundred fifty dollars per year for a wine
31 specialty shop license, in addition to any other licensing fees
32 paid by a winery or retailer holding such a license, except for
33 the amount of the license fee and the restriction to sales of
34 winery or farm winery wines, a winery or farm winery acting
35 as a wine specialty shop retailer is subject to all other
36 provisions of this article which are applicable to a wine
37 specialty shop retailer as defined in section two of this
38 article;

39 (5) One hundred fifty dollars per year for a wine tasting
40 license;

41 (6) One hundred fifty dollars per year for a private wine
42 bed and breakfast license, and each separate bed and
43 breakfast from which a licensee sells wine shall be separately
44 licensed and there shall be collected with respect to each such
45 location the annual license fee of \$150 as herein provided;

46 (7) Two hundred fifty dollars per year for a private wine
47 restaurant license, and each separate restaurant from which
48 a licensee sells wine shall be separately licensed and there
49 shall be collected with respect to each such location the
50 annual license fee of \$250 as herein provided;

51 (8) One hundred fifty dollars per year for a private wine
52 spa license and each separate private wine spa from which a
53 licensee sells wine shall be separately licensed and there shall
54 be collected with respect to each such location the annual
55 license fee of \$150 as herein provided;

56 (9) One hundred fifty dollars per year for a wine
57 sampling license issued for a wine specialty shop under
58 subsection (n) of this section;

59 (10) No fee shall be charged for a special one-day license
60 under subsection (p) of this section or for a heritage fair and
61 festival license under subsection (q) of this section; and

62 (11) One hundred fifty dollars per year for a direct
63 shipper's license for a licensee who sells and ships only wine
64 and \$250 per for a direct shipper's license who ships and
65 sells wine, nonfortified dessert wine, port, sherry or Madeira
66 wines.

67 (12) Three hundred dollars per year for a multicapacity
68 winery or farm winery license which shall enable the holder
69 to operate as a retailer, wine specialty shop, supplier and
70 direct shipper without obtaining an individual license for
71 each capacity.

72 (c) The license period shall begin on July 1, of each year
73 and end on June 30 of the following year and if granted for
74 a less period, the same shall be computed semiannually in
75 proportion to the remainder of the fiscal year.

76 (d) No retailer may be licensed as a private club as
77 provided by article seven of this chapter, except as provided
78 by subsection (k) of this section.

79 (e) No retailer may be licensed as a Class A retail dealer
80 in nonintoxicating beer as provided by article sixteen, chapter
81 eleven of this code: *Provided*, That a delicatessen, a caterer
82 or party supply store which is a grocery store as defined in
83 section two of this article and which is licensed as a Class A
84 retail dealer in nonintoxicating beer may be a retailer under
85 this article: *Provided, however*, That any delicatessen, caterer
86 or party supply store licensed in both such capacities must
87 maintain average monthly sales exclusive of sales of wine
88 and nonintoxicating beer which exceed the average monthly
89 sales of nonintoxicating beer.

90 (f) A wine specialty shop under this article may also hold
91 a wine tasting license authorizing such retailer to serve
92 complimentary samples of wine in moderate quantities for
93 tasting. Such wine specialty shop shall organize a wine
94 taster's club, which has at least fifty duly elected or approved
95 dues-paying members in good standing. Such club shall meet
96 on the wine specialty shop's premises not more than one time
97 per week and shall either meet at a time when the premises are
98 closed to the general public, or shall meet in a separate
99 segregated facility on the premises to which the general public
100 is not admitted. Attendance at tastings shall be limited to duly
101 elected or approved dues-paying members and their guests.

102 (g) A retailer who has more than one place of retail
103 business shall obtain a license for each separate retail
104 establishment. A retailer's license may be issued only to the

105 proprietor or owner of a bona fide grocery store or wine
106 specialty shop.

107 (h) The commissioner may issue a special license for the
108 retail sale of wine at any festival or fair which is endorsed or
109 sponsored by the governing body of a municipality or a
110 county commission. Such special license shall be issued for
111 a term of no longer than ten consecutive days and the fee
112 therefor shall be \$250 regardless of the term of the license
113 unless the applicant is the manufacturer of said wine on a
114 winery or a farm winery as defined in section five-a, article
115 one of this chapter, in which event the fee shall be \$50 if the
116 event is held on the premises of the winery or farm winery.
117 The application for such license shall contain such
118 information as the commissioner may reasonably require and
119 shall be submitted to the commissioner at least thirty days
120 prior to the first day when wine is to be sold at such festival
121 or fair. A winery or a farm winery licensed under this
122 subsection may exhibit, conduct tastings, not to exceed a
123 reasonable serving, and may sell wine only for consumption
124 off the premises of such festival or fair. A special license
125 issued other than to a winery or a farm winery may be issued
126 to a "wine club" as defined herein below. The festival or fair
127 committee or the governing body shall designate a person to
128 organize a club under a name which includes the name of the
129 festival or fair and the words "wine club". The license shall
130 be issued in the name of the wine club. A licensee may not
131 commence the sale of wine as provided in this subsection
132 until the wine club has at least fifty dues-paying members
133 who have been enrolled and to whom membership cards have
134 been issued. Thereafter, new members may be enrolled and
135 issued membership cards at any time during the period for
136 which the license is issued. A wine club licensed under the
137 provisions of this subsection may sell wine only to its
138 members, and in portions not to exceed eight ounces per
139 serving. Such sales shall take place on premises or in an area
140 cordoned or segregated so as to be closed to the general

141 public, and the general public shall not be admitted to such
142 premises or area. A wine club licensee under the provisions
143 of this subsection shall be authorized to serve complimentary
144 samples of wine in moderate quantities for tasting.

145 A license issued under the provisions of this subsection
146 and the licensee holding such license shall be subject to all
147 other provisions of this article and the rules and orders of the
148 commissioner relating to such special license: *Provided*,
149 That the commissioner may by rule, regulation or order
150 provide for certain waivers or exceptions with respect to such
151 provisions, rules, regulations or orders as the circumstances
152 of each such festival or fair may require, including, without
153 limitation, the right to revoke or suspend any license issued
154 pursuant to this section prior to any notice or hearing
155 notwithstanding the provisions of section twenty-seven and
156 twenty-eight of this article: *Provided, however*, That under
157 no circumstances shall the provisions of subsection (c) or (d),
158 section twenty of this article be waived nor shall any
159 exception be granted with respect thereto.

160 A license issued under the provisions of this subsection
161 and the licensee holding such license shall not be subject to
162 the provisions of subsection (g) of this section.

163 (i) (A) The commissioner may issue a special license for
164 the retail sale of wine in a professional baseball stadium. A
165 license to sell wine granted pursuant to this subsection
166 entitles the licensee to sell and serve wine, for consumption
167 in a professional baseball stadium. For the purpose of this
168 subsection, "professional baseball stadium" means a facility
169 constructed primarily for the use of a major or minor league
170 baseball franchisee affiliated with the National Association
171 of Professional Baseball Leagues, Inc., or its successor, and
172 used as a major or minor league baseball park. Any special
173 license issued pursuant to this subsection shall be for a term
174 beginning on the date of issuance and ending on the next

175 following June 30, and its fee is \$250 regardless of the length
176 of the term of the license. The application for the special
177 license shall contain information as the commissioner may
178 reasonably require and must be submitted to the
179 commissioner at least thirty days prior to the first day when
180 wine is to be sold at the professional baseball stadium. The
181 special license may be issued in the name of the baseball
182 franchisee or the name of the primary food and beverage
183 vendor under contract with the baseball franchisee. These
184 sales must take place within the confines of the professional
185 baseball stadium, provided that the exterior of the area where
186 wine sales may occur are surrounded by a fence or other
187 barrier prohibiting entry except upon the franchisee's express
188 permission, and under the conditions and restrictions
189 established by the franchisee, so that the wine sales area is
190 closed to free and unrestricted entry by the general public.

191 (B) A license issued under this subsection and the
192 licensee holding the license is subject to all other provisions
193 of this article and the rules and orders of the commissioner
194 relating to the special license: *Provided*, That the
195 commissioner may by rule or order grant certain waivers or
196 exceptions to those rules or orders as the circumstances of
197 each such professional baseball stadium may require,
198 including, without limitation, the right to revoke or suspend
199 any license issued pursuant to this section prior to any notice
200 or hearing notwithstanding sections twenty-seven and
201 twenty-eight of this article: *Provided, however*, That under
202 no circumstances may subsection (c) or (d), section twenty of
203 this article be waived nor shall any exception be granted
204 concerning those subsections.

205 (C) The commissioner has the authority to propose rules
206 for legislative approval in accordance with article three,
207 chapter twenty-nine-a of this code to implement this
208 subsection.

209 (j) A license to sell wine granted to a private wine bed
210 and breakfast, private wine restaurant, private wine spa or a
211 private club under the provisions of this article entitles the
212 operator to sell and serve wine, for consumption on the
213 premises of the licensee, when such sale accompanies the
214 serving of food or a meal to its members and their guests in
215 accordance with the provisions of this article: *Provided*, That
216 a licensed private wine bed and breakfast, private wine
217 restaurant, private wine spa or a private club may permit a
218 person over twenty-one years of age to purchase wine,
219 consume wine and recork or reseal, using a tamper resistant
220 cork or seal, up to two separate bottles of unconsumed wine
221 in conjunction with serving of food or a meal to its members
222 and their guests in accordance with the provisions of this
223 article and in accordance with regulations promulgated by the
224 commissioner for the purpose of consumption of said wine
225 off premises: *Provided, however*, That for this article, food
226 or a meal provided by the private licensee means that the
227 total food purchase, excluding beverage purchases, taxes,
228 gratuity or other fees is at least \$15: *Provided further*, That
229 a licensed private wine restaurant or a private club may offer
230 for sale for consumption off the premises, sealed bottles of
231 wine to its customers provided that no more than one bottle
232 is sold per each person over twenty-one years of age, as
233 verified by the private wine restaurant or private club, for
234 consumption off the premises. Such licensees are authorized
235 to keep and maintain on their premises a supply of wine in
236 such quantities as may be appropriate for the conduct of
237 operations thereof. Any sale of wine so made shall be
238 subject to all restrictions set forth in section twenty of this
239 article. A private wine restaurant may also be licensed as a
240 Class A retail dealer in nonintoxicating beer as provided by
241 article sixteen, chapter eleven of this code.

242 (k) With respect to subsections (h), (i), (j), (o) and (p) of
243 this section, the commissioner shall promulgate legislative
244 rules in accordance with the provisions of chapter

245 twenty-nine-a of this code with regard to the form of the
246 applications, the suitability of both the applicant and location
247 of the licensed premises and such other legislative rules
248 deemed necessary to carry the provisions of such subsections
249 into effect.

250 (l) The commissioner shall promulgate legislative rules
251 in accordance with the provisions of chapter twenty-nine-a of
252 this code to allow restaurants to serve wine with meals, and
253 to sell wine by the bottle for off-premises consumption as
254 provided in subsection (j) of this section. Each restaurant so
255 licensed shall be charged an additional \$100 per year fee.

256 (m) The commissioner shall establish guidelines to permit
257 wines to be sold in all stores licensed for retail sales.

258 (n) Wineries and farm wineries may advertise off
259 premises as provided in section seven, article twenty-two,
260 chapter seventeen of this code.

261 (o) A wine specialty shop under this article may also hold
262 a wine sampling license authorizing the wine specialty shop
263 to conduct special wine sampling events at a licensed wine
264 specialty shop location during regular hours of business. The
265 wine specialty shop may serve up to three complimentary
266 samples of wine, consisting of no more than one ounce each,
267 to any one consumer in one day. Persons serving the
268 complimentary samples must be twenty-one years of age and
269 an authorized representative of the licensed wine specialty
270 shop, winery, farm winery or a representative of a distributor
271 or registered supplier. Distributor and supplier
272 representatives attending wine sampling events must be
273 registered with the commissioner. No licensee, employee or
274 representative may furnish, give or serve complimentary
275 samples of wine to any person less than twenty-one years of
276 age or to a person who is physically incapacitated due to the
277 consumption of alcoholic liquor or the use of drugs. The

278 wine specialty shop shall notify and secure permission from
279 the commissioner for all wine sampling events one month
280 prior to the event. Wine sampling events may not exceed six
281 hours per calendar day. Licensees must purchase all wines
282 used during these events from a licensed farm winery or a
283 licensed distributor.

284 (p) The commissioner may issue special one-day licenses
285 to duly organized, nonprofit corporations and associations
286 allowing the sale and serving of wine when raising money for
287 athletic, charitable, educational or religious purposes. The
288 license application shall contain information as the
289 commissioner may reasonably require and shall be submitted
290 to the commissioner at least thirty days prior to the event.
291 Wines used during these events may be donated by or
292 purchased from a licensed retailer, a distributor or a farm
293 winery. Under no circumstances may the provision of
294 subsection (c), section twenty of this article be waived nor
295 may any exception be granted with respect thereto.

296 (q) The commissioner may issue special licenses to
297 heritage fairs and festivals allowing the sale, serving and
298 sampling of wine from a licensed farm winery. The license
299 application shall contain information required by the
300 commissioner and shall be submitted to the commissioner at
301 least thirty days prior to the event. Wines used during these
302 events may be donated by or purchased from a licensed farm
303 winery. Under no circumstances may the provision of
304 subsection (c), section twenty of this article be waived nor
305 may any exception be granted with respect thereto. The
306 commissioner shall propose rules for legislative approval in
307 accordance with article three, chapter twenty-nine-a of this
308 code to implement the provisions of this subsection.

●

CHAPTER 6

**(H. B. 4652 - By Delegates White, Cann,
Iaquinta, Mahan, Marshall, Perdue,
Ashley and Carmichael)**

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on March 20, 2012.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2012, to the Department of Administration - Children's Health Insurance Agency, fund 8838, fiscal year 2012, organization 0230, to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2012, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 8802, fiscal year 2012, organization 0506, to the Department of Health and Human Resources - Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2012, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2012, organization 0511, and to Miscellaneous Boards and Commissions - Coal Heritage Highway Authority, fund 8861, fiscal year 2012, organization 0942, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2012, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to the fund 8838, fiscal year 2012, organization 0230, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF ADMINISTRATION

304-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2012 Org 0230

	Activity	Federal Funds
1 1	Unclassified - Total. 096	\$10,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2012, to the fund 8708, fiscal year 2012,
4 organization 0313, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

324-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2012 Org 0313

		Activity	Federal Funds
1	1	Unclassified - Total 096	\$45,000,000

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2012, to fund 8802, fiscal year 2012,
 4 organization 0506, be supplemented and amended by
 5 increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

**DEPARTMENT OF HEALTH AND HUMAN
 RESOURCES**

*326-Division of Health -
 Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2012 Org 0506

		Activity	Federal Funds
1	1	Unclassified - Total. 096	\$ 6,500,000
2	2	Federal Economic Stimulus. 891	1,100,000

3 And, That the total appropriation for the fiscal year
 4 ending June 30, 2012, to fund 8824, fiscal year 2012,
 5 organization 0506, be supplemented and amended by
 6 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

*327-Division of Health -
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2012 Org 0506

		Activity	Federal Funds
1	1	Unclassified - Total. 096	\$ 8,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2012, to fund 8722, fiscal year 2012,
4 organization 0511, be supplemented and amended by
5 increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

330-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2012 Org 0511

		Activity	Federal Funds
1	2	Medical Services. 189	\$ 80,000,000
2	3	Medical Services Administrative	
3	4	Costs. 789	5,000,000

4 And, That the total appropriation for the fiscal year
 5 ending June 30, 2012, to fund 8861, fiscal year 2012,
 6 organization 0942, be supplemented and amended by
 7 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

352-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2012 Org 0942

		Activity	Federal Funds
1	1	Unclassified - Total. 096	\$ 75,000

2 The purpose of this supplementary appropriation bill is
 3 to supplement, amend and increase existing items of
 4 appropriation in the aforesaid accounts for the designated
 5 spending units for expenditure during the fiscal year 2012.

CHAPTER 7

**(H. B. 4656 - By Delegates White, T. Campbell,
Guthrie, Iaquina, Mahan, Perdue, L. Phillips,
M. Poling, Reynolds, Williams and Evans)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2012, to the Division of Human Services - Temporary Assistance for Needy Families, fund 8816, fiscal year 2012, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2012.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2012, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 8816, fiscal year 2012, organization 0511, be supplemented and amended by increasing an existing item of appropriation and adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

*364-Division of Human Services -
Temporary Assistance for Needy Families*

Fund 8816 FY 2012 Org 0511

			Activity	Federal Funds
1	1	Unclassified - Total.	096	\$20,000,000
2	2	Federal Economic Stimulus.	891	9,443,282

3 The purpose of this supplementary appropriation bill is
4 to supplement and amend by increasing an existing item of
5 appropriation and by adding a new item of appropriation in
6 the aforesaid account for the designated spending unit for
7 expenditure during the fiscal year 2012.

CHAPTER 8

**(H. B. 4657 - By Delegates White, T. Campbell,
Guthrie, Iaquinta, Marshall, L. Phillips, D. Poling,
M. Poling, Williams, Ashley and Canterbury)**

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on March 20, 2012.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2012, to the Department of Administration, Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2012, organization 0201, to the Department of Administration - Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2012, organization 0213, to the Department of Environmental Protection - Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund, fund 3323, fiscal year 2012, organization 0313, to the Department of Environmental Protection - Division of Environmental Protection - Stream Restoration Fund, fund 3349, fiscal year 2012, organization

0313, to the Department of Environmental Protection - Division of Environmental Protection - Mountaintop Removal Fund, fund 3490, fiscal year 2012, organization 0313, to the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2012, organization 0511, to a new item of appropriation designated to the to the Department of Military Affairs and Public Safety - West Virginia State Police - State Police Academy Post Exchange, fund 6544, fiscal year 2012, organization 0612, to the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2012, organization 0707, to the Miscellaneous Boards and Commissions - WV State Board of Examiners for Licensed Practical Nurses, fund 8517, fiscal year 2012, organization 0906, and to the Miscellaneous Boards and Commissions - Public Service Commission - Consumer Advocate, fund 8627, fiscal year 2012, organization 0926, by supplementing and amending chapter 11, Acts of the Legislature, regular session, 2011, known as the Budget Bill.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Department of Administration - Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2012, organization 0201, in the Department of Administration - Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2012, organization 0213, in the Department of Environmental Protection - Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund, fund 3323, fiscal year 2012, organization 0313, in the Department of Environmental Protection - Division of Environmental Protection - Stream Restoration Fund, fund 3349, fiscal year 2012, organization 0313, in the Department of Environmental Protection - Division of Environmental Protection - Mountaintop Removal Fund, fund 3490, fiscal year 2012, organization 0313, in the Department of Health and Human Resources - Division of Human Services - West Virginia Works

Separate State Two-Parent Program Fund, fund 5468, fiscal year 2012, organization 0511, in the Department of Military Affairs and Public Safety - West Virginia State Police - State Police Academy Post Exchange, fund 6544, fiscal year 2012, organization 0612, in the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2012, organization 0707, in the Miscellaneous Boards and Commissions - WV State Board of Examiners for Licensed Practical Nurses, fund 8517, fiscal year 2012, organization 0906, and in the Miscellaneous Boards and Commissions - Public Service Commission - Consumer Advocate, fund 8627, fiscal year 2012, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2012, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 2044, fiscal year 2012, organization 0201, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 18)

Fund 2044 FY 2012 Org 0201

		Activity	Other Funds
1	1	Unclassified - Total.. 096	\$32,722,000

2 And, That the total appropriation for the fiscal year ending
 3 June 30, 2012, to fund 2264, fiscal year 2012, organization
 4 0213, be supplemented and amended by increasing existing
 5 items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ADMINISTRATION

*124-Division of Purchasing -
Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2012 Org 0213

		Activity	Other Funds
1	1	Personal Services.. 001	\$ 53,976
2	2	Annual Increment. 004	780
3	3	Employee Benefits. 010	18,800

4 And, That the total appropriation for the fiscal year ending
 5 June 30, 2012, to fund 3323, fiscal year 2012, organization
 6 0313, be supplemented and amended by increasing existing
 7 items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

160-Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2012 Org 0313

	Activity	Other Funds
1 1	Personal Services..... 001	\$ 475,000
2 3	Employee Benefits. 010	161,500
3 4	Unclassified..... 099	500,000

4 And, That the total appropriation for the fiscal year ending
5 June 30, 2012, to fund 3349, fiscal year 2012, organization
6 0313, be supplemented and amended by increasing an
7 existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

168-Division of Environmental Protection - Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2012 Org 0313

	Activity	Other Funds
1 1	Unclassified - Total. 096	\$4,054,182

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2012, to fund 3490, fiscal year 2012,
 4 organization 0313, be supplemented and amended by
 5 increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

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

(WV Code Chapter 22)

Fund 3490 FY 2012 Org 0313

		Activity	Other Funds
1	1	Personal Services..... 001	\$ 40,000
2	3	Employee Benefits..... 010	10,000
3	4	Unclassified..... 099	250,000

4 And, That the total appropriation for the fiscal year
 5 ending June 30, 2012, to fund 5468, fiscal year 2012,
 6 organization 0511, be supplemented and amended by
 7 increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*190-Division of Human Services -
West Virginia Works Separate State Two-Parent Program
Fund*

(WV Code Chapter 9)

Fund 5468 FY 2012 Org 0511

		Activity	Other Funds
1	1	Unclassified..... 096	\$1,400,000

2 And, that chapter eleven, Acts of the Legislature, regular
3 session, 2011, known as the Budget Bill, be supplemented
4 and amended by adding to Title II, section three thereof, the
5 following:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

*200a-West Virginia State Police -
State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2012 Org 0612

		Activity	Other Funds
1	1	Current Expenses..... 130	\$160,000
2	2	Repairs and Alterations. 064	40,000

3 And, That the total appropriation for the fiscal year
 4 ending June 30, 2012, to fund 7305, fiscal year 2012,
 5 organization 0707, be supplemented and amended by
 6 decreasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

*226-Racing Commission -
 General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2012 Org 0707

	Activity	Other Funds
1 4	Unclassified..... 099	\$696,000

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2012, to fund 7305, fiscal year 2012,
 4 organization 0707, be supplemented and amended by
 5 increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

*226-Racing Commission -
 General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2012 Org 0707

		Activity	Other Funds
1	1	Personal Services..... 001	\$ 487,200
2	3	Employee Benefits..... 010	208,800

3 And, That the total appropriation for the fiscal year
 4 ending June 30, 2012, to fund 8517, fiscal year 2012,
 5 organization 0906, be supplemented and amended by
 6 increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

*247-WV State Board of Examiners for Licensed Practical
 Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2012 Org 0906

		Activity	Other Funds
1	1	Unclassified..... 096	\$ 42,000

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2012, to fund 8627, fiscal year 2012,
 4 organization 0926, be supplemented and amended by
 5 increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

*252-Public Service Commission -
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2012 Org 0926

	Activity	Other Funds
1 4	Unclassified - Total. 099	\$ 100,000
2		
3	The purpose of this supplementary appropriation bill is	
4	to supplement and amend by increasing and decreasing	
5	existing items of appropriation and provide for a new item of	
6	appropriation to be established therein to appropriate funds	
7	in the aforesaid accounts for the designated spending units	
8	for expenditure during fiscal year 2012.	



CHAPTER 9

**(H. B. 4658 - By Delegates White, Guthrie,
Iaquinta, Marshall, Perdue, D. Poling, Anderson,
Ashley, Carmichael, C. Miller and Walters)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT making supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 2012, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, be supplemented and amended by decreasing existing an item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

98-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803

	Activity	State Road Fund
1 11 Appalachian Programs.....	280	\$ 5,000,000

2 And, That the items of the total appropriations from the
 3 State Road Fund, to the Department of Transportation -
 4 Division of Highways, fund 9017, fiscal year 2012,
 5 organization 0803, be supplemented and amended by
 6 increasing existing items of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

98-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803

		State Road Fund
	Activity	
1	2 Maintenance..... 237	\$20,000,000
2	9 Interstate Construction..... 278	10,000,000
3	10 Other Federal Aid Programs. . . . 279	50,000,000
4	12 Nonfederal Aid Construction.... 281	13,000,000

5 The purpose of this supplemental appropriation bill is to
 6 supplement, amend, decrease and increase items of
 7 appropriation in the aforesaid accounts for the designated
 8 spending units for expenditure during the fiscal year ending
 9 June 30, 2012.



CHAPTER 10

**(Com. Sub. for S. B. 160 - By Senators
Kessler, Mr. President, and Hall)
[By Request of the Executive]**

[Passed March 16, 2012; in effect from passage.]
[Approved by the Governor on March 21, 2012.]

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

Be it enacted by the Legislature of West Virginia:

TITLE I — GENERAL PROVISIONS.

Section 1. General policy. — The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2013.

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

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2013” shall mean the period from July 1, 2012, through June 30, 2013.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

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

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections”, the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

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

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Annual increment” shall mean funds appropriated for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and

retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be transferred by each spending unit from its “personal services” line item or its “unclassified” or “current expenses” line item or other appropriate line item to its “employee benefits” line item. If there is no appropriation for “employee benefits”, such costs shall be paid by each spending unit from its “personal services” line item, its “unclassified” line item, or its “current expenses” line item or other appropriate line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

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

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be transferred by each spending unit from its “personal services” line item, its “employee benefits” line item, its “unclassified” line item, its “current expenses” line item or any other appropriate line item to “BRIM Premium” for payment to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands.

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

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one

agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services” line unless the source funds are also wholly from a “personal services” line, or unless the source funds are from another activity that has exclusively funded employment expenses (any of object codes 001 through 016, 160 and 163) for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services”, “employee benefits”, “current expenses”, “repairs and alterations”, “equipment”, “other assets”, and “buildings” to other lines within the same account and no funds from other lines shall be transferred to the “personal services” or “unclassified” line: *And provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer general revenue funds appropriated to “annual increment” to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with Article 5, Chapter 5 of the Code: *And provided further*, That no authority exists hereunder to transfer funds into line-items to which no funds are legislatively appropriated: *And provided further*, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary or other appropriate agency head may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of

Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

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

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

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- §1. General policy.
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 §16. Total appropriations.
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1 **Section 1. Appropriations from general revenue. —**
 2 From the State Fund, General Revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in Article 2, Chapter 11B the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 2013.

LEGISLATIVE

1-Senate

Fund 0165 FY 2013 Org 2100

		Act- ivity	General Revenue Funds
1	Compensation of Members (R).	003	\$ 1,010,000
2	Compensation and Per Diem of		
3	Officers and Employees (R).	005	3,003,210
4	Employee Benefits (R).....	010	597,712
5	Current Expenses and Contingent		
6	Fund (R).....	021	561,392
7	Repairs and Alterations (R).	064	210,410
8	Computer Supplies (R).....	101	40,000
9	Computer Systems (R).....	102	150,000
10	Printing Blue Book (R).	103	150,000
11	Expenses of Members (R).	399	700,000
12	BRIM Premium (R).....	913	<u>29,482</u>
13	Total.		\$ 6,452,206

1 The appropriations for the Senate for the fiscal year 2012
2 are to remain in full force and effect and are hereby
3 reappropriated to June 30, 2013. Any balances so
4 reappropriated may be transferred and credited to the fiscal
5 year 2012 accounts.

6 Upon the written request of the Clerk of the Senate, the
7 auditor shall transfer amounts between items of the total
8 appropriation in order to protect or increase the efficiency of
9 the service.

10 The Clerk of the Senate, with the approval of the
11 President, is authorized to draw his or her requisitions upon
12 the auditor, payable out of the Current Expenses and
13 Contingent Fund of the Senate, for any bills for supplies and
14 services that may have been incurred by the Senate and not
15 included in the appropriation bill, for supplies and services
16 incurred in preparation for the opening, the conduct of the
17 business and after adjournment of any regular or
18 extraordinary session, and for the necessary operation of the
19 Senate offices, the requisitions for which are to be
20 accompanied by bills to be filed with the auditor.

21 The Clerk of the Senate, with the approval of the
22 President, or the President of the Senate shall have authority
23 to employ such staff personnel during any session of the
24 Legislature as shall be needed in addition to staff personnel
25 authorized by the Senate resolution adopted during any such
26 session. The Clerk of the Senate, with the approval of the
27 President, or the President of the Senate shall have authority
28 to employ such staff personnel between sessions of the
29 Legislature as shall be needed, the compensation of all staff
30 personnel during and between sessions of the Legislature,
31 notwithstanding any such Senate resolution, to be fixed by
32 the President of the Senate. The Clerk is hereby authorized to
33 draw his or her requisitions upon the auditor for the payment
34 of all such staff personnel for such services, payable out of

35 the appropriation for Compensation and Per Diem of Officers
 36 and Employees or Current Expenses and Contingent Fund of
 37 the Senate.

38 For duties imposed by law and by the Senate, the Clerk of
 39 the Senate shall be paid a monthly salary as provided by the
 40 Senate resolution, unless increased between sessions under
 41 the authority of the President, payable out of the
 42 appropriation for Compensation and Per Diem of Officers
 43 and Employees or Current Expenses and Contingent Fund of
 44 the Senate.

45 The distribution of the blue book shall be by the office of
 46 the Clerk of the Senate and shall include 75 copies for each
 47 member of the Legislature and two copies for each classified
 48 and approved high school and junior high or middle school
 49 and one copy for each elementary school within the state.

2-House of Delegates

Fund 0170 FY 2013 Org 2200

1	Compensation of Members (R). 003	\$ 3,000,000
2	Compensation and Per Diem of Officers	
3	and Employees (R). 005	700,000
4	Current Expenses and Contingent	
5	Fund (R). 021	3,954,031
6	Expenses of Members (R). 399	1,700,000
7	BRIM Premium (R). 913	<u>50,000</u>
8	Total.	\$ 9,404,031

9 The appropriations for the House of Delegates for the
 10 fiscal year 2012 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2013. Any balances so
 12 reappropriated may be transferred and credited to the fiscal
 13 year 2012 accounts.

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

18 The Clerk of the House of Delegates, with the approval
19 of the Speaker, is authorized to draw his or her requisitions
20 upon the auditor, payable out of the Current Expenses and
21 Contingent Fund of the House of Delegates, for any bills for
22 supplies and services that may have been incurred by the
23 House of Delegates and not included in the appropriation bill,
24 for bills for services and supplies incurred in preparation for
25 the opening of the session and after adjournment, and for the
26 necessary operation of the House of Delegates' offices, the
27 requisitions for which are to be accompanied by bills to be
28 filed with the auditor.

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

43 For duties imposed by law and by the House of
44 Delegates, including salary allowed by law as keeper of the
45 rolls, the Clerk of the House of Delegates shall be paid a
46 monthly salary as provided in the House resolution, unless
47 increased between sessions under the authority of the

48 Speaker, with the approval of the House committee on rules,
 49 and payable out of the appropriation for Compensation and
 50 Per Diem of Officers and Employees or Current Expenses
 51 and Contingent Fund of the House of Delegates.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2013 Org 2300

1	Joint Committee on		
2	Government and Finance (R)....	104	\$ 6,758,015
3	Legislative Printing (R).	105	760,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	147,250
6	Legislative Computer System (R). . .	107	902,500
7	BRIM Premium (R).	913	<u>27,692</u>
8	Total.....		\$ 8,595,457

9 The appropriations for the joint expenses for the fiscal
 10 year 2012 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2013 with the exception of
 12 fund 0175, activity 319 and activity 666, which shall expire
 13 on June 30, 2011. Any balances reappropriated may be
 14 transferred and credited to the fiscal year 2012 accounts.

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

22 The appropriation for the Tax Reduction and Federal
 23 Funding Increased Compliance (TRAFFIC) (fund 0175,

24 activity 642) is intended for possible general state tax
 25 reductions or the offsetting of any reductions in federal
 26 funding for state programs.

JUDICIAL

4-Supreme Court — General Judicial

Fund 0180 FY 2013 Org 2400

1	Personal Services (R).....	001	\$ 70,199,069
2	Annual Increment (R).	004	870,250
3	Employee Benefits (R).....	010	24,748,388
4	Children's Protection Act (R).	090	2,663,012
5	Current Expenses.....	130	17,486,000
6	Repairs and Alterations.	064	700,000
7	Equipment.	070	2,000,000
8	Judges' Retirement System (R).	110	2,422,000
9	Other Assets.....	690	919,979
10	BRIM Premium (R).....	913	<u>312,254</u>
11	Total.		\$ 122,320,952

12 The appropriations to the Supreme Court of Appeals for
 13 the fiscal years 2010, 2011 and 2012 are to remain in full
 14 force and effect and are hereby reappropriated to June 30,
 15 2013. Any balances so reappropriated may be transferred
 16 and credited to the fiscal year 2012 accounts.

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

22 The appropriation for the Judges' Retirement System
 23 (activity 110) is to be transferred to the Consolidated Public

24 Retirement Board, in accordance with the law relating
 25 thereto, upon requisition of the Administrative Director of the
 26 Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2013 Org 0100

1	Personal Services.....	001	\$ 2,441,095
2	Salary of Governor.....	002	150,000
3	Annual Increment.....	004	30,360
4	Employee Benefits.....	010	777,889
5	Office of Economic Opportunity....	034	126,284
6	Current Expenses.....	130	977,708
7	Repairs and Alterations.	064	9,200
8	Equipment.	070	40,000
9	GO HELP (R).	116	509,912
10	National Governors' Association....	123	60,700
11	Southern States Energy Board.	124	28,732
12	Southern Governors' Association. . .	314	25,000
13	Herbert Henderson Office of		
14	Minority Affairs.....	134	176,000
15	BRIM Premium.	913	156,851
16	P20 Jobs Cabinet.	954	<u>38,000</u>
17	Total.		\$ 5,547,731

18 Any unexpended balances remaining in the
 19 appropriations for Unclassified (fund 0101, activity 099), GO
 20 HELP (fund 0101, activity 116), JOBS Fund (fund 0101,
 21 activity 665), and Pharmaceutical Cost Management Council
 22 (fund 0101, activity 796) at the close of the fiscal year 2012
 23 are hereby reappropriated for expenditure during the fiscal
 24 year 2013.

25 The above appropriation for Herbert Henderson Office
 26 of Minority Affairs (fund 0101, activity 134) shall be
 27 transferred to Fund 1058.

*6-Governor's Office —
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2013 Org 0100

1	Personal Services.....	001	\$	275,000
2	Annual Increment.....	004		1,500
3	Employee Benefits.....	010		97,566
4	Current Expenses.....	130		227,666
5	Repairs and Alterations.	064		<u>5,000</u>
6	Total.		\$	606,732

7 Any unexpended balance remaining in the appropriation
 8 for Unclassified - Total (fund 0102, activity 096) at the close
 9 of the fiscal year 2012 is hereby reappropriated for
 10 expenditure during the fiscal year 2013.

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

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

(WV Code Chapter 5)

Fund 0105 FY 2013 Org 0100

1	Civil Contingent Fund - Total.	114	\$	2,000,000
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2 Any unexpended balances remaining in the
 3 appropriation for Business and Economic Development
 4 Stimulus - Surplus (fund 0105, activity 084), Civil
 5 Contingent Fund - Total (fund 0105, activity 114), May 2009
 6 Flood Recovery - Surplus (fund 0105, activity 236), Civil
 7 Contingent Fund - Total - Surplus (fund 0105, activity 238),
 8 Civil Contingent Fund - Surplus (fund 0105, activity 263),
 9 Business and Economic Development Stimulus (fund 0105,
 10 activity 586), and Civil Contingent Fund (fund 0105, activity
 11 614) at the close of the fiscal year 2012 are hereby
 12 reappropriated for expenditure during the fiscal year 2013.

13 From this appropriation there may be expended, at the
 14 discretion of the Governor, an amount not to exceed \$1,000
 15 as West Virginia’s contribution to the interstate oil compact
 16 commission.

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

*8-Auditor’s Office —
 General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2013 Org 1200

1	Personal Services.....	001	\$ 2,307,257
2	Salary of Auditor.....	002	95,000
3	Annual Increment.....	004	47,686
4	Employee Benefits.....	010	840,635
5	Current Expenses.....	130	408,509
6	Repairs and Alterations.	064	20,500

7	Other Assets.....	690	29,298
8	BRIM Premium.	913	<u>15,428</u>
9	Total.		\$ 3,764,313

10 Any unexpended balances remaining in the
 11 appropriations for Unclassified - Surplus (fund 0116, activity
 12 097), Unclassified (fund 0116, activity 099), and Volunteer
 13 Fire Department Workers Compensation Subsidy (fund 0116,
 14 activity 832) at the close of the fiscal year 2012 are hereby
 15 reappropriated for expenditure during the fiscal year 2013.

9-Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2013 Org 1300

1	Personal Services.....	001	\$ 1,993,886
2	Salary of Treasurer.....	002	95,000
3	Annual Increment.....	004	26,440
4	Employee Benefits.....	010	684,681
5	Unclassified (R).....	099	39,000
6	Current Expenses.....	130	622,431
7	Repairs and Alterations.	064	10,000
8	Equipment.	070	10,000
9	Abandoned Property Program.	118	258,855
10	Other Assets.....	690	10,000
11	Tuition Trust Fund (R).....	692	147,045
12	BRIM Premium.	913	<u>30,809</u>
13	Total.		\$ 3,928,147

14 Any unexpended balances remaining in the
 15 appropriations for Unclassified (fund 0126, activity 099) and
 16 Tuition Trust Fund (fund 0126, activity 692) at the close of
 17 the fiscal year 2012 are hereby reappropriated for
 18 expenditure during the fiscal year 2013.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2013 Org 1400

1	Personal Services.....	001	\$ 4,146,646
2	Salary of Commissioner.....	002	95,000
3	Annual Increment.....	004	102,356
4	Employee Benefits.....	010	1,850,538
5	Animal Identification Program.	039	207,068
6	State Farm Museum.....	055	104,500
7	Unclassified (R).....	099	119,818
8	Current Expenses.....	130	500,000
9	Repairs and Alterations.	064	100,000
10	Equipment.	070	62,141
11	Gypsy Moth Program (R).	119	1,560,000
12	Huntington Farmers Market.....	128	47,500
13	Black Fly Control (R).	137	722,756
14	Donated Foods Program.....	363	50,000
15	Predator Control (R).	470	447,000
16	Logan Farmers Market.....	501	45,985
17	Bee Research.	691	77,109
18	Capital Outlay and Maintenance (R). 755		75,000
19	Microbiology Program (R).....	785	165,816
20	Moorefield Agriculture Center (R). .	786	1,210,607
21	Chesapeake Bay Watershed.....	830	125,443
22	Livestock Care Standards Board. ...	843	15,000
23	BRIM Premium.	913	130,202
24	Threat Preparedness.....	942	81,367
25	WV Food Banks.....	969	115,000
26	Senior's Farmers' Market Nutrition		
27	Coupon Program.	970	<u>62,137</u>
28	Total.		\$ 12,218,989
29	Any unexpended balances remaining in the		
30	appropriations for Unclassified - Surplus (fund 0131, activity		

31 097), Unclassified (fund 0131, activity 099), Gypsy Moth
 32 Program (fund 0131, activity 119), Black Fly Control (fund
 33 0131, activity 137), Predator Control (fund 0131, activity
 34 470), Capital Outlay and Maintenance (fund 0131, activity
 35 755), Microbiology Program (fund 0131, activity 785),
 36 Moorefield Agriculture Center (fund 0131, activity 786),
 37 Agricultural Disaster and Mitigation Needs - Surplus (fund
 38 0131, activity 850), and Predator Control - Surplus (fund
 39 0131, activity 924) at the close of the fiscal year 2012 are
 40 hereby reappropriated for expenditure during the fiscal year
 41 2013.

42 A portion of the Unclassified or Current Expenses
 43 appropriation may be transferred to a special revenue fund
 44 for the purpose of matching federal funds for marketing and
 45 development activities.

46 From the above appropriation for WV Food Banks
 47 (activity 969), \$20,000 is for House of Hope and the
 48 remainder of the appropriation shall be allocated to the
 49 Huntington Food Bank and the Mountaineer Food Bank in
 50 Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2013 Org 1400

1	Personal Services.....	001	\$	511,152
2	Annual Increment.....	004		11,580
3	Employee Benefits.....	010		235,404
4	Unclassified (R)	099		103,597
5	Current Expenses.....	130		317,841
6	Repairs and Alterations.	064		10,000
7	Equipment.	070		10,000
8	Soil Conservation Projects (R).....	120		8,382,948
9	Marlinton Flood Wall (R).	757		750,000

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10	BRIM Premium.	913 <u>26,326</u>
11	Total.	\$ 10,358,848

12 Any unexpended balances remaining in the
13 appropriations for Unclassified (fund 0132, activity 099),
14 Soil Conservation Projects (fund 0132, activity 120), Soil
15 Conservation Projects - Surplus (fund 0132, activity 269) and
16 Marlinton Flood Wall (fund 0132, activity 757) at the close
17 of the fiscal year 2012 are hereby reappropriated for
18 expenditure during the fiscal year 2013.

*12-Department of Agriculture —
Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2013 Org 1400

1	Personal Services.	001 \$ 427,055
2	Annual Increment.	004 8,621
3	Employee Benefits.	010 181,513
4	Unclassified.	099 7,182
5	Current Expenses.	130 <u>94,763</u>
6	Total.	\$ 719,134

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

*13-Department of Agriculture —
Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2013 Org 1400

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

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

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

(WV Code Chapter 8A)

Fund 0607 FY 2013 Org 1400

1	Personal Services.	001	\$	75,000
2	Employee Benefits.	010		26,976
3	Unclassified.	099		<u>750</u>
4	Total.		\$	102,726

5 Any unexpended balance remaining in the appropriation
6 for Unclassified - Total (fund 0607, activity 096) at the close
7 of the fiscal year 2012 is hereby reappropriated for
8 expenditure during the fiscal year 2013.

15-Attorney General

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

Fund 0150 FY 2013 Org 1500

1	Personal Services (R).	001	\$	2,228,612
2	Salary of Attorney General.	002		95,000
3	Annual Increment.	004		58,175
4	Employee Benefits (R).	010		1,132,115
5	Unclassified (R).	099		59,624
6	Current Expenses.	130		685,773
7	Repairs and Alterations.	064		7,500
8	Equipment.	070		40,000
9	Criminal Convictions and			
10	Habeas Corpus Appeals (R).	260		1,190,647
11	Better Government Bureau	740		325,766

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APPROPRIATIONS

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12	BRIM Premium	913		<u>118,590</u>
13	Total.		\$	5,941,802

14 Any unexpended balances remaining in the above
15 appropriations for Personal Services (fund 0150, activity
16 001), Employee Benefits (fund 0150, activity 010),
17 Unclassified (fund 0150, activity 099), Criminal Convictions
18 and Habeas Corpus Appeals (fund 0150, activity 260), and
19 Agency Client Revolving Liquidity Pool (fund 0150, activity
20 362) at the close of the fiscal year 2012 are hereby
21 reappropriated for expenditure during the fiscal year 2013.

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

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2013 Org 1600

1	Personal Services.	001	\$	606,441
2	Salary of Secretary of State.	002		95,000
3	Annual Increment.	004		3,240
4	Employee Benefits.	010		249,552
5	Unclassified (R).	099		13,072
6	Current Expenses.	130		324,333

7	BRIM Premium.	913		<u>16,000</u>
8	Total.		\$	1,307,638

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified - Surplus (fund 0155, activity
 11 097), Unclassified (fund 0155, activity 099), and Technology
 12 Improvements - Surplus (fund 0155, activity 725) at the close
 13 of the fiscal year 2012 are hereby reappropriated for
 14 expenditure during the fiscal year 2013.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2013 Org 1601

1	Personal Services.	001	\$	2,310
2	Employee Benefits.	010		177
3	Current Expenses.	130		<u>7,274</u>
4	Total.		\$	9,761

DEPARTMENT OF ADMINISTRATION

*18-Department of Administration —
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2013 Org 0201

1	Personal Services.	001	\$	443,414
2	Annual Increment.	004		3,026
3	Employee Benefits.	010		139,705
4	Unclassified.	099		9,397
5	Current Expenses.	130		97,056
6	Repairs and Alterations.	064		100
7	Equipment.	070		5,000

82	APPROPRIATIONS	[Ch. 10
8	Financial Advisor (R).....	304 200,000
9	Lease Rental Payments.	516 16,000,000
10	Design-Build Board.....	540 19,068
11	Other Assets.....	690 5,000
12	BRIM Premium.	913 <u>3,990</u>
13	Total.	\$ 16,925,756

14 Any unexpended balances remaining in the
15 appropriations for Financial Advisor (fund 0186, activity
16 304) and Debt Reduction (fund 0186, activity 635) at the
17 close of the fiscal year 2012 are hereby reappropriated for
18 expenditure during the fiscal year 2013.

19 The appropriation for Lease Rental Payments shall be
20 disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2013 Org 0205

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

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2013 Org 0209

1	Personal Services.....	001 \$ 83,590
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2	Annual Increment.....	004	1,101
3	Employee Benefits.....	010	34,254
4	Unclassified.	099	2,438
5	Current Expenses.....	130	113,562
6	Repairs and Alterations.	064	1,500
7	Equipment.	070	1,000
8	GAAP Project (R).	125	676,790
9	Other Assets.....	690	2,000
10	BRIM Premium.	913	<u>4,526</u>
11	Total.		\$ 920,761

12 Any unexpended balance remaining in the appropriation
 13 for GAAP Project (fund 0203, activity 125) at the close of the
 14 fiscal year 2012 is hereby reappropriated for expenditure
 15 during the fiscal year 2013.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2013 Org 0211

1	Personal Services.....	001	\$ 1,744,207
2	Annual Increment.....	004	27,089
3	Employee Benefits.....	010	897,138
4	Unclassified.	099	29,982
5	Current Expenses.....	130	1,106,133
6	Equipment.	070	1,000
7	Fire Service Fee.....	126	14,000
8	Preservation and Maintenance of		
9	Statues and Monuments on		
10	Capitol Grounds . .	371	68,000
11	Other Assets.....	690	1,000
12	BRIM Premium.	913	<u>112,481</u>
13	Total.		\$ 4,001,030

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

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2013 Org 0213

1	Personal Services.....	001	\$	722,838
2	Annual Increment.....	004		12,095
3	Employee Benefits.....	010		292,777
4	Unclassified.....	099		9,771
5	Current Expenses.....	130		131,932
6	Repairs and Alterations.....	064		700
7	Equipment.....	070		1,000
8	Other Assets.....	690		1,000
9	BRIM Premium.....	913		<u>6,167</u>
10	Total.....		\$	1,178,280

11 The division of highways shall reimburse Fund 2031
 12 within the division of purchasing for all actual expenses
 13 incurred pursuant to the provisions of W.Va. Code §17-2A-
 14 13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2013 Org 0215

1	Personal Services.....	001	\$	576,312
2	Annual Increment.....	004		4,680
3	Employee Benefits.....	010		355,403

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2013 Org 0220

1	Personal Services.....	001	\$	417,356
2	Annual Increment.....	004		4,200
3	Employee Benefits.....	010		132,728
4	Unclassified.....	099		7,553
5	Current Expenses.....	130		188,382
6	Repairs and Alterations.....	064		500
7	Other Assets.....	690		2,000
8	BRIM Premium.....	913		<u>2,788</u>
9	Total.....		\$	755,507

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2013 Org 0221

1	Personal Services.....	001	\$	698,376
2	Annual Increment.....	004		11,220
3	Employee Benefits.....	010		298,050
4	Unclassified.....	099		318,531
5	Public Defender Corporations.....	352		18,301,266
6	Appointed Counsel Fees (R).....	788		12,223,115
7	BRIM Premium.....	913		<u>4,216</u>
8	Total.....		\$	31,854,774

9 Any unexpended balance remaining in the above
 10 appropriation for Appointed Counsel Fees (fund 0226,
 11 activity 788) at the close of the fiscal year 2012 is hereby
 12 reappropriated for expenditure during the fiscal year 2013.

13 The director shall have the authority to transfer funds
 14 from the appropriation to Public Defender Corporations (fund

15 0226, activity 352) to Appointed Counsel Fees (fund 0226,
16 activity 788).

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

(WV Code Chapter 5A)

Fund 0233 FY 2013 Org 0224

1	Personal Services.....	001	\$	1,800
2	Employee Benefits.....	010		1,377
3	Current Expenses.....	130		<u>1,878</u>
4	Total.		\$	5,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2013 Org 0225

1	PEIA Subsidy.....	801	\$	3,500,000
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2 The above appropriation for PEIA Subsidy (fund 0200,
3 activity 801) may be transferred to a special revenue fund and
4 shall be utilized by the West Virginia Public Employee’s
5 Insurance Agency for the purposes of offsetting benefit
6 changes and to offset the aggregate premium cost-sharing
7 percentage requirements between employers and employees.
8 Such amount shall not be included in the calculation of the
9 plan year aggregate premium cost-sharing percentages
10 between employers and employees.

11 The division of highways, division of motor vehicles,
12 public service commission and other departments, bureaus,
13 divisions, or commissions operating from special revenue
14 funds and/or federal funds shall pay their proportionate share

15 of the public employees health insurance cost for their
16 respective divisions.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2013 Org 0228

1	Forensic Medical Examinations (R)..	683	\$	139,927
2	Federal Funds/Grant Match (R).....	749		<u>99,880</u>
3	Total.		\$	239,807

4 Any unexpended balances remaining in the
5 appropriations for Forensic Medical Examinations (fund
6 0557, activity 683) and Federal Funds/Grant Match (fund
7 0557, activity 749) at the close of the fiscal year 2012 are
8 hereby reappropriated for expenditure during the fiscal year
9 2013.

31-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2013 Org 0230

1	Personal Services.....	001	\$	86,036
2	Annual Increment.....	004		1,200
3	Employee Benefits.....	010		45,431
4	Current Expenses.....	130		10,295,876
5	Autism Spectrum Disorder Coverage.	856		<u>497,035</u>
6	Total.		\$	10,925,578

32-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2013 Org 0233

1	Personal Services.....	001	\$	524,095
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Ch. 10]	APPROPRIATIONS	89
2	Annual Increment..... 004	7,000
3	Employee Benefits..... 010	273,525
4	Unclassified. 099	10,027
5	Current Expenses..... 130	176,109
6	Repairs and Alterations. 064	1,300
7	Equipment. 070	5,000
8	Other Assets..... 690	1,000
9	BRIM Premium. 913	<u>4,200</u>
10	Total.	\$ 1,002,256

DEPARTMENT OF COMMERCE

33-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2013 Org 0304

1 Any unexpended balance remaining in the appropriation
2 for Tourism - Special Projects (fund 0246, activity 859) at the
3 close of the fiscal year 2012 is hereby reappropriated for
4 expenditure during the fiscal year 2013.

34-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2013 Org 0305

1	Personal Services..... 001	\$ 2,569,163
2	Annual Increment..... 004	77,000
3	Employee Benefits..... 010	1,026,548
4	Unclassified. 099	45,000
5	Current Expenses..... 130	631,706
6	Repairs and Alterations. 064	10,000
7	Equipment. 070	64,416
8	BRIM Premium. 913	<u>77,676</u>
9	Total.	\$ 4,501,509

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

35-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2013 Org 0306

1	Personal Services.....	001	\$ 1,296,229
2	Annual Increment.....	004	35,559
3	Employee Benefits.....	010	492,382
4	Unclassified.....	099	35,393
5	Current Expenses.....	130	193,601
6	Repairs and Alterations.....	064	14,000
7	Equipment.....	070	7,500
8	Mineral Mapping System (R).....	207	1,441,234
9	Other Assets.....	690	5,500
10	BRIM Premium.....	913	<u>20,228</u>
11	Total.....		\$ 3,541,626

12 Any unexpended balance remaining in the appropriation
 13 for Mineral Mapping System (fund 0253, activity 207) at the
 14 close of the fiscal year 2012 is hereby reappropriated for
 15 expenditure during the fiscal year 2013.

16 The above Unclassified and Current Expenses
 17 appropriations include funding to secure federal and other
 18 contracts and may be transferred to a special revolving fund
 19 (fund 3105, activity 099) for the purpose of providing
 20 advance funding for such contracts.

36-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2013 Org 0307

1	Personal Services.....	001	\$ 3,427,535
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2	Annual Increment.....	004	78,600
3	Employee Benefits.....	010	1,186,253
4	ARC-WV Home of Your Own		
5	Alliance.....	048	36,480
6	Unclassified.....	099	209,000
7	Current Expenses.....	130	*3,145,169
8	Repairs and Alterations.....	064	4,000
9	Equipment.....	070	200,000
10	Southern WV Career Center.....	071	448,476
11	Partnership Grants (R).....	131	605,150
12	Local Economic Development		
13	Partnerships (R).....	133	1,705,440
14	ARC Assessment.....	136	152,585
15	Mid-Atlantic Aerospace Complex... ..	231	161,226
16	Guaranteed Work Force Grant (R)..	242	1,050,569
17	Robert C. Byrd Institute for		
18	Advanced/Flexible Manufacturing		
19	- Technology Outreach and		
20	Programs for Environmental		
21	and Advanced Technologies.....	367	474,058
22	Advantage Valley.....	389	67,762
23	Chemical Alliance Zone.....	390	45,600
24	WV High Tech Consortium.....	391	215,034
25	Regional Contracting Assistance		
26	Center.....	418	225,000
27	Highway Authorities.....	431	791,436
28	Charleston Farmers Market.....	476	91,200
29	International Offices (R).....	593	629,867
30	Small Business Development (R)....	703	200,000
31	WV Manufacturing Extension		
32	Partnership.....	731	131,328
33	Polymer Alliance.....	754	104,880
34	Regional Councils.....	784	401,280
35	Mainstreet Program.....	794	186,634

*CLERK'S NOTE: The Governor reduced Item 36, line 7, Current Expenses, by \$250,000, from \$3,395,169 to \$3,145,169.

36	National Institute of Chemical		
37	Studies.....	805	64,296
38	Local Economic Development		
39	Assistance (R).....	819	5,800,000
40	I-79 Development Council.....	824	50,050
41	Mingo County Post Mine Land		
42	Use Projects 841		250,000
43	BRIM Premium.....	913	26,096
44	4-H Camp Improvements (R).....	941	650,000
45	Hatfield McCoy Recreational Trail..	960	228,000
46	Hardwood Alliance Zone.....	992	<u>38,851</u>
47	Total.....		\$ 23,331,855

48 Any unexpended balances remaining in the appropriations
49 for Tourism — Unclassified — Surplus (fund 0256, activity
50 075), Unclassified - Surplus (fund 0256, activity 097),
51 Partnership Grants (fund 0256, activity 131), Local
52 Economic Development Partnerships (fund 0256, activity
53 133), Guaranteed Work Force Grant (fund 0256, activity
54 242), Local Economic Development Assistance — Surplus
55 (fund 0256, activity 266), Industrial Park Assistance (fund
56 0256, activity 480), Leverage Technology and Small
57 Business Development Program (fund 0256, activity 525),
58 International Offices (fund 0256, activity 593), Small
59 Business Development (fund 0256, activity 703), Local
60 Economic Development Assistance (fund 0256, activity 819),
61 Economic Development Assistance (fund 0256, activity 900),
62 and 4-H Camp Improvements (fund 0256, activity 941) at the
63 close of the fiscal year 2012 are hereby reappropriated for
64 expenditure during the fiscal year 2013.

65 The above appropriation to Local Economic Development
66 Partnerships (activity 133) shall be used by the West Virginia
67 development office for the award of funding assistance to
68 county and regional economic development corporations or
69 authorities participating in the certified development
70 community program developed under the provisions of
71 W.Va. Code §5B-2-14. The West Virginia development

72 office shall award the funding assistance through a matching
73 grant program, based upon a formula whereby funding
74 assistance may not exceed \$34,000 per county served by an
75 economic development or redevelopment corporation or
76 authority.

77 From the above appropriation for Current Expenses (fund
78 0256, activity 130) \$250,000 is for TechConnect; \$250,000
79 is for Tamarack Foundation; \$150,000 is for the Citizens
80 Conservation Corps; *\$100,000 is for One Voice and
81 \$1,000,000 is to be transferred to Development Office
82 Promotion Fund (Fund 3171).

83 From the above appropriation for Highway Authorities
84 (fund 0256, activity 431), \$115,187 is for King Coal
85 Highway Authority; \$115,187 is for Coal Field Expressway
86 Authority; \$92,150 is for Coal Heritage Highway Authority;
87 \$92,150 is for Coal Heritage Area Authority; \$46,076 is for
88 Little Kanawha River Parkway; \$82,935 is for Midland Trail
89 Scenic Highway Association; \$52,525 is for Shawnee
90 Parkway Authority; \$92,150 is for Corridor G Regional
91 Development Authority; \$57,000 is for Corridor H Authority;
92 and \$46,076 is for Route 2 I68 Highway Authority.

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*CLERK'S NOTE: The Governor reduced Item 36, line 80, by \$250,000, from \$350,000 to \$100,000. The Governor also deleted language in Item 36, lines 93 through 96, which read "From the above appropriation for Local Economic Development Assistance (fund 0256, activity 819) the division may retain an amount not to exceed one percent of the total appropriation for administrative purposes."

37-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2013 Org 0308

1	Personal Services.....	001	\$	1,744,977
2	Annual Increment.....	004		32,501
3	Employee Benefits.....	010		811,659
4	Unclassified.	099		34,205
5	Current Expenses.....	130		716,462
6	Repairs and Alterations.	064		40,000
7	BRIM Premium.	913		<u>47,521</u>
8	Total.		\$	3,427,325

*38-Division of Labor -**Occupational Safety and Health Fund*

(WV Code Chapter 21)

Fund 0616 FY 2013 Org 0308

1	Personal Services.....	001	\$	55,000
2	Employee Benefits.....	010		35,000
3	Unclassified.	099		0
4	Current Expenses.....	130		109,015
5	BRIM Premium.	913		<u>985</u>
6	Total.		\$	200,000

39-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2013 Org 0310

1	Personal Services.....	001	\$	9,202,183
2	Annual Increment.....	004		292,050

3	Employee Benefits.....	010	4,417,715
4	Unclassified.	099	11,220
5	Current Expenses.....	130	500
6	Repairs and Alterations.	064	400
7	Equipment.	070	400
8	Buildings.	258	500
9	Litter Control Conservation Officers.	564	159,382
10	Upper Mud River Flood Control. ...	654	180,522
11	Other Assets.....	690	200
12	Land	730	400
13	Law Enforcement.....	806	2,954,720
14	BRIM Premium.	913	<u>293,374</u>
15	Total.		\$ 17,513,566

16 Any unexpended balances remaining in the
 17 appropriations for Land Purchase (fund 0265, activity 761)
 18 and Fish Hatchery Improvements (fund 0265, activity 825) at
 19 the close of the fiscal year 2012 are hereby reappropriated for
 20 expenditure during the fiscal year 2013.

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

40-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2013 Org 0314

1	Personal Services.....	001	\$ 7,477,243
2	Annual Increment.....	004	83,914
3	Employee Benefits.....	010	2,860,731
4	Unclassified.	099	120,000
5	Current Expenses.....	130	1,851,467

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APPROPRIATIONS

[Ch. 10

6	Coal Dust and Rock Dust Sampling..	270	564,908
7	BRIM Premium.	913	<u>68,134</u>
8	Total.		\$ 13,026,397

9 Included in the above appropriation for Current
 10 Expenses (fund 0277, activity 130) is \$500,000 for the sixth
 11 year of Southern West Virginia Community and Technical
 12 College Mine Rescue and Rapid Response Team.

41-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2013 Org 0319

1	Personal Services.....	001	\$ 143,110
2	Annual Increment.....	004	1,200
3	Employee Benefits.....	010	48,043
4	Mine Safety Technology Task Force.	061	115,000
5	Unclassified.	099	3,000
6	Current Expenses.....	130	23,493
7	Repairs and Alterations.	064	300
8	Equipment.	070	250
9	Board of Miners Training		
10	and Certification.	667	48,750
11	WV Diesel Equipment Commission.	712	<u>37,050</u>
12	Total.		\$ 420,196

42-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2013 Org 0320

1	Personal Services.....	001	\$ 30,500
2	Employee Benefits.....	010	3,523
3	Unclassified.	099	500

98	APPROPRIATIONS	[Ch. 10
5	Current Expenses..... 130	66,165
6	Repairs and Alterations. 064	200
7	Equipment. 070	<u>250</u>
8	Total.	\$ 392,275

45-Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2013 Org 0328

1	Personal Services..... 001	\$ 159,000
2	Annual Increment..... 004	3,500
3	Employee Benefits..... 010	57,231
4	Unclassified. 099	19,200
5	Current Expenses..... 130	1,667,314
6	Repairs and Alterations. 064	1,000
7	Equipment. 070	16,000
8	BRIM Premium. 913	<u>3,297</u>
9	Total.	\$ 1,926,542

10 From the above appropriation for Current Expenses
 11 (fund 0612, activity 130) \$693,500 is for West Virginia
 12 University and \$693,500 is for Southern West Virginia
 13 Community and Technical College for the Mine Training and
 14 Energy Technologies Academy.

DEPARTMENT OF EDUCATION

*46-State Department of Education -
 School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2013 Org 0402

1	Personal Services..... 001	\$ 255,730
2	Annual Increment..... 004	5,730

11	Teacher Mentor (R).	158	842,034
12	National Teacher Certification (R). . .	161	400,000
13	Buildings.	258	1,000
14	Technology Repair and		
15	Modernization.	298	951,003
16	HVAC Technicians.	355	483,638
17	Early Retirement Notification		
18	Incentive.	366	275,000
19	MATH Program.	368	396,251
20	Assessment Programs.	396	2,529,284
21	21 st Century Fellows.	507	297,188
22	English as a Second Language.	528	350,000
23	Teacher Reimbursement.	573	297,188
24	Hospitality Training.	600	343,642
25	Hi-Y Youth in Government.	616	100,000
26	High Acuity Special Needs (R).	634	1,500,000
27	Foreign Student Education.	636	97,079
28	State Teacher of the Year.	640	45,807
29	Principals Mentorship.	649	79,250
30	Other Assets.	690	50,000
31	Land.	730	1,000
32	Local Solutions Dropout		
33	Prevention and Recovery.	780	2,230,000
34	Pilot Program of Structured In-		
35	School Alternatives.	826	96,000
36	Elementary/Middle Alternative		
37	Schools.	833	1,000,000
38	21 st Century Innovation Zones.	876	435,694
39	Student Enrichment Program.	879	6,200,000
40	21 st Century Learners (R).	886	2,602,870
41	BRIM Premium.	913	285,686
42	High Acuity Health Care Needs		
43	Program.	920	1,000,000
44	21 st Century Assessment and		
45	Professional Development.	931	4,458,576
46	WV Commission on Holocaust		
47	Education.	935	15,000
48	Allowance for Extraordinary		
49	Sustained Growth.	943	286,898

50	Regional Education Service		
51	Agencies.	972	3,990,000
52	Educational Program Allowance.	996	<u>450,000</u>
53	Total.		\$ 53,106,950

54 The above appropriation includes the state board of
55 education and their executive office.

56 Any unexpended balances remaining in the
57 appropriations for Unclassified (fund 0313, activity 099),
58 Teacher Mentor (fund 0313, activity 158), National Teacher
59 Certification (fund 0313, activity 161), High Acuity Special
60 Needs (fund 0313, activity 634), and 21st Century Learners
61 (fund 0313, activity 886) at the close of the fiscal year 2012
62 are hereby reappropriated for expenditure during the fiscal
63 year 2013.

64 The above appropriation for Technology System
65 Specialists (activity 062), shall first be used for the
66 continuance of current pilot projects. The remaining balance,
67 if any, may be used to expand the pilot project for additional
68 counties.

69 Included in the above appropriation for Current Expenses
70 (activity 130) is \$50,000 for the second year of a five year
71 special community development school pilot program per W.Va.
72 Code 18-3-12.

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***CLERK’S NOTE:** The Governor deleted language in Item 48, lines 73 through 76, which read “From the above appropriation for National Teacher Certification (activity 161), any funds remaining after all initial certification expenses have been met shall be for the reimbursement of NBPTS certificate renewal.”

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

83 The above appropriation for Local Solutions Dropout
 84 Prevention and Recovery (activity 780) shall be transferred
 85 to the Local Solutions Dropout Prevention and Recovery
 86 Fund.

87 From the above appropriation for Educational Program
 88 Allowance (activity 996), \$100,000 shall be expended for
 89 Webster County Board of Education for Hacker Valley;
 90 \$150,000 for the Randolph County Board of Education for
 91 Pickens School; and \$100,000 shall be for the Preston County
 92 Board of Education for the Aurora School and \$100,000 is
 93 for Project Based Learning in STEM fields.

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

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2013 Org 0402

1	Special Education - Counties.	159	\$ 7,271,757
2	Special Education - Institutions.	160	3,823,331
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers.	302	635,846
6	Education of Institutionalized		
7	Juveniles and Adults (R).	472	<u>16,850,007</u>
8	Total.		\$ 28,580,941

9 Any unexpended balance remaining in the appropriation
 10 for Education of Institutionalized Juveniles and Adults (fund

11 0314, activity 472) at the close of the fiscal year 2012 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2013.

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

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

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2013 Org 0402

1	Other Current Expenses.	022	\$	154,832,559
2	Advanced Placement.	053		470,271
3	Professional Educators.	151		876,996,897
4	Service Personnel.	152		290,963,958
5	Fixed Charges.	153		105,032,906
6	Transportation.	154		81,460,742
7	Professional Student Support			
8	Services.	655		37,927,850
9	Improved Instructional Programs. . .	156		40,612,113
10	21st Century Strategic Technology			
11	Learning Growth.	936		<u>7,611,965</u>
12	Basic Foundation Allowances.			1,595,909,261
13	Less Local Share.			<u>(394,825,898)</u>
14	Total Basic State Aid.			1,201,083,363
15	Public Employees' Insurance			
16	Matching.	012		226,482,702
17	Teachers' Retirement System.	019		66,018,000
18	School Building Authority.	453		23,308,645
19	Retirement Systems - Unfunded			
20	Liability.	775		<u>364,658,000</u>
21	Total.			\$1,881,550,710

*51-State Board of Education -
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2013 Org 0402

1	Personal Services.	001	\$	1,075,000
2	Annual Increment.	004		25,500
3	Employee Benefits.	010		379,005
4	Unclassified.	099		20,000
5	Current Expenses.	130		1,145,878
6	Repairs and Alterations.	064		10,000
7	Equipment.	070		10,000
8	Wood Products - Forestry Vocational			
9	Program.	146		63,503
10	Albert Yanni Vocational Program. .	147		142,650
11	Vocational Aid.	148		18,406,624
12	Adult Basic Education.	149		4,212,600
13	Program Modernization.	305		956,014
14	Technical & Secondary Program			
15	Improvement Staff.	330		304,682
16	GED Testing (R).	339		1,060,395
17	Other Assets.	690		10,000
18	FFA Grant Awards.	839		12,428
19	Pre-Engineering Academy Program.	840		<u>286,804</u>
20	Total.			\$ 28,121,083

21 Any unexpended balance remaining in the appropriation
22 for GED Testing (fund 0390, activity 339) at the close of the
23 fiscal year 2012 is hereby reappropriated for expenditure
24 during the fiscal year 2013.

*52-State Board of Education -
Division of Education Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2013 Org 0402

1	Personal Services.....	001	\$	420,000
2	Annual Increment.....	004		4,900
3	Employee Benefits.....	010		120,261
4	Unclassified.....	099		7,000
5	Current Expenses.....	130		146,899
6	Repairs and Alterations.....	064		1,000
7	Equipment.....	070		1,000
8	Other Assets.....	690		<u>1,000</u>
9	Total.....		\$	702,060

53-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2013 Org 0403

1	Personal Services.....	001	\$	8,558,708
2	Annual Increment.....	004		480
3	Employee Benefits.....	010		2,890,037
4	Unclassified.....	099		132,879
5	Current Expenses.....	130		1,246,405
6	Repairs and Alterations.....	064		145,000
7	Equipment.....	070		50,000
8	Buildings.....	258		100,000
9	Other Assets.....	690		73,000
10	Capital Outlay and Maintenance (R).	755		62,500
11	BRIM Premium.....	913		<u>68,628</u>
12	Total.....		\$	13,327,637

13 Any unexpended balance remaining in the appropriation
 14 for Capital Outlay and Maintenance (fund 0320, activity 755)
 15 at the close of the fiscal year 2012 is hereby reappropriated
 16 for expenditure during the fiscal year 2013.

DEPARTMENT OF EDUCATION AND THE ARTS*54-Department of Education and the Arts -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2013 Org 0431

1	Personal Services.....	001	\$	662,750
2	Annual Increment.....	004		5,900
3	Employee Benefits.....	010		199,600
4	Unclassified (R).....	099		35,000
5	Current Expenses.....	130		126,016
6	Center for Professional			
7	Development (R).....	115		2,729,771
8	National Youth Science Camp	132		290,000
9	WV Humanities Council.	168		450,000
10	Benedum Professional Development			
11	Collaborative (R).....	427		927,500
12	Governor's Honor Academy (R).	478		600,780
13	Energy Express.	861		470,000
14	BRIM Premium.	913		4,509
15	Special Olympic Games.....	966		<u>25,000</u>
16	Total.		\$	6,526,826

17 Any unexpended balances remaining in the
18 appropriations for Unclassified (fund 0294, activity 099),
19 Center for Professional Development (fund 0294, activity
20 115), Benedum Professional Development Collaborative
21 (fund 0294, activity 427), Governor's Honor Academy (fund
22 0294, activity 478), and Educational Enhancements - Surplus
23 (fund 0294, activity 927) at the close of the fiscal year 2012
24 are hereby reappropriated for expenditure during the fiscal
25 year 2013.

26 From the above appropriation for Current Expenses
 27 (activity 130), \$100,000 is for Globaloria.

55-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2013 Org 0432

1	Personal Services.....	001	\$ 2,763,729
2	Annual Increment.....	004	67,114
3	Employee Benefits.....	010	1,283,414
4	Unclassified (R).....	099	131,341
5	Current Expenses.....	130	919,546
6	Repairs and Alterations.	064	44,000
7	Equipment.	070	1,000
8	Buildings.	258	1,000
9	Other Assets.....	690	10,000
10	Land.....	730	100
11	Culture and History Programming... ..	732	292,945
12	Capital Outlay and Maintenance (R). ..	755	100,000
13	Historical Highway Marker		
14	Program (R).....	844	75,185
15	BRIM Premium.	913	<u>33,677</u>
16	Total.		\$ 5,723,051

17 Any unexpended balances remaining in the
 18 appropriations for Unclassified - Surplus (fund 0293, activity
 19 097), Unclassified (fund 0293, activity 099), Capital Outlay,
 20 Repairs and Equipment (fund 0293, activity 589), Capital
 21 Outlay, Repairs and Equipment — Surplus (fund 0293,
 22 activity 677), Capital Outlay and Maintenance (fund 0293,
 23 activity 755), and Historical Highway Marker Program (fund
 24 0293, activity 844) at the close of the fiscal year 2012 are
 25 hereby reappropriated for expenditure during the fiscal year
 26 2013.

27 From the above appropriation for Unclassified (activity
28 099), \$75,000 is for the Strand Theatre.

29 From the above appropriation for Unclassified (activity
30 099), and Current Expenses (activity 130), is *\$100,000 for
31 the WVSOM in conjunction with WV Public Broadcasting
32 for the Healthy Choices Childrens Television Program.

33 The Current Expense appropriation includes funding for
34 the arts funds, department programming funds, grants, fairs
35 and festivals and Camp Washington Carver and shall be
36 expended only upon authorization of the division of culture
37 and history and in accordance with the provisions of Chapter
38 5A, Article 3, and Chapter 12 of the Code.

39 From the above appropriation for Current Expenses
40 (activity 130), \$100,000 shall be used for the
41 Sesquicentennial Celebration and \$4,500 shall be used for
42 Z.D. Ramsdell House.

56-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2013 Org 0433

1	Personal Services.....	001	\$ 1,009,270
2	Annual Increment.....	004	37,080
3	Employee Benefits.....	010	438,900
4	Current Expenses.....	130	233,332
5	Repairs and Alterations.	064	6,500
6	Equipment.	070	450
7	Services to Blind & Handicapped. . .	181	184,903
8	BRIM Premium.	913	<u>15,177</u>
9	Total.		\$ 1,925,612

*CLERK'S NOTE: The Governor reduced Item 55, line 30, Current Expenses, by \$150,000, from \$250,000 to \$100,000.

57-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2013 Org 0439

1	Personal Services.....	001	\$ 3,254,489
2	Annual Increment.....	004	75,360
3	Employee Benefits.....	010	1,310,837
4	Current Expenses.....	130	213,868
5	Repairs and Alterations.	064	123,405
6	Equipment.	070	275,000
7	Mountain Stage.	249	300,000
8	Capital Outlay and Maintenance (R).	755	50,000
9	BRIM Premium.	913	<u>41,929</u>
10	Total.		\$ 5,644,888

11 Any unexpended balances remaining in the
 12 appropriations for Unclassified (fund 0300, activity 099) and
 13 Capital Outlay and Maintenance (fund 0300, activity 755) at
 14 the close of the fiscal year 2012 are hereby reappropriated for
 15 expenditure during the fiscal year 2013.

16 From the above appropriation for Current Expenses
 17 (fund 0300, activity 130) \$45,000 is for the WV Music Hall
 18 of Fame.

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

(WV Code Chapter 18)

Fund 0310 FY 2013 Org 0932

1	Personal Services.....	001	\$ 7,537,569
1	Annual Increment.....	004	166,317
2	Independent Living Services (R)....	009	500,000

110	APPROPRIATIONS	[Ch. 10
3	Employee Benefits..... 010	2,746,504
4	Current Expenses..... 130	502,066
5	Workshop Development..... 163	2,116,149
6	Supported Employment Extended	
7	Services (R)..... 206	100,000
8	Ron Yost Personal Assistance	
9	Fund (R). 407	388,698
10	Employment Attendant Care	
11	Program 598	156,065
12	BRIM Premium. 913	<u>67,033</u>
13	Total.	\$ 14,280,401

14 Any unexpended balance remaining in the appropriation
15 for Independent Living Services (fund 0310, activity 009),
16 Supported Employment Extended Services (fund 0310,
17 activity 206), and Ron Yost Personal Assistance Fund (fund
18 0310, activity 407) at the close of the fiscal year 2012 is
19 hereby reappropriated for expenditure during the fiscal year
20 2013.

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

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

59-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2013 Org 0311

Ch. 10]	APPROPRIATIONS		111
1	Personal Services.....	001	\$ 74,482
2	Annual Increment.....	004	510
3	Employee Benefits.....	010	21,614
4	Current Expenses.....	130	46,365
5	Repairs and Alterations.	064	100
6	Equipment.	070	750
7	Other Assets.....	690	600
8	BRIM Premium.	913	<u>684</u>
9	Total.		\$ 145,105

60-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2013 Org 0313

1	Personal Services.....	001	\$ 3,394,322
2	Annual Increment.....	004	66,768
3	Employee Benefits.....	010	1,363,725
4	Water Resources Protection		
5	and Management.....	068	581,897
6	Current Expenses.....	130	723,396
7	Repairs and Alterations.	064	12,150
8	Equipment.	070	4,600
9	Dam Safety.....	607	216,966
10	West Virginia Stream Partners		
11	Program.....	637	77,396
12	Meth Lab Cleanup.....	656	227,142
13	Other Assets.....	690	4,500
14	WV Contribution to River		
15	Commissions.....	776	148,485
16	Office of Water Resources		
17	Non-Enforcement Activity.	855	1,218,139
18	BRIM Premium.	913	<u>56,802</u>
19	Total.		\$ 8,096,288

20 Any unexpended balance remaining in the appropriation
21 for Meth Lab Cleanup - Surplus (fund 0273, activity 474) at

112

APPROPRIATIONS

[Ch. 10

22 the close of fiscal year 2012 is hereby reappropriated for
23 expenditure during FY 2013.

24 A portion of the appropriation for Current Expenses
25 (fund 0273, activity 130) and Dam Safety (fund 0273,
26 activity 607) may be transferred to the special revenue fund
27 Dam Safety Rehabilitation Revolving Fund (fund 3025) for
28 the state deficient dams rehabilitation assistance program.

61-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2013 Org 0325

1	Personal Services.....	001	\$	58,000
2	Annual Increment.....	004		510
3	Employee Benefits.....	010		19,424
4	Current Expenses.....	130		21,100
5	Repairs and Alterations.	064		96
6	Equipment.	070		350
7	Other Assets.....	690		400
8	BRIM Premium.	913		<u>2,013</u>
9	Total.		\$	101,893

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

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

(WV Code Chapter 5F)

Fund 0400 FY 2013 Org 0501

1	Personal Services.....	001	\$	139,096
1	Employee Benefits.....	010		46,341
2	Unclassified.	099		6,447

19	Primary Care Centers - Mortgage		
20	Finance.	413	723,182
21	Black Lung Clinics	467	198,646
22	Center for End of Life.	545	466,886
23	Women's Right to Know.	546	15,000
24	Pediatric Dental Services.	550	151,603
25	Vaccine for Children	551	446,680
26	Adult Influenza Vaccine.	552	65,000
27	Tuberculosis Control	553	392,933
28	Maternal and Child Health Clinics,		
29	Clinicians and Medical Contracts		
30	and Fees (R).	575	7,228,168
31	Epidemiology Support.	626	1,709,675
32	Primary Care Support.	628	8,858,922
33	Health Right Free Clinics.	727	* 4,750,000
34	Capital Outlay and Maintenance (R).	755	2,125,000
35	Healthy Lifestyles.	778	169,285
36	Emergency Response Entities -		
37	Special Projects (R).	822	744,800
38	Maternal Mortality Review.	834	108,653
39	Osteoporosis and Arthritis		
40	Prevention.	849	259,416
41	Diabetes Education and Prevention.	873	105,000
42	Tobacco Education Program (R).	906	5,684,814
43	BRIM Premium.	913	211,214
44	State Trauma and Emergency		
45	Care System.	918	<u>1,839,632</u>
46	Total.		\$ 83,360,103

47 Any unexpended balances remaining in the
48 appropriations for Unclassified - Surplus (fund 0407, activity
49 097) and Statewide EMS Program Support (fund 0407,
50 activity 383), Maternal and Child Health Clinics, Clinicians
51 and Medical Contracts and Fees (fund 0407, activity 575),
52 Capital Outlay and Maintenance (fund 0407, activity 755),

*CLERK'S NOTE: The Governor reduced Item 63, line 33, by \$250,000, from \$5,000,000 to \$4,750,000.

53 Emergency Response Entities - Special Projects (fund 0407,
54 activity 822), Assistance to Primary Health Care Centers
55 Community Health Foundation (fund 0407, activity 845) and
56 Tobacco Education Program (fund 0407, activity 906) at the
57 close of the fiscal year 2012 are hereby reappropriated for
58 expenditure during the fiscal year 2013.

59 From the above appropriation for Current Expenses
60 (activity 130), an amount not less than \$100,000 is for the
61 West Virginia Cancer Coalition; \$50,000 shall be expended
62 for the West Virginia Aids Coalition; \$100,000 is for
63 Adolescent Immunization Education; \$73,065 is for informal
64 dispute resolution relating to nursing home administrative
65 appeals; and \$50,000 is for Hospital Hospitality House of
66 Huntington.

67 From the above appropriation for Maternal and Child
68 Health Clinics, Clinicians and Medical Contracts and Fees
69 (fund 0407, activity 575) \$250,000 is for the West Virginia
70 University Center for Excellence in Women's Health; and
71 \$400,000 shall be transferred to the Breast and Cervical
72 Cancer Diagnostic Treatment Fund (fund 5197).

73
74 The above appropriation for ABCA Tobacco Retailer
75 Education Program - Transfer (activity 239) shall be
76 transferred to the Alcohol Beverage Control Administration
77 (fund 7352, org 0708) for expenditure.

78 Included in the above appropriation for Primary Care
79 Centers - Mortgage Finance (activity 413) is \$47,500 for the
80 mortgage payment for the Lincoln Primary Care Center, Inc.;
81 \$50,483 for the mortgage payment for the Monroe County
82 Health Center; \$40,436 for the mortgage payment for Roane
83 County Family Health Care, Inc.; \$45,600 for the mortgage
84 payment for Community Care of West Virginia, Inc.
85 (formerly Primary Care Systems) (Clay); \$19,000 for the
86 mortgage payment for the Belington Clinic; \$28,500 for the
87 mortgage payment for the Community Care of West Virginia,
88 Inc. (formerly Tri-County Health Clinic); \$14,250 for the

89 mortgage payment for Valley Health Care (Randolph);
 90 \$25,236 for the mortgage payment for Family Care Health
 91 Center (WomenCare) in Madison; \$7,600 for the mortgage
 92 payment for Northern Greenbrier Health Clinic, Inc.; \$12,061
 93 for the mortgage payment for the WomenCare, Inc. (Putnam);
 94 \$23,750 for the mortgage payment for the Preston-Taylor
 95 Community Health Center, Inc.; \$19,000 for the mortgage
 96 payment for the Pendleton Community Care Inc. (North
 97 Fork); \$38,000 for the mortgage payment for the Pendleton
 98 Community Care, Inc.; \$36,480 for the mortgage payment for
 99 Clay-Battelle Health Services Association; \$31,920 for the
 100 mortgage payment for Mountaineer Community Health
 101 Center in Paw Paw; \$12,350 for the mortgage payment for
 102 the St. George Medical Clinic, Inc.; \$26,600 for the mortgage
 103 payment for the Bluestone Health Association, Inc.; \$42,750
 104 for the mortgage payment for Wheeling Health Right, Inc.;
 105 \$45,600 for the mortgage payment for the Minnie Hamilton
 106 Health Care Center, Inc.; \$51,300 for the mortgage payment
 107 for the Shenandoah Valley Medical Systems, Inc.; \$42,750
 108 for the mortgage payment for the Change, Inc.; \$34,506 for
 109 the mortgage payment for Valley Health Systems, Inc.; and
 110 \$27,510 for the mortgage payment for the Wirt County
 111 Health Services Association.

112 From the above appropriation for Pediatric Dental
 113 Services (fund 0407, activity 550), \$11,000 is for the
 114 Marshall County Health Department for dental services.

64-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2013 Org 0506

1	Personal Services.....	001	\$	678,606
2	Annual Increment.....	004		14,869
3	Employee Benefits.....	010		303,506
4	Current Expenses.....	130		6,663
5	Special Olympics.....	208		26,074

6	Behavioral Health Program (R)	219	65,442,056
7	Family Support Act.	221	1,093,923
8	Institutional Facilities		
9	Operations (R)	335	106,279,431
10	Substance Abuse Continuum of		
11	Care.	354	5,000,000
12	Capital Outlay and Maintenance (R). 755		950,000
13	Colin Anderson Community		
14	Placement (R).	803	664,000
15	Renaissance Program.	804	194,000
16	BRIM Premium.	913	<u>1,088,070</u>
17	Total.		\$ 181,741,198

18 Any unexpended balances remaining in the
19 appropriations for Behavioral Health Program - Unclassified
20 (fund 0525, activity 219), Institutional Facilities Operations
21 (fund 0525, activity 335), Capital Outlay (fund 0525, activity
22 511), Institutional Facilities Operations - Surplus (fund 0525,
23 activity 632), Capital Outlay and Maintenance (fund 0525,
24 activity 755), and Colin Anderson Community Placement
25 (fund 0525, activity 803) at the close of the fiscal year 2012
26 are hereby reappropriated for expenditure during the fiscal
27 year 2013.

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

33 Included in the above appropriation for Behavioral
34 Health Program - Unclassified (fund 0525, activity 219) is
35 \$100,000 for the Four Angels Substance Abuse Treatment
36 Project.

37 From the above appropriation to Institutional Facilities
38 Operations, together with available funds from the division

39 of health - hospital services revenue account (fund 5156,
 40 activity 335), on July 1, 2012, the sum of \$160,000 shall be
 41 transferred to the department of agriculture - land division -
 42 farm operating fund (1412) as advance payment for the
 43 purchase of food products; actual payments for such
 44 purchases shall not be required until such credits have been
 45 completely expended.

46 From the above appropriation (fund 0525, activity 354),
 47 the funding will be consistent with the goal areas outlined in
 48 the Comprehensive Substance Abuse Strategic Action Plan.
 49 Prior to disbursement of funds, the Department of Health and
 50 Human Resources, Bureau for Behavioral Health and Health
 51 Facilities, shall submit a gap analysis of substance abuse
 52 services, and an outline of service provision costs to provide
 53 assistance to the Regional Task Forces and the Advisory
 54 Council for development and prioritization of
 55 recommendations.

56 Additional funds have been appropriated in fund 5156,
 57 fiscal year 2013, organization 0506, for the operation of the
 58 institutional facilities. The secretary of the department of
 59 health and human resources is authorized to utilize up to ten
 60 percent of the funds from the Institutional Facilities
 61 Operations line item to facilitate cost effective and cost
 62 saving services at the community level.

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

(WV Code Chapter 16)

Fund 0561 FY 2013 Org 0506

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

4 The above appropriation for Drinking Water Treatment
 5 Revolving Fund - Transfer shall be transferred to the West
 6 Virginia Drinking Water Treatment Revolving Fund or
 7 appropriate bank depository and the Drinking Water
 8 Treatment Revolving - Administrative Expense Fund as
 9 provided by Chapter 16 of the Code.

66-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2013 Org 0510

1	Personal Services.....	001	\$	748,458
2	Annual Increment.....	004		19,912
3	Employee Benefits.....	010		342,588
4	Current Expenses.....	130		260,878
5	Repairs and Alterations.	064		5,000
6	Equipment.	070		15,015
7	BRIM Premium.	913		<u>9,311</u>
8	Total.		\$	1,401,162

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1	Personal Services.....	001	\$	27,527,367
2	Annual Increment.....	004		771,638
3	Employee Benefits.....	010		12,439,358
4	Unclassified.	099		5,688,944
5	Current Expenses.....	130		9,463,913
6	Child Care Development.	144		776,070
7	Medical Services Contracts and			
8	Office of Managed Care.	183		1,835,469
9	Medical Services (R).	189		226,739,877
10	Social Services.....	195		97,380,502

120	APPROPRIATIONS	[Ch. 10
11	Family Preservation Program.....	196 1,565,000
12	Family Resource Networks (R).	274 1,905,367
13	Domestic Violence Legal Services	
14	Fund.....	384 400,000
15	James "Tiger" Morton Catastrophic	
16	Illness Fund.	455 700,005
17	MR/DD Waiver.	466 88,753,483
18	Child Protective Services Case	
19	Workers	468 19,275,978
20	OSCAR and RAPIDS	515 5,088,138
21	Title XIX Waiver for Seniors.....	533 11,912,263
22	WV Teaching Hospitals	
23	Tertiary/Safety Net.	547 6,356,000
24	Specialized Foster Care.	566 310,948
25	Child Welfare System	603 1,735,815
26	In-Home Family Education.	688 900,000
27	WV Works Separate State Program..	698 4,750,000
28	Child Support Enforcement.	705 6,146,074
29	Medicaid Auditing.....	706 605,548
30	Temporary Assistance for Needy	
31	Families/Maintenance of Effort...	707 22,969,096
32	Child Care Maintenance of	
33	Effort Match.	708 5,693,743
34	Child and Family Services.....	736 2,850,000
35	Grants for Licensed Domestic	
36	Violence Programs and	
37	Statewide Prevention.....	750 2,500,000
38	Sexual Assault Intervention and	
39	Prevention.	723 * 250,000
40	Capital Outlay and Maintenance (R).	755 11,875
41	Medical Services Administrative	
42	Costs.	789 24,508,787
43	Traumatic Brain Injury Waiver.	835 800,000
44	Indigent Burials (R).....	851 2,550,000
45	BRIM Premium.	913 834,187
46	Rural Hospitals Under 150 Beds.	940 2,596,000

*CLERK'S NOTE: The Governor reduced Item 67, line 39, by \$250,000, from \$500,000 to \$250,000.

47	Children's Trust Fund - Transfer . . . 951	<u>300,000</u>
48	Total.	\$ 599,141,445

49 Any unexpended balances remaining in the
 50 appropriations for Medical Services (fund 0403, activity
 51 189), Family Resource Networks (fund 0403, activity 274),
 52 Capital Outlay and Maintenance (fund 0403, activity 755),
 53 and Indigent Burials (fund 0403, activity 851) at the close of
 54 the fiscal year 2012 are hereby reappropriated for expenditure
 55 during the fiscal year 2013.

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

64 The secretary shall have authority to expend funds for
 65 the educational costs of those children residing in out-of-state
 66 placements, excluding the costs of special education
 67 programs.

68 Included in the above appropriation for Social Services
 69 (activity 195) is funding for continuing education
 70 requirements relating to the practice of social work.

71 The above appropriation for Domestic Violence Legal
 72 Services Fund (activity 384) shall be transferred to the
 73 Domestic Violence Legal Services Fund (fund 5455).

74 The above appropriation for James "Tiger" Morton
 75 Catastrophic Illness Fund (activity 455) shall be transferred
 76 to the James "Tiger" Morton Catastrophic Illness Fund (fund
 77 5454) as provided by Article 5Q, Chapter 16 of the Code.

78 The above appropriation for WV Works Separate State
79 Program (activity 698), shall be transferred to the WV Works
80 Separate State College Program Fund (fund 5467), and the
81 WV Works Separate State Two-Parent Program Fund (fund
82 5468) as determined by the Secretary of the Department of
83 Health and Human Resources.

84 From the above appropriation for Child Support
85 Enforcement (fund 0403, activity 705) an amount not to
86 exceed \$300,000 may be transferred to a local banking
87 depository to be utilized to offset funds determined to be
88 uncollectible.

89 From the above appropriation for the Grants for
90 Licensed Domestic Violence Programs and Statewide
91 Prevention (activity 750), 50% of the total shall be divided
92 equally and distributed among the fourteen (14) licensed
93 programs and the West Virginia Coalition Against Domestic
94 Violence (WVCADV). The balance remaining in the
95 appropriation for Grants for Licensed Domestic Violence
96 Programs and Statewide Prevention (activity 750), shall be
97 distributed according to the formula established by the
98 Family Protection Services Board.

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

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

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

(WV Code Chapter 5F)

Fund 0430 FY 2013 Org 0601

124	APPROPRIATIONS	[Ch. 10
3	Mountaineer ChalleNGe Academy. 709	0
4	Adjutant General and Officer	
5	Compensation. 734	0
6	Armory Board Transfer. 746	0
7	Military Authority. 748	0
8	Capital Outlay and Maintenance. 755	0
9	BRIM Premium. 913	<u>0</u>
10	Total. \$	21,030,650

11 Any unexpended balances remaining in the
12 appropriations for Unclassified (fund 0433, activity 099) and
13 Armory Capital Improvements - Surplus (fund 0433, activity
14 325) at the close of the fiscal year 2012 are hereby
15 reappropriated for expenditure during the fiscal year 2013.

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

*70-Adjutant General -
Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2013 Org 0603

1	Personal Services. 001	\$ 125,000
2	Current Expenses. 130	<u>75,000</u>
3	Total.	\$ 200,000

71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2013 Org 0605

126	APPROPRIATIONS	[Ch. 10
16	Disaster Mitigation (R).	952 <u>100,000</u>
17	Total.	\$ 3,343,841

18 Any unexpended balances remaining in the
19 appropriations for Unclassified (fund 0443, activity 099),
20 Federal Funds/Grant Match (fund 0443, activity 749), Early
21 Warning Flood System (fund 0443, activity 877), and
22 Disaster Mitigation (fund 0443, activity 952) at the close of
23 the fiscal year 2012 are hereby reappropriated for expenditure
24 during the fiscal year 2013.

*73-Division of Corrections -
Central Office*

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

Fund 0446 FY 2013 Org 0608

1	Personal Services.	001 \$ 430,008
2	Annual Increment.	004 8,285
3	Employee Benefits.	010 169,507
4	Unclassified.	099 6,944
5	Current Expenses.	130 <u>93,640</u>
6	Total.	\$ 708,384

7 Any unexpended balance remaining in the appropriation
8 for Management Information System (fund 0446, activity
9 398) at the close of the fiscal year 2012 is hereby
10 reappropriated for expenditure during the fiscal year 2013.

*74-Division of Corrections -
Correctional Units*

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

Fund 0450 FY 2013 Org 0608

1	Employee Benefits.....	010	\$ 1,258,136
2	Children's Protection Act (R).	090	934,195
3	Unclassified	099	1,290,870
4	Charleston Work Release Center. ...	456	1,574,114
5	Beckley Correctional Center.	490	1,734,038
6	Huntington Work Release Center. . .	495	949,918
7	Anthony Correctional Center	504	4,973,213
8	Huttonsville Correctional Center . . .	514	22,301,261
9	Northern Correctional Center	534	8,054,639
10	Inmate Medical Expenses (R).	535	24,226,064
11	Pruntytown Correctional Center . . .	543	7,360,906
12	Payments to Federal, County and/or		
13	Regional Jails (R).	555	31,000,000
14	Corrections Academy.....	569	1,384,187
15	Martinsburg Correctional Center. ...	663	3,504,984
16	Parole Services.....	686	3,011,558
17	Special Services	687	3,977,420
18	Capital Outlay and Maintenance (R). 755		2,000,000
19	McDowell County Correctional		
20	Center.	790	1,949,983
21	Stevens Correctional Center	791	6,474,500
22	Parkersburg Correctional Center. ...	828	2,421,744
23	St. Mary's Correctional Center	881	13,042,762
24	Denmar Correctional Center.	882	4,717,283
25	Ohio County Correctional Center. . .	883	1,794,838
26	Mt. Olive Correctional Complex. ...	888	20,514,782
27	Lakin Correctional Center.	896	8,679,864
28	BRIM Premium.	913	<u>829,190</u>
29	Total.		\$ 179,960,449

30 Any unexpended balances remaining in the
31 appropriations for Children's Protection Act (fund 0450,
32 activity 090), Unclassified - Surplus (fund 0450, activity
33 097), Inmate Medical Expenses (fund 0450, activity 535),
34 Payments to Federal, County and/or Regional Jails (fund
35 0450, activity 555), Capital Improvements - Surplus (fund
36 0450, activity 661), Capital Outlay, Repairs and Equipment -

37 Surplus (fund 0450, activity 677), and Capital Outlay and
 38 Maintenance (fund 0450, activity 755) at the close of the
 39 fiscal year 2012 are hereby reappropriated for expenditure
 40 during the fiscal year 2013.

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

47 From the above appropriation to Unclassified, on July 1,
 48 2012, the sum of \$300,000 shall be transferred to the
 49 department of agriculture - land division - farm operating
 50 fund (1412) as advance payment for the purchase of food
 51 products; actual payments for such purchases shall not be
 52 required until such credits have been completely expended.

75-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2013 Org 0612

1	Personal Services.	001	\$*45,856,705
2	Annual Increment.	004	255,240
3	Employee Benefits.	010	*10,014,764
4	Children’s Protection Act.	090	900,069
5	Current Expenses.	130	9,294,292
6	Repairs and Alterations.	064	385,680
7	Vehicle Purchase.	451	887,200
8	Barracks Lease Payments.	556	246,478

*CLERK’S NOTE: The Governor reduced item 75, line 1, Personal Services, by \$807,500, from \$46,664,205 to \$45,856,705; and line 3, Employee Benefits, by \$242,500, from \$10,257,264 to \$10,014,764.

9	Communications and		
10	Other Equipment (R).....	558	1,268,968
11	Trooper Retirement Fund.....	605	4,966,353
12	Handgun Administration Expense. . .	747	76,816
13	Capital Outlay and Maintenance (R).	755	250,000
14	Retirement Systems - Unfunded		
15	Liability.....	775	15,162,000
16	Automated Fingerprint		
17	Identification System.....	898	662,394
18	BRIM Premium.	913	<u>4,946,608</u>
19	Total.		\$ 96,223,567

20 Any unexpended balances remaining in the
 21 appropriations for Communications and Other Equipment
 22 (fund 0453, activity 558), Capital Outlay, Repairs and
 23 Equipment - Surplus (fund 0453, activity 677), and Capital
 24 Outlay and Maintenance (fund 0453, activity 755) at the
 25 close of the fiscal year 2012 are hereby reappropriated for
 26 expenditure during the fiscal year 2013.

27 From the above appropriation for Personal Services
 28 (activity 001), an amount not less than \$25,000 shall be
 29 expended to offset the costs associated with providing police
 30 services for the West Virginia State Fair.

31 Included in the above appropriation for Personal
 32 Services (activity 001), and Employee Benefits (activity 010),
 33 is *\$250,000 for salary increases and associated benefits for
 34 civilian employees of the West Virginia State Police.

76-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2013 Org 0619

1	Current Expenses.....	130	\$	81,156
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*CLERK'S NOTE: The Governor reduced Item 75, line 33, by \$1,050,000, from \$1,300,000 to \$250,000.

77-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2013 Org 0620

1	Personal Services.....	001	\$	435,295
2	Annual Increment.....	004		6,025
3	Employee Benefits.....	010		187,828
4	Unclassified.....	099		7,000
5	Current Expenses.....	130		145,193
6	Repairs and Alterations.....	064		2,000
7	Equipment.....	070		100
8	Buildings.....	258		100
9	Child Advocacy Centers (R).....	458		1,502,466
10	Community Corrections (R).....	561		5,000,233
11	Statistical Analysis Program.....	597		54,021
12	Law Enforcement Professional			
13	Standards.....	838		182,798
14	BRIM Premium.....	913		<u>1,660</u>
15	Total.....		\$	7,524,719

16 Any unexpended balances remaining in the
 17 appropriations for Child Advocacy Centers (fund 0546,
 18 activity 458) and Community Corrections (fund 0546,
 19 activity 561) at the close of the fiscal year 2012 are hereby
 20 reappropriated for expenditure during the fiscal year 2013.

21 From the above appropriation for Child Advocacy
 22 Centers (fund 0546, activity 458), the division may retain an
 23 amount not to exceed four percent of the total appropriation
 24 for administrative purposes.

78-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2013 Org 0621

1	Jones Building Treatment Center.	261	\$ 2,233,738
2	Statewide Reporting Centers (R).	262	4,434,987
3	Robert L. Shell Juvenile Center.	267	2,062,244
4	Central Office	701	2,219,388
5	Capital Outlay and Maintenance (R).	755	250,000
6	Gene Spadaro Juvenile Center	793	2,119,386
7	Davis Center for Girls (R).	818	900,875
8	BRIM Premium.	913	96,187
9	WV Industrial Home for Youth (R)	979	10,816,042
10	Kenneth Honey Rubenstein		
11	Juvenile Center (R)	980	5,391,033
12	Vicki Douglas Juvenile Center.	981	1,821,025
13	Northern Regional Juvenile Center	982	1,344,737
14	Lorrie Yeager Jr. Juvenile Center.	983	1,941,020
15	Sam Perdue Juvenile Center	984	1,988,776
16	Tiger Morton Center	985	2,134,113
17	Donald R. Kuhn Juvenile Center	986	4,217,898
18	J.M. "Chick" Buckbee		
19	Juvenile Center	987	<u>2,042,495</u>
20	Total.		\$ <u>46,013,944</u>

21 Any unexpended balances remaining in the
 22 appropriations for Statewide Reporting Centers (fund 0570,
 23 activity 262), Capital Outlay and Maintenance (fund 0570,
 24 activity 755), Davis Center for Girls (fund 0570, activity
 25 818), WV Industrial Home for Youth (fund 0570, activity
 26 979), and Kenneth Honey Rubenstein Juvenile Center (fund
 27 0570, activity 980) at the close of the fiscal year 2012 are
 28 hereby reappropriated for expenditure during the fiscal year
 29 2013.

30 From the above appropriations, on July 1, 2012, the sum
 31 of \$50,000 shall be transferred to the department of
 32 agriculture - land division - farm operating fund (1412) as
 33 advance payment for the purchase of food products; actual

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APPROPRIATIONS

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34 payments for such purchases shall not be required until such
35 credits have been completely expended.

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

79-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2013 Org 0622

1	Personal Services (R).....	001	\$ 1,405,714
2	Annual Increment.....	004	38,090
3	Employee Benefits.....	010	590,925
4	Unclassified (R).....	099	23,223
5	Current Expenses.....	130	100,000
6	Repairs and Alterations.	064	8,500
7	Equipment (R).	070	75,000
8	Other Assets.....	690	72,825
9	BRIM Premium.	913	<u>9,969</u>
10	Total.		\$ 2,324,246

11 Any unexpended balances remaining in the
12 appropriations for Personal Services (fund 0585, activity
13 001), Equipment (fund 0585, activity 070), and Unclassified
14 (fund 0585, activity 099) at the close of the fiscal year 2012
15 are hereby reappropriated for expenditure during the fiscal
16 year 2013.

DEPARTMENT OF REVENUE

80-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2013 Org 0701

16 Technology Upgrade (fund 0470, activity 094), Unclassified
 17 (fund 0470, activity 099), GIS Development Project (fund
 18 0470, activity 562), and Remittance Processor (fund 0470,
 19 activity 570) at the close of the fiscal year 2012 are hereby
 20 reappropriated for expenditure during the fiscal year 2013.

82-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2013 Org 0703

1	Personal Services.....	001	\$	525,000
2	Annual Increment.....	004		10,200
3	Employee Benefits.....	010		166,437
4	Unclassified (R).....	099		8,680
5	Current Expenses.....	130		148,493
6	Repairs and Alterations.	064		500
7	Equipment.	070		5,000
8	Pay Equity Reserve.	364		250,000
9	BRIM Premium.	913		<u>2,750</u>
10	Total.		\$	1,117,060

11 Any unexpended balance remaining in the appropriation
 12 for Unclassified (fund 0595, activity 099) at the close of the
 13 fiscal year 2012 is hereby reappropriated for expenditure
 14 during the fiscal year 2013.

83-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2013 Org 0709

1	Personal Services.....	001	\$	405,320
2	Annual Increment.....	004		8,820
3	Employee Benefits.....	010		167,075

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6	BRIM Premium.	913 <u>177,352</u>
7	Total.	\$ 2,581,378

8 Any unexpended balance remaining in the appropriation
9 for Unclassified (fund 0506, activity 099) at the close of the
10 fiscal year 2012 is hereby reappropriated for expenditure
11 during the fiscal year 2013.

12 From the above appropriations \$30,000 shall be
13 expended for improvements at the Duffield Station.

86-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2013 Org 0805

1	Equipment.	070 \$ 225,000
2	Current Expenses.	130 1,832,525
3	Buildings.	258 555,956
4	Other Assets.	690 <u>172,528</u>
5	Total.	\$ 2,786,009

6 Any unexpended balances remaining in the
7 appropriations for Unclassified - Total (fund 0510, activity
8 096), Unclassified (fund 0510, activity 099), and Federal
9 Funds/Grant Match (fund 0510, activity 749) at the close of
10 the fiscal year 2012 are hereby reappropriated for expenditure
11 during the fiscal year 2013.

87-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2013 Org 0806

1	Personal Services.	001 \$ 194,992
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DEPARTMENT OF VETERANS' ASSISTANCE*89-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2013 Org 0613

1	Personal Services.....	001	\$ 1,142,895
2	Annual Increment.....	004	20,000
3	Employee Benefits.....	010	574,361
4	Unclassified.....	099	20,000
5	Current Expenses.....	130	152,189
6	Repairs and Alterations.....	064	5,000
7	Veterans' Field Offices.....	228	168,345
8	Veterans' Nursing Home (R).....	286	6,812,258
9	Veterans' Toll Free Assistance		
10	Line.....	328	2,015
11	Veterans' Reeducation		
12	Assistance (R).....	329	131,604
13	Veterans' Grant Program (R).....	342	150,000
14	Veterans' Grave Markers.....	473	2,754
15	Veterans' Transportation.....	485	625,000
16	Veterans Outreach Programs.....	617	205,277
17	Memorial Day Patriotic Exercise....	697	20,000
18	Veterans Cemetery.....	808	373,484
19	BRIM Premium.....	913	<u>23,860</u>
20	Total.....		\$ 10,429,042

21 Any unexpended balances remaining in the
 22 appropriations for Veterans' Nursing Home (fund 0456,
 23 activity 286), Veterans' Reeducation Assistance (fund 0456,
 24 activity 329), Veterans' Grant Program (fund 0456, activity
 25 342), Women's Veterans' Monument (fund 0456, activity
 26 385), Veterans' Bonus (fund 0456, activity 483), and
 27 Educational Opportunities for Children of Deceased Veterans
 28 (fund 0456, activity 854) at the close of the fiscal year 2012

29 are hereby reappropriated for expenditure during the fiscal
30 year 2013.

*90-Department of Veterans' Assistance -
Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2013 Org 0618

1	Personal Services.....	001	\$	723,352
2	Annual Increment.....	004		18,600
3	Employee Benefits.....	010		416,015
4	Current Expenses.....	130		<u>5,366</u>
5	Total.		\$	1,163,333

BUREAU OF SENIOR SERVICES

91-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2013 Org 0508

1	Transfer to Division of Human Services			
2	for Health Care and Title XIX Waiver			
3	for Senior Citizens.....	539	\$	23,482,933

4 The above appropriation for Transfer to Division of
5 Human Services for Health Care and Title XIX Waiver for
6 Senior Citizens (activity 539) along with the federal moneys
7 generated thereby shall be used for reimbursement for
8 services provided under the program.

9 The above appropriation is in addition to funding
10 provided in fund 5405 for this program.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2013 Org 0420

1	New River Community and		
2	Technical College.	358	\$ 6,305,522
3	West Virginia Council for Community		
4	and Technical Education (R).	392	863,576
5	Eastern West Virginia Community		
6	and Technical College.	412	2,100,509
7	Kanawha Valley Community and		
8	Technical College.	445	4,125,664
9	Southern West Virginia Community		
10	and Technical College.	446	9,228,731
11	West Virginia Northern Community		
12	and Technical College.	447	7,893,643
13	West Virginia University -		
14	Parkersburg.	471	10,916,188
15	Bridgemont Community and		
16	Technical College.	486	3,973,597
17	Mountwest Community and		
18	Technical College.	487	6,352,577
19	Transit Training Partnership.	783	80,000
20	Community College		
21	Workforce Development (R).	878	918,000
22	Blue Ridge Community and		
23	Technical College.	885	5,138,415
24	College Transition Program.	887	333,500
25	West Virginia Advance Workforce		
26	Development (R).	893	3,644,020
27	Technical Program		
28	Development (R).	894	2,261,100

29	Pierpont Community and Technical		
30	College.	930	<u>8,443,703</u>
31	Total.		\$ 72,578,745

32 Any unexpended balances remaining in the
 33 appropriations for Unclassified - Surplus (fund 0596, activity
 34 097), West Virginia Council for Community and Technical
 35 Education (fund 0596, activity 392), Community College
 36 Workforce Development (fund 0596, activity 878), West
 37 Virginia Advance Workforce Development (fund 0596,
 38 activity 893), and Technical Program Development (fund
 39 0596, activity 894) at the close of the fiscal year 2012 are
 40 hereby reappropriated for expenditure during the fiscal year
 41 2013.

42 From the above appropriation for New River
 43 Community and Technical College no funds shall be
 44 expended for the pursuit, planning, procurement, lease or
 45 construction of any new student housing on any state lands in
 46 Greenbrier County including any and all lands under the
 47 control of New River Community and Technical College.

48 From the above appropriation for the Community
 49 College Workforce Development (fund 0596, activity 878),
 50 \$200,000 shall be expended on the Mine Training Program
 51 in Southern West Virginia.

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

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

(WV Code Chapter 18B)

Fund 0589 FY 2013 Org 0441

1	Personal Services.....	001	\$ 1,473,157
2	Annual Increment.....	004	1,750
3	Employee Benefits.....	010	321,179
4	Current Expenses.....	130	1,295,975
5	Higher Education Grant Program. . .	164	39,019,864
6	Tuition Contract Program (R).	165	1,446,008
7	WVNET.....	169	1,948,443
8	PROMISE Scholarship — Transfer..	800	18,500,000
9	HEAPS Grant Program (R).	867	5,005,687
10	BRIM Premium.	913	<u>18,936</u>
11	Total.		\$ 69,030,999

12 Any unexpended balances remaining in the
 13 appropriations for Unclassified - Surplus (fund 0589, activity
 14 097), Tuition Contract Program (fund 0589, activity 165),
 15 Capital Improvements - Surplus (fund 0589, activity 661),
 16 Capital Outlay and Maintenance (fund 0589, activity 755),
 17 and HEAPS Grant Program (fund 0589, activity 867) at the
 18 close of the fiscal year 2012 are hereby reappropriated for
 19 expenditure during the fiscal year 2013.

20 The above appropriation for Higher Education Grant
 21 Program (activity 164) shall be transferred to the Higher
 22 Education Grant Fund (fund 4933, org 0441) established by
 23 W.Va. Code §18C-5-3.

24 The above appropriation for PROMISE Scholarship -
 25 Transfer (activity 800) shall be transferred to the PROMISE
 26 Scholarship Fund (fund 4296, org 0441) established by
 27 W.Va. Code §18C-7-7.

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

(WV Code Chapter 18B)

Fund 0586 FY 2013 Org 0442

1	WVU School of Health Science -		
2	Eastern Division.	056	\$ 2,646,269
3	West Virginia School of		
4	Osteopathic Medicine.	172	7,978,095
5	Marshall Medical School.	173	13,828,384
6	WVU—School of Health Sciences. .	174	19,300,013
7	WVU School of Health Sciences -		
8	Charleston Division.	175	2,704,448
9	General Operations.	277	1,500,000
10	Rural Health Outreach Programs (R).	377	606,231
11	West Virginia School of		
12	Osteopathic Medicine BRIM		
13	Subsidy.	403	174,475
14	Bluefield State College.	408	6,593,442
15	Concord University.	410	10,206,804
16	Fairmont State University.	414	17,880,671
17	Glenville State College.	428	7,206,804
18	Shepherd University.	432	11,228,474
19	West Liberty University.	439	9,322,524
20	West Virginia State University. . . .	441	10,954,389
21	Marshall University.	448	54,348,822
22	Marshall University Medical School		
23	BRIM Subsidy.	449	1,015,462
24	West Virginia University.	459	116,272,285
25	West Virginia University School of		
26	Medicine BRIM Subsidy.	460	1,400,038
27	Jackson’s Mill (R).	461	351,480
28	West Virginia University Institute		
29	for Technology.	479	8,717,640
30	Vista E-Learning (R).	519	300,000
31	State Priorities - Brownfield		
32	Professional Development (R). . .	531	806,198
33	Rural Health Initiative - Medical		
34	Schools Support.	581	480,988

144	APPROPRIATIONS	[Ch. 10
35	WV Autism Training Center.	932 2,111,572
36	West Virginia State University Land	
37	Grant Match..	956 1,908,000
38	West Virginia University —	
39	Potomac State	994 <u>4,690,189</u>
40	Total.	\$ 314,533,697

41 Any unexpended balances remaining in the
42 appropriations for Rural Health Outreach Programs (fund
43 0586, activity 377), Jackson’s Mill (fund 0586, activity 461),
44 Vista E-Learning (fund 0586, activity 519), State Priorities-
45 Brownfield Professional Development (fund 0586, activity
46 531), and WVU - School of Health Sciences - Surplus (fund
47 0586, activity 713) at the close of fiscal year 2012 are hereby
48 reappropriated for expenditure during the fiscal year 2013.

49 Included in the appropriation for WVU — School of
50 Health Sciences (activity 174) and Marshall Medical School
51 (activity 173) are \$943,080 and \$295,477, respectively, for
52 Graduate Medical Education which may be transferred to the
53 Department of Health and Human Resources’ Medical
54 Service Fund (fund 5084) for the purpose of matching federal
55 or other funds to be used in support of graduate medical
56 education, subject to approval of the Vice-Chancellor for
57 Health Sciences and the Secretary of the Department of
58 Health and Human Resources. If approval is denied, the
59 funds may be utilized by the respective institutions for
60 expenditure on graduate medical education.

61 Included in the above appropriation for WVU - School
62 of Health Sciences - Charleston Division (activity 175) and
63 Marshall Medical School (activity 173), an amount not less
64 than \$5,000 respectively, is to be used for the West Virginia
65 Academy of Family Physicians Doc of the Day Program.

66 Included in the above appropriation for Marshall
67 Medical School (activity 173) is \$417,351 for the Marshall

68 University Forensic Lab and \$275,061 for the Marshall
69 University Center for Rural Health.

70 Included in the above appropriation for WVU - School
71 of Health Sciences (activity 174) is \$1,000,000 for the
72 Blanchette Rockefeller Project and \$1,000,000 for the School
73 of Public Health (year 2 of 5).

74 The above appropriation for Rural Health Outreach
75 Programs (activity 377) includes rural health activities and
76 programs; rural residency development and education; and
77 rural outreach activities. These funds shall be dispersed
78 equally among the three (3) medical schools.

79 Included in the above appropriation for Concord
80 University (activity 410) is \$100,000 for the Geographic
81 Alliance.

82 Included in the above appropriation for Glenville State
83 College (activity 428) is \$300,000 for a 20 county "Hidden
84 Promise" consortium between the County School Systems
85 and Glenville State College; \$200,000 for courses offered in
86 conjunction with the corrections academy; and \$80,000 for
87 the installation of security equipment at the Corrections
88 Academy.

89 Included in the above appropriation for Shepherd
90 University (activity 432) is \$100,000 for the Gateway
91 Program.

92 Included in the above appropriation for Marshall
93 University (activity 448) is \$181,280 for the Marshall
94 University - Southern WV CTC 2+2 Program and \$175,000
95 for the Luke Lee Listening Language & Learning Lab.

96 Included in the above appropriation for West Virginia
97 University (activity 459) is \$34,500 for the Marshall and

98 WVU Faculty and Course Development International Study
99 Project; \$246,429 for the WVU Law School — Skills
100 Program; \$300,000 for the WVU Coal and Energy Research
101 Bureau to be expended in consultation with the Board of Coal
102 Mine Health and Safety, the Mine Safety Technology Task
103 Force, and the DEP Advisory Council; \$19,714 for the WVU
104 College of Engineering and Mineral Resources — Diesel
105 Training — Transfer; \$500,000 for the Mining Engineering
106 Program; \$220,000 for the WVU Petroleum Engineering
107 Program; \$82,500 for the WVU — Sheep Study; \$630,000
108 for the Davis College of Forestry Agriculture and Consumer
109 Sciences of which \$80,000 is for a Landscape Architect,
110 \$112,500 is to be used for Morgantown Farms, \$112,500 is
111 to be used for Raymond Memorial Farm, \$112,500 is to be
112 used for Reedsville Farm, and \$112,500 is to be used for
113 Kerneysville Farm; \$200,000 for Reedsville Arena and
114 Jackson’s Mill Arena; \$100,000 for the WVU — Soil Testing
115 Program; \$100,000 for a veterinarian; \$50,000 for the WVU
116 Cancer Study; \$500,000 for the Center for Multiple Sclerosis
117 Program; \$150,000 for the WV Alzheimer Disease Register;
118 and \$100,000 for the rifle team.

119 Included in the above appropriation for Jackson’s Mill
120 (activity 461) is \$150,000 for the Jackson’s Mill Fire
121 Academy.

122 From the above appropriation for West Virginia
123 University - Potomac State (activity 994) is \$50,000 for
124 maintenance, repairs and equipment; \$75,000 for Potomac
125 State Farms for maintenance, repairs, and equipment; and
126 \$82,500 for the Potomac State Equine Program.

127 The institutions operating from special revenue funds
128 and/or federal funds shall pay their proportionate share of the
129 Board of Risk and Insurance Management total insurance
130 premium cost for their respective institutions.

131 From the above appropriations to the respective medical
 132 schools, the line items for BRIM subsidies funding shall be
 133 paid to the Board of Risk and Insurance Management as a
 134 general revenue subsidy against the "Total Premium Billed"
 135 to each institution as part of the full cost of their malpractice
 136 insurance coverage.

137 Total TITLE II, Section 1 - General Revenue
 138 (Including claims against the state) \$4,149,751,000

1 **Sec. 2. Appropriations from state road fund.** - From
 2 the state road fund there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth
 4 in Article 2, Chapter 11B of the Code the following amounts,
 5 as itemized, for expenditure during the fiscal year 2013.

DEPARTMENT OF TRANSPORTATION

95-Division of Motor Vehicles

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

Fund 9007 FY 2013 Org 0802

	Act- ivity	State Road Fund
1	Personal Services..... 001	\$ 14,907,549
2	Annual Increment..... 004	340,000
3	Employee Benefits..... 010	7,242,182
4	Current Expenses..... 130	16,274,559
5	Repairs and Alterations. 064	51,000
6	Equipment. 070	40,000
7	Buildings. 258	10,000
8	Other Assets..... 690	1,600,000
9	BRIM Premium. 913	<u>113,435</u>
10	Total.	\$ 40,578,725

96-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2013 Org 0803

1	Debt Service.....	040	\$ 38,500,000
1	Maintenance.....	237	354,846,000
2	Maintenance, Contract Paving and		
3	Secondary Road Maintenance....	272	60,000,000
4	Bridge Repair and Replacement....	273	30,000,000
5	Inventory Revolving.	275	4,000,000
6	Equipment Revolving.	276	15,000,000
7	General Operations.	277	55,033,495
8	Interstate Construction.....	278	120,000,000
9	Other Federal Aid Programs.	279	350,000,000
10	Appalachian Programs.....	280	120,000,000
11	Nonfederal Aid Construction.....	281	12,500,000
12	Highway Litter Control.	282	1,755,000
13	Federal Economic Stimulus.....	891	<u>3,000,000</u>
14	Total.		\$ 1,164,634,495

15 The above appropriations are to be expended in
16 accordance with the provisions of Chapters 17 and 17-c of
17 the Code.

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

24 There is hereby appropriated within the above items
25 sufficient money for the payment of claims, accrued or
26 arising during this budgetary period, to be paid in accordance
27 with Sections 17 and 18, Article 2, Chapter 14 of the Code.

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

97-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2013 Org 0808

1	Personal Services.....	001	\$ 1,089,743
2	Annual Increment.....	004	19,680
3	Employee Benefits.....	010	463,864
4	Current Expenses.....	130	367,242
5	Repairs and Alterations.	064	4,000
6	Equipment.	070	2,500
7	Other Assets.....	690	3,000
8	BRIM Premium.	913	<u>1,950</u>
9	Total.		\$ 1,951,979
10	Total TITLE II, Section 2 - State Road Fund		
11	(Including claims against the state)		\$ <u><u>1,209,259,147</u></u>

1 **Sec. 3. Appropriations from other funds.** - From the
 2 funds designated there are hereby appropriated conditionally
 3 upon the fulfillment of the provisions set forth in Article 2,
 4 Chapter 11B of the Code the following amounts, as itemized,
 5 for expenditure during the fiscal year 2013.

LEGISLATIVE*98-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2013 Org 2300

		Act- ivity	Other Funds
1	Personal Services.....	001	\$ 344,220
2	Annual Increment.....	004	6,200
3	Employee Benefits.....	010	147,600
4	Current Expenses.....	130	133,903
5	Repairs and Alterations.	064	1,000
6	Economic Loss Claim Payment		
7	Fund (R).	334	3,460,125
8	Other Assets.....	690	<u>3,700</u>
9	Total.		\$ 4,096,748

10 Any unexpended balance remaining in the appropriation
11 for Economic Loss Claim Payment Fund (fund 1731, fiscal
12 year 2012, activity 334) at the close of the fiscal year 2012 is
13 hereby reappropriated for expenditure during the fiscal year
14 2013.

JUDICIAL*99-Supreme Court -
Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2013 Org 2400

1	Current Expenses.....	130	\$ 1,000,000
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EXECUTIVE

*100-Governor's Office
Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2013 Org 0100

1 Current Expenses..... 130 \$ 676,000

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

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2013 Org 1200

1	Personal Services.....	001	\$	432,487
2	Annual Increment.....	004		9,300
3	Employee Benefits.....	010		187,360
4	Unclassified.....	099		15,139
5	Current Expenses.....	130		440,291
6	Repairs and Alterations.....	064		2,600
7	Equipment.....	070		<u>426,741</u>
8	Total.....		\$	1,513,918

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

15 The total amount of this appropriation shall be paid from
16 the special revenue fund out of fees and collections as
17 provided by law.

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

(WV Code Chapter 6)

Fund 1224 FY 2013 Org 1200

1	Personal Services.....	001	\$	80,000
2	Annual Increment.....	004		500
3	Employee Benefits.....	010		25,587
4	Current Expenses.....	130		37,030
5	Repairs and Alterations.	064		1,000
6	Equipment.	070		10,000
7	Other Assets.....	690		<u>805</u>
8	Total.		\$	154,922

*103-Auditor's Office -
Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2013 Org 1200

1	Personal Services.....	001	\$	1,187,265
2	Annual Increment.....	004		18,316
3	Employee Benefits.....	010		509,929
4	Unclassified.	099		31,866
5	Current Expenses.....	130		788,830
6	Repairs and Alterations.	064		7,400
7	Equipment.	070		19,700
8	Other Assets.....	690		<u>623,326</u>
9	Total.		\$	3,186,632

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

(WV Code Chapter 12)

Fund 1233 FY 2013 Org 1200

1	Current Expenses.....	130	\$ 300,000
2	Other Assets.....	690	<u>100,000</u>
3	Total.		\$ 400,000

4 Fifty percent of the deposits made into this fund shall be
5 transferred to the Treasurer's Office - Technology Support
6 and Acquisition Fund (fund 1329, org 1300) for expenditure
7 for the purposes described in W.Va. Code §12-3-10c.

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

(WV Code Chapter 12)

Fund 1234 FY 2013 Org 1200

1	Personal Services.....	001	\$ 1,829,705
2	Annual Increment.....	004	20,000
3	Employee Benefits.....	010	496,102
4	Current Expenses.....	130	1,174,122
5	Repairs and Alterations.	064	5,500
6	Equipment.	070	400,000
7	Other Assets.....	690	<u>308,886</u>
8	Total.		\$ 4,234,315

9 There is hereby appropriated from this fund, in addition
10 to the above appropriation, the amount necessary to meet the
11 transfer requirements to the Purchasing Improvement Fund
12 and the Hatfield-McCoy Regional Recreation Authority per
13 W.Va. Code §12-3-10d.

*106-Auditor's Office -
Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2013 Org 1200

1	Personal Services.....	001	\$ 2,466,793
2	Annual Increment.....	004	39,288
3	Employee Benefits.....	010	899,431
4	Current Expenses.....	130	765,915
5	Equipment.	070	<u>50,000</u>
6	Total.		\$ 4,221,427

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

(WV Code Chapter 18)

Fund 1301 FY 2013 Org 1300

1	Personal Services.....	001	\$ 657,524
2	Annual Increment.....	004	6,240
3	Employee Benefits.....	010	232,494
4	Unclassified.	099	14,000
5	Current Expenses.....	130	<u>498,373</u>
6	Total.		\$ 1,408,631

*108-Treasurer's Office -
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2013 Org 1300

1	Personal Services.....	001	\$ 145,316
2	Annual Increment.....	004	1,800
3	Employee Benefits.....	010	38,994
4	Unclassified.	099	4,700
5	Current Expenses.....	130	185,839
6	Other Assets.....	690	<u>100,000</u>
7	Total.		\$ 476,649

*109-Department of Agriculture -
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2013 Org 1400

1	Personal Services.....	001	\$ 1,466,083
2	Annual Increment.....	004	26,236
3	Employee Benefits.....	010	731,680
4	Unclassified.....	099	37,425
5	Current Expenses.....	130	1,366,430
6	Repairs and Alterations.....	064	58,500
7	Equipment.....	070	36,209
8	Buildings.....	258	10,000
9	Other Assets.....	690	<u>10,000</u>
10	Total.....		\$ 3,742,563

*110-Department of Agriculture -
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2013 Org 1400

1	Personal Services.....	001	\$ 54,339
2	Annual Increment.....	004	998
3	Employee Benefits.....	010	16,355
4	Unclassified.....	099	10,476
5	Current Expenses.....	130	<u>965,519</u>
6	Total.....		\$ 1,047,687

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

(WV Code Chapter 19)

Fund 1409 FY 2013 Org 1400

1	Unclassified.	099	\$	2,100
2	Current Expenses.	130		117,900
3	Repairs and Alterations.	064		21,000
4	Equipment.	070		31,000
5	Buildings.	258		<u>38,000</u>
6	Total.		\$	210,000

7 The above appropriation shall be expended in
8 accordance with Article 26, Chapter 19 of the Code.

*112-Department of Agriculture -
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2013 Org 1400

1	Personal Services.	001	\$	217,400
2	Annual Increment.	004		1,010
3	Employee Benefits.	010		83,712
4	Unclassified.	099		15,173
5	Current Expenses.	130		730,763
6	Repairs and Alterations.	064		238,722
7	Equipment.	070		210,600
8	Other Assets.	690		<u>20,000</u>
9	Total.		\$	1,517,380

*113-Department of Agriculture -
Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2013 Org 1400

1	Personal Services.	001	\$	650,016
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Ch. 10]	APPROPRIATIONS	157
2	Annual Increment..... 004	11,460
3	Employee Benefits..... 010	283,580
4	Unclassified. 099	45,807
5	Current Expenses..... 130	3,502,650
6	Repairs and Alterations. 064	40,200
7	Equipment. 070	10,000
8	Buildings. 258	10,000
9	Other Assets..... 690	<u>27,000</u>
10	Total.	\$ 4,580,713

*114-Department of Agriculture -
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2013 Org 1400

1	Current Expenses..... 130	\$ 25,000
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*115-Attorney General -
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2013 Org 1500

1	Personal Services..... 001	\$ 266,410
2	Annual Increment..... 004	2,473
3	Employee Benefits..... 010	83,282
4	Current Expenses..... 130	<u>155,538</u>
5	Total.	\$ 507,703

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

(WV Code Chapter 47)

APPROPRIATIONS

[Ch. 10]

Fund 1513 FY 2013 Org 1500

1	Personal Services.....	001	\$	170,000
2	Annual Increment.....	004		2,044
3	Employee Benefits.....	010		56,872
4	Current Expenses.....	130		<u>37,925</u>
5	Total.		\$	266,841

*117-Attorney General -
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2013 Org 1500

1	Current Expenses.....	130	\$	901,135
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*118-Secretary of State -
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2013 Org 1600

1	Personal Services.....	001	\$	503,355
2	Annual Increment.....	004		1,680
3	Employee Benefits.....	010		267,146
4	Unclassified.	099		12,560
5	Current Expenses.....	130		<u>471,244</u>
6	Total.		\$	1,255,985

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

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2013 Org 1600

Ch. 10]	APPROPRIATIONS		159
1	Personal Services.....	001	\$ 1,111,954
2	Annual Increment.....	004	19,200
3	Employee Benefits.....	010	648,187
4	Unclassified.....	099	25,445
5	Current Expenses.....	130	739,719
6	Technology Improvements.....	599	<u>750,000</u>
7	Total.....		\$ 3,294,505

DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 18)

Fund 2044 FY 2013 Org 0201

- | | | | |
|---|--|-----|---------------|
| 1 | Current Expenses..... | 130 | *\$28,061,000 |
| 2 | The above appropriation for Current Expenses (fund | | |
| 3 | 2044, activity 130) shall be transferred to the Consolidated | | |
| 4 | Public Retirement Board - West Virginia Teachers' | | |
| 5 | Retirement System Employers Accumulation Fund (fund | | |
| 6 | 2601). | | |

121-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2013 Org 0210

- | | | | |
|---|------------------------|-----|---------------|
| 1 | Personal Services..... | 001 | \$ 16,542,399 |
| 2 | Annual Increment..... | 004 | 342,459 |

*CLERK'S NOTE: The Governor reduced Item 120, line 1, Current Expenses, by \$9,939,000, from \$38,000,000 to \$28,061,000.

160	APPROPRIATIONS	[Ch. 10
3	Employee Benefits..... 010	6,136,408
4	Unclassified. 099	382,354
5	Current Expenses..... 130	12,581,822
6	Equipment. 070	2,000,000
7	Other Assets..... 690	<u>250,000</u>
8	Total.	\$ 38,235,442

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

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

*122-Division of Purchasing -
Vendor Fee Fund*

(WV Code Chapter 5A)

Fund 2263 FY 2013 Org 0213

1	Personal Services..... 001	\$ 491,919
2	Annual Increment..... 004	7,561
3	Employee Benefits..... 010	168,831
4	Unclassified. 099	9,065
5	Current Expenses..... 130	218,329
6	Repairs and Alterations. 064	5,000
7	Equipment. 070	2,500
8	Other Assets..... 690	2,500
9	BRIM Premium. 913	<u>810</u>
10	Total.	\$ 906,515

*123-Division of Purchasing -
Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2013 Org 0213

1	Personal Services.....	001	\$	289,411
2	Annual Increment.....	004		4,942
3	Employee Benefits.....	010		112,124
4	Unclassified.....	099		5,562
5	Current Expenses.....	130		215,978
6	Equipment.....	070		500
7	Other Assets.....	690		500
8	BRIM Premium.....	913		<u>850</u>
9	Total.....		\$	629,867

*124-Travel Management
Fleet Management Office Fund*

(WV Code Chapter 5A)

Fund 2301 FY 2013 Org 0215

1	Personal Services.....	001	\$	532,580
2	Employee Benefits.....	010		199,717
3	Unclassified.....	099		4,000
4	Current Expenses.....	130		7,198,084
5	Repairs and Alterations.....	064		3,000
6	Equipment.....	070		4,000
7	Other Assets.....	690		<u>264,191</u>
8	Total.....		\$	8,205,572

*125-Travel Management
Aviation Fund*

(WV Code Chapter 5A)

APPROPRIATIONS

Fund 2302 FY 2013 Org 0215

1	Unclassified.	099	1,000
2	Current Expenses.	130	370,237
3	Repairs and Alterations.	064	180,000
4	Equipment.	070	<u>1,000</u>
5	Total.		\$ 552,237

126-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2013 Org 0222

1	Personal Services.	001	\$ 2,803,062
2	Annual Increment.	004	72,348
3	Employee Benefits.	010	1,059,253
4	Unclassified.	099	51,418
5	Current Expenses.	130	1,123,240
6	Repairs and Alterations.	064	2,500
7	Equipment.	070	15,000
8	Other Assets.	690	<u>15,000</u>
9	Total.		\$ 5,141,821

10 The total amount of this appropriation shall be paid from
 11 a special revenue fund out of fees collected by the division of
 12 personnel.

127-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2013 Org 0228

1	Personal Services.	001	\$ 173,106
2	Annual Increment.	004	777
3	Employee Benefits.	010	86,509

Ch. 10]	APPROPRIATIONS	163
4	Unclassified.	099 5,524
5	Current Expenses.	130 280,377
6	Repairs and Alterations.	064 600
7	Equipment.	070 5,000
8	Other Assets.	690 <u>500</u>
9	Total.	\$ 552,393

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

(WV Code Chapter 5A)

Fund 2531 FY 2013 Org 0231

1	Personal Services.	001 \$ 307,616
2	Annual Increment.	004 5,500
3	Employee Benefits.	010 82,000
4	Unclassified.	099 18,860
5	Current Expenses.	130 1,412,068
6	Equipment.	070 50,000
7	Other Assets.	690 <u>10,000</u>
8	Total.	\$ 1,886,044

9 From the above fund, the provisions of W.Va. Code
10 §11B-2-18 shall not operate to permit expenditures in excess
11 of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

129-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2013 Org 0305

1	Personal Services.	001 \$ 845,778
2	Annual Increment.	004 17,620

164		APPROPRIATIONS	[Ch. 10
3	Employee Benefits.....	010	284,214
4	Unclassified.....	099	12,800
5	Current Expenses.....	130	275,298
6	Repairs and Alterations.....	064	250
7	Equipment.....	070	<u>75,000</u>
8	Total.....		\$ 1,510,960

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

(WV Code Chapter 19)

Fund 3082 FY 2013 Org 0305

1	Personal Services.....	001	\$ 33,000
2	Annual Increment.....	004	1,260
3	Employee Benefits.....	010	10,986
4	Unclassified.....	099	1,430
5	Current Expenses.....	130	93,178
6	Repairs and Alterations.....	064	2,000
7	Equipment.....	070	<u>2,000</u>
8	Total.....		\$ 143,854

*131-Division of Forestry -
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2013 Org 0305

1	Personal Services.....	001	\$ 374,700
2	Annual Increment.....	004	7,460
3	Employee Benefits.....	010	216,572
4	Current Expenses.....	130	<u>5,582</u>
5	Total.....		\$ 604,314

*132-Geological and Economic Survey-
Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2013 Org 0306

1	Personal Services.....	001	\$	25,821
2	Employee Benefits.....	010		12,401
3	Unclassified.....	099		2,182
4	Current Expenses.....	130		141,375
5	Repairs and Alterations.	064		6,500
6	Equipment.....	070		20,000
7	Other Assets.....	690		<u>10,000</u>
8	Total.....		\$	218,279

9 The above appropriation shall be used in accordance
10 with W.Va. Code §29-2-4.

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

(WV Code Chapter 5B)

Fund 3002 FY 2013 Org 0307

1	Personal Services.....	001	\$	1,100,000
2	Annual Increment.....	004		14,000
3	Employee Benefits.....	010		408,649
4	Unclassified.....	099		30,000
5	Current Expenses.....	130		1,472,830
6	Repairs and Alterations.	064		500
7	Equipment.....	070		<u>15,000</u>
8	Total.....		\$	3,040,979

*134-West Virginia Development Office -
Broadband Deployment Fund*

(WV Code Chapter 31)

Fund 3174 FY 2013 Org 0307

1	Unclassified.	099	\$	50,000
2	Current Expenses.	130		<u>4,950,000</u>
3	Total.		\$	5,000,000

*135-Division of Labor -
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2013 Org 0308

1	Personal Services.	001	\$	1,010,300
2	Annual Increment.	004		16,156
3	Employee Benefits.	010		440,904
4	Unclassified.	099		21,589
5	Equipment.	070		* 0
6	Current Expenses.	130		645,009
7	Repairs and Alterations.	064		<u>25,000</u>
8	Total.		\$	2,668,958

*136-Division of Labor -
Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2013 Org 0308

*CLERK'S NOTE: The Governor reduced Item 135, line 5, Equipment, by \$510,000, from \$510,000 to \$0.

Ch. 10]	APPROPRIATIONS		167
1	Personal Services.....	001	\$ 116,696
2	Annual Increment.....	004	1,444
3	Employee Benefits.....	010	60,860
4	Unclassified.....	099	1,879
5	Current Expenses.....	130	43,266
6	Repairs and Alterations.....	064	<u>2,000</u>
7	Total.....		\$ 226,145

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

(WV Code Chapter 21)

Fund 3191 FY 2013 Org 0308

1	Personal Services.....	001	\$ 55,000
2	Annual Increment.....	004	883
3	Employee Benefits.....	010	25,340
4	Unclassified.....	099	1,380
5	Current Expenses.....	130	52,922
6	Repairs and Alterations.....	064	<u>2,500</u>
7	Total.....		\$ 138,025

*138-Division of Labor -
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2013 Org 0308

1	Personal Services.....	001	\$ 48,000
2	Annual Increment.....	004	678
3	Employee Benefits.....	010	27,494
4	Unclassified.....	099	1,081
5	Current Expenses.....	130	50,114
6	Repairs and Alterations.....	064	<u>750</u>
7	Total.....		\$ 128,117

*139-Division of Labor -
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2013 Org 0308

1	Personal Services.....	001	\$	102,248
2	Annual Increment.....	004		1,068
3	Employee Benefits.....	010		32,377
4	Unclassified.....	099		1,847
5	Current Expenses.....	130		42,775
6	Repairs and Alterations.....	064		1,000
7	BRIM Premium.....	913		<u>3,404</u>
8	Total.....		\$	184,719

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

(WV Code Chapter 47)

Fund 3196 FY 2013 Org 0308

1	Current Expenses.....	130	\$	20,000
2	Repairs and Alterations.....	064		20,000
3	Equipment.....	070		<u>10,000</u>
4	Total.....		\$	50,000

*141-Division of Natural Resources -
License Fund - Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2013 Org 0310

1	Wildlife Resources.....	023	\$	5,551,895
2	Administration.....	155		1,387,974

3	Capital Improvements and		
4	Land Purchase (R).....	248	1,387,974
5	Law Enforcement.....	806	<u>5,551,895</u>
6	Total.		\$ 13,879,738

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

10 Any unexpended balances remaining in the
11 appropriations for Capital Improvements and Land Purchase
12 (fund 3200, activity 248) at the close of the fiscal year 2012
13 are hereby reappropriated for expenditure during the fiscal
14 year 2013.

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

(WV Code Chapter 20)

Fund 3202 FY 2013 Org 0310

1	Unclassified.	099	\$ 500
2	Current Expenses.....	130	<u>74,500</u>
3	Total.		\$ 75,000

*143-Division of Natural Resources -
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2013 Org 0310

1	Personal Services.....	001	\$ 687,189
2	Annual Increment.....	004	15,000
3	Employee Benefits.....	010	315,167
4	Unclassified.	099	11,472

170	APPROPRIATIONS	[Ch. 10
5	Current Expenses.....	130 201,930
6	Equipment.	070 <u>95,113</u>
7	Total.	\$ 1,325,871

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

(WV Code Chapter 20)

Fund 3205 FY 2013 Org 0310

1	Personal Services.....	001 \$ 130,300
2	Annual Increment.....	004 2,100
3	Employee Benefits.....	010 55,594
4	Unclassified.	099 4,029
5	Current Expenses.....	130 301,250
6	Repairs and Alterations.	064 45,016
7	Equipment.	070 58,300
8	Buildings.	258 53,376
9	Other Assets.....	690 922,000
10	Land.....	730 <u>30,900</u>
11	Total.	\$ 1,602,865

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

(WV Code Chapter 20)

Fund 3253 FY 2013 Org 0310

1	Personal Services.....	001 \$ 41,221
2	Annual Increment.....	004 180
3	Employee Benefits.....	010 19,563
4	Unclassified.	099 1,357
5	Current Expenses.....	130 66,458
6	Equipment.	070 <u>6,969</u>
7	Total.	\$ 135,748

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

(WV Code Chapter 20)

Fund 3256 FY 2013 Org 0310

1	Unclassified.	099	\$	200
2	Current Expenses.	130		<u>19,800</u>
3	Total.		\$	20,000

*147-Division of Miners' Health, Safety and Training -
Special Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2013 Org 0314

1	Personal Services.	001	\$	342,984
2	Annual Increment.	004		900
3	Employee Benefits.	010		127,722
4	WV Mining Extension Service.	026		150,000
5	Unclassified.	099		40,985
6	Current Expenses.	130		1,954,557
7	Buildings.	258		481,358
8	Land.	730		<u>1,000,000</u>
9	Total.		\$	4,098,506

*148-Division of Energy -
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2013 Org 0328

1	Energy Assistance - Total.	647	\$	500,000
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*149-Division of Energy -
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3011 FY 2013 Org 0328

1	Personal Services.....	001	\$	334,374
2	Annual Increment.....	004		1,100
3	Employee Benefits.....	010		101,270
4	Unclassified.....	099		8,300
5	Current Expenses.....	130		381,671
6	Repairs and Alterations.....	064		1,500
7	Equipment.....	070		<u>10,000</u>
8	Total.....		\$	838,215

DEPARTMENT OF EDUCATION

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

(WV Code Chapter 18)

Fund 3937 FY 2013 Org 0402

1	Personal Services.....	001	\$	400,000
2	Annual Increment.....	004		4,000
3	Employee Benefits.....	010		123,554
4	Unclassified.....	099		8,000
5	Current Expenses.....	130		261,446
6	Repairs and Alterations.....	064		1,000
7	Equipment.....	070		1,000
8	Other Assets.....	690		<u>1,000</u>
9	Total.....		\$	800,000

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

(WV Code Chapter 18)

Fund 3959 FY 2013 Org 0402

1	Personal Services.....	001	\$	808,843
2	Annual Increment.....	004		9,300
3	Employee Benefits.....	010		276,409
4	Current Expenses.....	130		241,750
5	Repairs and Alterations.	064		7,500
6	Equipment.	070		<u>26,000</u>
7	Total.		\$	1,369,802

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

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

(WV Code Chapter 18)

Fund 3960 FY 2013 Org 0402

1	Personal Services.....	001	\$	841,255
2	Annual Increment.....	004		14,140
3	Employee Benefits.....	010		313,799
4	Unclassified.	099		17,000
5	Current Expenses.....	130		707,223
6	Repairs and Alterations.	064		57,500
7	Equipment.	070		1,000
8	Buildings.	258		1,000
9	Other Assets.....	690		10,000
10	Land.....	730		<u>1,000</u>
11	Total.		\$	1,963,917

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

Fund 3508 FY 2013 Org 0431

- 1 Any unexpended balance remaining in the appropriation
2 for Educational Enhancements (fund 3508, activity 695) at
3 the close of the fiscal year 2012 is hereby reappropriated for
4 expenditure during the fiscal year 2013.

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

(WV Code Chapter 5A)

Fund 3542 FY 2013 Org 0432

1	Personal Services.....	001	\$	152,679
2	Annual Increment.....	004		1,238
3	Employee Benefits.....	010		67,340
4	Current Expenses.....	130		852,067
5	Equipment.....	070		75,000
6	Buildings.....	258		1,000
7	Other Assets.....	690		52,328
8	Land.....	730		<u>1,000</u>
9	Total.....		\$	1,202,652

*155-State Board of Rehabilitation -
Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2013 Org 0932

1	Current Expenses.....	130	\$ 2,605,360
2	Repairs and Alterations.	064	150,000
3	Other Assets.....	690	<u>150,000</u>
4	Total.		\$ 2,905,360

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

156-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2013 Org 0312

1	Personal Services.....	001	\$ 586,841
2	Annual Increment.....	004	7,920
3	Employee Benefits.....	010	208,108
4	Current Expenses.....	130	1,760,277
5	Repairs and Alterations.	064	1,000
6	Equipment.	070	5,000
7	Other Assets.....	690	<u>4,403</u>
8	Total.		\$ 2,573,549

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

(WV Code Chapter 22)

Fund 3023 FY 2013 Org 0313

1	Personal Services.....	001	\$ 349,180
2	Annual Increment.....	004	5,100
3	Employee Benefits.....	010	156,736

176	APPROPRIATIONS		[Ch. 10
4	Current Expenses.....	130	88,913
5	Repairs and Alterations.	064	500
6	Equipment.	070	3,000
7	Other Assets.....	690	<u>2,000</u>
8	Total.		\$ 605,429

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

(WV Code Chapter 22)

Fund 3024 FY 2013 Org 0313

1	Personal Services.....	001	\$ 317,311
2	Annual Increment.....	004	3,060
3	Employee Benefits.....	010	144,923
4	Current Expenses.....	130	475,252
5	Repairs and Alterations.	064	13,000
6	Equipment.	070	53,105
7	Other Assets.....	690	<u>10,000</u>
8	Total.		\$ 1,016,651

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

(WV Code Chapter 22)

Fund 3321 FY 2013 Org 0313

1	Personal Services.....	001	\$ 941,554
2	Annual Increment.....	004	11,700
3	Employee Benefits.....	010	397,575
4	Current Expenses.....	130	16,402,506
5	Repairs and Alterations.	064	79,950
6	Equipment.	070	130,192
7	Other Assets.....	690	<u>32,000</u>
8	Total.		\$ 17,995,477

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

(WV Code Chapter 22)

Fund 3322 FY 2013 Org 0313

1	Personal Services.....	001	\$	121,912
2	Annual Increment.....	004		1,620
3	Employee Benefits.....	010		40,062
4	Current Expenses.....	130		<u>512,329</u>
5	Total.		\$	675,923

*161-Division of Environmental Protection -
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2013 Org 0313

1	Personal Services.....	001	\$	1,819,999
2	Annual Increment.....	004		15,809
3	Employee Benefits.....	010		769,073
4	Current Expenses.....	130		1,009,325
5	Repairs and Alterations.	064		15,600
6	Equipment.	070		8,000
7	Other Assets.....	690		<u>15,000</u>
8	Total.		\$	3,652,806

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

(WV Code Chapter 22)

Fund 3324 FY 2013 Org 0313

1	Personal Services.....	001	\$	3,304,137
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178		APPROPRIATIONS	[Ch. 10
2	Annual Increment.....	004	67,470
3	Employee Benefits.....	010	1,544,713
4	Current Expenses.....	130	2,570,364
5	Repairs and Alterations.	064	60,500
6	Equipment.	070	85,134
7	Other Assets.....	690	<u>57,500</u>
8	Total.		\$ 7,689,818

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

(WV Code Chapter 22)

Fund 3325 FY 2013 Org 0313

1	Personal Services.....	001	\$ 271,667
2	Annual Increment.....	004	2,760
3	Employee Benefits.....	010	105,471
4	Current Expenses.....	130	171,648
5	Repairs and Alterations.	064	5,400
6	Equipment.	070	3,500
7	Other Assets.....	690	<u>3,500</u>
8	Total.		\$ 563,946

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

(WV Code Chapter 22)

Fund 3331 FY 2013 Org 0313

1	Personal Services.....	001	\$ 435,904
2	Annual Increment.....	004	7,650
3	Employee Benefits.....	010	187,762
4	Current Expenses.....	130	435,005
5	Repairs and Alterations.	064	7,014

Ch. 10]	APPROPRIATIONS	179
6	Equipment.	070 9,000
7	Other Assets.	690 <u>11,700</u>
8	Total.	\$ 1,094,035

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

(WV Code Chapter 22)

Fund 3332 FY 2013 Org 0313

1	Personal Services.	001 \$ 559,784
2	Annual Increment.	004 7,074
3	Employee Benefits.	010 211,534
4	Current Expenses.	130 3,959,425
5	Repairs and Alterations.	064 8,650
6	Equipment.	070 31,500
7	Other Assets.	690 <u>1,000</u>
8	Total.	\$ 4,778,967

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

(WV Code Chapter 22)

Fund 3333 FY 2013 Org 0313

1	Personal Services.	001 \$ 1,829,228
2	Annual Increment.	004 27,059
3	Employee Benefits.	010 802,409
4	Current Expenses.	130 1,106,648
5	Repairs and Alterations.	064 54,930
6	Equipment.	070 65,356
7	Other Assets.	690 <u>32,168</u>
8	Total.	\$ 3,917,798

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

(WV Code Chapter 22)

Fund 3336 FY 2013 Org 0313

1	Personal Services.....	001	\$	4,185,930
2	Annual Increment.....	004		50,217
3	Employee Benefits.....	010		1,558,307
4	Current Expenses.....	130		1,894,593
5	Repairs and Alterations.	064		67,694
6	Equipment.	070		100,775
7	Other Assets.....	690		<u>45,217</u>
8	Total.		\$	7,902,733

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

(WV Code Chapter 22)

Fund 3340 FY 2013 Org 0313

1	Personal Services.....	001	\$	162,607
2	Annual Increment.....	004		2,280
3	Employee Benefits.....	010		67,285
4	Current Expenses.....	130		120,180
5	Repairs and Alterations.	064		1,000
6	Equipment.	070		13,000
7	Other Assets.....	690		<u>8,000</u>
8	Total.		\$	374,352

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

(WV Code Chapter 22)

Fund 3349 FY 2013 Org 0313

1	Personal Services.....	001	\$	83,008
2	Annual Increment.....	004		300
3	Employee Benefits.....	010		33,700
4	Current Expenses.....	130		11,177,697
5	Repairs and Alterations.	064		2,500
6	Equipment.	070		500
7	Other Assets.....	690		<u>500</u>
8	Total.			\$11,298,205

*170-Division of Environmental Protection -
Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2013 Org 0313

1	Current Expenses.....	130	\$	60,000
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*171-Division of Environmental Protection -
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2013 Org 0313

1	Personal Services.....	001	\$	386,523
2	Annual Increment.....	004		2,471
3	Employee Benefits.....	010		154,550
4	Current Expenses.....	130		2,241,458
5	Repairs and Alterations.	064		800
6	Equipment.	070		<u>500</u>
7	Total.			\$ 2,786,302

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

APPROPRIATIONS

[Ch. 10]

(WV Code Chapter 22)

Fund 3490 FY 2013 Org 0313

1	Personal Services.....	001	\$	821,246
2	Annual Increment.....	004		13,318
3	Employee Benefits.....	010		343,781
4	Unclassified.	099		250,000
5	Current Expenses.....	130		388,086
6	Repairs and Alterations.	064		20,112
7	Equipment.	070		27,748
8	Other Assets.....	690		<u>23,300</u>
9	Total.		\$	1,887,591

*173-Oil and Gas Conservation Commission -
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2013 Org 0315

1	Personal Services.....	001	\$	116,766
2	Annual Increment.....	004		2,976
3	Employee Benefits.....	010		37,482
4	Current Expenses.....	130		61,225
5	Repairs and Alterations.	064		1,000
6	Equipment.	070		9,481
7	Other Assets.....	690		<u>1,500</u>
8	Total.		\$	230,430

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

*174-Division of Health -
The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2013 Org 0506

1	Personal Services.....	001	\$	607,685
2	Annual Increment.....	004		15,190
3	Employee Benefits.....	010		253,896
4	Unclassified.....	099		15,501
5	Current Expenses.....	130		185,953
6	Equipment.....	070		30,000
7	Other Assets.....	690		<u>441,834</u>
8	Total.....		\$	<u>1,550,059</u>

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

(WV Code Chapter 16)

Fund 5156 FY 2013 Org 0506

1	Institutional Facilities			
2	Operations (R).....	335	\$	38,874,567
3	Medical Services Trust Fund -			
4	Transfer (R).....	512		<u>25,300,000</u>
5	Total.....		\$	<u>64,174,567</u>

6 Any unexpended balance remaining in the appropriation
7 for hospital services revenue account at the close of the fiscal
8 year 2012 is hereby reappropriated for expenditure during the
9 fiscal year 2013.

10 The total amount of this appropriation shall be paid from
11 the hospital services revenue account special fund created by
12 W.Va. Code §16-1-13, and shall be used for operating
13 expenses and for improvements in connection with existing
14 facilities and bond payments.

15 The secretary of the department of health and human
 16 resources is authorized to utilize up to ten percent of the
 17 funds from the appropriation for Institutional Facilities
 18 Operations line to facilitate cost effective and cost saving
 19 services at the community level.

20 Necessary funds from the above appropriation may be
 21 used for medical facilities operations, either in connection
 22 with this account or in connection with the line item
 23 designated Institutional Facilities Operations in the
 24 consolidated medical service fund (fund 0525, fiscal year
 25 2013, organization 0506).

26 From the above appropriation to Institutional Facilities
 27 Operations, together with available funds from the
 28 consolidated medical services fund (fund 0525, activity 335)
 29 on July 1, 2012, the sum of \$160,000 shall be transferred to
 30 the department of agriculture - land division - farm operation
 31 fund (1412) as advance payment for the purchase of food
 32 products; actual payments for such purchases shall not be
 33 required until such credits have been completely expended.

*176-Division of Health -
 Laboratory Services Fund*

(WV Code Chapter 16)

Fund 5163 FY 2013 Org 0506

1	Personal Services.....	001	\$	621,296
2	Annual Increment.....	004		13,774
3	Employee Benefits.....	010		277,587
4	Unclassified.....	099		22,067
5	Current Expenses.....	130		846,180
6	Equipment.....	070		<u>430,583</u>
7	Total.....		\$	2,211,487

*177-Division of Health -
The Health Facility Licensing Account*

(WV Code Chapter 16)

Fund 5172 FY 2013 Org 0506

1	Personal Services.....	001	\$	430,808
2	Annual Increment.....	004		8,936
3	Employee Benefits.....	010		166,206
4	Unclassified.....	099		7,892
5	Current Expenses.....	130		<u>177,734</u>
6	Total.....		\$	791,576

*178-Division of Health -
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2013 Org 0506

1	Personal Services.....	001	\$	62,198
2	Annual Increment.....	004		2,247
3	Employee Benefits.....	010		24,137
4	Unclassified.....	099		27,101
5	Current Expenses.....	130		<u>2,594,439</u>
6	Total.....		\$	2,710,122

*179-Division of Health -
Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2013 Org 0506

1	Personal Services.....	001	\$	10,000
2	Employee Benefits.....	010		4,024

186	APPROPRIATIONS	[Ch. 10
3	Unclassified. 099	400
4	Current Expenses. 130	<u>25,576</u>
5	Total.	\$ 40,000

*180-Division of Health -
West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2013 Org 0506

1	Personal Services. 001	\$ 494,117
2	Annual Increment. 004	5,890
3	Employee Benefits. 010	207,538
4	Unclassified. 099	249,000
5	Current Expenses. 130	<u>23,943,437</u>
6	Total.	\$24,899,982

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

(WV Code Chapter 16)

Fund 5218 FY 2013 Org 0506

1	Unclassified. 099	\$ 150
2	Current Expenses. 130	<u>14,850</u>
3	Total.	\$ 15,000

*182-West Virginia Health Care Authority —
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2013 Org 0507

1	Personal Services. 001	\$ 2,173,871
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*184-West Virginia Health Care Authority -
Revolving Loan Fund*

(WV Code Chapter 16)

Fund 5382 FY 2013 Org 0507

1 Current Expenses. 130 \$ 2,000,000

*185-Division of Human Services -
Health Care Provider Tax -
Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2013 Org 0511

1	Medical Services.	189	\$174,934,076
2	Medical Services Administrative Costs	789	<u>418,120</u>
3	Total.		\$175,352,196

4 The above appropriation for Medical Services
5 Administrative Costs (fund 5090, activity 789) shall be
6 transferred to a special revenue account in the treasury for
7 use by the department of health and human resources for
8 administrative purposes. The remainder of all moneys
9 deposited in the fund shall be transferred to the West Virginia
10 medical services fund (fund 5084).

*186-Division of Human Services -
Child Support Enforcement Fund*

(WV Code Chapter 48A)

Fund 5094 FY 2013 Org 0511

1 Personal Services. 001 \$ 16,771,990

APPROPRIATIONS

[Ch. 10]

(WV Code Chapter 16)

Fund 5454 FY 2013 Org 0511

1	Personal Services.....	001	\$	63,817
2	Annual Increment.....	004		600
3	Employee Benefits.....	010		24,975
4	Unclassified.....	099		16,091
5	Current Expenses.....	130		<u>1,503,968</u>
6	Total.....		\$	1,609,451

*189–Family Protection Services Board -
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2013 Org 0511

1	Current Expenses.....	130	\$	838,022
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*190–Division of Human Services -
West Virginia Works Separate State College Program
Fund*

(WV Code Chapter 9)

Fund 5467 FY 2013 Org 0511

1	Current Expenses.....	130	\$	1,700,000
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*191–Division of Human Services -
West Virginia Works Separate State Two-Parent Program
Fund*

(WV Code Chapter 9)

Fund 5468 FY 2013 Org 0511

1	Current Expenses.....	130	\$	4,400,000
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**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*192-Department of Military Affairs and Public Safety -
Office of the Secretary -
Law-Enforcement, Safety and
Emergency Worker Funeral
Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2013 Org 0601

1	Current Expenses.....	130	\$	25,000
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*193-State Armory Board -
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2013 Org 0603

1	Personal Services.....	001	\$	90,000
2	Employee Benefits.....	010		12,300
3	Current Expenses.....	130		50,000
4	Repairs and Alterations.	064		490,750
5	Buildings.	258		1,306,950
6	Land.....	730		<u>50,000</u>
7	Total.		\$	2,000,000

*194-Division of Homeland Security and
Emergency Management -
West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2013 Org 0606

1 Current Expenses. 130 \$ 2,000,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total (fund 6295, activity 096) at the close
4 of fiscal year 2012 is hereby reappropriated for expenditure
5 during the fiscal year 2013.

*195-West Virginia Division of Corrections -
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2013 Org 0608

1	Personal Services.	001	\$	376,732
2	Annual Increment.	004		7,531
3	Employee Benefits.	010		129,310
4	Unclassified.	099		10,024
5	Current Expenses.	130		408,700
6	Equipment.	070		30,000
7	Other Assets.	690		<u>40,129</u>
8	Total.		\$	1,002,426

*196-West Virginia State Police -
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2013 Org 0612

1	Personal Services.	001	\$	782,855
2	Annual Increment.	004		30,060
3	Employee Benefits.	010		311,818
4	Current Expenses.	130		263,762
5	Repairs and Alterations.	064		4,500
6	Equipment.	070		170,000
7	Other Assets.	690		5,000

8	BRIM Premium.	913	<u>302,432</u>
9	Total.		\$ 1,870,427

10 The total amount of this appropriation shall be paid from
 11 the special revenue fund out of fees collected for inspection
 12 stickers as provided by law.

*197-West Virginia State Police -
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2013 Org 0612

1	Current Expenses.	130	\$ 1,327,000
2	BRIM Premium.	913	<u>154,452</u>
3	Total.		\$ 1,481,452

4 The total amount of this appropriation shall be paid from
 5 the special revenue fund out of receipts collected pursuant to
 6 W.Va. Code §11-15-9a and 16 and paid into a revolving fund
 7 account in the state treasury.

*198-West Virginia State Police -
 Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2013 Org 0612

1	Buildings.	258	\$ 444,980
2	BRIM Premium.	913	<u>77,222</u>
3	Total.		\$ 522,202

*199-West Virginia State Police -
 Surplus Transfer Account*

APPROPRIATIONS

[Ch. 10]

(WV Code Chapter 15)

Fund 6519 FY 2013 Org 0612

1	Current Expenses.....	130	\$	105,000
2	Equipment.....	070		207,002
3	BRIM Premium.....	913		<u>54,063</u>
4	Total.....		\$	366,065

*200-West Virginia State Police -
Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2013 Org 0612

1	Personal Services.....	001	\$	140,788
2	Annual Increment.....	004		840
3	Employee Benefits.....	010		76,250
4	Current Expenses.....	130		38,019
5	Repairs and Alterations.....	064		500
6	BRIM Premium.....	913		<u>18,524</u>
7	Total.....		\$	274,921

*201-West Virginia State Police -
Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2013 Org 0612

1	Current Expenses.....	130	\$	8,300
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*202-West Virginia State Police -
State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2013 Org 0612

1	Current Expenses.....	130	\$	160,000
2	Repairs and Alterations.	064		<u>40,000</u>
3	Total.		\$	<u>200,000</u>

203-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2013 Org 0615

1	Personal Services.....	001	\$	1,395,228
2	Annual Increment.....	004		22,260
3	Employee Benefits.....	010		553,551
4	Debt Service.....	040		9,000,000
5	Current Expenses.....	130		495,852
6	Repairs and Alterations.	064		4,000
7	Equipment.	070		<u>1,743</u>
8	Total.		\$	11,472,634

*204-Fire Commission -
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2013 Org 0619

1	Personal Services.....	001	\$	2,000,000
2	Annual Increment.....	004		35,000
3	Employee Benefits.....	010		813,036
4	Unclassified.	099		3,800
5	Current Expenses.....	130		1,186,900
6	Repairs and Alterations.	064		54,500
7	Equipment.	070		44,800
8	Other Assets.....	690		12,000
9	BRIM Premium.	913		<u>50,000</u>
10	Total.		\$	<u>4,200,036</u>

11 Any unexpended cash balance remaining in fund 6152
 12 at the close of the fiscal year 2012 is hereby available for
 13 expenditure as part of the fiscal year 2013 appropriation.

*205-Division of Justice and Community Services -
 WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2013 Org 0620

1	Personal Services.....	001	\$	147,102
2	Annual Increment.....	004		1,779
3	Employee Benefits.....	010		66,074
4	Unclassified.	099		20,000
5	Current Expenses.....	130		1,761,045
6	Repairs and Alterations.	064		1,000
7	Equipment.	070		1,000
8	Buildings.	258		1,000
9	Other Assets.....	690		<u>1,000</u>
10	Total.		\$	2,000,000

*206-Division of Justice and Community Services -
 Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2013 Org 0620

1	Personal Services.....	001	\$	18,616
2	Annual Increment.....	004		354
3	Employee Benefits.....	010		8,190
4	Current Expenses.....	130		1,472,540
5	Repairs and Alterations.	064		100
6	Equipment.	070		100
7	Buildings.	258		<u>100</u>
8	Total.		\$	1,500,000

DEPARTMENT OF REVENUE

207-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2013 Org 0303

1	Personal Services.....	001	\$ 1,812,262
2	Annual Increment.....	004	24,000
3	Employee Benefits.....	010	865,928
4	Unclassified.....	099	32,291
5	Current Expenses.....	130	477,595
6	Repairs and Alterations.....	064	3,500
7	Equipment.....	070	<u>13,500</u>
8	Total.....		\$ 3,229,076

*208-Office of the Secretary -
State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2013 Org 0701

1	Directed Transfer.....	700	\$20,000,000
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2 The above appropriation for Directed Transfer shall be
 3 transferred to the Consolidated Public Retirement Board -
 4 West Virginia Public Employees Retirement System
 5 Employers Accumulation Fund (fund 2510).

*209-Tax Division -
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2013 Org 0702

APPROPRIATIONS

[Ch. 10]

1	Personal Services.....	001	\$	17,244
2	Annual Increment.....	004		370
3	Employee Benefits.....	010		5,845
4	Current Expenses.....	130		<u>7,717</u>
5	Total.		\$	31,176

*210-Tax Division -
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2013 Org 0702

1	Personal Services.....	001	\$	571,192
2	Annual Increment.....	004		16,460
3	Employee Benefits.....	010		228,821
4	Unclassified.	099		11,000
5	Current Expenses.....	130		260,527
6	Repairs and Alterations.	064		7,000
7	Equipment.	070		<u>5,000</u>
8	Total.		\$	1,100,000

*211-Tax Division -
Special District Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7086 FY 2013 Org 0702

1	Personal Services.....	001	\$	28,288
2	Annual Increment.....	004		300
3	Employee Benefits.....	010		11,994
4	Current Expenses.....	130		<u>11,491</u>
5	Total.		\$	52,073

*212-Tax Division -
Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2013 Org 0702

1	Personal Services.....	001	\$	170,000
2	Annual Increment.....	004		2,340
3	Employee Benefits.....	010		81,822
4	Current Expenses.....	130		<u>5,406</u>
5	Total.		\$	259,568

*213-Tax Division -
Reduced Cigarette Ignition Propensity
Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2013 Org 0702

1	Current Expenses.....	130	\$	35,000
2	Equipment.	070		<u>15,000</u>
3 Total		\$	50,000

*214-State Budget Office -
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2013 Org 0703

1	Public Employees Insurance Reserve			
2	Fund — Transfer.....	903	\$	6,800,000

3 The above appropriation for Public Employees
4 Insurance Reserve Fund — Transfer shall be transferred to
5 the Medical Services Trust Fund (fund 5185, org 0511) for
6 expenditure.

*215-Insurance Commissioner -
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2013 Org 0704

1	Personal Services.....	001	\$	518,696
2	Annual Increment.....	004		7,372
3	Employee Benefits.....	010		190,057
4	Current Expenses.....	130		<u>1,466,282</u>
5	Total.		\$	2,182,407

*216-Insurance Commissioner -
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2013 Org 0704

1	Personal Services.....	001	\$	383,295
2	Annual Increment.....	004		6,720
3	Employee Benefits.....	010		158,301
4	Current Expenses.....	130		250,625
5	Repairs and Alterations.	064		1,037
6	Other Assets.....	690		<u>17,952</u>
7	Total.		\$	817,930

217-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2013 Org 0704

1	Personal Services.....	001	\$	16,462,396
2	Annual Increment.....	004		422,462
3	Employee Benefits.....	010		7,992,646

Ch. 10]	APPROPRIATIONS	201
4	Current Expenses.....	130 12,682,166
5	Repairs and Alterations.	064 59,906
6	Equipment.	070 223,295
7	Buildings.	258 235,984
8	Other Assets.....	690 <u>205,682</u>
9	Total.	\$ 38,284,537

10 The total amount of this appropriation shall be paid from
11 a special revenue fund out of collections of fees and charges
12 as provided by law.

*218-Insurance Commissioner –
Workers’ Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2013 Org 0704

1	Current Expenses.....	130 \$550,000,000
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*219-Insurance Commissioner –
Workers’ Compensation Uninsured Employers’ Fund*

(WV Code Chapter 23)

Fund 7163 FY 2013 Org 0704

1	Current Expenses.....	130 \$ 27,000,000
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*220-Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2013 Org 0704

1	Current Expenses.....	130 \$ 5,000,000
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*221-Insurance Commissioner –
Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2013 Org 0704

1	Current Expenses.	130	\$ 10,000,000
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*222-Lottery Commission -
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2013 Org 0705

1	Unclassified.	099	\$ 38,000
2	Buildings.	258	<u>3,762,000</u>
3	Total.		\$ 3,800,000

223-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2013 Org 0706

1	Personal Services.	001	\$ 166,570
2	Annual Increment.	004	5,332
3	Employee Benefits.	010	76,338
4	Current Expenses.	130	<u>84,948</u>
5	Total.		\$ 333,188

*224-Racing Commission -
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2013 Org 0707

1 Medical Expenses - Total..... 245 \$ 57,000

2 The total amount of this appropriation shall be paid from
3 the special revenue fund out of collections of license fees and
4 fines as provided by law.

5 No expenditures shall be made from this account except
6 for hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

*225-Racing Commission -
Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2013 Org 0707

1	Personal Services.....	001	\$	125,645
2	Annual Increment.....	004		2,170
3	Employee Benefits.....	010		37,967
4	Current Expenses.....	130		179,218
5	Equipment.....	070		<u>10,000</u>
6	Total.....		\$	355,000

*226-Racing Commission -
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2013 Org 0707

1	Personal Services.....	001	\$	2,766,717
2	Annual Increment.....	004		25,206
3	Employee Benefits.....	010		797,179

204	APPROPRIATIONS	[Ch. 10
4	Current Expenses..... 130	* 557,364
5	Repairs and Alterations. 064	7,000
6	Equipment. 070	<u>50,000</u>
7	Total.	\$ 4,900,266

*227-Racing Commission -
Administration, Promotion, Education, Capital
Improvement
and Greyhound Adoption Programs
to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2013 Org 0707

1	Personal Services..... 001	\$ 110,000
2	Employee Benefits..... 010	53,414
3	Current Expenses..... 130	405,507
4	Repairs and Alterations. 064	5,000
5	Equipment. 070	<u>200,000</u>
6	Total.	\$ 773,921

*228-Alcohol Beverage Control Administration -
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2013 Org 0708

1	Personal Services..... 001	\$ 113,943
2	Annual Increment..... 004	3,780
3	Employee Benefits..... 010	50,840
4	Current Expenses..... 130	32,324
5	Repairs and Alterations. 064	8,000
6	Equipment. 070	50,000

*CLERK'S NOTE: The Governor reduced Item 226, line 4, Current Expenses, by \$696,800, from \$1,254,164 to \$557,364.

7	Buildings.	258		<u>100,000</u>
8	Total.		\$	358,887

9 Any unexpended balance in the appropriation for Capital
10 Outlay and Maintenance (fund 7351, activity 755) at the
11 close of the fiscal year 2012 is hereby reappropriated for
12 expenditure during the fiscal year 2013.

13 To the extent permitted by law, four classified exempt
14 positions shall be provided from Personal Services line item
15 for field auditors.

229-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2013 Org 0708

1	Personal Services.	001	\$	3,734,079
2	Annual Increment.	004		98,092
3	Employee Benefits.	010		1,640,895
4	Current Expenses.	130		2,930,500
5	Repairs and Alterations.	064		62,000
6	Equipment.	070		<u>37,548</u>
7	Total.		\$	8,503,114

8 The total amount of this appropriation shall be paid from
9 a special revenue fund out of liquor revenues and any other
10 revenues available.

11 The above appropriation includes the salary of the
12 commissioner and the salaries, expenses and equipment of
13 administrative offices, warehouses and inspectors.

14 From the above appropriation an amount not less than
15 \$200,000 shall be used for the Tobacco/Alcohol Education
16 Program.

17 There is hereby appropriated from liquor revenues, in
 18 addition to the above appropriation, the necessary amount for
 19 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

*230-Division of Motor Vehicles -
 Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2013 Org 0802

1	Current Expenses.....	130	\$	189,000
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*231-Division of Motor Vehicles -
 Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2013 Org 0802

1	Personal Services.....	001	\$	1,702,000
2	Annual Increment.....	004		35,000
3	Employee Benefits.....	010		756,959
4	Current Expenses.....	130		3,832,552
5	Repairs and Alterations.	064		16,000
6	Other Assets.....	690		<u>210,000</u>
7	Total.		\$	6,552,511

*232-Division of Highways -
 A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2013 Org 0803

Ch. 10]	APPROPRIATIONS	207
1	Current Expenses.....	130 \$ 1,600,000

*233-Public Port Authority -
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2013 Org 0806

1	Current Expenses.....	130 \$ 8,000,000
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DEPARTMENT OF VETERANS' ASSISTANCE

234-Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2013 Org 0613

1	Personal Services.....	001 \$ 65,000
2	Annual Increment.....	004 300
3	Employee Benefits.....	010 28,850
4	Unclassified.....	099 58,313
5	Current Expenses.....	130 <u>5,744,097</u>
6	Total.....	\$ 5,896,560

*235-Department of Veterans' Assistance -
WV Veterans' Home -
Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2013 Org 0618

1	Current Expenses.....	130 \$ 712,000
2	Repairs and Alterations.....	064 <u>38,000</u>
3	Total.....	\$ 750,000

BUREAU OF SENIOR SERVICES

*236-Bureau of Senior Services -
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2013 Org 0508

1	Personal Services.....	001	\$	110,000
2	Annual Increment.....	004		1,000
3	Employee Benefits.....	010		38,267
4	Current Expenses.....	130		<u>10,350,733</u>
5	Total.			\$10,500,000

6 The total amount of this appropriation is funded from
7 annual table game license fees to enable the aged and
8 disabled citizens of West Virginia to stay in their homes
9 through the provision of home and community-based
10 services.

HIGHER EDUCATION

*237-Higher Education Policy Commission -
System -
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2013 Org 0442

1	General Capital Expenditures (R). . .	306	\$	500,000
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2 Any unexpended balance remaining in the appropriation
3 for General Capital Expenditures (fund 4902, activity 306,
4 fiscal year 2012) at the close of fiscal year 2012 is hereby
5 reappropriated for expenditure during the fiscal year 2013.

6 The total amount of this appropriation shall be paid from
 7 the special capital improvements fund created in W.Va. Code
 8 §18B-10-8. Projects are to be paid on a cash basis and made
 9 available on July 1 of each year.

10 The above appropriation for General Capital
 11 Expenditures (activity 306) may be transferred to special
 12 revenue funds for capital improvement projects at the
 13 institutions.

*238-Higher Education Policy Commission -
 System -
 Tuition Fee Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)
 Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2013 Org 0442

1	Debt Service.....	040	\$28,906,457
2	General Capital Expenditures.	306	3,000,000
3	Facilities Planning		
4	and Administration (R).	386	<u>421,082</u>
5	Total.		\$32,327,539

6 Any unexpended balance remaining in the appropriation
 7 for Facilities Planning and Administration (fund 4903,
 8 activity 386) at the close of fiscal year 2012 is hereby
 9 reappropriated for expenditure during the fiscal year 2013.

10 The total amount of this appropriation shall be paid from
 11 the special capital improvement fund created in W.Va. Code
 12 §18B-10-8. Projects are to be paid on a cash basis and made
 13 available on July 1.

14 The above appropriations, except for debt service, may
15 be transferred to special revenue funds for capital
16 improvement projects at the institutions.

*239-Higher Education Policy Commission -
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2013 Org 0442

1 Any unexpended balance remaining in the appropriation
2 at the close of the fiscal year 2012 is hereby reappropriated
3 for expenditure during the fiscal year 2013.

4 The appropriation shall be paid from available
5 unexpended cash balances and interest earnings accruing to
6 the fund. The appropriation shall be expended at the
7 discretion of the Higher Education Policy Commission and
8 the funds may be allocated to any institution within the
9 system.

10 The total amount of this appropriation shall be paid from
11 the unexpended proceeds of revenue bonds previously issued
12 pursuant to W.Va. Code §18-12B-8, which have since been
13 refunded.

*240-Higher Education Policy Commission -
Community and Technical College
Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2013 Org 0442

1 Any unexpended balance remaining in the appropriation
2 for Capital Improvements - Total (fund 4908, activity 958) at

3 the close of fiscal year 2012 is hereby reappropriated for
4 expenditure during the fiscal year 2013.

5 The total amount of this appropriation shall be paid from
6 the sale of the 2009 Series A Community and Technical
7 College Capital Improvement Revenue Bonds and anticipated
8 interest earnings.

*241-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2013 Org 0463

1	Personal Services.	001	\$ 6,000,000
2	Annual Increment.	004	100,000
3	Employee Benefits.	010	4,174,340
4	Current Expenses.	130	4,524,300
5	Repairs and Alterations.	064	425,000
6	Equipment.	070	512,000
7	Buildings.	258	150,000
8	Other Assets.	690	<u>50,000</u>
9	Total.		\$15,935,640

10 Any unexpended balance remaining in the appropriation
11 for Unclassified - Total (fund 4179, activity 096) at the close
12 of fiscal year 2012 is hereby reappropriated for expenditure
13 during the fiscal year 2013.

*242-Higher Education Policy Commission -
Marshall University -
Marshall University Land Sale Account*

(WV Code Chapter 18B)

Fund 4270 FY 2013 Org 0471

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total (fund 4270, activity 096) at the close
3 of fiscal year 2012 is hereby reappropriated for expenditure
4 during the fiscal year 2013.

5 The total mount of this appropriation shall be used for
6 the purchase of additional real property or technology, or for
7 capital improvements at the institution.

*243-Higher Education Policy Commission -
West Liberty University -
West Liberty University Land Sales Account*

(WV Code Chapter 18B)

Fund 4566 FY 2013 Org 0488

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total (fund 4566, activity 096) at the close
3 of fiscal year 2012 is hereby reappropriated for expenditure
4 during the fiscal year 2013.

5 The total amount of this appropriation shall be used for
6 the purchase of additional real property or technology, or for
7 capital improvements at the institution.

*244-WV Council for Community and Technical College
Education -
West Virginia Northern Community and Technical College
- WVNCC Land Sale Account*

(WV Code Chapter 18B)

Fund 4732 FY 2013 Org 0489

1 Any unexpended balance remaining in the appropriation
 2 for Unclassified - Total (fund 4732, activity 096) at the close
 3 of fiscal year 2012 is hereby reappropriated for expenditure
 4 during the fiscal year 2013.

5 The total amount of this appropriation shall be used for
 6 the purchase of additional real property or technology, or for
 7 capital improvements at the institution.

MISCELLANEOUS BOARDS AND COMMISSIONS

245-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425 FY 2013 Org 0505

1	Personal Services.....	001	\$	329,906
2	Annual Increment.....	004		6,500
3	Employee Benefits.....	010		138,060
4	Current Expenses.....	130		<u>270,000</u>
5	Total.		\$	<u>744,466</u>

6 The total amount of this appropriation shall be paid from
 7 a special revenue fund out of collections made by the board
 8 of barbers and cosmetologists as provided by law.

246-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2013 Org 0509

1	Personal Services.....	001	\$	49,410
2	Annual Increment.....	004		1,360
3	Employee Benefits.....	010		21,862
4	Unclassified... ..	099		900

249-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2013 Org 0926

1	Personal Services.....	001	\$ 8,500,587
2	Annual Increment.....	004	161,734
3	Employee Benefits.....	010	3,144,993
4	Current Expenses.....	130	2,857,041
5	Repairs and Alterations.	064	55,000
6	Equipment.	070	45,000
7	PSC Weight Enforcement.	345	4,405,884
8	Debt Payment/Capital Outlay.	520	350,000
9	BRIM Premium.	913	<u>114,609</u>
10	Total.		\$ 19,634,848

11 The total amount of this appropriation shall be paid from
 12 a special revenue fund out of collection for special license
 13 fees from public service corporations as provided by law.

14 The Public Service Commission is authorized to spend
 15 up to \$500,000, from surplus funds in this account, to meet
 16 the expected deficiencies in the Motor Carrier Division (fund
 17 8625, org 0926) due to the amendment and reenactment of
 18 W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715,
 19 Regular Session, 1997.

*250-Public Service Commission -
 Gas Pipeline Division —
 Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2013 Org 0926

1	Personal Services.....	001	\$ 166,481
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216	APPROPRIATIONS	[Ch. 10
2	Annual Increment..... 004	6,890
3	Employee Benefits..... 010	69,616
4	Current Expenses..... 130	81,966
5	Repairs and Alterations. 064	<u>4,000</u>
6	Total.	\$ 328,953

7 The total amount of this appropriation shall be paid from
8 a special revenue fund out of receipts collected for or by the
9 public service commission pursuant to and in the exercise of
10 regulatory authority over pipeline companies as provided by
11 law.

*251-Public Service Commission -
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2013 Org 0926

1	Personal Services..... 001	\$ 1,575,837
2	Annual Increment..... 004	49,647
3	Employee Benefits..... 010	618,042
4	Current Expenses..... 130	656,790
5	Repairs and Alterations. 064	<u>23,000</u>
6	Total.	\$ 2,923,316

7 The total amount of this appropriation shall be paid from
8 a special revenue fund out of receipts collected for or by the
9 public service commission pursuant to and in the exercise of
10 regulatory authority over motor carriers as provided by law.

*252-Public Service Commission -
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2013 Org 0926

218	APPROPRIATIONS	[Ch. 10
2	Annual Increment..... 004	180
3	Employee Benefits..... 010	14,933
4	Current Expenses..... 130	<u>42,160</u>
5	Total.	\$ 114,813

255-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2013 Org 0935

1	Personal Services..... 001	\$ 48,843
2	Annual Increment..... 004	840
3	Employee Benefits..... 010	28,874
4	Current Expenses..... 130	49,913
5	Repairs and Alterations. 064	500
6	Other Assets..... 690	<u>2,000</u>
	Total.	\$ 130,970

256-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2013 Org 0936

1	Personal Services..... 001	\$ 5,000
2	Employee Benefits..... 010	766
3	Current Expenses..... 130	<u>14,734</u>
4	Total.	\$ 20,500

257-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2013 Org 0938

1	Personal Services..... 001	\$ 72,000
2	Annual Increment..... 004	960

Ch. 10]	APPROPRIATIONS	219
3	Employee Benefits..... 010	22,881
4	Current Expenses..... 130	30,815
5	Repairs and Alterations. 064	300
6	Equipment. 070	<u>50</u>
7	Total.	\$ 127,066

258-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2013 Org 0945

1	Personal Services..... 001	\$ 658,738
2	Annual Increment..... 004	8,520
3	Employee Benefits..... 010	243,706
4	Current Expenses..... 130	602,405
5	Repairs and Alterations. 064	4,000
6	Other Assets..... 690	<u>5,500</u>
7	Total.	\$ 1,522,869

259-West Virginia Enterprise Resource Planning Board

(WV Code Chapter 12)

Fund 9080 FY 2013 Org 0947

1	Personal Services..... 001	\$ 3,100,000
2	Annual Increment..... 004	50,000
3	Employee Benefits..... 010	1,070,469
4	Unclassified. 099	430,000
5	Current Expenses..... 130	44,799,531
6	Repairs and Alterations. 064	100,000
7	Equipment. 070	250,000
8	Buildings. 258	100,000
9	Other Assets..... 690	<u>100,000</u>
10	Total.	\$50,000,000

260-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2013 Org 0950

1	Personal Services.....	001	\$	515,000
2	Annual Increment.....	004		5,580
3	Employee Benefits.....	010		183,526
4	Unclassified.....	099		12,667
5	Current Expenses.....	130		390,434
6	BRIM Premium.....	913		<u>159,500</u>
7	Total.....		\$	1,266,707

8 There is hereby appropriated from this fund, in addition
 9 to the above appropriation, the amount of funds necessary for
 10 the Board of Treasury Investments to pay the fees and
 11 expenses of custodians, fund advisors and fund managers for
 12 the Consolidated fund of the State as provided in Article 6C,
 13 Chapter 12 of the Code.

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

17 Total TITLE II, Section 3 - Other Funds
 18 (Including claims against the state) \$1,656,354,880

1 **Sec. 4. Appropriations from lottery net profits.** - Net
 2 profits of the lottery are to be deposited by the director of the
 3 lottery to the following accounts in the amounts indicated.
 4 The director of the lottery shall prorate each deposit of net
 5 profits in the proportion the appropriation for each account
 6 bears to the total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252,
 8 Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-

9 18, the director of the lottery shall make available from the
 10 remaining net profits of the lottery any amounts needed to
 11 pay debt service for which an appropriation is made for Fund
 12 9065, Fund 4297, and Fund 3514 and is authorized to transfer
 13 any such amounts to Fund 9065, Fund 4297, and Fund 3514
 14 for that purpose. Upon receipt of reimbursement of amounts
 15 so transferred, the director of the lottery shall deposit the
 16 reimbursement amounts to the following accounts as required
 17 by this section.

*261-Education, Arts, Sciences and Tourism -
 Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2013 Org 0211

	Act- ivity	Lottery Funds
1 Debt Service - Total.....	310	\$ 10,000,000

*262-West Virginia Development Office -
 Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2013 Org 0304

1 Tourism - Telemarketing Center.	463	\$ 82,080
2 WV Film Office.....	498	338,018
3 Tourism - Advertising (R).....	618	2,938,284
4 Tourism - Operations (R).....	662	<u>4,005,623</u>
5 Total.		\$ 7,364,005

6 Any unexpended balances remaining in the
 7 appropriations for Capitol Complex - Capital Outlay (fund

8 3067, activity 417), Tourism - Advertising (fund 3067,
 9 activity 618), Tourism - Unclassified (fund 3067, activity
 10 662), and Tourism - Special Projects (fund 3067, activity
 11 859) at the close of the fiscal year 2012 are hereby
 12 reappropriated for expenditure during the fiscal year 2013.

263-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2013 Org 0310

1	Personal Services.....	001	\$ 1,437,886
2	Annual Increment.....	004	50,340
3	Employee Benefits.....	010	801,071
4	Unclassified (R).....	099	20,829
5	Current Expenses.....	130	500
6	Repairs and Alterations.	064	600
7	Equipment.	070	500
8	Buildings.	258	400
9	Pricketts Fort State Park.....	324	120,000
10	Non-Game Wildlife (R).....	527	417,285
11	State Parks and		
12	Recreation Advertising (R).....	619	548,733
13	Other Assets.....	690	<u>200</u>
14	Total.		\$ 3,398,344

15 Any unexpended balances remaining in the
 16 appropriations for Gypsy Moth Suppression Program for
 17 State Parks (fund 3267, activity 017), Unclassified (fund
 18 3267, activity 099), Capital Outlay - Parks (fund 3267,
 19 activity 288), Non-Game Wildlife (fund 3267, activity 527),
 20 and State Parks and Recreation Advertising (fund 3267,
 21 activity 619) at the close of the fiscal year 2012 are hereby
 22 reappropriated for expenditure during the fiscal year 2013.

264-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2013 Org 0402

1	Current Expenses.....	130	\$ 3,950,000
2	FBI Checks.....	372	117,319
3	Vocational Education		
4	Equipment Replacement.....	393	1,000,000
5	Assessment Program (R).	396	3,433,036
6	21st Century Technology Infrastructure		
7	Network Tools and Support (R). .	933	<u>22,111,271</u>
8	Total.		\$ 30,611,626

9 Any unexpended balances remaining in the
10 appropriations for Unclassified (fund 3951, activity 099),
11 Assessment Program (fund 3951, activity 396), and 21st
12 Century Technology Infrastructure Network Tools and
13 Support (fund 3951, activity 933) at the close of the fiscal
14 year 2012 are hereby reappropriated for expenditure during
15 the fiscal year 2013.

*265-State Department of Education -
School Building Authority -
Debt Service Fund
(WV Code Chapter 18)*

Fund 3963 FY 2013 Org 0402

1	Debt Service - Total.....	310	\$ 18,000,000
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*266-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2013 Org 0431

1	Unclassified (R).....	099	\$	18,000
1	Current Expenses.....	130		102,000
2	Commission for National and			
3	Community Service.....	193		435,050
4	Governor's Honor Academy.	478		400,000
5	Arts Programs (R).	500		81,165
6	College Readiness.	579		184,689
7	Challenger Learning Center.....	862		118,750
8	Statewide STEM 21 st Century			
9	Academy.	897		150,000
10	Literacy Project (R).	899		<u>350,000</u>
11	Total.		\$	1,839,654

12 Any unexpended balances remaining in the
 13 appropriations for Unclassified (fund 3508, activity 099),
 14 Arts Programs (fund 3508, activity 500), and Literacy Project
 15 (fund 3508, activity 899) at the close of fiscal year 2012 are
 16 hereby reappropriated for expenditure during the fiscal year
 17 2013.

*267-Division of Culture and History -
 Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2013 Org 0432

1	Huntington Symphony.....	027	\$	99,763
2	Martin Luther King, Jr.			
3	Holiday Celebration.	031		10,260
4	Fairs and Festivals (R).....	122		2,061,556
5	Preservation West Virginia.			765,715
6	Archeological Curation/Capital			
7	Improvements (R).	246		51,641

8	Historic Preservation Grants (R).	311	563,750
9	West Virginia Public Theater.	312	198,550
10	Tri-County Fair Association.	343	22,562
11	George Tyler Moore Center for the		
12	Study of the Civil War.	397	61,858
13	Greenbrier Valley Theater.	423	158,913
14	Theater Arts of West Virginia.	464	265,000
15	Marshall Artists Series.	518	59,565
16	Grants for Competitive Arts		
17	Program (R).	624	1,021,250
18	West Virginia State Fair.	657	49,875
19	Save the Music.	680	30,000
20	Contemporary American Theater		
21	Festival.	811	94,763
22	Independence Hall.	812	45,125
23	Mountain State Forest Festival.	864	63,175
24	WV Symphony.	907	94,763
25	Wheeling Symphony.	908	94,763
26	Appalachian Children's Chorus.	916	<u>90,250</u>
27	Total.		\$ 5,903,097

28

29 Any unexpended balances remaining in the
30 appropriations for Unclassified (fund 3534, activity 099),
31 Fairs and Festivals (fund 3534, activity 122), Archeological
32 Curation/Capital Improvements (fund 3534, activity 246),
33 Historic Preservation Grants (fund 3534, activity 311), Grants
34 for Competitive Arts Program (fund 3534, activity 624), and
35 Project ACCESS (fund 3534, activity 865) at the close of the
36 fiscal year 2012 are hereby reappropriated for expenditure
37 during the fiscal year 2013.

38 From the above appropriation for Preservation West
39 Virginia (fund 3534) funding shall be provided to Aracoma
40 Story (Logan) \$47,500, Barbour County Arts and Humanities
41 Council \$1,425, Beckley Main Street (Raleigh) \$4,750, Belle
42 Boyd House (Berkeley) \$1,900, Buffalo Creek Memorial
43 (Logan) \$4,750, Carnegie Hall (Greenbrier) \$75,000, Ceredo

44 Historical Society (Wayne) \$1,900, Ceredo Kenova Railroad
45 Museum (Wayne) \$1,900, Children's Theatre of Charleston
46 (Kanawha) \$5,000, Chuck Mathena Center (Mercer)
47 \$100,000, Collis P. Huntington Railroad Historical Society
48 (Cabell) \$9,500, Country Music Hall of Fame and Museum
49 (Marion) \$6,650, Culture and History National Conference
50 \$25,000, Flannigan Murrell House (Summers) \$9,500, Fort
51 Ashby Fort (Mineral) \$1,425, Fort New Salem (Harrison)
52 \$3,515, Fort Randolph (Mason) \$4,750, Frieda J. Riley
53 Award (Harrison) \$2,850, General Adam Stephen Memorial
54 Foundation (Berkeley) \$17,600, Grafton Mother's Day
55 Shrine Committee (Taylor) \$8,075, Hardy County Tour and
56 Crafts Association \$19,000, Heritage Craft Center of the
57 Eastern Panhandle (Berkeley) \$6,650, Heritage Farm
58 Museum & Village (Cabell) \$47,500, Historic Fayette
59 Theater (Fayette) \$5,225, Historic Middleway Conservancy
60 (Jefferson) \$950, Jefferson County Black History
61 Preservation Society \$4,750, Jefferson County Historical
62 Landmark Commission \$7,600, Maddie Carroll House
63 (Cabell) \$7,125, Marshall County Historical Society \$8,075,
64 McCoy Theater (Hardy) \$19,000, Morgantown Theater
65 Company (Monongalia) \$19,000, Mountaineer Boys' State
66 (Lewis) \$9,500, Nicholas Old Main Foundation (Nicholas)
67 \$1,900, Norman Dillon Farm Museum (Berkeley) \$9,500,
68 Old Opera House Theater Company (Jefferson) \$14,250,
69 Parkersburg Arts Center (Wood) \$19,000, Pocahontas
70 Historic Opera House \$5,700, Raleigh County All Wars
71 Museum \$9,500, Rhododendron Girl's State (Ohio) \$9,500,
72 Roane County 4-H and FFA Youth Livestock Program
73 \$4,750, Scottish Heritage Society/N. Central WV (Harrison)
74 \$4,750, Society for the Preservation of McGrew House
75 (Preston) \$3,325, Soldiers' Memorial Theater (Raleigh)
76 \$9,500, Southern WV Veterans' Museum \$4,275, Summers
77 County Historic Landmark Commission \$4,750, Those Who
78 Served War Museum (Mercer) \$3,800, Three Rivers Avian
79 Center (Summers) \$14,250, Tug Valley Arts Council
80 (Mingo) \$4,750, Tug Valley Chamber of Commerce Coal

81 House (Mingo) \$1,900, Tunnelton Historical Society
82 (Preston) \$1,900, Veterans Committee for Civic
83 Improvement of Huntington (Wayne) \$4,750, Webb Chapel
84 Cemetery Association Event (Preston) \$1,900, West Virginia
85 Museum of Glass (Lewis) \$4,750, West Virginia Music Hall
86 of Fame (Kanawha) \$33,250, YMCA Camp Horseshoe
87 (Ohio) \$95,000, Youth Museum of Southern WV (Raleigh)
88 \$11,400.

89 From the above appropriation for Fairs and Festivals
90 (fund 3534, activity 122) funding shall be provided to the
91 African-American Cultural Heritage Festival (Jefferson)
92 \$4,750, African-American Heritage Family Tree Museum
93 (Fayette) \$4,275, Alderson 4th of July Celebration
94 (Greenbrier) \$4,750, Allegheny Echo (Pocahontas) \$7,125,
95 Alpine Festival/Leaf Peepers Festival (Tucker) \$10,688,
96 Angus Beef and Cattle Show (Lewis) \$1,425, Antique
97 Market Fair (Lewis) \$1,900, Apollo Theater-Summer
98 Program (Berkeley) \$1,900, Appalachian Autumn Festival
99 (Braxton) \$3,325, Appalachian Mountain Bike Race
100 (Calhoun) \$1,425, Apple Butter Festival (Morgan) \$5,700,
101 Arkansaw Homemaker's Heritage Weekend (Hardy) \$3,325,
102 Armed Forces Day-South Charleston (Kanawha) \$2,850,
103 Arthurdale Heritage New Deal Festival (Preston) \$4,750,
104 Arts Monongahela (Monongalia) \$19,000, Athens Town Fair
105 (Mercer) \$1,900, Augusta Fair (Randolph) \$4,750, Barbour
106 County Fair \$23,750, Barboursville Octoberfest (Cabell)
107 \$4,750, Bass Festival (Pleasants) \$1,758, Battelle District
108 Fair (Monongalia) \$4,750, Battle of Dry Creek (Greenbrier)
109 \$1,425, Battle of Lewisburg Civil War Days (Greenbrier)
110 \$2,850, Battle of Point Pleasant Memorial Committee
111 (Mason) \$4,750, Belle Town Fair (Kanawha) \$4,275,
112 Belleville Homecoming (Wood) \$19,000, Bergoo Down
113 Home Days (Webster) \$2,375, Berkeley County Youth Fair
114 \$17,575, Black Bear 4K Mountain Bike Race (Kanawha)
115 \$950, Black Heritage Festival (Harrison) \$5,700, Black
116 Walnut Festival (Roane) \$9,500, Blue-Gray Reunion

117 (Barbour) \$3,325, Boone County Fair \$9,500, Boone County
118 Labor Day Celebration \$3,800, Bradshaw Fall Festival
119 (McDowell) \$1,900, Bramwell Street Fair (Mercer) \$3,325,
120 Braxton County Fairs and Festivals Association \$10,925,
121 Braxton County Monster Fest / WV Autumn Festival \$2,375,
122 Brooke County Fair \$3,325, Bruceton Mills Good Neighbor
123 Days (Preston) \$1,900, Buckwheat Festival (Preston) \$8,075,
124 Buffalo 4th of July Celebration (Putnam) \$475, Burlington
125 Apple Harvest Festival (Mineral) \$28,500, Burlington
126 Pumpkin Harvest Festival (Raleigh) \$4,750, Burnsville
127 Harvest Festival (Braxton) \$2,500, Cabell County Fair
128 \$9,500, Calhoun County Wood Festival \$1,900, Campbell's
129 Creek Community Fair (Kanawha) \$2,375, Cape Coalwood
130 Festival Association (McDowell) \$2,375, Capon Bridge
131 Annual VFD Celebration (Hampshire) \$950, Capon Bridge
132 Founders Day Festival (Hampshire) \$1,900, Capon Springs
133 Ruritan 4th of July (Hampshire) \$950, Cass Homecoming
134 (Pocahontas) \$1,900, Cedarville Town Festival (Gilmer)
135 \$950, Celebration in the Park (Wood) \$3,800, Celebration of
136 America (Monongalia) \$5,700, Chapmanville Apple Butter
137 Festival (Logan) \$950, Chapmanville Fire Department 4th of
138 July (Logan) \$2,850, Charles Town Christmas Festival
139 (Jefferson) \$4,750, Charles Town Heritage Festival
140 (Jefferson) \$4,750, Charlie West Blues Festival (Kanawha)
141 \$9,500, Cherry River Festival (Nicholas) \$6,175, Chester
142 Fireworks (Hancock) \$1,425, Chester Fourth of July
143 Festivities (Hancock) \$4,750, Chief Logan State Park-Civil
144 War Celebration (Logan) \$7,600, Christmas in
145 Shepherdstown (Jefferson) \$3,800, Christmas in the Park
146 (Brooke) \$4,750, Christmas in the Park (Logan) \$23,750,
147 City of Dunbar Critter Dinner (Kanawha) \$9,500, City of
148 New Martinsville Festival of Memories (Wetzel) \$10,450,
149 City of Pleasant Valley Celebration (Marion) \$2,375, City of
150 Romney Fair (Hampshire) \$3,000, Civil War Horse Cavalry
151 Race (Barbour) \$950, Clay County Golden Delicious Apple
152 Festival \$6,650, Coal Field Jamboree (Logan) \$33,250,
153 Coalton Days Fair (Randolph) \$6,650, Cole Chevy Mountain

154 Festival \$1,000, Country Roads Festival (Fayette) \$1,900,
155 Cowen Railroad Festival (Webster) \$3,325, Craigsville Fall
156 Festival (Nicholas) \$3,325, Delbarton Homecoming (Mingo)
157 \$3,325, Doddridge County Fair \$6,650, Durbin Days
158 (Pocahontas) \$4,750, Elbert/Filbert Reunion Festival
159 (McDowell) \$1,425, Elizabethtown Festival (Marshall)
160 \$4,750, Elkins Randolph County 4th of July Car Show
161 (Randolph) \$1,900, Fairview 4th of July Celebration
162 (Marion) \$950, Farm Safety Day (Preston) \$1,900, Fayette
163 American Legion 4th of July (Fayette) \$950, FestivALL
164 Charleston (Kanawha) \$19,000, First Stage Children's
165 Theater Company (Cabell) \$1,900, Flemington Day Fair and
166 Festival (Taylor) \$3,325, Follansbee Community Days
167 (Brooke) \$7,838, Fort Gay Mountain Heritage Days (Wayne)
168 \$4,750, Fort Henry Days (Ohio) \$5,035, Frankford
169 Autumnfest (Greenbrier) \$4,750, Franklin Fishing Derby
170 (Pendleton) \$7,125, Franklins Fireman Carnival (Pendleton)
171 \$4,750, Freshwater Folk Festival (Greenbrier) \$4,750,
172 Friends Auxiliary of W.R. Sharpe Hospital (Lewis) \$4,750,
173 Frontier Days (Harrison) \$2,850, Frontier Fest/Canaan Valley
174 (Taylor) \$4,750, Fund for the Arts-Wine & All that Jazz
175 Festival (Kanawha) \$2,375, Gassaway Days Celebration
176 (Braxton) \$4,750, Gilbert Kiwanis Harvest Festival (Mingo)
177 \$3,800, Gilbert Spring Fling (Mingo) \$4,750, Gilmer County
178 Farm Show \$3,800, Grant County Arts Council \$1,900,
179 Grape Stomping Wine Festival (Nicholas) \$1,900, Great
180 Greenbrier River Race (Pocahontas) \$9,500, Greater
181 Quinwood Days (Greenbrier) \$1,250, Green Spring Days
182 (Hampshire) \$950, Guyandotte Civil War Days (Cabell)
183 \$9,500, Hamlin 4th of July Celebration (Lincoln) \$4,750,
184 Hampshire Civil War Celebration Days (Hampshire) \$950,
185 Hampshire County 4th of July Celebration \$19,000,
186 Hampshire County Fair \$8,000, Hampshire Heritage Days
187 \$3,800, Hancock County Oldtime Fair \$4,750, Hardy County
188 Commission - 4th of July \$9,500, Hatfield McCoy Matewan
189 Reunion Festival (Mingo) \$4,750, Hatfield McCoy Trail
190 National ATV and Dirt Bike Weekend (Wyoming) \$4,750,

191 Heritage Craft Festival (Monroe) \$950, Heritage Days
192 Festival (Roane) \$1,425, Hicks Festival (Tucker) \$1,900,
193 Hilltop Festival (Cabell) \$950, Hilltop Festival of Lights
194 (McDowell) \$1,900, Hinton Railroad Days (Summers)
195 \$5,225, Holly River Festival (Webster) \$1,425, Hundred 4th
196 of July (Wetzel) \$6,888, Hundred American Legion Earl
197 Kiger Post Bluegrass Festival (Wetzel) \$1,900, Hurricane 4th
198 of July Celebration (Putnam) \$4,750, Jaeger Lions Club
199 Annual Golf Show (McDowell) \$1,425, Jaeger Town Fair
200 (McDowell) \$1,425, Irish Heritage Festival of WV (Raleigh)
201 \$4,750, Irish Spring Festival (Lewis) \$950, Italian Heritage
202 Festival-Clarksburg (Harrison) \$28,500, Jackson County Fair
203 \$4,750, Jacksonburg Homecoming (Wetzel) \$950, Jane Lew
204 Arts and Crafts Fair (Lewis) \$950, Jefferson County Fair
205 Association \$23,750, Jersey Mountain Ruritan Pioneer Days
206 (Hampshire) \$950, John Henry Days Festival (Monroe)
207 \$4,750, Johnnie Johnson Blues and Jazz Festival (Marion)
208 \$4,750, Johnstown Community Fair (Harrison) \$2,375,
209 Junior Heifer Preview Show (Lewis) \$1,900, Kanawha Coal
210 Riverfest-St. Albans 4th of July Festival (Kanawha) \$4,750,
211 Kanawha County Fair \$4,750, Kayford Reunion (Kanawha)
212 \$2,375, Kermit Fall Festival (Mingo) \$2,850, Keyser Old
213 Fashioned 4th of July Celebration (Mineral) \$950, Keystone
214 Reunion Gala (McDowell) \$2,500, King Coal Festival
215 (Mingo) \$4,750, Kingwood Downtown Street Fair and
216 Heritage Days (Preston) \$1,900, L.Z. Rainelle WV Veterans
217 Reunion (Greenbrier) \$4,750, Lady of Agriculture (Preston)
218 \$950, Lamb and Steer Show (Grant) \$8,550, Larry Joe
219 Harless Center Octoberfest Hatfield McCoy Trail (Mingo)
220 \$9,500, Larry Joe Harless Community Center Spring Middle
221 School Event (Mingo) \$4,750, Last Blast of Summer
222 (McDowell) \$4,750, Laurel Mt. Re-enactment Committee
223 (Barbour) \$3,088, Lewis County Fair Association \$3,325,
224 Lewisburg Shanghai (Greenbrier) \$1,900, Lincoln County
225 Fall Festival \$7,600, Lincoln County Winterfest \$4,750,
226 Lincoln District Fair (Marion) \$2,375, Little Birch Days
227 Celebration (Braxton) \$475, Little Levels Heritage Festival

228 (Pocahontas) \$1,900, Logan County Arts and Crafts Fair
229 \$3,800, Logan Freedom Festival \$14,250, Lost Creek
230 Community Festival (Harrison) \$6,650, Mannington District
231 Fair (Marion) \$5,700, Maple Syrup Festival (Randolph)
232 \$950, Marion County FFA Farm Fest \$2,375, Marmet
233 Annual Labor Day Celebration (Kanawha) \$5,000, Marshall
234 County Antique Power Show \$2,375, Marshall County Fair
235 \$7,125, Mason County Fair \$4,750, Mason Dixon Festival
236 (Monongalia) \$6,650, Matewan Massacre Reenactment
237 (Mingo) \$5,700, Matewan-Magnolia Fair (Mingo) \$42,750,
238 McARTS-McDowell County \$19,000, McDowell County
239 Fair \$2,375, McGrew House History Day (Preston) \$1,900,
240 McNeill's Rangers (Mineral) \$7,600, Meadow Bridge
241 Hometown Festival (Fayette) \$1,188, Meadow River Days
242 Festival (Greenbrier) \$2,850, Mercer Bluestone Valley Fair
243 (Mercer) \$1,900, Mercer County Fair \$1,900, Mid Ohio
244 Valley Antique Engine Festival (Wood) \$2,850, Milton
245 Christmas in the Park (Cabell) \$2,375, Milton Fourth of July
246 Celebration (Cabell) \$2,375, Mineral County Fair \$1,663,
247 Mineral County Veterans Day Parade \$1,425, Molasses
248 Festival (Calhoun) \$1,900, Monongahfest (Marion) \$6,000,
249 Monroe County Harvest Festival \$1,900, Moon Over
250 Mountwood Fishing Festival (Wood) \$2,850, Morgan County
251 Fair-History Wagon \$1,425, Moundsville Bass Festival
252 (Marshall) \$3,800, Moundsville July 4th Celebration
253 (Marshall) \$4,750, Mount Liberty Fall Festival (Barbour)
254 \$2,375, Mountain Fest (Monongalia) \$19,000, Mountain
255 Festival (Mercer) \$4,394, Mountain Heritage Arts and Crafts
256 Festival (Jefferson) \$4,750, Mountain Music Festival
257 (McDowell) \$2,375, Mountain State Apple Harvest Festival
258 (Berkeley) \$7,125, Mountain State Arts Crafts Fair Cedar
259 Lakes (Jackson) \$42,750, Mountaineer Hot Air Balloon
260 Festival (Monongalia) \$3,800, Mud River Festival (Lincoln)
261 \$7,600, Mullens Dogwood Festival (Wyoming) \$6,650,
262 Multi-Cultural Festival of West Virginia (Kanawha) \$19,000,
263 Nettle Festival (Pocahontas) \$4,750, New Cumberland
264 Christmas Parade (Hancock) \$2,850, New Cumberland

265 Fourth of July Fireworks (Hancock) \$4,750, New River
266 Bridge Day Festival (Fayette) \$38,000, Newburg Volunteer
267 Fireman's Field Day (Preston) \$950, Newell Annual Clay
268 Festival (Hancock) \$2,850, Nicholas County Fair \$4,750,
269 Nicholas County Potato Festival \$3,325, North Preston
270 Farmers Club - Civil War Times (Preston) \$950, North River
271 Valley Festival (Hampshire) \$950, Northern Preston Mule
272 Pull and Farmers Days (Preston) \$3,800, Oak Leaf Festival
273 (Fayette) \$10,000, Oceana Heritage Festival (Wyoming)
274 \$5,700, Oglebay City Park - Festival of Lights (Ohio)
275 \$76,000, Oglebay Festival (Ohio) \$9,500, Ohio County
276 Country Fair \$8,550, Ohio Valley Beef Association (Wood)
277 \$2,375, Ohio Valley Black Heritage Festival (Ohio) \$5,225,
278 Old Central City Fair (Cabell) \$4,750, Old Tyme Christmas
279 (Jefferson) \$2,280, Paden City Labor Day Festival (Wetzel)
280 \$6,175, Parkersburg Homecoming (Wood) \$14,000, Patty
281 Fest (Monongalia) \$1,900, Paw Paw District Fair (Marion)
282 \$3,325, Pax Reunion Committee (Fayette) \$4,750, Pendleton
283 County 4-H Weekend \$1,900, Pendleton County Committee
284 for Arts \$14,250, Pennsboro Country Road Festival (Ritchie)
285 \$1,900, Petersburg Fourth of July Celebration (Grant)
286 \$19,000, Petersburg HS Celebration (Grant) \$9,500,
287 Piedmont-Annual Back Street Festival (Mineral) \$3,800,
288 Pinch Reunion (Kanawha) \$1,425, Pine Bluff Fall Festival
289 (Harrison) \$3,800, Pine Grove 4th of July Festival (Wetzel)
290 \$6,650, Pineville Festival (Wyoming) \$5,700, Pleasants
291 County Agriculture Youth Fair \$4,750, Poca Heritage Days
292 (Putnam) \$2,850, Pocahontas County Pioneer Days \$6,650,
293 Point Pleasant Stern Wheel Regatta (Mason) \$4,750,
294 Potomac Highlands Maple Festival (Grant) \$5,700, Pratt Fall
295 Festival (Kanawha) \$2,375, Princeton Street Fair (Mercer)
296 \$4,750, Putnam County Fair \$4,750, Quartets on Parade
297 (Hardy) \$3,800, Rand Community Center Festival (Kanawha)
298 \$2,375, Randolph County Community Arts Council \$2,850,
299 Randolph County Fair \$6,650, Randolph County Ramp and
300 Rails \$1,900, Ranson Christmas Festival (Jefferson) \$4,750,
301 Ranson Festival (Jefferson) \$4,750, Ravenswood Octoberfest

302 (Jackson) \$7,600, Reedsville VFD Fair (Preston) \$3,325,
303 Renick Liberty Festival (Greenbrier) \$950, Riders of the
304 Flood (Greenbrier) \$2,850, Ripley 4th of July (Jackson)
305 \$14,250, Ritchie County Fair and Exposition \$4,750, Ritchie
306 County Pioneer Days \$950, River City Festival (Preston)
307 \$950, Riverfest (Marion) \$1,900, Roane County Agriculture
308 Field Day \$2,850, Ronceverte River Festival (Greenbrier)
309 \$4,750, Rowlesburg Labor Day Festival (Preston) \$950,
310 Rupert Country Fling (Greenbrier) \$2,850, Saint Spyridon
311 Greek Festival (Harrison) \$2,375, Salem Apple Butter
312 Festival (Harrison) \$3,800, Sistersville 4th of July Fireworks
313 (Wetzel) \$5,225, Smoke on the Water (Kanawha) \$1,900,
314 Smoke on the Water (Wetzel) \$2,850, South Charleston
315 Summerfest (Kanawha) \$9,500, Southern Wayne County Fall
316 Festival \$950, Spirit of Grafton Celebration (Taylor) \$9,500,
317 Spring Mountain Festival (Grant) \$3,800, Springfield Peach
318 Festival (Hampshire) \$1,140, St. Albans City of Lights -
319 December (Kanawha) \$4,750, Sternwheel Festival (Wood)
320 \$2,850, Stoco Reunion (Raleigh) \$2,375, Stonewall Jackson
321 Heritage Arts & Crafts Jubilee \$10,450, Storytelling Festival
322 (Lewis) \$475, Strawberry Festival (Upshur) \$28,500, Tacy
323 Fair (Barbour) \$950, Taste of Parkersburg (Wood) \$4,750,
324 Taylor County Fair \$5,225, Terra Alta VFD 4th of July
325 Celebration (Preston) \$950, The Gathering at Sweet Creek
326 (Wood) \$2,850, Three Rivers Coal Festival (Marion) \$7,363,
327 Thunder on the Tygart - Mothers' Day Celebration (Taylor)
328 \$14,250, Town of Anawalt Celebration (McDowell) \$1,425,
329 Town of Delbarton 4th of July Celebration (Mingo) \$2,850,
330 Town of Fayetteville Heritage Festival (Fayette) \$7,125,
331 Town of Matoaka Hog Roast (Mercer) \$950, Treasure
332 Mountain Festival (Pendleton) \$23,750, Tri-County Fair
333 (Grant) \$14,250, Tucker County Arts Festival and
334 Celebration \$17,100, Tucker County Fair \$4,513, Tucker
335 County Health Fair \$1,900, Tunnelton Depot Days (Preston)
336 \$950, Tunnelton Volunteer Fire Department Festival
337 (Preston) \$950, Turkey Festival (Hardy) \$2,850, Tyler
338 County Fair \$4,940, Tyler County Fourth of July \$475,

339 Union Community Irish Festival (Barbour) \$1,000, Uniquely
340 West Virginia Festival (Morgan) \$1,900, Upper Kanawha
341 Valley Oktoberfest (Kanawha) \$2,375, Upper Ohio Valley
342 Italian Festival (Ohio) \$11,400, Upper West Fork VFD
343 Bluegrass Festival (Calhoun) \$475, Upshur County Fair
344 \$6,650, Veterans Welcome Home Celebration (Cabell)
345 \$1,500, Vietnam Veterans of America Christmas Party
346 (Cabell) \$950, Volcano Days at Mountwood Park (Wood)
347 \$4,750, War Homecoming Fall Festival (McDowell) \$1,425,
348 Wardensville Fall Festival (Hardy) \$4,750, Wayne County
349 Fair \$4,750, Wayne County Fall Festival \$4,750, Webster
350 County Wood Chopping Festival \$14,250, Webster Wild
351 Water Weekend \$1,900, Weirton July 4th Celebration
352 (Hancock) \$19,000, Welcome Home Family Day (Wayne)
353 \$3,040, Wellsburg 4th of July Celebration (Brooke) \$7,125,
354 Wellsburg Apple Festival of Brooke County \$4,750, West
355 Virginia Blackberry Festival (Harrison) \$4,750, West
356 Virginia Chestnut Festival (Preston) \$950, West Virginia
357 Coal Festival (Boone) \$9,500, West Virginia Coal Show
358 (Mercer) \$2,500, West Virginia Dairy Cattle Show (Lewis)
359 \$9,500, West Virginia Dandelion Festival (Greenbrier)
360 \$4,750, West Virginia Fair and Exposition (Wood) \$7,695,
361 West Virginia Fireman's Rodeo (Fayette) \$2,375, West
362 Virginia Honey Festival (Wood) \$1,900, West Virginia Oil
363 and Gas Festival (Tyler) \$10,450, West Virginia Polled
364 Hereford Association (Braxton) \$1,425, West Virginia
365 Poultry Festival (Hardy) \$4,750, West Virginia Pumpkin
366 Festival (Cabell) \$9,500, West Virginia State Folk Festival
367 (Gilmer) \$4,750, West Virginia State Monarch Butterfly
368 Festival (Brooke) \$4,750, West Virginia Water Festival -
369 City of Hinton (Summers) \$15,200, West Virginia Wine &
370 Jazz Festival (Monongalia) \$8,550, Weston VFD 4th of July
371 Firemen Festival (Lewis) \$1,900, Wetzel County Autumnfest
372 \$5,225, Wetzel County Town and Country Days \$16,150,
373 Wheeling Celtic Festival (Ohio) \$1,900, Wheeling City of
374 Lights (Ohio) \$7,600, Wheeling Sternwheel Regatta (Ohio)
375 \$9,500, Wheeling Vintage Raceboat Regatta (Ohio) \$19,000,

376 Whipple Community Action (Fayette) \$2,375, Widen Days
 377 Festival (Calhoun) \$1,900, Wileyville Homecoming (Wetzel)
 378 \$3,800, Wine Festival and Mountain Music Event (Harrison)
 379 \$4,750, Winter Festival of the Waters (Berkeley) \$4,750,
 380 Wirt County Fair \$2,375, Wirt County Pioneer Days \$1,900,
 381 Youth Stockman Beef Expo. (Lewis) \$1,900.

382 Any Fairs & Festivals awards shall be funded in addition
 383 to, and not in lieu of, individual grant allocations derived
 384 from the Arts Council and the Cultural Grant Program
 385 allocations.

*268-Library Commission -
 Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2013 Org 0433

1	Books and Films..	179	\$	427,500
2	Services to Libraries..	180		550,000
3	Grants to Public Libraries.	182		9,264,970
4	Digital Resources..	309		219,992
5	Libraries - Special Projects (R).	625		850,000
6	Infomine Network.	884		<u>873,422</u>
7	Total.		\$	12,185,884

8 Any unexpended balance remaining in the appropriation
 9 for Libraries-Special Projects (fund 3559, activity 625) at the
 10 close of fiscal year 2012 is hereby reappropriated for
 11 expenditure during the fiscal year 2013.

*269-Bureau of Senior Services -
 Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2013 Org 0508

1	Personal Services.	001	\$	138,628
2	Annual Increment.	004		3,000
3	West Virginia Helpline.	006		200,000
4	Employee Benefits.	010		65,157
5	Current Expenses.	130		380,543
6	Repairs and Alterations.	064		3,000
7	Local Programs Service Delivery			
8	Costs.	200		2,475,250
9	Silver Haired Legislature.	202		20,000
10	Area Agencies Administration	203		38,684
11	Senior Citizen Centers and			
12	Programs (R)	462		2,470,000
13	Transfer to Division of Human			
14	Services for Health Care and			
15	Title XIX Waiver for Senior			
16	Citizens.	539		10,264,882
17	Roger Tompkins Alzheimers			
18	Respite Care.	643		2,296,137
19	Regional Aged and Disabled			
20	Resource Center.	767		935,000
21	Senior Services Medicaid Transfer.	871		8,670,000
22	WV Alzheimer's Hotline.	724		45,000
23	Legislative Initiatives for the			
24	Elderly.	904		10,000,000
25	Long Term Care Ombudsman.	905		321,325
26	BRIM Premium.	913		7,243
27	In-Home Services and Nutrition			
28	for Senior Citizens.	917		<u>4,500,000</u>
29	Total.		\$	42,833,849

30 Any unexpended balance remaining in the appropriation
31 for Senior Citizen Centers and Programs (fund 5405, activity
32 462), at the close of the fiscal year 2012 is hereby
33 reappropriated for expenditure during the fiscal year 2013.

34 Included in the above appropriation for Current
35 Expenses (fund 5405, activity 130), is \$50,000 for an in-
36 home direct care workforce registry.

37 The above appropriation for Transfer to Division of
38 Human Services for Health Care and Title XIX Waiver for
39 Senior Citizens (activity 539) along with the federal moneys
40 generated thereby shall be used for reimbursement for
41 services provided under the program.

42 In addition to the above appropriations, funding is
43 available in the special revenue Community Based Service
44 Fund (fund 5409) to provide in-home and community-based
45 services for the eligible aged and disabled citizens of West
46 Virginia that provides funding at a comparable level with FY
47 2012.

*270-Community and Technical College —
Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2013 Org 0442

1 Debt Service - Total..... 310 \$5,000,000

2 Any unexpended balance remaining in the appropriation
3 for Capital Outlay and Improvements - Total (fund 4908,
4 activity 847) at the close of fiscal year 2012 is hereby
5 reappropriated for expenditure during the fiscal year 2013.

*271-Higher Education Policy Commission -
Lottery Education -
Higher Education Policy Commission -
Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2013 Org 0441

1	Marshall Medical School - RHI		
2	Program and Site Support (R).	033	\$471,258
3	WVU Health Sciences - RHI		
4	Program and Site Support (R).	035	1,294,995
5	RHI Program and Site Support (R).	036	2,213,469
6	RHI Program and Site Support -		
7	RHEP Program		
8	Administration (R).	037	169,731
9	RHI Program and Site Support -		
10	Grad Med Ed and Fiscal		
11	Oversight (R).	038	98,709
12	Higher Education Grant		
13	Program (R).	164	0
14	Minority Doctoral Fellowship (R).	166	150,000
15	Underwood—Smith Scholarship		
16	Program - Student Awards (R).	167	141,142
17	Health Sciences Scholarship (R).	176	251,542
18	Vice Chancellor for Health		
19	Sciences - Rural Health		
20	Residency Program (R).	601	267,882
21	MA Public Health Program and		
22	Health Science Technology (R).	623	62,483
23	Marshall University Graduate		
24	College Writing Project (R).	807	25,000
25	WV Engineering, Science, and		
26	Technology Scholarship		
27	Program (R).	868	470,473
28	Health Sciences Career		
29	Opportunities Program (R).	869	378,192
30	HSTA Program (R).	870	1,543,868
31	Center for Excellence in		
32	Disabilities (R).	967	<u>350,000</u>
33	Total.		\$ 7,888,744

34 Any unexpended balances remaining in the
35 appropriations at the close of fiscal year 2012 are hereby
36 reappropriated for expenditure during the fiscal year 2013.

37 *
38
39
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41 The above appropriation for Underwood-Smith
42 Scholarship Program - Student Awards (activity 167) shall be
43 transferred to the Underwood -Smith Teacher Scholarship
44 Fund (fund 4922, org 0441) established by W.Va. Code
45 §18C-4-1.

46 The above appropriation for WV Engineering, Science,
47 and Technology Scholarship Program (activity 868) shall be
48 transferred to the West Virginia Engineering, Science and
49 Technology Scholarship Fund (fund 4928, org 0441)
50 established by W.Va. Code §18C-6-1.

51 Total TITLE II, Section 4 -
52 Lottery Revenue. \$145,025,203

1 **Sec. 5. Appropriations from state excess lottery**
2 **revenue fund.** - In accordance with W.Va. Code §29-22-18a,
3 the following appropriations shall be deposited and disbursed
4 by the director of the lottery to the following accounts in this
5 section in the amounts indicated.

6 After first funding the appropriations required by W.Va.
7 Code §29-22-18a, the director of the lottery shall provide

*CLERK’S NOTE: The Governor deleted language in Item 271, lines 35 through 38, which read “The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, Org 0441) established by W.Va. Code §18C-5-3.”

8 funding from the state excess lottery revenue fund for the
 9 remaining appropriations in this section to the extent that
 10 funds are available. In the event that revenues to the state
 11 excess lottery revenue fund are not sufficient to meet all the
 12 appropriations made pursuant to this section, then the director
 13 of the lottery shall first provide the necessary funds to meet
 14 the appropriation for Fund 7208, activity 700 of this section;
 15 next, to provide the funds necessary for Fund 7208, activity
 16 095 of this section; next, to provide the funds necessary for
 17 Fund 5365, activity 189 of this section. Allocation of the
 18 funds for each appropriation shall be allocated in succession
 19 before any funds are provided for the next subsequent
 20 appropriation.

*272-Lottery Commission -
 Refundable Credit*

Fund 7207 FY 2013 Org 0705

	Act- ivity	Excess Lottery Funds
1 Directed Transfer.....	700	\$ 10,000,000

2 The above appropriation shall be transferred to the General
 3 Revenue Fund to provide reimbursement for the refundable
 4 credit allowable under W.Va. Code §11-21-21. The amount of
 5 the required transfer shall be determined solely by the state tax
 6 commissioner and shall be completed by the director of the
 7 lottery upon the commissioner’s request.

*273-Lottery Commission -
 General Purpose Account*

Fund 7206 FY 2013 Org 0705

1 Directed Transfer.....	700	\$ 65,000,000
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2 The above appropriation shall be transferred to the
 3 General Revenue Fund as determined by the director of the
 4 lottery in accordance with W.Va. Code §29-22-18a.

274-Education Improvement Fund

Fund 4295 FY 2013 Org 0441

1 Directed Transfer..... 700 \$ 29,000,000

2 The above appropriation shall be transferred to the
 3 PROMISE Scholarship Fund (fund 4296, org 0441)
 4 established by W.Va. Code §18C-7-7.

5 The Legislature has explicitly set a finite amount of
 6 available appropriations and directed the administrators of the
 7 Program to provide for the award of scholarships within the
 8 limits of available appropriations.

*275-Economic Development Authority -
Economic Development Project Fund*

Fund 9065 FY 2013 Org 0944

1 Debt Service - Total..... 310 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
 3 excess lottery revenues are authorized to be transferred to the
 4 lottery fund as reimbursement of amounts transferred to the
 5 economic development project fund pursuant to section four
 6 of this title and W.Va. Code §29-22-18, subsection (f).

276-School Building Authority

Fund 3514 FY 2013 Org 0402

1 Debt Service - Total..... 310 \$ 19,000,000

*277-West Virginia Infrastructure Council*Fund 3390 FY 2013 Org 0316

- 1 Directed Transfer. 700 \$ 46,000,000
 2
 3 The above appropriation shall be allocated pursuant to
 4 W.Va. Code §29-22-18d and §31-15-9.

*278-Higher Education Improvement Fund*Fund 4297 FY 2013 Org 0441

- 1 Directed Transfer. 700 \$15,000,000
 2
 3 The above appropriation shall be transferred to fund
 4 4903, org 0442 as authorized by Senate Concurrent
 Resolution No. 41.

*279-State Park Improvement Fund*Fund 3277 FY 2013 Org 0310

- | | | | |
|---|----------------------------------|-----|---------------|
| 1 | Unclassified. | 099 | \$ 50,000 |
| 2 | Current Expenses. | 130 | 2,438,300 |
| 3 | Repairs and Alterations. | 064 | 2,161,200 |
| 4 | Equipment. | 070 | 200,000 |
| 5 | Buildings. | 258 | 100,000 |
| 6 | Other Assets. | 690 | <u>50,500</u> |
| 7 | Total. | | \$ 5,000,000 |

- 8 Any unexpended balance remaining in the appropriation
 9 at the close of the fiscal year 2012 is hereby reappropriated
 10 for expenditure during the fiscal year 2013.

- 11 Appropriations to the State Park Improvement Fund are
 12 not to be expended on personal services or employee
 13 benefits.

*280-Racing Commission -*Fund 7308 FY 2013 Org 0707

1	Special Breeders Compensation		
2	(WVC §29-22-18a,		
3	subsection (1)).	218	\$ 2,000,000

*281-Lottery Commission -
Excess Lottery Revenue Fund Surplus*Fund 7208 FY 2013 Org 0705

1	Teachers' Retirement Savings		
2	Realized.	095	\$28,061,000
3	Directed Transfer.	700	<u>27,600,000</u>
4	Total.		\$55,661,000

5 The above appropriation for Directed Transfer (fund
6 7208, activity 700) shall be transferred to the General
7 Revenue Fund.

8 The above appropriation for Teachers' Retirement
9 Savings Realized (fund 7208, activity 095) shall be
10 transferred to the Employee Pension and Health Care Benefit
11 Fund (fund 2044).

282—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2013 Org 2300

1 Any unexpended balance remaining in the appropriation
2 for Tax Reduction and Federal Funding Increased
3 Compliance (TRAFFIC) - Lottery Surplus (fund 1736,
4 activity 929) at the close of the fiscal year 2012 is hereby
5 reappropriated for expenditure during the fiscal year 2013.

283—Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2013 Org 0100

1 Any unexpended balance remaining in the appropriation
 2 for Publication of Papers and Transition Expenses — Lottery
 3 Surplus (fund 1046, activity 066) at the close of the fiscal
 4 year 2012 is hereby reappropriated for expenditure during the
 5 fiscal year 2013.

284—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2013 Org 0307

1	Unclassified - Total.	096	*\$400,000
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2 Any unexpended balances remaining in the
 3 appropriations for Unclassified - Total (fund 3170, activity
 4 096), Recreational Grants or Economic Development Loans
 5 (fund 3170, activity 253), and Connectivity Research and
 6 Development - Lottery Surplus (fund 3170, activity 923) at
 7 the close of the fiscal year 2012 are hereby reappropriated for
 8 expenditure during the fiscal year 2013.

9 The above appropriation to Connectivity Research and
 10 Development - Lottery Surplus shall be used by the West
 11 Virginia Development Office for the coordinated
 12 development of technical infrastructure in areas where
 13 expanded resources and technical infrastructure may be
 14 expected or required pursuant to the provisions of W.Va.
 15 Code §5A-6-4.

*CLERK’S NOTE: The Governor reduced Item 284, line 1, Unclassified - Total,
 by \$410,000, from \$810,000 to \$400,000.

*285—Higher Education Policy Commission -
Administration -
Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2013 Org 0441

- 1 Any unexpended balance remaining in the appropriation
- 2 for Advanced Technology Centers (fund 4932, activity 028)
- 3 at the close of the fiscal year 2012 is hereby reappropriated
- 4 for expenditure during the fiscal year 2013.

*286-Division of Health —
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2013 Org 0506

- 1 Any unexpended balance remaining in the appropriation
- 2 for Capital Outlay and Maintenance (fund 5219, activity 755)
- 3 at the close of the fiscal year 2012 is hereby reappropriated
- 4 for expenditure during the fiscal year 2013.

287—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2013 Org 0511

- 1 Medical Services. 189 \$24,503,890

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

(WV Code Chapter 5F)

Fund 6005 FY 2013 Org 0601

1 Any unexpended balance remaining in the appropriation
 2 for Interoperable Communications System (fund 6005,
 3 activity 303) at the close of the fiscal year 2012 is hereby
 4 reappropriated for expenditure during the fiscal year 2013.

*289—Division of Corrections -
 Correctional Units*

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

Fund 6283 FY 2013 Org 0608

1 Any unexpended balance remaining in the appropriation
 2 for Capital Outlay and Maintenance (fund 6283, activity 755)
 3 at the close of the fiscal year 2012 is hereby reappropriated
 4 for expenditure during the fiscal year 2013.

Total TITLE II, Section 5 -

Excess Lottery Funds \$ 290,974,890

1 **Sec. 6. Appropriations of federal funds.** - In
 2 accordance with Article 11, Chapter 4 of the Code from
 3 federal funds there are hereby appropriated conditionally
 4 upon the fulfillment of the provisions set forth in Article 2,
 5 Chapter 11B of the Code the following amounts, as itemized,
 6 for expenditure during the fiscal year 2013.

LEGISLATIVE

290-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2013 Org 2300

		Act- ivity	Federal Funds
1	Economic Loss Claim Payment		
2	Fund.....	334	\$ 3,000,000

JUDICIAL

291-Supreme Court

Fund 8867 FY 2013 Org 2400

1	Personal Services.....	001	\$ 200,000
2	Employee Benefits.....	010	50,000
3	Current Expenses.....	130	<u>1,382,000</u>
4	Total.		\$ 1,632,000

EXECUTIVE

*292-Governor's Office -
American Recovery and Reinvestment Act*

(WV Code Chapter 5)

Fund 8701 FY 2013 Org 0100

1	Federal Economic Stimulus.	891	\$ 500,000
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*293-Governor's Office -
ARRA NTIA Broadband Infrastructure Grant Fund*

(WV Code Chapter 5)

Fund 8717 FY 2013 Org 0100

1	Federal Economic Stimulus.	891	\$50,000,000
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294-Governor's Office

(WV Code Chapter 5)

Fund 8742 FY 2013 Org 0100

1	Personal Services.....	001	\$	90,000
2	Annual Increment.....	004		1,000
3	Employee Benefits.....	010		39,500
4	Current Expenses.....	130		<u>24,869,500</u>
	Total.			\$25,000,000

*295-Governor's Office -
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2013 Org 0100

1	Personal Services.....	001	\$	350,000
2	Annual Increment.....	004		2,785
3	Employee Benefits.....	010		134,122
4	Current Expenses.....	130		9,006,593
5	Repairs and Alterations.	064		500
6	Equipment.	070		6,000
7	Federal Economic Stimulus.....	891		<u>1,500,000</u>
8	Total.			\$ 11,000,000

*296-Governor's Office -
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2013 Org 0100

1	Personal Services.....	001	\$	274,400
2	Annual Increment.....	004		4,000
3	Employee Benefits.....	010		108,773

Ch. 10]	APPROPRIATIONS	249
4	Current Expenses..... 130	5,274,337
5	Repairs and Alterations. 064	<u>1,000</u>
6	Total.	\$ 5,662,510

297-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2013 Org 1400

1	Personal Services..... 001	\$ 1,157,088
2	Annual Increment..... 004	8,555
3	Employee Benefits..... 010	355,844
4	Unclassified. 099	50,534
5	Current Expenses..... 130	3,321,434
6	Repairs and Alterations. 064	50,000
7	Equipment. 070	<u>110,000</u>
8	Total.	\$ 5,053,455

*298-Department of Agriculture -
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2013 Org 1400

1	Personal Services..... 001	\$ 418,228
2	Annual Increment..... 004	8,716
3	Employee Benefits..... 010	181,380
4	Unclassified. 099	8,755
5	Current Expenses..... 130	138,518
6	Repairs and Alterations. 064	5,500
7	Equipment. 070	<u>114,478</u>
8	Total.	\$ 875,575

*299-Department of Agriculture -
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2013 Org 1400

1	Current Expenses.....	130	\$ 1,814,314
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*300-Department of Agriculture -
Land Protection Authority*

Fund 8896 FY 2013 Org 1400

1	Personal Services.....	001	\$ 30,000
2	Employee Benefits.....	010	15,924
3	Unclassified.....	099	5,004
4	Current Expenses.....	130	<u>449,522</u>
5	Total.....		\$ 500,450

*301-Secretary of State -
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2013 Org 1600

1	Personal Services.....	001	\$ 85,000
2	Annual Increment.....	004	1,200
3	Employee Benefits.....	010	59,558
4	Unclassified.....	099	16,525
5	Current Expenses.....	130	810,168
6	Repairs and Alterations.....	064	15,000
7	Equipment.....	070	150,000
8	Other Assets.....	690	<u>100,000</u>
9	Total.....		\$ 1,237,451

DEPARTMENT OF ADMINISTRATION

302—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2013 Org 0230

1	Personal Services.....	001	\$	373,310
2	Annual Increment.....	004		7,140
3	Employee Benefits.....	010		196,849
4	Current Expenses.....	130		<u>37,379,427</u>
5	Total.			\$37,956,726

303—WV Retiree Health Benefits Trust Fund

(WV Code Chapter 5)

Fund 8759 FY 2013 Org 0232

1	Current Expenses.....	130	\$	10,000,000
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DEPARTMENT OF COMMERCE*304-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2013 Org 0305

1	Personal Services.....	001	\$	648,400
2	Annual Increment.....	004		12,500
3	Employee Benefits.....	010		277,712
4	Unclassified.	099		101,950
5	Current Expenses.....	130		9,059,078
6	Repairs and Alterations.	064		<u>100,000</u>
7	Total.			\$10,199,640

305-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2013 Org 0306

1	Personal Services.....	001	\$	35,857
2	Employee Benefits.....	010		18,247
3	Unclassified.....	099		3,800
4	Current Expenses.....	130		294,970
5	Repairs and Alterations.....	064		5,000
6	Equipment.....	070		7,500
7	Other Assets.....	690		15,000
8	Federal Economic Stimulus.....	891		<u>1,162,076</u>
9	Total.....		\$	<u>1,542,450</u>

306-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2013 Org 0307

1	Personal Services.....	001	\$	730,000
2	Annual Increment.....	004		20,000
3	Employee Benefits.....	010		292,200
4	Unclassified.....	099		96,900
5	Current Expenses.....	130		8,542,852
6	Repairs and Alterations.....	064		2,000
7	Equipment.....	070		<u>19,000</u>
8	Total.....		\$	<u>9,702,952</u>

307-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2013 Org 0308

1	Personal Services.....	001	\$	270,000
2	Annual Increment.....	004		4,992
3	Employee Benefits.....	010		108,515
4	Unclassified.....	099		5,572
5	Current Expenses.....	130		167,663

Ch. 10]	APPROPRIATIONS	253
6	Repairs and Alterations. 064	<u>500</u>
7	Total.	\$ 557,242

308-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2013 Org 0310

1	Personal Services. 001	\$ 3,511,315
2	Annual Increment. 004	75,780
3	Employee Benefits. 010	1,245,180
4	Unclassified. 099	91,850
5	Current Expenses. 130	6,278,598
6	Repairs and Alterations. 064	109,400
7	Equipment. 070	842,088
8	Buildings. 258	26,000
9	Other Assets. 690	1,564,000
10	Land. 730	<u>149,030</u>
11	Total.	\$13,893,241

*309-Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2013 Org 0314

1	Personal Services. 001	\$ 504,828
2	Annual Increment. 004	7,800
3	Employee Benefits. 010	<u>100,549</u>
4 Total	\$ 613,177

310-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2013 Org 0323

1	Unclassified.	099	\$	5,127
2	Current Expenses.	130		507,530
3	Reed Act 2002—Unemployment			
4	Compensation.	622		2,850,000
5	Reed Act 2002—Employment			
6	Services.	630		<u>1,650,000</u>
7	Total.		\$	5,012,657

8

9 Pursuant to the requirements of 42 U.S.C. 1103, Section

10 903 of the Social Security Act, as amended, and the

11 provisions of W.Va. Code §21A-9-9, the above appropriation

12 to Unclassified and Current Expenses shall be used by

13 WorkForce West Virginia for the specific purpose of

14 administration of the state's unemployment insurance

15 program or job service activities, subject to each and every

16 restriction, limitation or obligation imposed on the use of the

17 funds by those federal and state statutes.

311-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2013 Org 0328

1	Personal Services.	001	\$	300,000
2	Annual Increment.	004		7,000
3	Employee Benefits.	010		103,581
4	Unclassified.	099		15,000
5	Current Expenses.	130		1,061,661
6	Repairs and Alterations.	064		1,000
7	Equipment.	070		22,500
8	Federal Economic Stimulus.	891		<u>5,000,000</u>
9	Total.		\$	6,510,742

DEPARTMENT OF EDUCATION*312-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2013 Org 0402

1	Personal Services.....	001	\$ 4,935,500
2	Annual Increment.....	004	25,000
3	Employee Benefits.....	010	1,491,680
4	Unclassified.....	099	2,000,000
5	Current Expenses.....	130	204,517,820
6	Repairs and Alterations.....	064	10,000
7	Equipment.....	070	10,000
8	Other Assets.....	690	10,000
9	Federal Economic Stimulus.....	891	<u>10,000,000</u>
10	Total.....		\$ 223,000,000

*313-State Department of Education -
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2013 Org 0402

1	Personal Services.....	001	\$ 1,200,000
2	Annual Increment.....	004	11,000
3	Employee Benefits.....	010	322,235
4	Unclassified.....	099	1,150,500
5	Current Expenses.....	130	113,419,265
6	Repairs and Alterations.....	064	2,000
7	Equipment.....	070	20,000
8	Other Assets.....	690	<u>25,000</u>
9	Total.....		\$ 116,150,000

*314-State Board of Education -
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2013 Org 0402

1	Personal Services.....	001	\$	1,155,000
2	Annual Increment.....	004		14,600
3	Employee Benefits.....	010		325,318
4	Unclassified.....	099		155,000
5	Current Expenses.....	130		13,820,082
6	Repairs and Alterations.....	064		10,000
7	Equipment.....	070		10,000
8	Other Assets.....	690		<u>10,000</u>
9	Total.....		\$	15,500,000

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

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2013 Org 0402

1	Personal Services.....	001	\$	3,015,000
2	Annual Increment.....	004		23,000
3	Employee Benefits.....	010		985,610
4	Unclassified.....	099		1,000,000
5	Current Expenses.....	130		102,646,390
6	Repairs and Alterations.....	064		10,000
7	Equipment.....	070		10,000
8	Other Assets.....	690		<u>10,000</u>
9	Total.....		\$	107,700,000

*316-West Virginia Schools for the Deaf
and the Blind*

(WV Code Chapters 18 and 18A)

Fund 8716 FY 2013 Org 0403

1	Current Expenses.....	130	\$	35,000
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DEPARTMENT OF EDUCATION AND THE ARTS*317-Department of Education and the Arts -
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2013 Org 0431

1	Personal Services.....	001	\$	25,000
2	Employee Benefits.....	010		2,251
3	Current Expenses.....	130		372,749
4	Federal Economic Stimulus.....	891		<u>400,000</u>
5	Total.		\$	800,000

318-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2013 Org 0432

1	Personal Services.....	001	\$	528,630
2	Annual Increment.....	004		9,553
3	Employee Benefits.....	010		207,007
4	Current Expenses.....	130		1,495,228
5	Repairs and Alterations.	064		1,000
6	Equipment.	070		1,000
7	Buildings.	258		1,000
8	Other Assets.....	690		1,000
9	Land.....	730		360
10	Federal Economic Stimulus.....	891		<u>300,000</u>
11	Total.		\$	2,544,778

APPROPRIATIONS

[Ch. 10]

319-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2013 Org 0433

1	Personal Services.....	001	\$	236,208
2	Annual Increment.....	004		3,660
3	Employee Benefits.....	010		86,310
4	Current Expenses.....	130		1,083,039
5	Repairs and Alterations.	064		2,000
6	Equipment.	070		<u>542,000</u>
7	Total.		\$	1,953,217

320-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2013 Org 0439

1	Equipment.	070	\$	1,500,000
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*321-State Board of Rehabilitation -
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2013 Org 0932

1	Personal Services.....	001	\$	7,300,000
2	Annual Increment.....	004		250,000
3	Employee Benefits.....	010		6,650,577
4	Current Expenses.....	130		52,340,263
5	Repairs and Alterations.	064		350,300
6	Equipment.	070		<u>470,000</u>
7	Total.		\$	67,361,140

*322-State Board of Rehabilitation -
Division of Rehabilitation Services -
Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2013 Org 0932

1	Personal Services.....	001	\$ 9,781,700
2	Annual Increment.....	004	260,000
3	Employee Benefits.....	010	5,864,506
4	Current Expenses.....	130	9,207,634
5	Repairs and Alterations.	064	1,100
6	Equipment.	070	<u>83,350</u>
7	Total.		\$ 25,198,290

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

323-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2013 Org 0313

1	Personal Services.....	001	\$ 19,212,824
2	Annual Increment.....	004	310,489
3	Employee Benefits.....	010	7,352,792
4	Current Expenses.....	130	143,243,738
5	Repairs and Alterations.	064	231,750
6	Equipment.	070	894,490
7	Other Assets.....	690	160,393
8	Federal Economic Stimulus.....	891	<u>2,007,850</u>
9	Total.		\$ 173,414,326

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

324-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2013 Org 0506

1	Personal Services.....	001	\$	460,000
2	Annual Increment.....	004		5,000
3	Employee Benefits.....	010		162,336
4	Unclassified.....	099		73,307
5	Current Expenses.....	130		<u>6,630,103</u>
6	Total.....		\$	<u>7,330,746</u>

*325-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2013 Org 0506

1	Personal Services.....	001	\$	9,767,841
2	Annual Increment.....	004		130,000
3	Employee Benefits.....	010		3,846,563
4	Unclassified.....	099		910,028
5	Current Expenses.....	130		75,098,201
6	Equipment.....	070		456,972
7	Buildings.....	258		155,000
8	Other Assets.....	690		380,000
9	Federal Economic Stimulus.....	891		<u>2,000,000</u>
10	Total.....		\$	<u>92,744,605</u>

*326-Division of Health -
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2013 Org 0506

1	Unclassified.	099	\$	180,000
2	West Virginia Drinking Water Treatment			
3	Revolving Fund - Transfer.	689		<u>15,820,000</u>
4	Total.		\$	16,000,000

327-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2013 Org 0507

1	Unclassified.	099	\$	9,874
2	Current Expenses.	130		977,546
3	Federal Economic Stimulus.	891		<u>3,505,920</u>
4	Total.		\$	4,493,340

328-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2013 Org 0510

1	Personal Services.	001	\$	300,000
2	Annual Increment.	004		7,000
3	Employee Benefits.	010		108,037
4	Current Expenses.	130		<u>28,080</u>
5	Total.		\$	443,117

329-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2013 Org 0511

APPROPRIATIONS

[Ch. 10]

1	Personal Services.....	001	\$	44,204,944
2	Annual Increment.....	004		851,000
3	Employee Benefits.....	010		19,032,868
4	Unclassified.....	099		22,855,833
5	Current Expenses.....	130		71,501,742
6	Medical Services.....	189		2,200,000,000
7	Medical Services Administrative			
8	Costs.....	789		100,517,659
9	Federal Economic Stimulus.....	891		<u>30,500,000</u>
10	Total.....			\$2,489,464,046

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

330-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2013 Org 0601

1	Personal Services.....	001	\$	248,426
2	Annual Increment.....	004		4,040
3	Employee Benefits.....	010		113,033
4	Unclassified.....	099		250,053
5	Current Expenses.....	130		24,375,774
6	Repairs and Alterations.....	064		6,500
7	Other assets.....	690		<u>7,500</u>
8	Total.....		\$	25,005,326

331-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2013 Org 0603

1	Unclassified.....	099	\$	969,296
2	Martinsburg Starbase.....	742		350,000

264		APPROPRIATIONS	[Ch. 10
1	Personal Services.....	001	\$ 1,188,076
2	Employee Benefits.....	010	124,683
3	Current Expenses.....	130	1,584,701
4	Repairs and Alterations.	064	13,000
5	Equipment.	070	2,003,970
6	Other Assets.....	690	<u>106,100</u>
	Total.		\$ 5,020,530

335-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2013 Org 0619

1	Current Expenses.....	130	\$ 80,000
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336-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2013 Org 0620

1	Personal Services.....	001	\$ 538,527
2	Annual Increment.....	004	7,124
3	Employee Benefits.....	010	225,546
4	Unclassified.	099	75,000
5	Current Expenses.....	130	9,050,000
6	Repairs and Alterations.	064	2,000
7	Equipment.	070	5,000
8	Buildings.	258	2,000
9	Other Assets.....	690	1,000
10	Federal Economic Stimulus.....	891	<u>450,000</u>
11	Total.		\$ 10,356,197

DEPARTMENT OF REVENUE

*337-Tax Division -
Consolidated Federal Fund*

(WV Code Chapter 11)

Fund 8899 FY 2013 Org 0702

1	Current Expenses.....	130	\$	10,000
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338-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2013 Org 0704

1	Personal Services.....	001	\$	140,412
2	Annual Increment.....	004		3,500
3	Employee Benefits.....	010		59,398
4	Current Expenses.....	130		11,050,190
5	Repairs and Alterations.	064		20,000
6	Equipment.	070		20,000
7	Buildings.	258		20,000
8	Other Assets.....	690		<u>2,887,427</u>
9	Total.		\$	14,200,927

DEPARTMENT OF TRANSPORTATION*339-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2013 Org 0802

1	Personal Services.....	001	\$324,633
2	Annual Increment.....	004	7,080
3	Employee Benefits.....	010	115,888
4	Current Expenses.....	130	17,725,433
5	Repairs and Alterations.	064	<u>500</u>
6	Total.		\$ 18,173,534

APPROPRIATIONS

340 - State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2013 Org 0804

1	Current Expenses.....	130	\$	250,000
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341-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2013 Org 0805

1	Personal Services.....	001	\$	442,232
2	Annual Increment.....	004		7,560
3	Employee Benefits.....	010		183,257
4	Current Expenses.....	130		6,670,961
5	Repairs and Alterations.	064		2,500
6	Equipment.	070		3,215,906
7	Buildings.	258		5,843,714
8	Other Assets.....	690		965,000
9	Federal Economic Stimulus.....	891		<u>2,000,000</u>
10	Total.		\$	19,331,130

342-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2013 Org 0806

1	Current Expenses.....	130	\$	7,091,713
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DEPARTMENT OF VETERANS' ASSISTANCE*343-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2013 Org 0613

1	Personal Services.....	001	\$	500,000
2	Annual Increment.....	004		3,000
3	Employee Benefits.....	010		246,840
4	Current Expenses.....	130		3,469,282
5	Repairs and Alterations.	064		250,000
6	Equipment.	070		<u>657,878</u>
7	Total.		\$	5,127,000

*344-Department of Veterans' Assistance -
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2013 Org 0618

1	Personal Services.....	001	\$	425,000
2	Annual Increment.....	004		10,760
3	Employee Benefits.....	010		291,615
4	Current Expenses.....	130		531,632
5	Repairs and Alterations.	064		200,000
6	Equipment.	070		300,000
7	Other Assets.....	690		<u>25,000</u>
8	Total.		\$	1,784,007

BUREAU OF SENIOR SERVICES

345-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2013 Org 0508

1	Personal Services.....	001	\$	520,000
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268	APPROPRIATIONS	[Ch. 10
2	Annual Increment..... 004	11,000
3	Employee Benefits..... 010	176,950
4	Current Expenses..... 130	13,825,296
5	Repairs and Alterations. 064	<u>3,000</u>
6	Total.	\$ 14,536,246

MISCELLANEOUS BOARDS AND COMMISSIONS

*346-Public Service Commission -
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2013 Org 0926

1	Personal Services..... 001	\$ 897,144
2	Annual Increment..... 004	20,000
3	Employee Benefits..... 010	369,769
4	Current Expenses..... 130	368,953
5	Repairs and Alterations. 064	40,000
6	Federal Economic Stimulus..... 891	<u>801,598</u>
7	Total.	\$ 2,497,464

*347-Public Service Commission -
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2013 Org 0926

1	Personal Services..... 001	\$ 212,263
2	Annual Increment..... 004	6,000
3	Employee Benefits..... 010	<u>78,058</u>
4	Total.	\$ 296,321

348-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2013 Org 0941

1	Personal Services.....	001	\$	80,000
2	Annual Increment.....	004		700
3	Employee Benefits.....	010		30,876
4	Current Expenses.....	130		478,424
5	Repairs and Alterations.	064		5,000
6	Equipment.	070		3,000
7	Other Assets.....	690		<u>2,000</u>
8	Total.		\$	600,000

349-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2013 Org 0942

1	Personal Services.....	001	\$	33,500
2	Employee Benefits.....	010		13,559
3	Current Expenses.....	130		<u>77,941</u>
4	Total.		\$	125,000

5 Total TITLE II, Section 6 - Federal Funds \$3,792,019,112

1 **Sec. 7. Appropriations from federal block grants. -**
2 The following items are hereby appropriated from federal
3 block grants to be available for expenditure during the fiscal
4 year 2013.

*350-Governor's Office -
Office of Economic Opportunity
Community Services*

Fund 8799 FY 2013 Org 0100

270	APPROPRIATIONS	[Ch. 10
1	Personal Services..... 001	\$ 250,000
2	Annual Increment..... 004	4,000
3	Employee Benefits..... 010	97,708
4	Current Expenses..... 130	8,043,292
5	Repairs and Alterations. 064	1,000
6	Equipment. 070	<u>4,000</u>
7	Total.	\$ 8,400,000

*351-West Virginia Development Office -
Community Development*

Fund 8746 FY 2013 Org 0307

1	Personal Services..... 001	\$ 470,800
2	Annual Increment..... 004	8,000
3	Employee Benefits..... 010	166,924
4	Unclassified. 099	533,500
5	Current Expenses..... 130	47,169,388
6	Repairs and Alterations. 064	300
7	Equipment. 070	10,000
8	Federal Economic Stimulus..... 891	<u>5,000,000</u>
9	Total.	\$ 53,358,912

*352-WorkForce West Virginia -
Workforce Investment Act*

Fund 8749 FY 2013 Org 0323

1	Personal Services..... 001	\$ 1,119,882
2	Annual Increment..... 004	15,040
3	Employee Benefits..... 010	376,286
4	Unclassified. 099	203,023
5	Current Expenses..... 130	18,584,909
6	Repairs and Alterations. 064	1,600
7	Equipment. 070	500
8	Buildings. 258	1,100
9	Federal Economic Stimulus..... 891	<u>1,100,000</u>
10	Total.	\$ 21,402,340

*353-Division of Energy -
Energy Efficiency and Conservation*

Fund 8702 FY 2013 Org 0328

1	Federal Economic Stimulus.	891		\$ 2,000,000
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*354-Division of Health -
Maternal and Child Health*

Fund 8750 FY 2013 Org 0506

1	Personal Services.	001		\$ 1,181,152
2	Annual Increment.	004		29,000
3	Employee Benefits.	010		914,142
4	Unclassified.	099		110,017
5	Current Expenses.	130		<u>8,767,420</u>
6	Total.			\$ 11,001,731

*355-Division of Health -
Preventive Health*

Fund 8753 FY 2013 Org 0506

1	Personal Services.	001		\$ 100,000
2	Annual Increment.	004		1,320
3	Employee Benefits.	010		61,000
4	Unclassified.	099		22,458
5	Current Expenses.	130		1,895,365
6	Equipment.	070		<u>165,642</u>
7	Total.			\$ 2,245,785

*356-Division of Health -
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2013 Org 0506

1	Personal Services.	001		\$ 531,808
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4	Current Expenses.....	130		<u>38,372,400</u>
5	Total.		\$	40,000,000

*360-Division of Human Services -
Social Services*

Fund 8757 FY 2013 Org 0511

1	Personal Services.....	001	\$	10,927,000
2	Annual Increment.....	004		130,500
3	Employee Benefits.....	010		4,574,184
4	Unclassified.	099		171,982
5	Current Expenses.....	130		<u>1,470,508</u>
6	Total.		\$	17,274,174

*361-Division of Human Services -
Temporary Assistance for Needy Families*

Fund 8816 FY 2013 Org 0511

1	Personal Services.....	001	\$	7,170,000
2	Annual Increment.....	004		185,000
3	Employee Benefits.....	010		3,224,349
4	Unclassified.	099		1,304,191
5	Current Expenses.....	130		<u>118,592,846</u>
6	Total.		\$	130,476,386

*362-Division of Human Services -
Child Care and Development*

Fund 8817 FY 2013 Org 0511

1	Personal Services.....	001	\$	750,000
2	Annual Increment.....	004		17,000
3	Employee Benefits.....	010		293,237
4	Unclassified.	099		402,889
5	Current Expenses.....	130		<u>38,580,161</u>
6	Total.		\$	40,043,287

*363-Division of Justice and Community Services -
Juvenile Accountability Incentive*

Fund 8829 FY 2013 Org 0620

1	Personal Services.....	001	\$	10,814
2	Annual Increment.....	004		87
3	Employee Benefits.....	010		3,491
4	Unclassified.....	099		500
5	Current Expenses.....	130		485,100
6	Repairs and Alterations.....	064		<u>8</u>
7	Total.....		\$	500,000
8	Total TITLE II, Section 7 -			
9	Federal Block Grants.....		\$	<u>342,148,442</u>

1 **Sec. 8. Awards for claims against the state.** – There
2 are hereby appropriated for fiscal year 2013, from the fund as
3 designated, in the amounts as specified, general revenue
4 funds in the amount of \$6,057,143, special revenue funds in
5 the amount of \$366,855, and state road funds in the amount
6 of \$2,093,948 for payment of claims against the state.

1 **Sec. 9. Appropriations from surplus accrued.** – The
2 following items are hereby appropriated from the state fund,
3 general revenue, and are to be available for expenditure
4 during the fiscal year 2013 out of surplus funds only, accrued
5 from the fiscal year ending June 30, 2012, subject to the
6 terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the
8 following appropriations be payable only from surplus
9 accrued as of July 31, 2012 from the fiscal year ending June
10 30, 2012.

11 In the event that surplus revenues available on July 31,
12 2012, are not sufficient to meet all the appropriations made
13 pursuant to this section, then the appropriations shall be made

14 to the extent that surplus funds are available as of the date
15 mandated and shall be allocated first to provide the necessary
16 funds to meet the first appropriation of this section and each
17 subsequent appropriation in the order listed in this section.

364-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2013 Org 0506

1 Substance Abuse Continuum of
2 Care - Surplus. 722 \$ 2,500,000

3 From the above appropriation (fund 0525, *activity ~~354~~),
4 the funding will be consistent with the goal areas outlined in
5 the Comprehensive Substance Abuse Strategic Action Plan.
6 Prior to disbursement of funds, the Department of Health and
7 Human Resources, Bureau for Behavioral Health and Health
8 Facilities, shall submit a gap analysis of substance abuse
9 services, and an outline of service provision costs to provide
10 assistance to the Regional Task Forces and the Advisory
11 Council for development and prioritization of
12 recommendations.

365-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1 Medical Services - Surplus. 633 \$33,920,831

*CLERK’S NOTE: In item 364, line 3, the Governor deleted a reference to an incorrect activity number, “activity 354”.

366-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1 Medical Services - Surplus. 633 \$20,000,000

367-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2013 Org 0511

1 Medical Services Trust Fund

2 Transfer - Surplus. 638 \$ 11,079,169

3 Total TITLE II, Section 9-

4 Surplus Accrued \$ 67,500,000

1 **Sec. 10. Special revenue appropriations.** - There are

2 hereby appropriated for expenditure during the fiscal year

3 2013 appropriations made by general law from special

4 revenues which are not paid into the state fund as general

5 revenue under the provisions of W.Va. Code §12-2-2:

6 *Provided*, That none of the money so appropriated by this

7 section shall be available for expenditure except in

8 compliance with the provisions of W.Va. Code §12-2 and 3,

9 and W.Va. Code §11b-2, unless the spending unit has filed

10 with the director of the budget and the legislative auditor

11 prior to the beginning of each fiscal year:

12 (a) An estimate of the amount and sources of all revenues

13 accruing to such fund;

14 (b) A detailed expenditure schedule showing for what

15 purposes the fund is to be expended.

16 In addition to the preceding provisions, any unencumbered

17 balance in the Courtesy Patrol Fund (fund 3078), established

18 by W.Va. Code §5B-2-12, which exceeds \$500,000 at the
19 close of the fiscal year 2012, shall be transferred to the
20 Tourism Promotion Fund (fund 3072).

1 **Sec. 11. State improvement fund appropriations.** -
2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year 2013,
4 for the purpose of making studies and recommendations
5 relative to improvements of the administration and
6 management of spending units in the executive branch of
7 state government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year 2013 to be expended as authorized by
11 the governor, for such studies and recommendations which
12 may encompass any problems of organization, procedures,
13 systems, functions, powers or duties of a state spending unit
14 in the executive branch, or the betterment of the economic,
15 social, educational, health and general welfare of the state or
16 its citizens.

1 **Sec. 12. Specific funds and collection accounts.** - A fund
2 or collection account which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account and shall
5 be expended according to the provisions of Article 3, Chapter
6 12 of the Code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.** - Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he or she
7 shall issue his or her requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue his or

9 her warrant to the treasurer and the treasurer shall pay the
10 warrant out of the fund into which the amount was originally
11 paid.

1 **Sec. 14. Sinking fund deficiencies.** - There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development
5 fund which is under the supervision and control of the
6 municipal bond commission as provided by W.Va. Code §31-
7 18-20b, or in the funds of the municipal bond commission
8 because of the failure of any state agency for either general
9 obligation or revenue bonds or any local taxing district for
10 general obligation bonds to remit funds necessary for the
11 payment of interest and sinking fund requirements. The
12 governor is authorized to transfer from time to time such
13 amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first
17 remittance collected from the West Virginia housing
18 development fund or from any state agency or local taxing
19 district for which the governor advanced funds, with interest
20 at the rate carried by the bonds for security or payment of
21 which the advance was made.

1 **Sec. 15. Appropriations for local governments.** - There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations
5 and which have been paid into the treasury:

- 6 (a) For redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.** - Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits,
4 current expenses, repairs and alterations, buildings,
5 equipment, other assets, land, and capital outlay, where not
6 otherwise specifically provided and except as otherwise
7 provided in TITLE I - GENERAL PROVISIONS, Sec. 3.

1 **Sec. 17. General school fund.** - The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with W.Va. Code
5 §18-9A-16.

TITLE III - ADMINISTRATION.

1 **Sec. 1. Appropriations conditional.** - The expenditure of
2 the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branches
4 of the state government, are conditioned upon the compliance
5 by the spending unit with the requirements of Article 2,
6 Chapter 11B of the Code.

7 Where spending units or parts of spending units have been
8 absorbed by or combined with other spending units, it is the
9 intent of this act that appropriations and reappropriations
10 shall be to the succeeding or later spending unit created,
11 unless otherwise indicated.

1 **Sec. 2. Constitutionality.** - If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this act
4 which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 11

**(S. B. 650 - By Senators Kessler,
Mr. President, and Hall)
[By Request of the Executive]**

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 16, 2012.]

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 Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2012, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents which included a statement of the State Fund, General Revenue, dated January 11, 2012, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Governor's Executive Budget Documents statement of the State Fund, General Revenue there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

67--Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

			General Revenue Funds
		Activity	
1	1	Personal Services 001	\$ 27,315,518
2	2	Annual Increment 004	771,638
3	3	Employee Benefits 010	12,354,350
4	4	Unclassified 099	15,452,857
5	5	Child Care Development 144	775,933
6	6	Medical Services Contracts	
7		and Office of Managed Care . . 183	1,835,469
8	8	Medical Services (R) 189	230,550,319
9	9	Social Services 195	75,571,254
10	10	Family Preservation Program . . . 196	1,565,000
11	11	Family Resource Networks (R) . . 274	1,905,367
12	12	Domestic Violence Legal	
13		Services Fund 384	400,000
14	14	James "Tiger" Morton	
15		Catastrophic Illness Fund 455	698,797
16	16	MR/DD Waiver 466	88,753,483
17	17	Child Protective Services Case	
18	18	Workers 468	19,142,591

19	19	OSCAR and RAPIDS	515	5,086,356
20	20	Title XIX Waiver for Seniors -		
21	21	Surplus	526	2,500,000
22	22	Title XIX Waiver for Seniors . . .	533	9,587,500
23	23	WV Teaching Hospitals		
24	24	Tertiary/Safety Net	547	6,356,000
25	25	Specialized Foster Care	566	621,895
26	26	Child Welfare System	603	1,731,795
27	27	Medical Services - Surplus	633	2,009,222
28	28	In-Home Family Education	688	900,000
29	29	WV Works Separate State		
30		Program	698	4,750,000
31	30	Child Support Enforcement	705	6,135,598
32	31	Medicaid Auditing	706	605,618
33	32	Temporary Assistance for Needy		
34	33	Families/Maintenance of		
35		Effort	707	22,969,096
36	34	Child Care Maintenance of		
37	35	Effort Match	708	5,693,743
38	36	Child and Family Services	736	2,850,000
39	37	Grants for Licensed Domestic . . .		
40		Violence Programs and		
41	38	Statewide Prevention	750	2,500,000
42	39	Capital Outlay and		
43		Maintenance (R)	755	11,875
44	40	Medical Services		
45	41	Administrative Costs	789	1,916
46	42	Indigent Burials (R)	851	2,550,000
47	43	BRIM Premium	913	834,187
48	44	Rural Hospitals Under 150		
49		Beds	940	2,596,000
50	45	Children's Trust Fund -		
51		Transfer	951	300,000
52	46	Traumatic Brain Injury Waiver . .	835	<u>800,000</u>
53	47	Total		\$582,983,377

54 Any unexpended balances remaining in the
55 appropriations for Medical Services (fund 0403, activity

56 189), Family Resource Networks (fund 0403, activity 274),
57 Capital Outlay and Maintenance (fund 0403, activity 755),
58 and Indigent Burials (fund 0403, activity 851) at the close of
59 the fiscal year 2011 are hereby reappropriated for expenditure
60 during the fiscal year 2012.

61 The above appropriation for James “Tiger” Morton
62 Catastrophic Illness Fund (activity 455) shall be transferred
63 to the James “Tiger” Morton Catastrophic Illness Fund (fund
64 5454) as provided by Article 5Q, Chapter 16 of the code.

65 The above appropriation for Domestic Violence Legal
66 Services Fund (activity 384) shall be transferred to the
67 Domestic Violence Legal Services Fund (fund 5455).

68 Notwithstanding the provisions of Title I, section three of
69 this bill, the secretary of the Department of Health and
70 Human Resources shall have the authority to transfer funds
71 within the above account: *Provided*, That no more than five
72 percent of the funds appropriated to one line item may be
73 transferred to other line items: *Provided, however*, That no
74 funds from other line items shall be transferred to the
75 personal services line item.

76 From the above appropriation for Child Support
77 Enforcement (fund 0403, activity 705) an amount not to
78 exceed \$300,000 may be transferred to a local banking
79 depository to be utilized to offset funds determined to be
80 uncollectible.

81 From the above appropriation for the Grants for Licensed
82 Domestic Violence Programs and Statewide Prevention
83 (activity 750), fifty percent of the total shall be divided
84 equally and distributed among the fourteen (14) licensed
85 programs and the West Virginia Coalition Against Domestic
86 Violence (WVCADV). The balance remaining in the
87 appropriation for Grants for Licensed Domestic Violence

88 Programs and Statewide Prevention (activity 750), shall be
89 distributed according to the formula established by the
90 Family Protection Services Board.

91 The secretary shall have authority to expend funds for the
92 educational costs of those children residing in out-of-state
93 placements, excluding the costs of special education
94 programs.

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

98 From the above appropriation for Unclassified (fund
99 0403, activity 099) \$100,000 is provided for a one-time pilot
100 program for at-risk youth. The funds are to be administered
101 as a reimbursement grant and may only be drawn down on a
102 one-to-one matching basis.

103 Included in the above appropriation for Social Services
104 fund 0403, activity 195) is an additional \$78,365 for
105 continuing education requirements relating to the practice of
106 social work.

107 From the above appropriation for WV Works Separate
108 State Program (activity 698), funding shall be transferred to
109 the WV Works Separate State College Program Fund (fund
110 5467), and to the WV Works Separate State Two-Parent
111 Program Fund (fund 5468).

CHAPTER 12

**(S. B. 673 - By Senators Prezioso,
D. Facemire, Chafin, Edgell, Green,
Helmick, Laird, McCabe, Miller,
Plymale, Stollings, Unger, Wells,
Yost, Boley, Hall and Sypolt)**

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2012, in the amount of \$212,859.85 from the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, and 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 Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Legislature finds that the account balance in the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 11, 2012, which

included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011; and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for fiscal year 2012; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2012, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, be decreased by expiring the amount of \$212,859.85 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0450, fiscal year 2012, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

*74-Division of Corrections -
Correctional Units*

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

Fund 0450 FY 2012 Org 0608

			General Revenue Funds
		Activity	
1	3	Unclassified - Surplus (R) 097	\$ 212,859
2		The purpose of this bill is to expire funds into the	
3		unappropriated surplus balance in the state fund, general	
4		revenue, and to supplement, amend and increase an item of	
5		appropriation in the aforesaid account for the designated	
6		spending unit for expenditure during the fiscal year 2012.	



CHAPTER 13

**(S. B. 677 - By Senators Prezioso,
D. Facemire, Chafin, Edgell, Green,
Helmick, Laird, McCabe, Miller,
Plymale, Stollings, Unger, Wells,
Yost, Boley, Hall and Sypolt)**

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 21, 2012.]

AN ACT expiring funds to the surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2012, in the amount of \$3,700,000 from the Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, and making a

supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as a surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2012, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Legislature finds that the account balance in the Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 11, 2012, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011; and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for fiscal year 2012; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains a surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2012, Department of Health and Human Resources - Medicaid Fraud Control Fund, fund 5141, fiscal year 2012, organization 0511, be decreased by expiring the amount of \$3,700,000 to the surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

			General Revenue Funds
		Activity	
1	8	Medical Services - Surplus (R) . . 633	\$ 3,700,000

2 The purpose of this bill is to expire funds into the surplus
3 balance in the State Fund, General Revenue, and to
4 supplement, amend and increase an item of appropriation in
5 the aforesaid account for the designated spending unit for
6 expenditure during the fiscal year 2012.

CHAPTER 14

**(S. B. 678 - By Senators Prezioso,
D. Facemire, Chafin, Edgell, Green,
Helmick, Laird, McCabe, Miller,
Plymale, Stollings, Unger, Wells,
Yost, Boley, Hall and Sypolt)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 21, 2012.]

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 2012, organization 1400, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2012, organization 0209, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2012, organization 0221, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2012, organization 0305, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2012, organization 0310, to the Department of Education, State Department of Education, fund 0313, fiscal year 2012, organization 0402, to the Department of Education and the Arts, Division of Culture and History, fund 0293, fiscal year 2012, organization 0432, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2012, organization 0313, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2012, organization 0506, to the Department of Health and Human

Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2012, organization 0511, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, to the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2012, organization 0613, to Higher Education, West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2012, organization 0420, and to Higher Education, Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2012, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents on January 11, 2012, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Executive Budget Document 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 June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 0131, fiscal year 2012, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10--Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400

	Activity	General Revenue Funds
1	13a Capital Outlay, Repairs and	
2	13b Equipment - Surplus (R) 677	\$ 1,000,000

3 Any unexpended balance remaining in the above
4 appropriation for Capital Outlay, Repairs and Equipment -
5 Surplus (fund 0131, activity 677) at the close of fiscal year
6 2012 is hereby reappropriated for expenditure during the
7 fiscal year 2013.

8 And, That the total appropriation for the fiscal year
9 ending June 30, 2012, to fund 0203, fiscal year 2012,
10 organization 0209, be supplemented and amended by adding
11 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

20--Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2012 Org 0209

	Activity	General Revenue Funds
1 5a Enterprise Resource Planning		
2 5b System - Surplus	872	\$30,400,000

3 The above appropriation for Enterprise Resource
 4 Planning System - Surplus (activity 872) shall be transferred
 5 to the West Virginia Enterprise Resource Planning Board,
 6 fund 9080, organization 0947.

7 And, That the total appropriation for the fiscal year
 8 ending June 30, 2012, to fund 0226, fiscal year 2012,
 9 organization 0221, be supplemented and amended by
 10 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2012 Org 0221

	Activity	General Revenue Funds
1 6 Appointed Counsel Fees -		
2 Surplus (R)	435	\$ 13,000,000

3 Any unexpended balance remaining in the above
 4 appropriation for the Appointed Counsel Fees - Surplus (fund
 5 0226, activity 435) at the close of fiscal year 2012 is hereby
 6 reappropriated for expenditure during the fiscal year 2013.

7 And, That the total appropriation for the fiscal year
 8 ending June 30, 2012, to fund 0250, fiscal year 2012,
 9 organization 0305, be supplemented and amended by
 10 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

34--Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

			General Revenue Funds
		Activity	
1	4	Unclassified - Surplus (R) 097	\$ 375,000

2 Any unexpended balance remaining in the above
 3 appropriation for Unclassified - Surplus (fund 0250, activity
 4 097) at the close of fiscal year 2012 is hereby reappropriated
 5 for expenditure during the fiscal year 2013.

6 And, That the total appropriation for the fiscal year
 7 ending June 30, 2012, to fund 0265, fiscal year 2012,
 8 organization 0310, be supplemented and amended by adding
 9 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

39--Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2012 Org 0310

	Activity	General Revenue Funds
1	6a Canaan Valley Resort State Park	
2	6b Operating - Surplus (R) 710	\$ 2,000,000
3	Any unexpended balance remaining in the above	
4	appropriation for Canaan Valley Resort State Park Operating	
5	- Surplus (fund 0265, activity 710) at the close of fiscal year	
6	2012 is hereby reappropriated for expenditure during the	
7	fiscal year 2013.	

8 And, That the total appropriation for the fiscal year
 9 ending June 30, 2012, to fund 0313, fiscal year 2012,
 10 organization 0402, be supplemented and amended by adding
 11 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

48--State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2012 Org 0402

	Activity	General Revenue Funds
1 3a Tax Assessment Errors -		
2 Surplus	065	\$ 209,171

3 And, That the total appropriation for the fiscal year
 4 ending June 30, 2012, to fund 0293, fiscal year 2012,
 5 organization 0432, be supplemented and amended by adding
 6 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

55--Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2012 Org 0432

	Activity	General Revenue Funds
1 4a Capital Improvements -		
2 Surplus (R)	661	\$ 304,000

3 Any unexpended balance remaining in the above
 4 appropriation for Capital Improvements - Surplus (fund 0293,

5 activity 661) at the close of fiscal year 2012 is hereby
6 reappropriated for expenditure during the fiscal year 2013.

7 And, That the total appropriation for the fiscal year
8 ending June 30, 2012, to fund 0273, fiscal year 2012,
9 organization 0313, be supplemented and amended by
10 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

60--Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

			General Revenue Funds
		Activity	
1	6	Unclassified - Surplus 097	\$ 1,300,000

2 The above appropriation for Unclassified - Surplus
3 (activity 097) shall be transferred to the Underground Storage
4 Tank Insurance Fund, fund 3218, organization 0313.

5 And, That the total appropriation for the fiscal year
6 ending June 30, 2012, to fund 0407, fiscal year 2012,
7 organization 0506, be supplemented and amended by
8 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*63–Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

		General Revenue Funds
		Activity
1	5	Unclassified - Surplus 097 \$ 36,545

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2012, to fund 0525, fiscal year 2012,
4 organization 0506, be supplemented and amended by adding
5 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

64–Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2012 Org 0506

		General Revenue Funds
		Activity
1	9a	Capital Outlay, Repairs and
2	9b	Equipment - Surplus (R) . . 677 \$ 6,000,000

3 Any unexpended balance remaining in the above
 4 appropriation for Capital Outlay, Repairs and Equipment -
 5 Surplus (fund 0525, activity 677) at the close of fiscal year
 6 2012 is hereby reappropriated for expenditure during the
 7 fiscal year 2013.

8 And, That the total appropriation for the fiscal year
 9 ending June 30, 2012, to fund 0403, fiscal year 2012,
 10 organization 0511, be supplemented and amended by
 11 increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

67--Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

		General Revenue Funds
	Activity	
1	4 Unclassified - Surplus 097	\$ 313,455
2	9 Social Services - Surplus 082	8,673,484
3	27 Medical Services - Surplus (R) . . 633	13,144,112

4 The above appropriation for Unclassified - Surplus
 5 (activity 097) shall be transferred to the West Virginia Works
 6 Separate State Two-Parent Program Fund, fund 5468,
 7 organization 0511.

8 Any unexpended balance remaining in the above
 9 appropriation for Medical Services - Surplus (fund 0403,
 10 activity 633) at the close of fiscal year 2012 is hereby
 11 reappropriated for expenditure during the fiscal year 2013.

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2012, to fund 0450, fiscal year 2012,
 14 organization 0608, be supplemented and amended by adding
 15 new items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*74-Division of Corrections -
 Correctional Units*

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

Fund 0450 FY 2012 Org 0608

	Activity	General Revenue Funds
1	3a Payments to Counties and/or	
2	3b Regional Jails - Surplus (R) . . . 348	\$ 9,000,000
3	3c Payments for Voluntary Inmate	
4	3d Placement - Surplus (R) 592	1,500,000
5	3e Capital Improvements -	
6	Surplus (R) 661	5,500,000
7	3f Capital Outlay, Repairs and	
8	3g Equipment - Surplus (R) 677	5,000,000
9	3h Operational Expenses - Surplus . . 779	5,439,629

10 Any unexpended balances remaining in the above
 11 appropriations for Payments to Counties and/or Regional
 12 Jails - Surplus (fund 0450, activity 348), Payments for
 13 Voluntary Inmate Placement - Surplus (fund 0450, activity
 14 592), Capital Improvements - Surplus (fund 0450, activity
 15 661), and Capital Outlay, Repairs and Equipment - Surplus
 16 (fund 0450, activity 677) at the close of fiscal year 2012 are
 17 hereby reappropriated for expenditure during the fiscal year
 18 2013.

19 And, That the total appropriation for the fiscal year
 20 ending June 30, 2012, to fund 0456, fiscal year 2012,
 21 organization 0613, be supplemented and amended by adding
 22 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

91-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2012 Org 0613

		General Revenue Funds
	Activity	
1	9a Veterans Bonus - Surplus (R) . . . 344	\$ 1,000,000

2 Any unexpended balance remaining in the above
 3 appropriation for Veterans Bonus - Surplus (fund 0456,
 4 activity 344) at the close of fiscal year 2012 is hereby
 5 reappropriated for expenditure during the fiscal year 2013.

6 And, That the total appropriation for the fiscal year
 7 ending June 30, 2012, to fund 0596, fiscal year 2012,
 8 organization 0420, be supplemented and amended by adding
 9 a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2012 Org 0420

	Activity	General Revenue Funds
1 18a Capital Improvements -		
2 Surplus (R)	661	\$ 2,700,000

3 Any unexpended balance remaining in the above
 4 appropriation for Capital Improvements - Surplus (fund 0596,
 5 activity 661) at the close of fiscal year 2012 is hereby
 6 reappropriated for expenditure during the fiscal year 2013.

7 And, That the total appropriation for the fiscal year
 8 ending June 30, 2012, to fund 0589, fiscal year 2012,
 9 organization 0441, be supplemented and amended by
 10 increasing an existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Section 1. Appropriations from General Revenue.**HIGHER EDUCATION**

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

(WV Code Chapter 18B)

Fund 0589 FY 2012 Org 0441

			General Revenue Funds
		Activity	
1	1	Unclassified - Surplus (R) 097	\$ 3,000,000

2 Any unexpended balance remaining in the above
3 appropriation for Unclassified - Surplus (fund 0589, activity
4 097) at the close of fiscal year 2012 is hereby reappropriated
5 for expenditure during the fiscal year 2013.

6 The purpose of this supplemental appropriation bill is to
7 supplement, amend, increase and add items of appropriations
8 in the aforesaid accounts for the designated spending units for
9 expenditure during the fiscal year 2012.



CHAPTER 15

(Com. Sub. for S. B. 536 - By Senators Snyder and Kirdendoll)

[Passed March 5, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11A-3-36a, relating to payment of amounts due to the land department of the Auditor's office; permitting payments to be paid by credit, debit or charge card; and authorizing a fee to be assessed for the use of a credit, debit or charge card as a form of payment.

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 §11A-3-36a, to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-36a. Credit card approved form of payment in land department of Auditor's office.

- 1 (a) The Auditor shall use the State Treasurer's contracts
- 2 and system for receiving payment by credit card for all
- 3 redemption fees, publication fees, delinquent taxes or other
- 4 charges collected by the Auditor in connection with the
- 5 operations of the land department. The person using the

6 credit card as a form of payment is responsible for any
7 charges assessed by the credit company. Acceptance of a
8 credit card shall be in accordance with the rules and
9 requirements set forth by credit card provided.

10 (b) For the purposes of this section, the term “credit card”
11 means a credit card, debit card or charge card.



CHAPTER 16

**(S. B. 224 - By Senators
Minard and Klempa)**

[Passed February 29, 2012; in effect from passage.]

[Approved by the Governor on March 9, 2012.]

AN ACT to amend and reenact §31A-2-1 of the Code of West Virginia, 1931, as amended, relating to the change of names of the Division of Banking or the Department of Banking to the Division of Financial Institutions; changing the names of the Commissioner of Banking and the Deputy Commissioner of Banking to the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions, respectively; providing that all references in this code to the Division of Banking or the Department of Banking shall be read, construed and understood to mean and have reference to the Division of Financial Institutions; and providing that all references in this code to the Commissioner of Banking and the Deputy Commissioner of Banking shall be read, construed and understood to mean and have reference to the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions, respectively.

Be it enacted by the Legislature of West Virginia:

That §31A-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-1. Department of Banking of West Virginia, offices of Commissioner and Deputy Commissioner of Banking continued.

1 The Department of Banking of West Virginia, the Office
2 of Commissioner of Banking of West Virginia and the Office
3 of Deputy Commissioner of Banking of West Virginia,
4 heretofore created and existing in the state government, are
5 continued and, after the date of the passage of the
6 amendments to this section adopted in the regular Legislative
7 Session of 2012, shall hereafter be referred to, respectively,
8 as the Division of Financial Institutions, the Commissioner of
9 Financial Institutions and the Deputy Commissioner of
10 Financial Institutions.

11 All references in this code to the Department of Banking
12 or the Division of Banking shall, after the effective date of
13 the amendments to this section adopted in the regular
14 Legislative Session of 2012, be read, construed and
15 understood to mean and to have reference to the Division of
16 Financial Institutions. All references in this code to the
17 Commissioner of Banking and the Deputy Commissioner of
18 Banking shall, after the effective date of the amendments to
19 this section adopted in the regular Legislative Session of
20 2012, be read, construed and understood to mean and have
21 reference, respectively, to the Commissioner of Financial
22 Institutions and the Deputy Commissioner of Financial
23 Institutions.



CHAPTER 17

(S. B. 337 - By Senator Minard)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Commissioner of Banking; authorizing the Commissioner of Banking to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, or other entities designated by the Nationwide Mortgage Licensing System and Registry, to collect and maintain records related to criminal background investigations and fingerprinting for persons subject to this subsection; providing that the Commissioner of Banking may use the Nationwide Mortgage Licensing System and Registry, or its designated vendor, as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency; providing that the Commissioner of Banking may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner; authorizing the Commissioner of Banking to conduct examinations of third-party providers of information technology services to financial institutions; creating a special revenue account to be known as the Consumer Education Fund, which may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending; providing that ten percent of all civil administrative penalties collected by the Division of

Banking during each fiscal year shall be deposited into that account, which may be invested and retain all earnings and interest; and providing that at the end of each fiscal year, any remaining balance less than \$500,000, including accrued interest, shall remain in the account and that any balance exceeding \$500,000 shall revert to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §31A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner has supervision and
3 jurisdiction over state banks, regulated consumer lenders,
4 residential mortgage lenders and brokers licensed pursuant to
5 article seventeen, chapter thirty-one of this code, credit
6 unions and all other persons now or hereafter made subject to
7 his or her supervision or jurisdiction. All powers, duties,
8 rights and privileges vested in the division are hereby vested
9 in the commissioner. He or she shall be the chief executive
10 officer of the Division of Banking and is responsible for the
11 division's organization, services and personnel and for the
12 orderly and efficient administration, enforcement and
13 execution of the provisions of this chapter and all laws
14 vesting authority or powers in or prescribing duties or
15 functions for the division or the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain an office for the division and there keep a
18 complete record of all the division's transactions, of the
19 financial conditions of all financial institutions and records of
20 the activities of other persons as the commissioner considers
21 important. Notwithstanding any other provision of this code,
22 heretofore or hereafter enacted, the records relating to the
23 financial condition of any financial institution and any
24 information contained in the records shall be confidential for
25 the use of the commissioner and authorized personnel of the
26 Division of Banking. No person shall divulge any
27 information contained in any records except as authorized in
28 this subdivision in response to a valid subpoena or subpoena
29 duces tecum issued pursuant to law in a criminal proceeding
30 or in a civil enforcement action brought by the state or federal
31 regulatory authorities. Subpoenas shall first be directed to
32 the commissioner, who shall authorize disclosure of relevant
33 records and information from the records for good cause,
34 upon imposing terms and conditions considered necessary to
35 protect the confidential nature of the records, the financial
36 integrity of the financial institution or the person to which the
37 records relate and the legitimate privacy interests of any
38 individual named in the records. Conformity with federal
39 procedures shall be sought where the institution maintains
40 federal deposit insurance. The commissioner has and may
41 exercise reasonable discretion as to the time, manner and
42 extent the other records in his or her office and the
43 information contained in the records are available for public
44 examination;

45 (2) Require all financial institutions to comply with all
46 the provisions of this chapter and other applicable laws, or
47 any rule promulgated or order issued thereunder;

48 (3) Investigate all alleged violations of this chapter and
49 all other laws which he or she is required to enforce and of
50 any rule promulgated or order issued thereunder; and

51 (4) Require a criminal background investigation,
52 including requiring fingerprints for submission to the Federal
53 Bureau of Investigation or any governmental agency or entity
54 authorized to receive such information for a state, national or
55 international criminal history check, of each: (A) Applicant
56 seeking approval to charter and/or control a state bank, state
57 credit union or a foreign bank state agency or representative
58 office; (B) applicant seeking a license to engage in the
59 business of money transmission, currency exchange or other
60 activity regulated under article two, chapter thirty-two-a of
61 this code; (C) applicant subject to the commissioner's
62 supervision seeking a license to engage in the business of
63 regulated consumer lending, mortgage lending or brokering;
64 and (D) Division of Banking Financial Institutions regulatory
65 employee applicant: *Provided*, That where the applicant is a
66 company or entity already subject to supervision and
67 regulation by the Federal Reserve Board or other federal
68 bank, thrift or credit union regulator, or is a direct or indirect
69 subsidiary of a company or entity subject to the supervision
70 and regulation, or where the applicant is a company subject
71 to the supervision and regulation of the federal Securities and
72 Exchange Commission whose stock is publicly traded on a
73 registered exchange or through the National Association of
74 Securities Dealers automated quotation system, or the
75 applicant is a direct or indirect subsidiary of such a company,
76 the investigation into criminal background is not required.
77 The provisions of this subdivision are not applicable to
78 applicants seeking interim bank charters organized solely for
79 the purpose of facilitating the acquisition of another bank
80 pursuant to section five, article four of this chapter: *Provided*,
81 *however*, That where a nonexempt applicant under this
82 subdivision is not a natural person, the principals of the
83 applicant are subject to the requirements of this subdivision.
84 As used in this subdivision, the term "principals" means the
85 chief executive officer, regardless of title, managing partner
86 if a partnership, members of the organizing group if no chief
87 executive officer has yet been appointed, trustee or other

88 person controlling the conduct of the affairs of a licensee. A
89 person controlling ten percent or more of the stock of any
90 corporate applicant shall be considered to be a principal
91 under this provision. The commissioner may establish
92 relationships or contracts with the Nationwide Mortgage
93 Licensing System and Registry or other entities designated by
94 the Nationwide Mortgage Licensing System and Registry to
95 collect and maintain records related to criminal background
96 investigations and fingerprints of persons subject to this
97 subsection.

98 (A) To reduce the points of contact which the Federal
99 Bureau of Investigation may have to maintain, the
100 commissioner may use the Nationwide Mortgage Licensing
101 System and Registry or its designated vendor as a channeling
102 agent for requesting information from and distributing
103 information to the Department of Justice or any governmental
104 agency.

105 (B) To reduce the points of contact which the
106 commissioner may have to maintain, the commissioner may
107 use the Nationwide Mortgage Licensing System and Registry
108 as a channeling agent for requesting and distributing
109 information to and from any source so directed by the
110 commissioner.

111 (c) In addition to all other authority and powers vested in
112 the commissioner by provisions of this chapter and other
113 applicable laws, the commissioner may:

114 (1) Provide for the organization of the division and the
115 procedures and practices of the division and implement the
116 procedures and practices by the promulgation of rules and
117 forms as appropriate and the rules shall be promulgated in
118 accordance with article three, chapter twenty-nine-a of this
119 code;

120 (2) Employ, direct, discipline, discharge and establish
121 qualifications and duties for all personnel for the division,
122 including, but not limited to, examiners, assistant examiners,
123 conservators and receivers, establish the amount and
124 condition of bonds for the personnel he or she considers
125 appropriate and pay the premiums on the bonds and, if he or
126 she elects, have all personnel subject to and under the
127 classified service of the state personnel division;

128 (3) Cooperate with organizations, agencies, committees
129 and other representatives of financial institutions of the state
130 in connection with schools, seminars, conferences and other
131 meetings to improve the responsibilities, services and
132 stability of the financial institutions;

133 (4) In addition to the examinations required by section six
134 of this article, inspect, examine and audit the books, records,
135 accounts and papers of all financial institutions and any third-
136 party vendor providing information technology services to
137 financial institutions at such times as circumstances in his or
138 her opinion may warrant;

139 (5) Call for and require any data, reports and information
140 from financial institutions under his or her jurisdiction, at
141 such times and in such form, content and detail considered
142 necessary by him or her in the faithful discharge of his or her
143 duties and responsibilities in the supervision of the financial
144 institutions;

145 (6) Subject to the powers vested in the board by article
146 three of this chapter, supervise the location, organization,
147 practices and procedures of financial institutions and, without
148 limitation on the general powers of supervision of financial
149 institutions, require financial institutions to:

150 (A) Maintain their accounts consistent with rules
151 prescribed by the commissioner and in accordance with
152 generally accepted accounting practices;

153 (B) Observe methods and standards which he or she may
154 prescribe for determining the value of various types of assets;

155 (C) Charge off the whole or any part of an asset which at
156 the time of his or her action could not lawfully be acquired;

157 (D) Write down an asset to its market value;

158 (E) Record or file writings creating or evidencing liens or
159 other interests in property;

160 (F) Obtain financial statements from prospective and
161 existing borrowers;

162 (G) Obtain insurance against damage and loss to real
163 estate and personal property taken as security;

164 (H) Maintain adequate insurance against other risks as he
165 or she may determine to be necessary and appropriate for the
166 protection of depositors and the public;

167 (I) Maintain an adequate fidelity bond or bonds on its
168 officers and employees;

169 (J) Take other action that in his or her judgment is
170 required of the institution in order to maintain its stability,
171 integrity and security as required by law and all rules
172 promulgated by him or her; and

173 (K) Verify any or all asset or liability accounts;

174 (7) Subject to the powers vested in the board by article
175 three of this chapter, receive from any person or persons and
176 consider any request, petition or application relating to the
177 organization, location, conduct, services, policies and
178 procedures of any financial institution and to act on the
179 request, petition or application in accordance with any
180 provisions of law applicable thereto;

181 (8) In connection with the investigations required by
182 subdivision (3), subsection (b) of this section, issue
183 subpoenas and subpoenas duces tecum, administer oaths,
184 examine persons under oath, and hold and conduct hearings.
185 Any subpoenas or subpoenas duces tecum shall be issued,
186 served and enforced in the manner provided in section one,
187 article five, chapter twenty-nine-a of this code. Any person
188 appearing and testifying at a hearing may be accompanied by
189 an attorney employed by him or her;

190 (9) Issue declaratory rulings in accordance with the
191 provisions of section one, article four, chapter twenty-nine-a
192 of this code;

193 (10) Study and survey the location, size and services of
194 financial institutions, the geographic, industrial, economic
195 and population factors affecting the agricultural, commercial
196 and social life of the state and the needs for reducing,
197 expanding or otherwise modifying the services and facilities
198 of financial institutions in the various parts of the state and
199 compile and keep current data thereon to aid and guide him
200 or her in the administration of the duties of his or her office;

201 (11) Implement all of the provisions of this chapter,
202 except the provisions of article three of this chapter, and all
203 other laws which he or she is empowered to administer and
204 enforce by the promulgation of rules in accordance with the
205 provisions of article three, chapter twenty-nine-a of this code;

206 (12) Implement the provisions of chapter forty-six-a of
207 this code applicable to consumer loans and consumer credit
208 sales by the promulgation of rules in accordance with the
209 provisions of article three, chapter twenty-nine-a of this code
210 as long as the rules do not conflict with any rules
211 promulgated by the state's Attorney General;

212 (13) Foster and encourage a working relationship
213 between the Division of Banking and financial institutions,

214 credit, consumer, mercantile and other commercial and
215 finance groups and interests in the state in order to make
216 current appraisals of the quality, stability and availability of
217 the services and facilities of financial institutions;

218 (14) Provide to financial institutions and the public copies
219 of the West Virginia statutes relating to financial institutions,
220 suggested drafts of bylaws commonly used by financial
221 institutions and any other forms and printed materials found
222 by him or her to be helpful to financial institutions, their
223 shareholders, depositors and patrons and make reasonable
224 charges for the copies;

225 (15) Delegate the powers and duties of his or her office,
226 other than the powers and duties excepted in this subdivision,
227 to qualified division personnel who shall act under the
228 direction and supervision of the commissioner and for whose
229 acts he or she is responsible, but the commissioner may
230 delegate to the deputy commissioner of banking and to no
231 other division personnel the following powers, duties and
232 responsibilities, all of which are hereby granted to and vested
233 in the commissioner and for all of which the commissioner
234 also is responsible. The commissioner shall:

235 (A) Order any person to cease violating any provision or
236 provisions of this chapter or other applicable law or any rule
237 promulgated or order issued thereunder;

238 (B) Order any person to cease engaging in any unsound
239 practice or procedure which may detrimentally affect any
240 financial institution or depositor of the financial institution;

241 (C) Revoke the certificate of authority, permit or license
242 of any financial institution except a banking institution in
243 accordance with the provisions of section thirteen of this
244 article; and

245 (D) Accept an assurance in writing that the person will
246 not in the future engage in the conduct alleged by the
247 commissioner to be unlawful, which could be subject to an
248 order under the provisions of this chapter. This assurance of
249 voluntary compliance shall not be considered an admission of
250 violation for any purpose, except that if a person giving the
251 assurance fails to comply with its terms, the assurance is
252 prima facie evidence that prior to this assurance the person
253 engaged in conduct described in the assurance;

254 (16) Seek and obtain civil administrative penalties against
255 any person who violates this chapter, the rules issued
256 pursuant to this chapter, or any orders lawfully entered by the
257 commissioner or board of banking and financial institutions
258 in an amount not more than \$5,000 per day for each
259 violation: *Provided*, That all of the pertinent provisions of
260 article five, chapter twenty-nine-a of this code shall apply to
261 any assessment of a penalty under this subsection;

262 (17) Receive from state banking institutions applications
263 to change the locations of their principal offices and to
264 approve or disapprove these applications;

265 (18) Expend funds in order to promote consumer
266 awareness and understanding of issues related to residential
267 mortgage lending. In furtherance of this duty, there is
268 established in the State Treasury a special revenue account to
269 be known as the Consumer Education Fund, which shall be
270 administered by the Commissioner of Banking. Ten percent
271 of all civil administrative penalties collected by the Division
272 of Banking during each fiscal year shall be deposited into the
273 fund and may be expended by the commissioner to promote
274 consumer awareness and understanding of issues related to
275 residential mortgage lending. The account shall be a special
276 revenue account, and may be invested and retain all earnings
277 and interest. Any remaining balance less than \$500,000,
278 including accrued interest, in the fund at the end of the fiscal

279 year shall not revert to the General Revenue Fund, but shall
280 remain in the account. Any balance which exceeds \$500,000
281 as of June 30, 2012, and each year thereafter, shall revert to
282 the General Revenue Fund; and

283 (19) Take other action as he or she may consider
284 necessary to enforce and administer the provisions of this
285 chapter, except the provisions of article three of this chapter,
286 and all other laws which he or she is empowered to
287 administer and enforce and apply to any court of competent
288 jurisdiction for appropriate orders, writs, processes and
289 remedies.



CHAPTER 18

**(H. B. 4274 - By Delegates Moore,
Reynolds and Azinger)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §46A-4-103 of the Code of West Virginia, 1931, as amended, relating to the authority of the Commissioner of Banking over regulated consumer lender licensees; authorizing the commissioner to impose a fine or penalty upon a licensee for violation of chapter forty-six-a or chapter thirty-one-a of this code or any other law or rule that the Division of Banking is authorized to enforce that is applicable to regulated consumer lenders; and providing for an administrative hearing to contest a fine or penalty.

Be it enacted by the Legislature of West Virginia:

That §46A-4-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-103. Revocation, suspension or forfeiture of license.

1 (a) The commissioner may issue to a person licensed to
2 make regulated consumer loans an order to show cause why
3 his or her license should not be revoked or should not be
4 suspended for a period not in excess of six months. The
5 order shall state the place for a hearing and set a time for the
6 hearing that is no less than ten days from the date of the
7 order. After the hearing the commissioner shall revoke or
8 suspend the license if he or she finds that:

9 (1) The licensee has repeatedly and willfully violated this
10 chapter or any rule or order lawfully made or issued pursuant
11 to this article;

12 (2) The licensee has failed to remit their required annual
13 assessment, or to maintain their status as a business in good
14 standing with the office of the Secretary of State,
15 notwithstanding notification in writing by the commissioner
16 sent by certified mail to the licensee's last known address
17 providing for thirty days to rectify such failure;

18 (3) The licensee has forfeited their license by failing to
19 remain open for regulated consumer lending business in
20 conformity with the rules or order of the commissioner; or

21 (4) Facts or conditions exist which would clearly have
22 justified the commissioner in refusing to grant a license had
23 these facts or conditions been known to exist at the time the
24 application for the license was made.

25 (b) No revocation or suspension of a license under this
26 article is lawful unless prior to institution of proceedings by

27 the commissioner notice is given to the licensee of the facts
28 or conduct which warrant the intended action, and the
29 licensee is given an opportunity to show compliance with all
30 lawful requirements for retention of the license.

31 (c) If the commissioner finds that probable cause for
32 revocation of a license exists and that enforcement of this
33 article requires immediate suspension of the license pending
34 investigation, he or she may, after a hearing upon five days'
35 written notice, enter an order suspending the license for not
36 more than thirty days.

37 (d) Nothing in this section limits the authority of the
38 commissioner to take action against a regulated consumer
39 lender pursuant to chapter thirty-one-a of this code.

40 (e) Whenever the commissioner revokes or suspends a
41 license, he or she shall enter an order to that effect and
42 forthwith notify the licensee of the revocation or suspension.
43 Within five days after the entry of the order he or she shall
44 mail by registered or certified mail or deliver to the licensee
45 a copy of the order and the findings supporting the order.

46 (f) Any person holding a license to make regulated
47 consumer loans may relinquish the license by notifying the
48 commissioner in writing of its relinquishment, but this
49 relinquishment shall not affect his or her liability for acts
50 previously committed.

51 (g) No revocation, suspension, forfeiture or
52 relinquishment of a license shall impair or affect the
53 obligation of any preexisting lawful contract between the
54 licensee and any consumer.

55 (h) The commissioner may reinstate a license, terminate
56 a suspension or grant a new license to a person whose license
57 has been revoked or suspended if no fact or condition then

58 exists which clearly would have justified the commissioner
59 in refusing to grant a license.

60 (i) In addition to the authority authorized by this section,
61 the commissioner may impose a fine or penalty not exceeding
62 \$2,000 upon any regulated consumer lender required to be
63 licensed under this article who violates this chapter, chapter
64 thirty-one-a or any other law or rule that the Division of
65 Banking is authorized to enforce with respect to companies
66 licensed under this article. For the purposes of this section,
67 each day, excluding Sundays and holidays, that an unlicensed
68 person engages in the business or holds himself or herself out
69 to the general public as a licensed consumer lender is a
70 separate violation and, as such, each day is subject to the
71 maximum fine of \$2,000 per day. Any fine or penalty
72 imposed under this subsection may be contested by the
73 licensee pursuant to article five, chapter twenty-nine-a of this
74 code.



CHAPTER 19

**(Com. Sub. for H. B. 4012 - By Delegates
Morgan, Manypenny, Martin
and Swartzmiller)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-16-4 of said code; to amend and reenact §30-23-5 of said code; and to amend and reenact §30-26-3 and §30-26-4 of said code, all relating to boards; changing the membership of boards;

removing the Commissioner of the Bureau for Public Health from certain boards; removing the requirement that the commissioner provide support to certain boards; allowing certain boards to receive compensation not to exceed the amount paid to legislators; and updating the name of certain boards.

Be it enacted by the Legislature of West Virginia:

That §16-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-16-4 of said code be amended and reenacted; that §30-23-5 of said code be amended and reenacted; and that §30-26-3 and §30-26-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-7. Duties and powers of the commissioner; service on advisory councils; boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

1 (a) Effective July 1, 2012, the commissioner serves on the
2 following licensing boards:

3 (1) The West Virginia Board of Medicine, provided in
4 article three, chapter thirty; and

5 (2) The State Board of Sanitarians, as provided in article
6 seventeen, chapter thirty.

7 (b) Effective July 1, 2012, the commissioner serves on
8 the following advisory councils, boards and commissions:

- 9 (1) The Advisory Committee on Cancer (Cancer
10 Registry);
- 11 (2) The Air Quality Board;
- 12 (3) The Appalachian States Low-level Radioactive Waste
13 Commission;
- 14 (4) The Child Fatality Review Team;
- 15 (5) The Childhood Immunization Advisory Committee;
- 16 (6) The Early Intervention Coordinating Council;
- 17 (7) The Interagency Council on Osteoporosis;
- 18 (8) The Sewage Advisory Board;
- 19 (9) The State Emergency Response Commission;
- 20 (10) The State Groundwater Coordinating Committee;
- 21 (11) The Water Development Authority;
- 22 (12) The West Virginia Commission for the Deaf and
23 Hard of Hearing;
- 24 (13) The West Virginia Infrastructure and Jobs
25 Development Council; and
- 26 (14) Any other advisory council, board or commission as
27 assigned by the secretary except for business, professional or
28 occupational licensing boards.
- 29 (c) Notwithstanding any other provision of this code to
30 the contrary, the commissioner may, at his or her discretion,

31 designate, in writing, a representative to serve in his or her
32 stead at the meetings and in the duties of all boards and
33 commissions on which the commissioner is designated as an
34 ex officio member. The appropriately designated
35 representative or proxy acts with the full power and authority
36 of the commissioner in voting, acting upon matters
37 concerning the public health and welfare and other business
38 that is properly the duty of any board or commission. The
39 representative serves as proxy at the commissioner's will and
40 pleasure. The provisions of this section do not apply to the
41 West Virginia Board of Medicine, the Air Quality Board or
42 other board, commission or body on which the commissioner
43 is designated by this code as chairman ex officio, secretary ex
44 officio or a board, commission or body on which the
45 commissioner is designated by this code as being that person
46 whose signature must appear on licenses, minutes or other
47 documents necessary to carry out the intents and purposes of
48 the board, commission or body.

ARTICLE 16. CHIROPRACTORS.

§30-16-4. West Virginia Board of Chiropractic; establishment and composition.

1 (a) The "West Virginia Board of Chiropractic" is
2 continued. Effective July 1, 2012, the board is composed of
3 four licensed chiropractors and one person to represent the
4 interest of the public. All are appointed by the Governor,
5 with the advice and consent of the Senate, from a list of three
6 names recommended by the West Virginia Chiropractic
7 Society, Incorporated. Each chiropractic member of the
8 board shall have been a resident of and engaged in the active
9 practice of chiropractic in the state for a period of at least five
10 years preceding his or her appointment.

11 (b) As existing board members' terms expire, newly
12 appointed board members are appointed by the Governor for

13 a term of office of three years. No member may serve more
14 than two full consecutive three-year terms. When a vacancy
15 in the membership of the board occurs for a cause other than
16 the expiration of a term, the Governor shall appoint a new
17 member from a list of three names recommended by West
18 Virginia Chiropractic Society, Incorporated, to fill the
19 unexpired portion of the term of office.

20 (c) The Governor may remove any member of the board
21 in case of incompetency, neglect of duty, gross immorality or
22 malfeasance in office.

23 (d) The board shall conduct an annual training program
24 to familiarize new board members with their duties.

25 (e) Each member of the board is entitled to receive
26 compensation in the amount paid to members of the
27 Legislature for interim duties for each day or substantial
28 portion that he or she is engaged in the work of the board or
29 of its committees. Members are entitled to be reimbursed for
30 actual and necessary expenses incurred in carrying out his or
31 her duties.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

1 (a) The West Virginia Medical Imaging and Radiation
2 Therapy Technology Board of Examiners is continued. The
3 members of the board in office, unless sooner removed,
4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b) The board shall consist of the following nine
7 members, appointed by the Governor by and with the advice
8 and consent of the Senate:

9 (1) Three licensed practitioners, two of whom shall be
10 Radiologists;

11 (2) Three licensed Radiologic Technologists, one of
12 whom shall be an active medical imaging educator;

13 (3) One licensed Nuclear Medicine Technologist;

14 (4) One licensed Magnetic Resonance Imaging; and

15 (5) One citizen member, who is not licensed under the
16 provisions of this article and does not perform any services
17 related to the practice licensed under the provisions of this
18 article.

19 (c) Each member shall be appointed for a term of three
20 years and may not serve more than two consecutive full
21 terms. A member having served two consecutive full terms
22 may not be appointed for one year after completion of his or
23 her second full term. A member continues to serve until a
24 successor has been appointed and has qualified. The terms
25 shall be staggered in accordance with the initial appointments
26 under prior enactments of this article.

27 (d) Each member of the board shall be a resident of West
28 Virginia during the appointment term.

29 (e) The Radiologic Technologists, Nuclear Medicine
30 Technologists and the Magnetic Resonance Imaging
31 Technologists serving on the board shall maintain an active
32 license with the board.

33 (f) A vacancy on the board shall be filled by appointment
34 by the Governor for the unexpired term of the member whose
35 office is vacant.

36 (g) The Governor may remove any member from the board
37 for neglect of duty, incompetency or official misconduct.

38 (h) A licensed member of the board immediately and
39 automatically forfeits membership to the board if his or her
40 license to practice has been suspended or revoked. A
41 member of the board immediately and automatically forfeits
42 membership to the board if he or she is convicted of a felony
43 under the laws of any state or the United States, or becomes
44 a nonresident of this state.

45 (i) The board shall designate one of its members as
46 chairperson and one member as secretary who shall serve at
47 the will of the board.

48 (j) Each member of the board shall receive compensation
49 and expense reimbursement in accordance with article one of
50 this chapter.

51 (k) A majority of the members serving on the board shall
52 constitute a quorum.

53 (l) The board shall hold at least two annual meetings.
54 Other meetings shall be held at the call of the chairperson or
55 upon the written request of two members, at such time and
56 place as designated in the call or request.

57 (m) Prior to commencing his or her duties as a member of
58 the board, each member shall take and subscribe to the oath
59 required by section five, article four of the Constitution of
60 this state.

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.**

1 (a) There is continued the West Virginia board of
2 hearing-aid dealers, which is composed of five members to be
3 appointed by the Governor, with the advice and consent of
4 the Senate. The members of the board shall be residents of
5 this state. One member shall be a person licensed to practice
6 medicine in this state and one member shall hold a degree in
7 audiology from an accredited college or university. The
8 remaining three members shall be persons having no less than
9 five years' experience as hearing-aid dealers or fitters and
10 shall hold a valid license under the provisions of this article.

11 (b) The terms of office of each member of the board shall
12 be four years, staggered in accordance with initial
13 appointments under prior enactments of this act. A board
14 member shall serve until his or her successor has been
15 appointed and qualified and any vacancy in the office of a
16 member shall be filled by appointment for the unexpired term
17 of such member. Any member of the board shall be eligible
18 for reappointment.

19 (c) The board shall annually at its meeting first
20 succeeding May 1 elect from its own members a chairman
21 and vice chairman.

22 (d) Each member of the board is entitled to receive for
23 each day actually engaged in the duties of his or her office, an
24 amount not to exceed the amount paid to legislators for their
25 interim duties, and is entitled to be reimbursed for all
26 reasonable and necessary expenses actually incurred in the
27 performance of his or her duties as a member of such board.

28 (e) All fees and other moneys collected by the board,
29 pursuant to the provisions of this article, shall be kept in a
30 separate fund and shall be expended solely for the purposes
31 of this article. The compensation for the members of the
32 board and all expenses incurred under this article shall be
33 paid from this special fund and no such compensation or
34 expenses shall be paid from the General Revenue Fund of this
35 state. All disbursements of funds necessary to carry out the
36 provisions of this article shall be so disbursed only upon the
37 authority of the board.

38 (f) The board shall regulate and control the practice of
39 dealing in or fitting of hearing aids in this state, and shall
40 administer qualifying examinations in accordance with the
41 provisions of this article to test the knowledge and
42 proficiency of all prospective licensees or trainees.

43 (g) The board may purchase and maintain or rent
44 audiometric equipment and other facilities necessary to carry
45 out the examination of applicants as provided in this article
46 and may purchase such other equipment and supplies and
47 employ such persons as it deems appropriate to carry out the
48 provisions of this article.

49 (h) The board shall propose rules for legislative approval
50 in accordance with the provisions of article three, chapter
51 twenty-nine-a of this code:

52 (1) For the proper performance of its duties;

53 (2) To define and prescribe the ethical practice of dealing
54 in or fitting of hearing aids for the safety, protection and
55 welfare of the public;

56 (3) To govern the time, place and manner of conducting
57 the examinations required by this article and the standard,
58 scope and subject of such examinations, which examinations

59 shall, as a minimum, conform with the standards, scope and
60 subjects set forth in section six of this article and manner, and
61 the form in which applications for such examinations shall be
62 filed;

63 (4) To establish procedures for determining whether
64 persons holding similar valid licenses from other states or
65 jurisdictions shall be required to take and successfully pass
66 the appropriate qualifying examination as a condition for
67 such licensing in this state; and

68 (5) To establish such fees for such examinations, permits,
69 licenses and renewals as may be necessary to cover the costs
70 of administration.

§30-26-4. Administrative duties; examinations; register; use of fees.

1 (a) Effective July 1, 2012, the administrative work of the
2 board shall be performed by the board. The board shall keep
3 full and complete records of all of their proceedings and
4 accounts, which said records and accounts shall be open to
5 public inspection at all reasonable times.

6 (b) The board is authorized to conduct, supervise, and
7 administer the qualifying examinations authorized and
8 required by this article, to maintain for a register or record of
9 persons who apply for a license or a temporary trainee permit
10 as well as a register or record of the name and last-known
11 business address of all persons to whom a license or trainee
12 permit is issued pursuant to this article.

13 (c) Effective July 1, 2012, the board shall bear the costs
14 of carrying out the powers and duties granted to it by this
15 article from the fees collected by it for these purposes.



CHAPTER 20

**(Com. Sub. for S. B. 110 - By Senators
Unger, Beach and Klempa)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, all relating to modifying and increasing the membership of the Broadband Deployment Council; increasing the number of members required for a quorum; and expanding the powers and duties of the Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

**§31-15C-3. Broadband Deployment Council established;
members of council; administrative support.**

- 1 (a) The Broadband Deployment Council is continued. The
- 2 council is a governmental instrumentality of the state. The
- 3 exercise by the council of the powers conferred by this article
- 4 and the carrying out of its purpose and duties are considered
- 5 and held to be, and are hereby determined to be, essential
- 6 governmental functions and for a public purpose. The council
- 7 is created under the Department of Commerce for
- 8 administrative, personnel and technical support services only.

9 (b) The council shall consist of fifteen voting members,
10 designated as follows:

11 (1) The Governor or his or her designee;

12 (2) The Secretary of Commerce or his or her designee;

13 (3) The Secretary of Administration or his or her
14 designee;

15 (4) The Director of Homeland Security and Emergency
16 Management or his or her designee;

17 (5) The State Superintendent of Schools or his or her
18 designee; and

19 (6) Ten public members that serve at the will and pleasure
20 of the Governor and are appointed by the Governor with the
21 advice and consent of the Senate, as follows:

22 (i) One member representing employees of
23 communications and cable providers who is a member or
24 representative of a union representing communications
25 workers;

26 (ii) One member representing the interests of the business
27 community in this state;

28 (iii) One member representing incumbent local exchange
29 carriers who provide broadband services in this state;

30 (iv) One member representing cable operators who
31 provide broadband services in this state;

32 (v) One member representing competitive local exchange
33 carriers who provide broadband services in this state;

34 (vi) One member representing broadband equipment or
35 device manufacturers;

36 (vii) One member representing higher education or
37 secondary education; and

38 (viii) Three members representing the general public who
39 are residents of the state, one of whom shall represent rural
40 communities, and who may not reside in the same
41 congressional district.

42 (7) In addition to the fifteen voting members of the
43 council, the President of the Senate shall name two senators
44 from the West Virginia Senate and the Speaker of the House
45 shall name two delegates from the West Virginia House of
46 Delegates, each to serve in the capacity of an ex officio,
47 nonvoting advisory member of the council.

48 (c) The Secretary of Commerce or his or her designee
49 shall chair the council and appoint one of the other council
50 members to serve as vice chair. In the absence of the
51 Secretary of Commerce or his or her designee, the vice chair
52 shall serve as chair. The council shall appoint a
53 secretary-treasurer who need not be a member of the council
54 and who, among other tasks or functions designated by the
55 council, shall keep records of its proceedings.

56 (d) The council may appoint committees or
57 subcommittees to investigate and make recommendations to
58 the full council. Members of these committees or
59 subcommittees need not be members of the council.

60 (e) Eight voting members of the council constitute a
61 quorum and the affirmative vote of at least the majority of
62 those members present is necessary for any action taken by
63 vote of the council.

64 (f) The council is part time. Public members appointed
65 by the Governor may pursue and engage in another business
66 or occupation or gainful employment. Any person employed
67 by, owning an interest in or otherwise associated with a
68 broadband deployment project, project sponsor or project
69 participant may serve as a council member and is not
70 disqualified from serving as a council member because of a
71 conflict of interest prohibited under section five, article two,
72 chapter six-b of this code and is not subject to prosecution for
73 violation of said section when the violation is created solely
74 as a result of his or her relationship with the broadband
75 deployment project, project sponsor or project participant so
76 long as the member recuses himself or herself from board
77 participation regarding the conflicting issue in the manner set
78 forth in legislative rules promulgated by the West Virginia
79 Ethics Commission.

80 (g) No member of the council who serves by virtue of his
81 or her office receives any compensation or reimbursement of
82 expenses for serving as a member. The public members and
83 members of any committees or subcommittees are entitled to
84 be reimbursed for actual and necessary expenses incurred for
85 each day or portion thereof engaged in the discharge of his or
86 her official duties in a manner consistent with the guidelines
87 of the Travel Management Office of the Department of
88 Administration.

§31-15C-4. Powers and duties of the council generally.

1 (a) The council shall:

2 (1) Explore the potential for increased use of broadband
3 service for the purposes of education, career readiness,
4 workforce preparation and alternative career training;

5 (2) Explore ways for encouraging state and municipal
6 agencies to expand the development and use of broadband

7 services for the purpose of better serving the public,
8 including audio and video streaming, voice-over Internet
9 protocol, teleconferencing and wireless networking; and

10 (3) Cooperate and assist in the expansion of electronic
11 instruction and distance education services by July, 2014.

12 (b) In addition to the powers set forth elsewhere in this
13 article, the council is hereby granted, has and may exercise
14 all powers necessary or appropriate to carry out and
15 effectuate the purpose and intent of this article. The council
16 shall have the power and capacity to:

17 (1) Provide consultation services to project sponsors in
18 connection with the planning, acquisition, improvement,
19 construction or development of any broadband deployment
20 project;

21 (2) Promote awareness of public facilities that have
22 community broadband access that can be used for distance
23 education and workforce development;

24 (3) Advise on deployment of e-government portals such
25 that all public bodies and political subdivisions have
26 homepages, encourage one-stop government access, and that
27 all public entities stream audio and video of all public
28 meetings;

29 (4) To make and execute contracts, commitments and
30 other agreements necessary or convenient for the exercise of
31 its powers, including, but not limited to, the hiring of
32 consultants to assist in the mapping of the state,
33 categorization of areas within the state and evaluation of
34 project applications: *Provided*, That the provisions of article
35 three, chapter five-a of this code do not apply to the
36 agreements and contracts executed under the provisions of
37 this article;

38 (5) Acquire by gift or purchase, hold or dispose of real
39 property and personal property in the exercise of its powers
40 and performance of its duties as set forth in this article;

41 (6) Receive and dispense funds appropriated for its use
42 by the Legislature or other funding sources or solicit, apply
43 for and receive any funds, property or services from any
44 person, governmental agency or organization to carry out its
45 statutory duties; and

46 (7) Perform any and all other activities in furtherance of
47 its purpose.

48 (c) The council shall exercise its powers and authority to
49 bring broadband service to unserved areas. The council may
50 not duplicate or displace broadband service in areas already
51 served or where private industry feasibly can be expected to
52 offer services in the reasonably foreseeable future.



CHAPTER 21

**(Com. Sub. for H. B. 4263 - By Delegates
Barker, Caputo, Martin, Hamilton,
Butcher and Stowers)**

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-57, relating to creating a “Buy American Task Force”; setting forth legislative findings; declaring state policy; requiring the Purchasing Division and the Division of Labor to convene a

task force to study the use of American made construction materials and goods; setting forth the membership of the task force; specifying areas of study; and requiring report to Legislature by December 31, 2012.

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-3-57, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Buy American task force; study; report.

1 (a) *Findings.* -- The Legislature finds that:

2 (1) The production of iron, steel, manufactured goods,
3 coal and timber provides jobs and family income to many
4 individuals in this state and, in turn, the jobs and family
5 incomes of millions of persons in the United States;

6 (2) The taxes paid to the state and its political
7 subdivisions by employers and employees engaged in the
8 production and sale of iron, steel, manufactured goods, coal
9 and timber are a large source of public revenues for West
10 Virginia;

11 (3) The economy and general welfare of West Virginia
12 and its people and the economy and general welfare of the
13 United States are inseparably linked to the preservation and
14 development of manufacturing, harvesting and mineral
15 extraction industries in this state, as well as all the other states
16 of this nation;

17 (4) The state's taxpayer dollars are better spent if
18 reinvested with its individual and employer taxpayers in
19 order to foster job retention and growth, particularly within

20 the manufacturing, harvesting and mineral extraction sectors,
21 and to ensure a broad and healthy tax base for future
22 investments vital to the state's infrastructure; and

23 (5) West Virginia's procurement policies should reflect
24 the state's and the nation's principles ensuring that the
25 products of those companies and workers who abide by
26 workplace safety and environmental laws, rules and
27 regulations should be rewarded with a commonsense
28 preference in government contracting.

29 (b) *Declaration of policy.* -- It is the policy of West
30 Virginia that the state and its political subdivisions should aid
31 and promote the economy of this state and the United States
32 by requiring a preference for the procurement of iron, steel,
33 manufactured goods, coal and timber produced in the United
34 States in all contracts for the construction, reconstruction,
35 repair, improvement or maintenance of public buildings and
36 public works projects.

37 (c) The Purchasing Division and the Division of Labor
38 shall jointly convene the task force created in subsection (d)
39 of this section to study the use of American-made
40 construction materials and manufactured goods in the various
41 aspects of the construction and maintenance of public
42 buildings and public works projects of the state and its
43 political subdivisions which are funded in part by state
44 grants, state loans or state appropriations.

45 (d) A task force is hereby created to assist the divisions
46 with this study. The task force shall consist of:

47 (1) An architect, an engineer and a contractor, each
48 designated by his or her respective licensing board;

49 (2) One representative of the largest organization
50 representing West Virginia manufacturers;

51 (3) One representative each from the Division of
52 Highways, the School Building Authority, the Water
53 Development Authority, the General Services Division and
54 the Higher Education Policy Commission; and

55 (4) Four labor representatives chosen by the largest labor
56 organization in the state.

57 (e) The study shall include, but not be limited to:

58 (1) The need to maintain a list of all suppliers qualified to
59 provide construction materials and manufactured goods
60 produced in the United States;

61 (2) The percentage of domestically produced construction
62 materials and manufactured goods to be included in a
63 construction project to qualify it as built with American made
64 construction materials and manufactured goods; and

65 (3) Possible changes to the bid process, including waiver
66 requirements.

67 (f) The directors of the Purchasing Division and the
68 Division of Labor shall report to the Joint Committee on
69 Government and Finance, by December 31, 2012, on the task
70 force's findings on the best methods of promoting the
71 American production of iron, steel, manufactured goods, coal
72 and timber and creating jobs through a buy American
73 mandate, as well as the burdens and benefits of such mandate
74 on the construction industry in West Virginia and the state's
75 public building and public works projects.



CHAPTER 22

**(Com. Sub. for S. B. 597 - By Senators
Palumbo, Wills, D. Facemire, Edgell,
Snyder, Unger, Browning, Beach,
Klempa, Foster and Stollings)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to carbon monoxide detectors, smoke detectors and sprinkler systems; requiring smoke detectors and sprinkler systems meet and be installed according to current edition of national standard requirements; requiring carbon monoxide detectors be installed in certain public facilities on and after certain effective date; requiring carbon monoxide detectors be hardwired into alternating current on and after certain date; allowing the installation of either single station carbon monoxide detector or combination smoke detector and carbon monoxide detector; providing certain exception for installing carbon monoxide detectors in certain long-term care facilities; providing for minimum specification requirements and testing, maintaining, repairing and replacing carbon monoxide detectors; and providing for certain penalties.

Be it enacted by the Legislature of West Virginia:

That §29-3-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.**

1 (a) An operational smoke detector shall be installed in the
2 immediate vicinity of each sleeping area within all one and
3 two family dwellings, including any “manufactured home” as
4 that term is defined in subsection (j), section two, article nine,
5 chapter twenty-one of this code. The smoke detector shall be
6 capable of sensing visible or invisible particles of combustion
7 and shall meet the specifications and be installed as provided
8 in the current edition of the National Fire Protection
9 Association Standard 72, “Standard for the Installation,
10 Maintenance and Use of Household Fire Warning
11 Equipment” and in the manufacturer’s specifications. When
12 activated, the smoke detector shall provide an alarm suitable
13 to warn the occupants of the danger of fire.

14 (b) The owner of each dwelling described in subsection
15 (a) of this section shall provide, install and replace the
16 operational smoke detectors required by this section. So as
17 to assure that the smoke detector continues to be operational,
18 in each dwelling described in subsection (a) of this section
19 which is not occupied by the owner thereof, the tenant in any
20 dwelling shall perform routine maintenance on the smoke
21 detectors within the dwelling.

22 (c) Where a dwelling is not occupied by the owner and is
23 occupied by an individual who is deaf or hearing impaired,
24 the owner shall, upon written request by or on behalf of the
25 individual, provide and install a smoke detector with a light
26 signal sufficient to warn the deaf or hearing-impaired
27 individual of the danger of fire.

28 (d) An automatic fire sprinkler system installed in
29 accordance with the current edition of the National Fire
30 Protection Association Standard 13D, “Standard for the

31 Installation of Sprinkler Systems in Residential Occupancies”
32 may be provided in lieu of smoke detectors.

33 (e) After investigating a fire in any dwelling described in
34 subsection (a) of this section, the local investigating authority
35 shall issue to the owner a smoke detector installation order in
36 the absence of the required smoke detectors.

37 (f) An operational single station carbon monoxide
38 detector with a suitable alarm or a combination smoke
39 detector and carbon monoxide detector, which shall be
40 alternating current (AC) powered, either plugged directly in
41 to an electrical outlet that is not controlled by a switch or
42 hardwired into an alternating current (AC) electrical source,
43 with battery back up, and be installed, maintained, tested,
44 repaired or replaced, if necessary, in accordance with the
45 manufacturer’s direction:

46 (1) In any newly constructed residential unit which has a
47 fuel-burning heating or cooking source including, but not
48 limited to, an oil or gas furnace or stove;

49 (2) In any residential unit which is connected to a newly
50 constructed building, including, but not limited to, a garage,
51 storage shed or barn, which has a fuel-burning heating or
52 cooking source, including, but not limited to, an oil or gas
53 furnace or stove;

54 (3) Effective September 1, 2012, in either a common area
55 where the general public has access or all rooms in which a
56 person will be sleeping that are adjoining to and being
57 directly below and above all areas or rooms that contain
58 permanently installed fuel-burning appliances and equipment
59 that emit carbon monoxide as a byproduct of combustion
60 located within all apartment buildings, boarding houses,
61 dormitories, long-term care facilities, adult or child care
62 facilities, assisted living facilities, one- and two- family
63 dwellings intended to be rented or leased, hotels and motels.

64 (g) Effective January 1, 2013, all single station carbon
65 monoxide detectors with a suitable alarm or a combination
66 smoke detector and carbon monoxide detectors shall be
67 hardwired into an alternating current (AC) electrical source,
68 with battery backup, when installed in all newly constructed
69 apartment buildings, boarding houses, dormitories, hospitals,
70 long-term care facilities, adult or child care facilities, assisted
71 living facilities, one- and two-family dwellings intended to be
72 rented or leased, hotels and motels.

73 (h) In any long-term care facility that is staffed on a
74 twenty-four hour, seven day a week basis, the single station
75 carbon monoxide detector with a suitable alarm or a
76 combination smoke detector and carbon monoxide detector
77 shall only be required to be installed in an area of the facility
78 that permits the detector to be audible to the staff on duty.

79 (i) Any person installing a carbon monoxide detector in
80 a residential unit shall inform the owner, lessor or the
81 occupant or occupants of the residential unit of the dangers
82 of carbon monoxide poisoning and instructions on the
83 operation of the carbon monoxide detector installed.

84 (j) When repair or maintenance work is undertaken on a
85 fuel-burning heating or cooking source or a venting system
86 in an existing residential unit, the person making the repair or
87 performing the maintenance shall inform the owner, lessor or
88 the occupant or occupants of the unit being served by the
89 fuel-burning heating or cooking source or venting system of
90 the dangers of carbon monoxide poisoning and recommend
91 the installation of a carbon monoxide detector.

92 (k) Any person who violates any provision of this section
93 is guilty of a misdemeanor and, upon conviction thereof, for
94 a first offense, shall be fined \$250. For a second offense, the
95 person is guilty of a misdemeanor and, upon conviction
96 thereof, shall be fined \$750. For a third and subsequent
97 offenses, the person is guilty of a misdemeanor and, upon
98 conviction thereof, shall be fined \$2000.

99 (l) A violation of this section may not be considered by
100 virtue of the violation to constitute evidence of negligence or
101 contributory negligence or comparative negligence in any
102 civil action or proceeding for damages.

103 (m) A violation of this section may not constitute a
104 defense in any civil action or proceeding involving any
105 insurance policy.

106 (n) Nothing in this section shall be construed to limit the
107 rights of any political subdivision in this state to enact laws
108 imposing upon owners of any dwelling or other building
109 described in subsection (a) or (f) of this section a greater duty
110 with regard to the installation, repair and replacement of the
111 smoke detectors or carbon monoxide detectors than is
112 required by this section.



CHAPTER 23

**(S. B. 676 - By Senators Prezioso,
D. Facemire, Chafin, Edgell, Green,
Helmick, Laird, McCabe, Miller,
Plymale, Stollings, Unger, Wells,
Yost, Boley, Hall and Sypolt)**

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on March 19, 2012.]

AN ACT to amend and reenact §31-15A-17b of the Code of West Virginia, 1931, as amended, relating to Chesapeake Bay watershed compliance projects; and specifying dates by which eligible projects may apply for grant funding.

Be it enacted by the Legislature of West Virginia:

That §31-15A-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.**

**§31-15A-17b. Infrastructure lottery revenue bonds for
watershed compliance projects.**

1 (a)(1) The Chesapeake Bay has been identified as an
2 impaired water body due to excessive nutrients entering the
3 Bay from various sources in six states, including wastewater
4 facilities in West Virginia. To restore the Chesapeake Bay,
5 the states have agreed to reduce their respective nutrient
6 contributions to the Chesapeake Bay.

7 (2) The Greenbrier River Watershed in southeastern West
8 Virginia which encompasses approximately 1,646 square
9 miles, the majority of which lies within Pocahontas,
10 Greenbrier, Monroe and Summers counties, has been
11 identified as an impaired water body due to excessive levels
12 of fecal coliform and phosphorus entering the Watershed
13 from various sources, including wastewater facilities in West
14 Virginia. To restore the Greenbrier River Watershed, the
15 state agrees to reduce the fecal coliform and phosphorus
16 contributions to the Greenbrier River Watershed.

17 (b) Notwithstanding any other provision of this code to
18 the contrary, the Water Development Authority may issue, in
19 accordance with the provisions of section seventeen of this
20 article, infrastructure lottery revenue bonds payable from the
21 West Virginia infrastructure lottery revenue debt service fund
22 created by section nine of this article and such other sources
23 as may be legally pledged for such purposes other than the
24 West Virginia infrastructure revenue debt service fund
25 created by section seventeen of this article.

26 (c) The council shall direct the Water Development
27 Authority to issue bonds in one or more series when it has
28 approved Chesapeake Bay watershed compliance projects
29 and Greenbrier River watershed compliance projects with an
30 authorized permitted flow of four hundred thousand gallons
31 per day or more. The proceeds of the bonds shall be used
32 solely to pay costs of issuance, fund a debt service reserve
33 account, capitalize interest, pay for security instruments
34 necessary to market the bonds and to make grants to
35 governmental instrumentalities of the state for the
36 construction of approved Chesapeake Bay watershed
37 compliance projects and Greenbrier River watershed
38 compliance projects. To the extent funds are available in the
39 West Virginia Infrastructure Lottery Revenue Debt Service
40 Fund that are not needed for debt service, the council may
41 direct the Water Development Authority to make grants to
42 project sponsors for the design or construction of approved
43 Chesapeake Bay watershed compliance projects and
44 Greenbrier River watershed compliance projects: *Provided*,
45 That the council shall direct the Water Development
46 Authority to provide from monies in the Lottery Revenue
47 Debt Service Fund not needed to pay debt service in fiscal
48 year 2013 a grant of \$6 million to a Chesapeake Bay
49 watershed compliance project which opened bids on
50 December 28, 2011 and further provided that such
51 Chesapeake Bay watershed compliance project shall receive
52 no further grant funding under this section after receipt of the
53 \$6 million grant.

54 (d) No later than June 30, 2012, each publicly owned
55 facility with an authorized permitted flow of 400,000 gallons
56 per day or more that is subject to meeting Chesapeake Bay
57 compliance standards or Greenbrier River watershed
58 compliance standards shall submit to the council a ten year
59 projected capital funding plan for Chesapeake Bay watershed
60 compliance projects or Greenbrier River watershed

61 compliance projects, as the case may be, including a general
62 project description, cost estimate and estimated or actual
63 project start date and project completion date, if any. The
64 council shall timely review the submitted capital funding
65 plans and forward approved plans to the Water Development
66 Authority for further processing and implementation pursuant
67 to this article. If the council finds a plan to be incomplete,
68 inadequate or otherwise problematic, it shall return the plan
69 to the applicant with comment on the plan shortcomings. The
70 applicant may then resubmit to council an amended capital
71 funding plan for further consideration pursuant to the terms
72 of this subsection.

73 (e) Upon approval, each proposed Chesapeake Bay
74 watershed compliance project or Greenbrier River watershed
75 compliance project, or portion of a larger project, which
76 portion is dedicated to compliance with nutrient standards, or
77 fecal coliform and phosphorus standards, established for the
78 protection and restoration of the Chesapeake Bay or the
79 Greenbrier River Watershed, as the case may be, shall be
80 eligible for grant funding by funds generated by the
81 infrastructure lottery revenue bonds described in section (b)
82 of this section. At the request of the applicant, the remaining
83 percentage of project funding not otherwise funded by grant
84 under the provisions of this article may be reviewed as a
85 standard project funding application.

86 (f) No later than December 1, 2012, the Water
87 Development Authority shall report to the Joint Committee
88 on Government and Finance the total cost of Chesapeake Bay
89 watershed compliance projects and the Greenbrier River
90 watershed compliance projects and the proposed grant awards
91 for each eligible project. Grant awards shall be of equal ratio
92 among all applicants of the total cost of each eligible project.

93 (g) Eligible projects that have obtained project financing

94 prior to December 31, 2012, may apply to the council for
95 funding under the provisions of this section. These
96 applications shall be processed and considered as all other
97 eligible projects, and a grant funding awarded shall, to the
98 extent allowed by law, be dedicated to prepay all or a portion
99 of debt previously incurred by governmental instrumentalities
100 of the state for required Chesapeake Bay nutrient removal
101 projects or Greenbrier River watershed fecal coliform and
102 phosphorus removal projects, subject to the bond covenants
103 and contractual obligations of the borrowing governmental
104 entity. However, any private portion of funding provided by
105 agreement between a political subdivision and one or more
106 private entities, either by direct capital investment or debt
107 service obligation, shall not be eligible for grant funding
108 under the provisions of this article.



CHAPTER 24

**(H. B. 4521 - By Delegates Poore,
Hunt, Moore, Mahan, Guthrie,
Ireland, Wells, Miley, Michael,
Frazier and White)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-13-703, relating to permitting the restructuring of child support payments of an inmate who is released from the custody of the Division of Corrections or United States Bureau of Prisons under certain circumstances; providing that one judge within the circuit may assume jurisdiction over all child support

obligations of the former inmate; and providing a minimum amount of child support which is to be paid each month in each case.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §48-13-703, to read as follows:

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-703. Restructuring of payments upon release of inmate.

1 Upon his or her release from the custody of the Division
2 of Corrections or the United States Bureau of Prisons, a
3 person who is gainfully employed and is subject to a child
4 support obligation or obligations and from whose weekly
5 disposable earnings an amount in excess of forty percent is
6 being withheld for the child support obligation or obligations
7 may, within eighteen months of his or her release, petition the
8 court having jurisdiction over the case or cases to restructure
9 the payments to an amount that allows the person to pay his
10 or her necessary living expenses. In order to achieve
11 consistency and fairness, one judge may assume jurisdiction
12 over all the cases the person may have within that circuit of
13 the court. In apportioning the available funds, the court shall
14 give priority to the person's current child support obligations:
15 *Provided*, That a minimum of \$50 per month shall be paid in
16 each case.



CHAPTER 25

**(H. B. 4523 - By Delegates Poore,
Moore, Mahan, Guthrie, Wells,
Michael, Frazier, White and Miley)**

[Passed March 7, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §48-18-125 of the Code of West Virginia, 1931, as amended, relating to the Bureau for Child Support enforcement; reporting employment and income; providing definition of independent contractor; and reporting income of an independent contractor if the contract for services is over \$2500.

Be it enacted by the Legislature of West Virginia:

That §48-18-125 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

- 1 (a) For purposes of this section:
- 2 (1) “Employee” means an individual who is an
- 3 “employee” for purposes of federal income tax withholding,
- 4 as defined in 26 U.S.C. §3401;
- 5 (2) “Employer” means the person or entity for whom an
- 6 individual performs or performed any service of whatever

7 nature and who has control of the payment of the individual's
8 wages for performance of the service or services, as defined
9 in 26 U.S.C. §3401;

10 (3) "Independent Contractor" means an individual who is
11 not an employee of the employer and who receives
12 compensation or executes a contract for services performed
13 for that employer. Independent contractor does not include a
14 direct seller as defined in 26 U. S. C. §3508(b)(2).

15 (4) An individual is considered a "new hire" on the first
16 day in which that individual performs services for
17 remuneration and on which an employer begins to withhold
18 amounts for income tax purposes.

19 (b) Except as provided in subsections (c) and (d) of this
20 section, all employers doing business in the state shall report
21 to the Bureau for Child Support enforcement:

22 (1) The hiring of any person who resides or works in this
23 state to whom the employer anticipates paying earnings;

24 (2) The rehiring or return to work of any employee or
25 independent contractor who resides or works in this state; and

26 (3) The contracting for services in the state with an
27 independent contractor when payment for the services is \$2500
28 or more. Payment for the services shall be reported within
29 fourteen days of the earlier of first making payments that in the
30 aggregate equal or exceed \$2500 in any year or contracts with
31 an independent contractor providing for payments that in the
32 aggregate equal or exceed \$2500 in any year.

33 (c) Employers are not required to report the hiring,
34 rehiring or return to work of any person who is an employee
35 or independent contractor of a federal or state agency
36 performing intelligence or counterintelligence functions if the
37 head of the agency has determined that reporting could

38 endanger the safety of the employee or independent
39 contractor or compromise an ongoing investigation or
40 intelligence mission.

41 (d) An employer that has employees or independent
42 contractors in states other than this state and that transmits
43 reports magnetically or electronically is not required to report
44 to the Bureau for Child Support enforcement the hiring,
45 rehiring or return to work of any employee or independent
46 contractor if the employer has filed with the secretary of the
47 federal department of health and human services, as required
48 by 42 U.S.C. §653A, a written designation of another state in
49 which it has employees or independent contractors as the
50 reporting state.

51 (e) Employers shall report by mailing the required
52 information to the Bureau for Child Support enforcement or
53 may transmit the information through another means if
54 approved in writing by the Bureau for Child Support
55 enforcement prior to the transmittal. The report shall include
56 the employee's or independent contractor's name, address
57 and social security number, start date, the employer's name
58 and address, any different address of the payroll office and
59 the employer's federal tax identification number. The
60 employer may report other information, such as date of birth
61 or income information, if desired.

62 (f) Employers shall submit a report within fourteen days
63 of the date of the hiring, rehiring or return to work of the
64 employee or independent contractor. However, if the
65 employer transmits the reports magnetically or electronically
66 by two monthly submissions, the reports shall be submitted
67 not less than twelve days nor more than sixteen days apart.

68 (g) An employer shall provide to the Bureau for Child
69 Support enforcement, upon its written request, information
70 regarding an obligor's employment, wages or salary, medical
71 insurance, start date and location of employment.

72 (h) Any employer who fails to report in accordance with the
73 provisions of this section shall be assessed a civil penalty of no
74 more than \$25 per failure. If the failure to report is the result of
75 a conspiracy between the employer and the employee or
76 independent contractor not to supply the required report or to
77 supply a false or incomplete report, the employer shall be
78 assessed a civil penalty of no more than \$500.

79 (i) Employers required to report under this section may
80 assess each employee or independent contractor reported \$1
81 for the administrative costs of reporting.

82 (j) Uses for the new hire information include, but are not
83 limited to, the following:

84 (1) The state directory of new hires shall furnish the
85 information to the national directory of new hires;

86 (2) The Bureau for Child Support enforcement shall use
87 information received pursuant to this section to locate
88 individuals for purposes of establishing paternity and of
89 establishing, modifying and enforcing child support
90 obligations and may disclose the information to any agent of
91 the agency that is under contract with the bureau to carry out
92 those purposes;

93 (3) State agencies responsible for administering a
94 program specified in 42 U.S.C. §1320b-7(b) shall have access
95 to information reported by employers for purposes of
96 verifying eligibility for the program; and

97 (4) The Bureau of Employment Programs and the
98 Workers' Compensation Commission shall have access to
99 information reported by employers for purposes of
100 administering employment security and Workers'
101 Compensation Programs.



CHAPTER 26

**(Com. Sub. for S. B. 484 - By Senators
Palumbo, Laird, Tucker, Edgell,
Wills, Wells, Kessler, Mr. President,
Klempa, Jenkins, Beach and Yost)**

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to repeal §49-5-21 of the Code of West Virginia, 1931, as amended; to repeal §49-6-5a of said code; to amend and reenact §49-1-3 of said code; to amend and reenact §49-2-17 of said code; to amend and reenact §49-5-13 of said code; to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to amend said code by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to amend and reenact §49-6A-5 of said code; to amend and reenact §49-6D-3 of said code; to amend and reenact §49-7-1 of said code; and to amend said code by adding thereto a new section, designated §49-7-36, all relating generally to child welfare; defining “court appointed special advocate program”; establishing a system of assistance from funds appropriated to the Department of Health and Human Resources for facilitating the adoption or legal guardianship of children who are dependents of the department or of a child welfare agency licenced to place children for adoption; providing when a juvenile is ordered into out-of-state placement, the reasons why the juvenile was not placed in state be included in the court order; adding additional members to the multidisciplinary team; providing a process for multidisciplinary treatment planning in cases involving child

abuse and neglect; providing a process for multidisciplinary treatment planning in cases involving status offense or delinquency; increasing the continuing education hours required for attorneys appointed in child abuse and neglect cases; providing that reasonable efforts to preserve the family are not required when a person is required by state or federal law to register with a sex offender registry; providing that the court may modify a dispositional order when it finds a material change of circumstances has occurred and such modification is in the child's best interests; clarifying that the circuit court of origin has exclusive jurisdiction over placement of a child in a child abuse and neglect case; providing a process for permanency hearings and permanent placement reviews; providing that any combination of improvement periods cannot cause a child to be in foster care more than fifteen months of the most recent twenty-two months unless the court finds that it is in the child's best interests; providing for modifications and requests for expunging of records; requiring the secretary to promulgate legislative rules; providing guidelines for unified child and family case plans; confidentiality of records; and requiring a quarterly status review hearing and yearly permanency hearings for transitioning adults.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be repealed; that §49-6-5a of said code be repealed; that §49-1-3 of said code be amended and reenacted; that §49-2-17 of said code be amended and reenacted; that §49-5-13 of said code be amended and reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be amended and reenacted; that §49-6A-5 of said code be amended and reenacted; that §49-6D-3 of said code be amended and reenacted; that §49-7-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-7-36, all to read as follows:

ARTICLE 1. PURPOSES AND DEFINITIONS.**§49-1-3. Definitions relating to abuse and neglect.**

1 (1) “Abused child” means a child whose health or welfare
2 is harmed or threatened by:

3 (A) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly allows
5 another person to inflict, physical injury or mental or
6 emotional injury, upon the child or another child in the home;

7 (B) Sexual abuse or sexual exploitation;

8 (C) The sale or attempted sale of a child by a parent,
9 guardian or custodian in violation of section sixteen, article
10 four, chapter forty-eight of this code; or

11 (D) Domestic violence as defined in section two hundred
12 two, article twenty-seven, chapter forty-eight of this code.

13 In addition to its broader meaning, physical injury may
14 include an injury to the child as a result of excessive corporal
15 punishment.

16 (2) “Abusing parent” means a parent, guardian or other
17 custodian, regardless of his or her age, whose conduct, as
18 alleged in the petition charging child abuse or neglect, has
19 been adjudged by the court to constitute child abuse or
20 neglect.

21 (3) “Battered parent” means a parent, guardian or other
22 custodian who has been judicially determined not to have
23 condoned the abuse or neglect and has not been able to stop
24 the abuse or neglect of the child or children due to being the
25 victim of domestic violence as defined by section two
26 hundred two, article twenty-seven, chapter forty-eight of this

27 code, which domestic violence was perpetrated by the person
28 or persons determined to have abused or neglected the child
29 or children.

30 (4) “Child abuse and neglect” or “child abuse or neglect”
31 means physical injury, mental or emotional injury, sexual
32 abuse, sexual exploitation, sale or attempted sale or negligent
33 treatment or maltreatment of a child by a parent, guardian or
34 custodian who is responsible for the child’s welfare, under
35 circumstances which harm or threaten the health and welfare
36 of the child.

37 (5) “Child abuse and neglect services” means social
38 services which are directed toward:

39 (A) Protecting and promoting the welfare of children who
40 are abused or neglected;

41 (B) Identifying, preventing and remedying conditions
42 which cause child abuse and neglect;

43 (C) Preventing the unnecessary removal of children from
44 their families by identifying family problems and assisting
45 families in resolving problems which could lead to a removal
46 of children and a breakup of the family;

47 (D) In cases where children have been removed from
48 their families, providing services to the children and the
49 families so as to reunify such children with their families or
50 some portion thereof;

51 (E) Placing children in suitable adoptive homes when
52 reunifying the children with their families, or some portion
53 thereof, is not possible or appropriate; and

54 (F) Assuring the adequate care of children who have been
55 placed in the custody of the department or third parties.

56 (6) “Child advocacy center (CAC)” means a community-
57 based organization that is a member in good standing with the
58 West Virginia Child Abuse Network, Inc., and is working to
59 implement the following program components:

60 (A) Child-appropriate/child-friendly facility: A child
61 advocacy center provides a comfortable, private, child-
62 friendly setting that is both physically and psychologically
63 safe for clients.

64 (B) Multidisciplinary team (MDT): A multidisciplinary
65 team for response to child abuse allegations includes
66 representation from the following: Law enforcement; child
67 protective services; prosecution; mental health; medical;
68 victim advocacy; child advocacy center.

69 (C) Organizational capacity: A designated legal entity
70 responsible for program and fiscal operations has been
71 established and implements basic sound administrative
72 practices.

73 (D) Cultural competency and diversity: The CAC
74 promotes policies, practices and procedures that are culturally
75 competent. Cultural competency is defined as the capacity to
76 function in more than one culture, requiring the ability to
77 appreciate, understand and interact with members of diverse
78 populations within the local community.

79 (E) Forensic interviews: Forensic interviews are
80 conducted in a manner which is of a neutral, fact-finding
81 nature and coordinated to avoid duplicative interviewing.

82 (F) Medical evaluation: Specialized medical evaluation
83 and treatment are to be made available to CAC clients as part
84 of the team response, either at the CAC or through
85 coordination and referral with other specialized medical
86 providers.

87 (G) Therapeutic intervention: Specialized mental health
88 services are to be made available as part of the team response,
89 either at the CAC or through coordination and referral with
90 other appropriate treatment providers.

91 (H) Victim support/advocacy: Victim support and
92 advocacy are to be made available as part of the team
93 response, either at the CAC or through coordination with
94 other providers, throughout the investigation and subsequent
95 legal proceedings.

96 (I) Case review: Team discussion and information sharing
97 regarding the investigation, case status and services needed
98 by the child and family are to occur on a routine basis.

99 (J) Case tracking: CACs must develop and implement a
100 system for monitoring case progress and tracking case
101 outcomes for team components: *Provided*, That a child
102 advocacy center may establish a safe exchange location for
103 children and families who have a parenting agreement or an
104 order providing for visitation or custody of the children that
105 require a safe exchange location.

106 (7) “Court appointed special advocate (CASA) program”
107 means a community organization that screens, trains and
108 supervises CASA volunteers to advocate for the best interests
109 of children who are involved in abuse and neglect
110 proceedings. Court appointed special advocate programs will
111 be operated under the following guidelines:

112 (A) Standards: CASA programs shall be members in
113 good standing with the West Virginia Court Appointed
114 Special Advocate Association, Inc., and the National Court
115 Appointed Special Advocates Association and adhere to all
116 standards set forth by these entities.

117 (B) Organizational capacity: A designated legal entity
118 responsible for program and fiscal operations has been

119 established and implements basic sound administrative
120 practice.

121 (C) Cultural competency and diversity: CASA programs
122 promote policies, practices and procedures that are culturally
123 competent. “Cultural competency” is defined as the capacity
124 to function in more than one culture, requiring the ability to
125 appreciate, understand and interact with members of diverse
126 populations within the local community.

127 (D) Case management: CASA programs must utilize a
128 uniform case management system to monitor case progress
129 and track outcomes.

130 (E) Case review: CASA volunteers meet with CASA staff
131 on a routine basis to discuss case status and outcomes.

132 (F) Training: Court appointed special advocates shall
133 serve as volunteers without compensation and shall receive
134 training consistent with state and nationally developed
135 standards.

136 (8) “Imminent danger to the physical well being of the
137 child” means an emergency situation in which the welfare or
138 the life of the child is threatened. Such emergency situation
139 exists when there is reasonable cause to believe that any child
140 in the home is or has been sexually abused or sexually
141 exploited, or reasonable cause to believe that the following
142 conditions threaten the health or life of any child in the home:

143 (A) Nonaccidental trauma inflicted by a parent, guardian,
144 custodian, sibling or a babysitter or other caretaker;

145 (B) A combination of physical and other signs indicating
146 a pattern of abuse which may be medically diagnosed as
147 battered child syndrome;

- 148 (C) Nutritional deprivation;
- 149 (D) Abandonment by the parent, guardian or custodian;
- 150 (E) Inadequate treatment of serious illness or disease;
- 151 (F) Substantial emotional injury inflicted by a parent,
152 guardian or custodian;
- 153 (G) Sale or attempted sale of the child by the parent,
154 guardian or custodian; or
- 155 (H) The parent, guardian or custodian abuse of alcohol or
156 drugs or other controlled substance as defined in section one
157 hundred one, article one, chapter sixty-a of this code, has
158 impaired his or her parenting skills to a degree as to pose an
159 imminent risk to a child's health or safety.
- 160 (9) "Legal guardianship" means the permanent
161 relationship between a child and caretaker, established by
162 order of the circuit court having jurisdiction over the child,
163 pursuant to the provisions of this chapter and chapter forty-
164 eight of this code.
- 165 (10) "Multidisciplinary team" means a group of
166 professionals and paraprofessionals representing a variety of
167 disciplines who interact and coordinate their efforts to
168 identify, diagnose and treat specific cases of child abuse and
169 neglect. Multidisciplinary teams may include, but are not
170 limited to, medical, educational, child care and law-
171 enforcement personnel, social workers, psychologists and
172 psychiatrists. Their goal is to pool their respective skills in
173 order to formulate accurate diagnoses and to provide
174 comprehensive coordinated treatment with continuity and
175 followup for both parents and children. "Community team"
176 means a multidisciplinary group which addresses the general
177 problem of child abuse and neglect in a given community and

178 may consist of several multidisciplinary teams with different
179 functions.

180 (11) (A) “Neglected child” means a child:

181 (i) Whose physical or mental health is harmed or
182 threatened by a present refusal, failure or inability of the
183 child’s parent, guardian or custodian to supply the child with
184 necessary food, clothing, shelter, supervision, medical care or
185 education, when such refusal, failure or inability is not due
186 primarily to a lack of financial means on the part of the
187 parent, guardian or custodian; or

188 (ii) Who is presently without necessary food, clothing,
189 shelter, medical care, education or supervision because of the
190 disappearance or absence of the child’s parent or custodian;

191 (B) “Neglected child” does not mean a child whose
192 education is conducted within the provisions of section one,
193 article eight, chapter eighteen of this code.

194 (12) “Parent” means an individual defined has a parent by
195 law or on the basis of a biological relationship, marriage to a
196 person with a biological relationship, legal adoption or other
197 recognized grounds.

198 (13) “Parental rights” means any and all rights and duties
199 regarding a parent to a minor child, including, but not limited
200 to, custodial rights and visitational rights and rights to
201 participate in the decisions affecting a minor child.

202 (14) “Parenting skills” means a parent’s competencies in
203 providing physical care, protection, supervision and
204 psychological support appropriate to a child’s age and state
205 of development.

206 (15) “Sexual abuse” means:

207 (A) As to a child who is less than sixteen years of age,
208 any of the following acts which a parent, guardian or
209 custodian shall engage in, attempt to engage in or knowingly
210 procure another person to engage in, with such child,
211 notwithstanding the fact that the child may have willingly
212 participated in such conduct or the fact that the child may
213 have suffered no apparent physical injury or mental or
214 emotional injury as a result of such conduct:

215 (i) Sexual intercourse;

216 (ii) Sexual intrusion; or

217 (iii) Sexual contact;

218 (B) As to a child who is sixteen years of age or older, any
219 of the following acts which a parent, guardian or custodian
220 shall engage in, attempt to engage in or knowingly procure
221 another person to engage in, with such child, notwithstanding
222 the fact that the child may have consented to such conduct or
223 the fact that the child may have suffered no apparent physical
224 injury or mental or emotional injury as a result of such
225 conduct:

226 (i) Sexual intercourse;

227 (ii) Sexual intrusion; or

228 (iii) Sexual contact;

229 (C) Any conduct whereby a parent, guardian or custodian
230 displays his or her sex organs to a child, or procures another
231 person to display his or her sex organs to a child, for the
232 purpose of gratifying the sexual desire of the parent, guardian
233 or custodian, of the person making such display, or of the
234 child, or for the purpose of affronting or alarming the child.

235 (16) “Sexual contact” means sexual contact as that term
236 is defined in section one, article eight-b, chapter sixty-one of
237 this code.

238 (17) “Sexual exploitation” means an act whereby:

239 (A) A parent, custodian or guardian, whether for financial
240 gain or not, persuades, induces, entices or coerces a child to
241 engage in sexually explicit conduct as that term is defined in
242 section one, article eight-c, chapter sixty-one of this code;

243 (B) A parent, guardian or custodian persuades, induces,
244 entices or coerces a child to display his or her sex organs for
245 the sexual gratification of the parent, guardian, custodian or
246 a third person, or to display his or her sex organs under
247 circumstances in which the parent, guardian or custodian
248 knows such display is likely to be observed by others who
249 would be affronted or alarmed.

250 (18) “Sexual intercourse” means sexual intercourse as
251 that term is defined in section one, article eight-b, chapter
252 sixty-one of this code.

253 (19) “Sexual intrusion” means sexual intrusion as that
254 term is defined in section one, article eight-b, chapter sixty-
255 one of this code.

256 (20) “Placement” means any temporary or permanent
257 placement of a child who is in the custody of the state in any
258 foster home, group home or other facility or residence.

259 (21) “Serious physical abuse” means bodily injury which
260 creates a substantial risk of death, which causes serious or
261 prolonged disfigurement, prolonged impairment of health or
262 prolonged loss or impairment of the function of any bodily
263 organ.

264 (22) “Siblings” means children who have at least one
265 biological parent in common or who have been legally
266 adopted by the same parents or parent.

267 (23) “Time-limited reunification services” means
268 individual, group and family counseling, inpatient, residential
269 or outpatient substance abuse treatment services, mental
270 health services, assistance to address domestic violence,
271 services designed to provide temporary child care and
272 therapeutic services for families, including crisis nurseries
273 and transportation to or from any such services, provided
274 during fifteen of the most recent twenty-two months a child
275 has been in foster care, as determined by the earlier date of
276 the first judicial finding that the child is subjected to abuse or
277 neglect, or the date which is sixty days after the child is
278 removed from home.

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE
PROTECTION AND CARE OF
CHILDREN.**

§49-2-17. Subsidized adoption and legal guardianship.

1 (a) From funds appropriated to the Department of Health
2 and Human Resources, the secretary shall establish a system
3 of assistance for facilitating the adoption or legal
4 guardianship of children. An adoption subsidy shall be
5 available for children who are legally free for adoption and
6 who are dependents of the department or a child welfare
7 agency licensed to place children for adoption. A legal
8 guardianship subsidy shall not require the surrender or
9 termination of parental rights. For either subsidy, the
10 children must be in special circumstances because one or
11 more of the following conditions inhibit their adoption or
12 legal guardianship placement:

13 (1) They have a physical or mental disability;

- 14 (2) They are emotionally disturbed;
- 15 (3) They are older children;
- 16 (4) They are a part of a sibling group; or
- 17 (5) They are a member of a racial or ethnic minority.
- 18 (b) The department shall provide assistance in the form
19 of subsidies or other services to parents who are found and
20 approved for adoption or legal guardianship of a child
21 certified as eligible for subsidy by the department, but before
22 the final decree of adoption or order of legal guardianship is
23 entered, there must be a written agreement between the
24 family entering into the subsidized adoption or legal
25 guardianship and the department. Adoption or legal
26 guardianship subsidies in individual cases may commence
27 with the adoption or legal guardianship placement, and will
28 vary with the needs of the child as well as the availability of
29 other resources to meet the child's needs. The subsidy may
30 be for special services only, or for money payments, and
31 either for a limited period, or for a long term, or for any
32 combination of the foregoing. The specific financial terms of
33 the subsidy shall be included in the agreement between the
34 department and the adoptive parents or legal guardians. The
35 agreement may recognize and provide for direct payment by
36 the department of attorney's fees to an attorney representing
37 the adoptive parent. The amount of the time-limited or long-
38 term subsidy may in no case exceed that which would be
39 allowable from time to time for such child under foster family
40 care or, in the case of a special service, the reasonable fee for
41 the service rendered. In addition, the department shall
42 provide either Medicaid or other health insurance coverage
43 for any special needs child for whom there is an adoption or
44 legal guardianship assistance agreement between the
45 department and the adoptive parent or legal guardian and who
46 the department determines cannot be placed with an adoptive

47 parent or legal guardian without medical assistance because
48 the child has special needs for medical, mental health or
49 rehabilitative care.

50 (c) After reasonable efforts have been made without the
51 use of subsidy and no appropriate adoptive family or legal
52 guardian has been found for the child, the department shall
53 certify the child as eligible for a subsidy in the event of
54 adoption or a legal guardianship: *Provided*, that reasonable
55 efforts to place a child without a subsidy shall not be required
56 if it is in the best interest of the child because of such factors
57 as the existence of significant emotional ties developed
58 between the child and the prospective parent or guardian
59 while in care as a foster child.

60 (d) If the child is the dependent of a voluntary licensed
61 child-placing agency, that agency shall present to the
62 department evidence of the inability to place the child for
63 adoption or legal guardianship without the use of subsidy or
64 evidence that such efforts would not be in the best interests
65 of the child. In no event shall the value of the services and
66 assistance provided by the department under an agreement
67 pursuant to this section exceed the value of assistance
68 available to foster families in similar circumstances. All
69 records regarding subsidized adoptions or legal guardianships
70 shall be held in confidence; however, records regarding the
71 payment of public funds for subsidized adoptions or legal
72 guardianships shall be available for public inspection
73 provided they do not directly or indirectly identify any child
74 or persons receiving funds for such child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon

3 request of the court, make an investigation of the
4 environment of the juvenile and the alternative dispositions
5 possible. The court, upon its own motion, or upon request of
6 counsel, may order a psychological examination of the
7 juvenile. The report of such examination and other
8 investigative and social reports shall not be made available to
9 the court until after the adjudicatory hearing. Unless waived,
10 copies of the report shall be provided to counsel for the
11 petitioner and counsel for the juvenile no later than seventy-
12 two hours prior to the dispositional hearing.

13 (b) Following the adjudication, the court shall conduct
14 the dispositional proceeding, giving all parties an opportunity
15 to be heard. In disposition the court shall not be limited to
16 the relief sought in the petition and shall, in electing from the
17 following alternatives, consider the best interests of the
18 juvenile and the welfare of the public:

19 (1) Dismiss the petition;

20 (2) Refer the juvenile and the juvenile's parent or
21 custodian to a community agency for needed assistance and
22 dismiss the petition;

23 (3) Upon a finding that the juvenile is in need of extra-
24 parental supervision: (A) Place the juvenile under the
25 supervision of a probation officer of the court or of the court
26 of the county where the juvenile has his or her usual place of
27 abode or other person while leaving the juvenile in custody
28 of his or her parent or custodian; and (B) prescribe a program
29 of treatment or therapy or limit the juvenile's activities under
30 terms which are reasonable and within the child's ability to
31 perform, including participation in the litter control program
32 established pursuant to section three, article fifteen-a, chapter
33 twenty-two of this code or other appropriate programs of
34 community service;

35 (4) Upon a finding that a parent or custodian is not
36 willing or able to take custody of the juvenile, that a juvenile
37 is not willing to reside in the custody of his or her parent or
38 custodian or that a parent or custodian cannot provide the
39 necessary supervision and care of the juvenile, the court may
40 place the juvenile in temporary foster care or temporarily
41 commit the juvenile to the department or a child welfare
42 agency. The court order shall state that continuation in the
43 home is contrary to the best interest of the juvenile and why;
44 and whether or not the department made a reasonable effort
45 to prevent the placement or that the emergency situation
46 made such efforts unreasonable or impossible. Whenever the
47 court transfers custody of a youth to the department, an
48 appropriate order of financial support by the parents or
49 guardians shall be entered in accordance with section five,
50 article seven of this chapter and guidelines promulgated by
51 the Supreme Court of Appeals;

52 (5) Upon a finding that the best interests of the juvenile
53 or the welfare of the public require it, and upon an
54 adjudication of delinquency pursuant to subdivision (1),
55 section four, article one of this chapter, the court may commit
56 the juvenile to the custody of the Director of the Division of
57 Juvenile Services for placement in a juvenile services facility
58 for the treatment, instruction and rehabilitation of juveniles:
59 *Provided*, That the court maintains discretion to consider
60 alternative sentencing arrangements. Notwithstanding any
61 provision of this code to the contrary, in the event that the
62 court determines that it is in the juvenile's best interests or
63 required by the public welfare to place the juvenile in the
64 custody of the Division of Juvenile Services, the court shall
65 provide the Division of Juvenile Services with access to all
66 relevant court orders and records involving the underlying
67 offense or offenses for which the juvenile was adjudicated
68 delinquent, including sentencing and presentencing reports
69 and evaluations, and provide the division with access to
70 school records, psychological reports and evaluations,

71 medical reports and evaluations or any other such records as
72 may be in the court's possession as would enable the
73 Division of Juvenile Services to better assess and determine
74 the appropriate counseling, education and placement needs
75 for the juvenile offender. Commitments shall not exceed the
76 maximum term for which an adult could have been sentenced
77 for the same offense and any such maximum allowable
78 sentence to be served in a juvenile correctional facility may
79 take into account any time served by the juvenile in a
80 detention center pending adjudication, disposition or transfer.
81 The order shall state that continuation in the home is contrary
82 to the best interests of the juvenile and why; and whether or
83 not the state department made a reasonable effort to prevent
84 the placement or that the emergency situation made such
85 efforts unreasonable or impossible; or

86 (6) After a hearing conducted under the procedures set
87 out in subsections (c) and (d), section four, article five,
88 chapter twenty-seven of this code, commit the juvenile to a
89 mental health facility in accordance with the juvenile's
90 treatment plan; the director of the mental health facility may
91 release a juvenile and return him or her to the court for
92 further disposition. The order shall state that continuation in
93 the home is contrary to the best interests of the juvenile and
94 why; and whether or not the state department made a
95 reasonable effort to prevent the placement or that the
96 emergency situation made such efforts unreasonable or
97 impossible.

98 (c) In any case in which the court decides to order the
99 juvenile placed in an out-of-state facility or program, it shall
100 set forth in the order directing the placement the reasons the
101 juvenile was not placed in an in-state facility or program.

102 (d) The disposition of the juvenile shall not be affected by
103 the fact that the juvenile demanded a trial by jury or made a

104 plea of denial. Any dispositional order is subject to appeal to
105 the Supreme Court of Appeals.

106 (e) Following disposition, the court shall inquire whether
107 the juvenile wishes to appeal and the response shall be
108 transcribed; a negative response shall not be construed as a
109 waiver. The evidence shall be transcribed as soon as
110 practicable and made available to the juvenile or his or her
111 counsel, if the same is requested for purposes of further
112 proceedings. A judge may grant a stay of execution pending
113 further proceedings.

114 (f) Notwithstanding any other provision of this code to
115 the contrary, if a juvenile charged with delinquency under
116 this chapter is transferred to adult jurisdiction and there tried
117 and convicted, the court may make its disposition in
118 accordance with this section in lieu of sentencing such person
119 as an adult.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

1 (a) The prosecuting attorney shall establish a
2 multidisciplinary investigative team in each county. The
3 multidisciplinary team shall be headed and directed by the
4 prosecuting attorney or his or her designee and shall include
5 as permanent members the prosecuting attorney or his or her
6 designee, a local child protective services caseworker from
7 the Department of Health and Human Resources; a local law-
8 enforcement officer employed by a law-enforcement agency
9 in the county; a child advocacy center representative, where
10 available; a health care provider with pediatric and child
11 abuse expertise, where available; a mental health professional
12 with pediatric and child abuse expertise, where available; an
13 educator and a representative from a licensed domestic

14 violence program serving the county. The Department of
15 Health and Human Resources and any local law-enforcement
16 agency or agencies selected by the prosecuting attorney shall
17 appoint their representatives to the team by submitting a
18 written designation of the team to the prosecuting attorney of
19 each county within thirty days of the prosecutor's request that
20 the appointment be made. Within fifteen days of the
21 appointment, the prosecuting attorney shall notify the chief
22 judge of each circuit within which the county is situated of
23 the names of the representatives so appointed. Any other
24 person or any other appointee of an agency who may
25 contribute to the team's efforts to assist a minor child as may
26 be determined by the permanent members of the team may
27 also be appointed as a member of the team by the prosecutor
28 with notification to the chief judge.

29 (b) Any permanent member of the multidisciplinary
30 investigative team shall refer all cases of accidental death of
31 any child reported to their agency and all cases when a child
32 dies while in the custody of the state for investigation and
33 review by the team. The multidisciplinary investigative team
34 shall meet at regular intervals at least once every calendar
35 month.

36 (c) The investigative team shall be responsible for
37 coordinating or cooperating in the initial and ongoing
38 investigation of all civil and criminal allegations pertinent to
39 cases involving child sexual assault, child sexual abuse, child
40 abuse and neglect and shall make a recommendation to the
41 county prosecuting attorney as to the initiation or
42 commencement of a civil petition and/or criminal
43 prosecution.

44 (d) State, county and local agencies shall provide the
45 multidisciplinary investigative team with any information
46 requested in writing by the team as allowable by law or upon
47 receipt of a certified copy of the circuit court's order

48 directing said agencies to release information in its
49 possession relating to the child. The team shall assure that all
50 information received and developed in connection with the
51 provisions of this article remains confidential. For purposes
52 of this section, the term “confidential” shall be construed in
53 accordance with the provisions of section one, article seven
54 of this chapter.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a)(1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to articles five and six of this chapter
3 shall be established within each county of the state, either
4 separately or in conjunction with a contiguous county, by the
5 secretary of the department with advice and assistance from
6 the prosecutor’s advisory council as set forth in section four,
7 article four, chapter seven of this code. The Division of
8 Juvenile Services shall establish a similar treatment planning
9 process for delinquency cases in which the juvenile has been
10 committed to its custody, including those cases in which the
11 juvenile has been committed for examination and diagnosis.

12 (2) The provisions of this section do not require a
13 multidisciplinary team meeting to be held prior to temporarily
14 placing a child or juvenile out-of-home under exigent
15 circumstances or upon a court order placing a juvenile in a
16 facility operated by the Division of Juvenile Services.

17 (b) The case manager in the Department of Health and
18 Human Resources for the child, family or juvenile or the case
19 manager in the Division of Juvenile Services for a juvenile
20 shall convene a treatment team in each case when it is
21 required pursuant to this article.

22 Prior to disposition, in each case in which a treatment
23 planning team has been convened, the team shall advise the
24 court as to the types of services the team has determined are

25 needed and the type of placement, if any, which will best
26 serve the needs of the child. If the team determines that an
27 out-of-home placement will best serve the needs of the child,
28 the team shall first consider placement with appropriate
29 relatives then with foster care homes, facilities or programs
30 located within the state. The team may only recommend
31 placement in an out-of-state facility if it concludes, after
32 considering the best interests and overall needs of the child,
33 that there are no available and suitable in-state facilities
34 which can satisfactorily meet the specific needs of the child.

35 Any person authorized by the provisions of this chapter
36 to convene a multidisciplinary team meeting may seek and
37 receive an order of the circuit court setting such meeting and
38 directing attendance. Members of the multidisciplinary team
39 may participate in team meetings by telephone or video
40 conferencing: *Provided*, That the provisions of this
41 subsection do not prevent the respective agencies from
42 designating a person other than the case manager as a
43 facilitator for treatment team meetings.

44 (c) The treatment team shall coordinate its activities and
45 membership with local family resource networks and
46 coordinate with other local and regional child and family
47 service planning committees to assure the efficient planning
48 and delivery of child and family services on a local and
49 regional level.

50 (d) The multidisciplinary treatment team shall be afforded
51 access to information in the possession of the Department of
52 Health and Human Services, Division of Juvenile Services,
53 law-enforcement agencies and other state, county and local
54 agencies; and the agencies shall cooperate in the sharing of
55 information, as may be provided in sections three(d) and six,
56 article five-D and section one, article seven, all of chapter
57 forty-nine, and any other relevant provision of law. Any
58 multidisciplinary team member who acquires confidential

59 information shall not disclose such information except as
60 permitted by the provisions of this code or court rules.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

1 (a) In any case in which a multidisciplinary treatment
2 team develops an individualized service plan for a child or
3 family pursuant to the provisions of this article, the court
4 shall review the proposed service plan to determine if
5 implementation of the plan is in the child's best interests. If
6 the multidisciplinary team cannot agree on a plan or if the
7 court determines not to adopt the team's recommendations,
8 it shall, upon motion or sua sponte, schedule and hold within
9 ten days of such determination, and prior to the entry of an
10 order placing the child in the custody of the department or in
11 an out-of-home setting, a hearing to consider evidence from
12 the team as to its rationale for the proposed service plan. If,
13 after a hearing held pursuant to the provisions of this section,
14 the court does not adopt the teams's recommended service
15 plan, it shall make specific written findings as to why the
16 team's recommended service plan was not adopted.

17 (b) In any case in which the court decides to order the
18 child placed in an out-of-state facility or program it shall set
19 forth in the order directing the placement the reasons why the
20 child was not placed in an in-state facility or program.

21 (c) Any member of the multidisciplinary treatment team
22 who disagrees with recommendations of the team may inform
23 the court of his or her own recommendations and objections
24 to the team's recommendations. The recommendations and
25 objections of the dissenting team member may be made in a
26 hearing on the record, made in writing and served upon each
27 team member and filed with the court and indicated in the
28 case plan, or both made in writing and indicated in the case

29 plan. Upon receiving objections, the court will conduct a
30 hearing pursuant to paragraph (a) of this section.

**§49-5D-3b. Multidisciplinary treatment planning process
involving child abuse and neglect.**

1 (a) Within thirty days of the initiation of a judicial
2 proceeding pursuant to article six of this chapter, the
3 Department of Health and Human Services shall convene a
4 multidisciplinary treatment team to assess, plan and
5 implement a comprehensive, individualized service plan for
6 children who are victims of abuse or neglect and their
7 families. The multidisciplinary team shall obtain and utilize
8 any assessments for the children or the adult respondents that
9 it deems necessary to assist in the development of such a
10 plan.

11 (b) In a case initiated pursuant to article six of this
12 chapter, the treatment team shall consist of the child or
13 family's case manager in the Department of Health and
14 Human Resources, the adult respondent or respondents, the
15 child's parent or parents, guardians, any copetitioners,
16 custodial relatives of the child, foster or preadoptive parents,
17 any attorney representing an adult respondent or other
18 member of the treatment team, the child's counsel or the
19 guardian ad litem, the prosecuting attorney or his or her
20 designee, a member of a child advocacy center when the
21 child has been processed through the child advocacy center
22 program or programs or it is otherwise appropriate that a
23 member of the child advocacy center participate, any court-
24 appointed special advocate assigned to a case, any other
25 person entitled to notice and the right to be heard, an
26 appropriate school official and any other person or agency
27 representative who may assist in providing recommendations
28 for the particular needs of the child and family, including
29 domestic violence service providers. The child may
30 participate in multidisciplinary treatment team meetings if the

31 child's participation is deemed appropriate by the
32 multidisciplinary treatment team. Unless otherwise ordered
33 by the court, a party whose parental rights have been
34 terminated and his or her attorney shall not be given notice of
35 a multidisciplinary treatment team meeting and does not have
36 the right to participate in any treatment team meeting.

37 (c) Prior to disposition in each case which a treatment
38 planning team has been convened, the team shall advise the
39 court as to the types of services the team has determined are
40 needed and the type of placement, if any, which will best
41 serve the needs of the child. If the team determines that an
42 out-of-home placement will best serve the needs of the child,
43 the team shall first consider placement with appropriate
44 relatives then with foster care homes, facilities or programs
45 located within the state. The team may only recommend
46 placement in an out-of-state facility if it concludes, after
47 considering the best interests and overall needs of the child,
48 that there are no available and suitable in-state facilities
49 which can satisfactorily meet the specific needs of the child.

50 (d) The multidisciplinary treatment team shall submit
51 written reports to the court as required by the rules governing
52 this type of proceeding or by the court, and shall meet as
53 often as deemed necessary but at least every three months
54 until the case is dismissed from the docket of the court. The
55 multidisciplinary treatment team shall be available for status
56 conferences and hearings as required by the court.

57 (e) If a respondent or copetitioner admits the underlying
58 allegations of child abuse or neglect, or both abuse and
59 neglect, in the multidisciplinary treatment planning process,
60 his or her statements not be used in any subsequent criminal
61 proceeding against him or her, except for perjury or false
62 swearing.

§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.

1 (a) (1) When a juvenile is adjudicated as a status offender
2 pursuant to section eleven-d, article five of this chapter, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, to determine the juvenile's
7 mental and physical condition, maturity and education level,
8 home and family environment, rehabilitative needs and
9 recommended service plan. Upon completion of the
10 assessment, the treatment team shall prepare and implement
11 a comprehensive, individualized service plan for the juvenile.

12 (2) When a juvenile is adjudicated as a delinquent or has
13 been granted an improvement period pursuant to section nine,
14 article five of this chapter, the court, either upon its own
15 motion or motion of a party, may require the Department of
16 Health and Human Resources to convene a multidisciplinary
17 treatment team and conduct an assessment, utilizing a
18 standard uniform comprehensive assessment instrument or
19 protocol, to determine the juvenile's mental and physical
20 condition, maturity and education level, home and family
21 environment, rehabilitative needs and recommended service
22 plan. A referral to the Department of Health and Human
23 Resources to convene a multidisciplinary treatment team and
24 to conduct such an assessment shall be made when the court
25 is considering placing the juvenile in the department's
26 custody or placing the juvenile out-of-home at the
27 department's expense pursuant to section thirteen, article five
28 of this chapter. In any delinquency proceeding in which the
29 court requires the Department of Health and Human
30 Resources to convene a multidisciplinary treatment team, the
31 probation officer shall notify the department at least fifteen
32 working days before the court proceeding in order to allow

33 the department sufficient time to convene and develop an
34 individualized service plan for the juvenile.

35 (3) When a juvenile has been adjudicated and committed
36 to the custody of the Director of the Division of Juvenile
37 Services, including those cases in which the juvenile has been
38 committed for examination and diagnosis, the Division of
39 Juvenile Services shall promptly convene a multidisciplinary
40 treatment team and conduct an assessment, utilizing a
41 standard uniform comprehensive assessment instrument or
42 protocol, to determine the juvenile's mental and physical
43 condition, maturity and education level, home and family
44 environment, rehabilitative needs and recommended service
45 plan. Upon completion of the assessment, the treatment team
46 shall prepare and implement a comprehensive, individualized
47 service plan for the juvenile.

48 (4) (A) The rules of juvenile procedure shall govern the
49 procedure for obtaining an assessment of a juvenile,
50 preparing an individualized service plan and submitting the
51 plan and assessment to the court.

52 (B) In juvenile proceedings conducted pursuant to article
53 five of this chapter, the treatment team shall consist of the
54 juvenile, the juvenile's case manager in the Department of
55 Health and Human Resources or the Division of Juvenile
56 Services, the juvenile's parent or parents, guardian or
57 guardians or custodial relatives, the juvenile's attorney, any
58 attorney representing a member of the treatment team, the
59 prosecuting attorney or his or her designee, an appropriate
60 school official and any other person or agency representative
61 who may assist in providing recommendations for the
62 particular needs of the juvenile and family, including
63 domestic violence service providers. In delinquency
64 proceedings, the probation officer shall be a member of a
65 treatment team. When appropriate, the juvenile case manager
66 in the Department of Health and Human Resources and the

67 Division of Juvenile Services shall cooperate in conducting
68 multidisciplinary treatment team meetings when it is in the
69 juvenile's best interest.

70 (C) Prior to disposition, in each case in which a treatment
71 planning team has been convened, the team shall advise the
72 court as to the types of services the team has determined are
73 needed and type of placement, if any, which will best serve
74 the needs of the child. If the team determines that an out-of-
75 home placement will best serve the needs of the child, the
76 team shall first consider placement at facilities or programs
77 located within the state. The team may only recommend
78 placement in an out-of-state facility if it concludes, after
79 considering the best interests and overall needs of the child,
80 that there are no available and suitable in-state facilities
81 which can satisfactorily meet the specific needs of the child.

82 (D) The multidisciplinary treatment team shall submit
83 written reports to the court as required by applicable law or
84 by the court, shall meet with the court at least every three
85 months, as long as the juvenile remains in the legal or
86 physical custody of the state, and shall be available for status
87 conferences and hearings as required by the court.

88 (E) In any case in which a juvenile has been placed out of
89 his or her home except for a temporary placement in a shelter
90 or detention center, the multidisciplinary treatment team shall
91 cooperate with the state agency in whose custody the juvenile
92 is placed to develop an after-care plan. The rules of juvenile
93 procedure and section twenty, article five, chapter forty-nine
94 of the code shall govern the development of an after-care
95 plan for a juvenile, the submission of the plan to the court and
96 any objection to the after-care plan.

97 (F) If a juvenile respondent admits the underlying
98 allegations of the case initiated pursuant to article five,
99 chapter forty-nine of this code in the multidisciplinary

100 treatment planning process, his or her statements shall not be
101 used in any juvenile or criminal proceedings against the
102 juvenile, except for perjury or false swearing.

**ARTICLE 6. PROCEDURE IN CASES OF CHILD
NEGLECT OR ABUSE.**

**§49-6-2. Petition to court when child believed neglected or
abused -- Right to counsel; improvement period;
hearing; priority of proceeding; transcript.**

1 (a) In any proceeding under the provisions of this article,
2 the child, his or her or parents and his or her legally
3 established custodian or other persons standing in loco
4 parentis to him or her shall have the right to be represented
5 by counsel at every stage of the proceedings and shall be
6 informed by the court of their right to be so represented and
7 that if they cannot pay for the services of counsel, that
8 counsel will be appointed. Counsel of the child shall be
9 appointed in the initial order. If the order gives physical
10 custody of the child to the state, the initial order shall appoint
11 counsel for the parents or, if the parents are separated or
12 divorced, the parents or parent or other person or persons
13 standing in loco parentis who had physical custody of the
14 child for the majority of the time in the period immediately
15 preceding the petition: *Provided*, That such representation
16 shall only continue after the first appearance if the parent or
17 other persons standing in loco parentis cannot pay for the
18 services of counsel. Counsel for other parties shall only be
19 appointed upon request for appointment of counsel. If the
20 requesting parties have not retained counsel and cannot pay
21 for the services of counsel, the court shall, by order entered
22 of record, appoint an attorney or attorneys to represent the
23 other party or parties and so inform the parties. Under no
24 circumstances may the same attorney represent both the child
25 and the other party or parties, nor shall the same attorney
26 represent both parents or custodians. However, one attorney

27 may represent both parents or custodians where both parents
28 or guardians consent to this representation after the attorney
29 fully discloses to the client the possible conflict and where
30 the attorney assures the court that she or he is able to
31 represent each client without impairing her or his
32 professional judgment; however, if more than one child from
33 a family is involved in the proceeding, one attorney may
34 represent all the children. A parent who has been judicially
35 determined to be battered shall be entitled to his or her own
36 attorney. The court may allow to each attorney so appointed
37 a fee in the same amount which appointed counsel can
38 receive in felony cases. Effective July 1, 2012, any attorney
39 appointed pursuant to this section shall receive a minimum of
40 eight hours of continuing legal education training per
41 reporting period on child abuse and neglect procedure and
42 practice. In addition to this requirement, after July 1, 2013,
43 any attorney appointed to represent a child must first
44 complete training on representation of children that is
45 approved by the administrative office of the Supreme Court
46 of Appeals. The Supreme Court of Appeals shall develop
47 procedures for approval and certification of training required
48 under this section by July 1, 2012: *Provided, however,* That
49 where no attorney who has completed this training is
50 available for such appointment, the court shall appoint a
51 competent attorney with demonstrated knowledge of child
52 welfare law to represent the parent or child. Any attorney
53 appointed pursuant to this section shall perform all duties
54 required as an attorney licensed to practice law in the State of
55 West Virginia.

56 (b) In any proceeding brought pursuant to the provisions
57 of this article, the court may grant any respondent an
58 improvement period in accord with the provisions of this
59 article. During such period, the court may require temporary
60 custody with a responsible person which has been found to be
61 a fit and proper person for the temporary custody of the child
62 or children or the state department or other agency during the

63 improvement period. An order granting such improvement
64 period shall require the department to prepare and submit to
65 the court a family case plan in accordance with the provisions
66 of section three, article six-d of this chapter.

67 (c) In any proceeding pursuant to the provisions of this
68 article, the party or parties having custodial or other parental
69 rights or responsibilities to the child shall be afforded a
70 meaningful opportunity to be heard, including the
71 opportunity to testify and to present and cross-examine
72 witnesses. The petition shall not be taken as confessed. A
73 transcript or recording shall be made of all proceedings
74 unless waived by all parties to the proceeding. The rules of
75 evidence shall apply. Where relevant, the court shall
76 consider the efforts of the state department to remedy the
77 alleged circumstances. At the conclusion of the hearing, the
78 court shall make a determination based upon the evidence
79 and shall make findings of fact and conclusions of law as to
80 whether such child is abused or neglected and, if applicable,
81 whether the parent, guardian, or custodian is a battered
82 parent, all of which shall be incorporated into the order of the
83 court. The findings must be based upon conditions existing
84 at the time of the filing of the petition and proven by clear
85 and convincing proof.

86 (d) Any petition filed and any proceeding held under the
87 provisions of this article shall, to the extent practicable, be
88 given priority over any other civil action before the court,
89 except proceedings under article two-a, chapter forty-eight of
90 this code and actions in which trial is in progress. Any
91 petition filed under the provisions of this article shall be
92 docketed immediately upon filing. Any hearing to be held at
93 the end of an improvement period and any other hearing to be
94 held during any proceedings under the provisions of this
95 article shall be held as nearly as practicable on successive
96 days and, with respect to said hearing to be held at the end of
97 an improvement period, shall be held as close in time as

98 possible after the end of said improvement period and shall
99 be held within sixty days of the termination of such
100 improvement period.

101 (e) Following the court's determination, it shall be
102 inquired of the parents or custodians whether or not appeal is
103 desired and the response transcribed. A negative response
104 shall not be construed as a waiver. The evidence shall be
105 transcribed and made available to the parties or their counsel
106 as soon as practicable, if the same is required for purposes of
107 further proceedings. If an indigent person intends to pursue
108 further proceedings, the court reporter shall furnish a
109 transcript of the hearing without cost to the indigent person
110 if an affidavit is filed stating that he or she cannot pay
111 therefor.

**§49-6-3. Petition to court when child believed neglected or
abused -- temporary custody.**

1 (a) Upon the filing of a petition, the court may order that
2 the child alleged to be an abused or neglected child be
3 delivered for not more than ten days into the custody of the
4 state department or a responsible person found by the court
5 to be a fit and proper person for the temporary care of the
6 child pending a preliminary hearing, if it finds that:

7 (1) There exists imminent danger to the physical well
8 being of the child; and

9 (2) There are no reasonably available alternatives to
10 removal of the child, including, but not limited to, the
11 provision of medical, psychiatric, psychological or
12 homemaking services in the child's present custody:
13 *Provided*, That where the alleged abusing person, if known,
14 is a member of a household, the court shall not allow
15 placement pursuant to this section of the child or children in
16 said home unless the alleged abusing person is or has been

17 precluded from visiting or residing in said home by judicial
18 order. In a case where there is more than one child in the
19 home, or in the temporary care, custody or control of the
20 alleged offending parent, the petition shall so state, and
21 notwithstanding the fact that the allegations of abuse or
22 neglect may pertain to less than all of such children, each
23 child in the home for whom relief is sought shall be made a
24 party to the proceeding. Even though the acts of abuse or
25 neglect alleged in the petition were not directed against a
26 specific child who is named in the petition, the court shall
27 order the removal of such child, pending final disposition, if
28 it finds that there exists imminent danger to the physical well
29 being of the child and a lack of reasonable available
30 alternatives to removal. The initial order directing such
31 custody shall contain an order appointing counsel and
32 scheduling the preliminary hearing, and upon its service shall
33 require the immediate transfer of custody of such child or
34 children to the department or a responsible relative which
35 may include any parent, guardian, or other custodian. The
36 court order shall state:

37 (A) That continuation in the home is contrary to the best
38 interests of the child and why; and

39 (B) Whether or not the department made reasonable
40 efforts to preserve the family and prevent the placement or
41 that the emergency situation made such efforts unreasonable
42 or impossible. The order may also direct any party or the
43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate transfer of
46 custody as provided in subsection (a) of this section, if the
47 facts alleged in the petition demonstrate to the court that there
48 exists imminent danger to the child, the court may schedule
49 a preliminary hearing giving the respondents at least five
50 days' actual notice. If the court finds at the preliminary

51 hearing that there are no alternatives less drastic than removal
52 of the child and that a hearing on the petition cannot be
53 scheduled in the interim period, the court may order that the
54 child be delivered into the temporary custody of the
55 department or a responsible person or agency found by the
56 court to be a fit and proper person for the temporary care of
57 the child for a period not exceeding sixty days: *Provided,*
58 That the court order shall state:

59 (1) That continuation in the home is contrary to the best
60 interests of the child and set forth the reasons therefor;

61 (2) Whether or not the department made reasonable
62 efforts to preserve the family and to prevent the child's
63 removal from his or her home;

64 (3) Whether or not the department made reasonable
65 efforts to preserve the family and to prevent the placement or
66 that the emergency situation made such efforts unreasonable
67 or impossible; and

68 (4) What efforts should be made by the department, if
69 any, to facilitate the child's return home: *Provided, however,*
70 That if the court grants an improvement period as provided in
71 section twelve of this article, the sixty-day limit upon
72 temporary custody is waived.

73 (c) If a child or children shall, in the presence of a child
74 protective service worker, be in an emergency situation
75 which constitutes an imminent danger to the physical well
76 being of the child or children, as that phrase is defined in
77 section three, article one of this chapter, and if such worker
78 has probable cause to believe that the child or children will
79 suffer additional child abuse or neglect or will be removed
80 from the county before a petition can be filed and temporary
81 custody can be ordered, the worker may, prior to the filing of
82 a petition, take the child or children into his or her custody

83 without a court order: *Provided*, That after taking custody of
84 such child or children prior to the filing of a petition, the
85 worker shall forthwith appear before a circuit judge or a
86 juvenile referee of the county wherein custody was taken, or
87 if no such judge or referee be available, before a circuit judge
88 or a juvenile referee of an adjoining county, and shall
89 immediately apply for an order ratifying the emergency
90 custody of the child pending the filing of a petition. The
91 circuit court of every county in the state shall appoint at least
92 one of the magistrates of the county to act as a juvenile
93 referee, who shall serve at the will and pleasure of the
94 appointing court, and who shall perform the functions
95 prescribed for such position by the provisions of this
96 subsection. The parents, guardians or custodians of the child
97 or children may be present at the time and place of
98 application for an order ratifying custody, and if at the time
99 the child or children are taken into custody by the worker, the
100 worker knows which judge or referee is to receive the
101 application, the worker shall so inform the parents, guardians
102 or custodians. The application for emergency custody may
103 be on forms prescribed by the Supreme Court of Appeals or
104 prepared by the prosecuting attorney or the applicant, and
105 shall set forth facts from which it may be determined that the
106 probable cause described above in this subsection exists.
107 Upon such sworn testimony or other evidence as the judge or
108 referee deems sufficient, the judge or referee may order the
109 emergency taking by the worker to be ratified. If appropriate
110 under the circumstances, the order may include authorization
111 for an examination as provided for in subsection (b), section
112 four of this article. If a referee issues such an order, the
113 referee shall by telephonic communication have such order
114 orally confirmed by a circuit judge of the circuit or an
115 adjoining circuit who shall on the next judicial day enter an
116 order of confirmation. If the emergency taking is ratified by
117 the judge or referee, emergency custody of the child or
118 children shall be vested in the department until the expiration
119 of the next two judicial days, at which time any such child

120 taken into emergency custody shall be returned to the custody
121 of his or her parent or guardian or custodian unless a petition
122 has been filed and custody of the child has been transferred
123 under the provisions of section three of this article.

124 (d) For purposes of the court's consideration of
125 temporary custody pursuant to the provisions of subsection
126 (a) or (b) of this section, the department is not required to
127 make reasonable efforts to preserve the family if the court
128 determines:

129 (1) The parent has subjected the child, another child of
130 the parent or any other child residing in the same household
131 or under the temporary or permanent custody of the parent to
132 aggravated circumstances which include, but are not limited to,
133 to, abandonment, torture, chronic abuse and sexual abuse;

134 (2) The parent has:

135 (A) Committed murder of the child's other parent,
136 guardian or custodian, another child of the parent or any
137 other child residing in the same household or under the
138 temporary or permanent custody of the parent;

139 (B) Committed voluntary manslaughter of the child's
140 other parent, guardian or custodian, another child of the
141 parent or any other child residing in the same household or
142 under the temporary or permanent custody of the parent;

143 (C) Attempted or conspired to commit such a murder or
144 voluntary manslaughter or been an accessory before or after
145 the fact to either such crime;

146 (D) Committed unlawful or malicious wounding that
147 results in serious bodily injury to the child, the child's other
148 parent, guardian or custodian, to another child of the parent

149 or any other child residing in the same household or under the
150 temporary or permanent custody of the parent;

151 (E) Committed sexual assault or sexual abuse of the child,
152 the child's other parent, guardian or custodian, another child
153 of the parent or any other child residing in the same
154 household or under the temporary or permanent custody of
155 the parent; or

156 (F) Has been required by state or federal law to register
157 with a sex offender registry; or

158 (3) The parental rights of the parent to another child have
159 been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two of
2 this article wherein the court finds a child to be abused or
3 neglected, the department shall file with the court a copy of
4 the child's case plan, including the permanency plan for the
5 child. The term case plan means a written document that
6 includes, where applicable, the requirements of the family
7 case plan as provided for in section three, article six-d of this
8 chapter and that also includes at least the following: A
9 description of the type of home or institution in which the
10 child is to be placed, including a discussion of the
11 appropriateness of the placement and how the agency which
12 is responsible for the child plans to assure that the child
13 receives proper care and that services are provided to the
14 parents, child and foster parents in order to improve the
15 conditions in the parent(s) home; facilitate return of the child
16 to his or her own home or the permanent placement of the
17 child; and address the needs of the child while in foster care,
18 including a discussion of the appropriateness of the services
19 that have been provided to the child. The term "permanency
20 plan" refers to that part of the case plan which is designed to

21 achieve a permanent home for the child in the least restrictive
22 setting available. The plan must document efforts to ensure
23 that the child is returned home within approximate time lines
24 for reunification as set out in the plan. Reasonable efforts to
25 place a child for adoption or with a legal guardian may be
26 made at the same time reasonable efforts are made to prevent
27 removal or to make it possible for a child to safely return
28 home. If reunification is not the permanency plan for the
29 child, the plan must state why reunification is not appropriate
30 and detail the alternative placement for the child to include
31 approximate time lines for when such placement is expected
32 to become a permanent placement. This case plan shall serve
33 as the family case plan for parents of abused or neglected
34 children. Copies of the child's case plan shall be sent to the
35 child's attorney and parent, guardian or custodian or their
36 counsel at least five days prior to the dispositional hearing.
37 The court shall forthwith proceed to disposition giving both
38 the petitioner and respondents an opportunity to be heard.
39 The court shall give precedence to dispositions in the
40 following sequence:

41 (1) Dismiss the petition;

42 (2) Refer the child, the abusing parent, the battered parent
43 or other family members to a community agency for needed
44 assistance and dismiss the petition;

45 (3) Return the child to his or her own home under
46 supervision of the department;

47 (4) Order terms of supervision calculated to assist the
48 child and any abusing parent or battered parent or parents or
49 custodian which prescribe the manner of supervision and care
50 of the child and which are within the ability of any parent or
51 parents or custodian to perform;

52 (5) Upon a finding that the abusing parent or battered
53 parent or parents are presently unwilling or unable to provide
54 adequately for the child's needs, commit the child
55 temporarily to the custody of the state department, a licensed
56 private child welfare agency or a suitable person who may be
57 appointed guardian by the court. The court order shall state:

58 (A) That continuation in the home is contrary to the best
59 interests of the child and why;

60 (B) Whether or not the department has made reasonable
61 efforts, with the child's health and safety being the paramount
62 concern, to preserve the family, or some portion thereof, and
63 to prevent or eliminate the need for removing the child from
64 the child's home and to make it possible for the child to
65 safely return home;

66 (C) What efforts were made or that the emergency
67 situation made such efforts unreasonable or impossible; and

68 (D) The specific circumstances of the situation which
69 made such efforts unreasonable if services were not offered
70 by the department. The court order shall also determine
71 under what circumstances the child's commitment to the
72 department shall continue. Considerations pertinent to the
73 determination include whether the child should:

74 (i) Be continued in foster care for a specified period;

75 (ii) Be considered for adoption;

76 (iii) Be considered for legal guardianship;

77 (iv) Be considered for permanent placement with a fit and
78 willing relative; or

79 (v) Be placed in another planned permanent living
80 arrangement, but only in cases where the department has
81 documented to the circuit court a compelling reason for
82 determining that it would not be in the best interests of the
83 child to follow one of the options set forth in subparagraphs
84 (I), (ii), (iii) or (iv) of this paragraph. The court may order
85 services to meet the special needs of the child. Whenever the
86 court transfers custody of a youth to the department, an
87 appropriate order of financial support by the parents or
88 guardians shall be entered in accordance with section five,
89 article seven of this chapter; or

90 (6) Upon a finding that there is no reasonable likelihood
91 that the conditions of neglect or abuse can be substantially
92 corrected in the near future and, when necessary for the
93 welfare of the child, terminate the parental, custodial and
94 guardianship rights and responsibilities of the abusing parent
95 and commit the child to the permanent sole custody of the
96 nonabusing parent, if there be one, or, if not, to either the
97 permanent guardianship of the department or a licensed child
98 welfare agency. The court may award sole custody of the
99 child to a nonabusing battered parent. If the court shall so
100 find, then in fixing its dispositional order the court shall
101 consider the following factors:

102 (A) The child's need for continuity of care and
103 caretakers;

104 (B) The amount of time required for the child to be
105 integrated into a stable and permanent home environment;
106 and

107 (C) Other factors as the court considers necessary and
108 proper. Notwithstanding any other provision of this article,
109 the court shall give consideration to the wishes of a child
110 fourteen years of age or older or otherwise of an age of
111 discretion as determined by the court regarding the

112 permanent termination of parental rights. No adoption of a
113 child shall take place until all proceedings for termination of
114 parental rights under this article and appeals thereof are final.
115 In determining whether or not parental rights should be
116 terminated, the court shall consider the efforts made by the
117 department to provide remedial and reunification services to
118 the parent. The court order shall state:

119 (i) That continuation in the home is not in the best interest
120 of the child and why;

121 (ii) Why reunification is not in the best interests of the
122 child;

123 (iii) Whether or not the department made reasonable
124 efforts, with the child's health and safety being the paramount
125 concern, to preserve the family, or some portion thereof, and
126 to prevent the placement or to eliminate the need for
127 removing the child from the child's home and to make it
128 possible for the child to safely return home, or that the
129 emergency situation made such efforts unreasonable or
130 impossible; and

131 (iv) Whether or not the department made reasonable
132 efforts to preserve and reunify the family, or some portion
133 thereof, including a description of what efforts were made or
134 that such efforts were unreasonable due to specific
135 circumstances.

136 (7) For purposes of the court's consideration of the
137 disposition custody of a child pursuant to the provisions of
138 this subsection, the department is not required to make
139 reasonable efforts to preserve the family if the court
140 determines:

141 (A) The parent has subjected the child, another child of
142 the parent or any other child residing in the same household

143 or under the temporary or permanent custody of the parent to
144 aggravated circumstances which include, but are not limited
145 to, abandonment, torture, chronic abuse and sexual abuse;

146 (B) The parent has:

147 (i) Committed murder of the child's other parent,
148 guardian or custodian, another child of the parent or any
149 other child residing in the same household or under the
150 temporary or permanent custody of the parent;

151 (ii) Committed voluntary manslaughter of the child's
152 other parent, guardian or custodian, another child of the
153 parent or any other child residing in the same household or
154 under the temporary or permanent custody of the parent;

155 (iii) Attempted or conspired to commit such a murder or
156 voluntary manslaughter or been an accessory before or after
157 the fact to either such crime;

158 (iv) Committed a felonious assault that results in serious
159 bodily injury to the child, the child's other parent, guardian
160 or custodian, to another child of the parent or any other child
161 residing in the same household or under the temporary or
162 permanent custody of the parent; or

163 (v) Committed sexual assault or sexual abuse of the child,
164 the child's other parent, guardian or custodian, another child
165 of the parent or any other child residing in the same
166 household or under the temporary or permanent custody of
167 the parent; or

168 (vi) Has been required by state or federal law to register
169 with a sex offender registry; or

170 (C) The parental rights of the parent to another child have
171 been terminated involuntarily; or

172 (D) A parent has been required by state or federal law to
173 register with a sex offender registry, and the court has
174 determined in consideration of the nature and circumstances
175 surrounding the prior charges against that parent, that the
176 child's interests would not be promoted by a preservation of
177 the family.

178 (b) As used in this section, "no reasonable likelihood that
179 conditions of neglect or abuse can be substantially corrected"
180 shall mean that, based upon the evidence before the court, the
181 abusing adult or adults have demonstrated an inadequate
182 capacity to solve the problems of abuse or neglect on their
183 own or with help. Such conditions shall be considered to
184 exist in the following circumstances, which shall not be
185 exclusive:

186 (1) The abusing parent or parents have habitually abused
187 or are addicted to alcohol, controlled substances or drugs, to
188 the extent that proper parenting skills have been seriously
189 impaired and such person or persons have not responded to
190 or followed through the recommended and appropriate
191 treatment which could have improved the capacity for
192 adequate parental functioning;

193 (2) The abusing parent or parents have willfully refused
194 or are presently unwilling to cooperate in the development of
195 a reasonable family case plan designed to lead to the child's
196 return to their care, custody and control;

197 (3) The abusing parent or parents have not responded to
198 or followed through with a reasonable family case plan or
199 other rehabilitative efforts of social, medical, mental health
200 or other rehabilitative agencies designed to reduce or prevent
201 the abuse or neglect of the child, as evidenced by the
202 continuation or insubstantial diminution of conditions which
203 threatened the health, welfare or life of the child;

204 (4) The abusing parent or parents have abandoned the
205 child;

206 (5) The abusing parent or parents have repeatedly or
207 seriously injured the child physically or emotionally, or have
208 sexually abused or sexually exploited the child, and the
209 degree of family stress and the potential for further abuse and
210 neglect are so great as to preclude the use of resources to
211 mitigate or resolve family problems or assist the abusing
212 parent or parents in fulfilling their responsibilities to the
213 child;

214 (6) The abusing parent or parents have incurred
215 emotional illness, mental illness or mental deficiency of such
216 duration or nature as to render such parent or parents
217 incapable of exercising proper parenting skills or sufficiently
218 improving the adequacy of such skills; or

219 (7) The battered parent's parenting skills have been
220 seriously impaired and said person has willfully refused or is
221 presently unwilling or unable to cooperate in the
222 development of a reasonable treatment plan or has not
223 adequately responded to or followed through with the
224 recommended and appropriate treatment plan.

225 (c) The court may, as an alternative disposition, allow the
226 parents or custodians an improvement period not to exceed
227 six months. During this period the court shall require the
228 parent to rectify the conditions upon which the determination
229 was based. The court may order the child to be placed with
230 the parents, or any person found to be a fit and proper person,
231 for the temporary care of the child during the period. At the
232 end of the period, the court shall hold a hearing to determine
233 whether the conditions have been adequately improved and
234 at the conclusion of the hearing shall make a further
235 dispositional order in accordance with this section.

§49-6-6. Modification of dispositional orders.

1 (a) Upon motion of a child, a child's parent or custodian
2 or the department alleging a change of circumstances
3 requiring a different disposition, the court shall conduct a
4 hearing pursuant to section two of this article and may
5 modify a dispositional order if the court finds by clear and
6 convincing evidence a material change of circumstances and
7 that such modification is in the child's best interests:
8 *Provided*, That a dispositional order pursuant to subdivision
9 (6), subsection (a) of section five shall not be modified after
10 the child has been adopted, except as provided in subsections
11 (b) and (c) of this section. Adequate and timely notice of any
12 motion for modification shall be given to the child's counsel,
13 counsel for the child's parent or custodian, the department
14 and any person entitled to notice and the right to be heard.
15 The circuit court of origin has exclusive jurisdiction over
16 placement of the child, and such placement shall not be
17 disrupted or delayed by any administrative process of the
18 department.

19 (b) If the child is removed or relinquished from an
20 adoptive home or other permanent placement after the case
21 has been dismissed, any party with notice thereof and the
22 receiving agency shall promptly report the matter to the
23 circuit court of origin, the department and the child's counsel,
24 and the court shall schedule a permanency hearing within
25 sixty days of the report to the circuit court, with notice given
26 to any appropriate parties and persons entitled to notice and
27 the right to be heard. The department shall convene a
28 multidisciplinary treatment team meeting within thirty days
29 of the receipt of notice of permanent placement disruption.

30 (c) If a child has not been adopted, the child or
31 department may move the court to place the child with a
32 parent or custodian whose rights have been terminated and/or
33 restore such parent's or guardian's rights. Under these

34 circumstances, the court may order such placement and/or
35 restoration of a parent's or guardian's rights if it finds by
36 clear and convincing evidence a material change of
37 circumstances and that such placement and/or restoration is
38 in the child's best interests.

§49-6-8. Permanency hearing and permanent placement review.

1 (a) If the court finds, pursuant to any provision of this
2 article, that the department is not required to make reasonable
3 efforts to preserve the family, then, notwithstanding any other
4 provision, a permanency hearing must be held within thirty
5 days following the entry of the court order so finding, and a
6 permanent placement review hearing must be conducted at
7 least once every three calendar months thereafter until a
8 permanent placement is achieved.

9 (b) If, twelve months after receipt by the department or its
10 authorized agent of physical custody of a child either by a
11 court ordered placement or by a voluntary agreement, the
12 department has not placed a child in an adoptive home or
13 placed the child with a natural parent or placed the child in
14 legal guardianship or permanently placed the child with a fit
15 and willing relative, the court shall hold a permanency
16 hearing. The department shall file a report with the court
17 detailing the efforts that have been made to place the child in
18 a permanent home and copies of the child's case plan,
19 including the permanency plan as defined in section five,
20 article six of this chapter. Copies of the report shall be sent
21 to the parties and all persons entitled to notice and the right
22 to be heard. The court shall schedule a hearing, giving notice
23 and the right to be present to: The child's attorney; the child,
24 if twelve years of age or older; the child's parents; the child's
25 guardians; the child's foster parents; any preadoptive parent
26 or any relative providing care for the child; any person
27 entitled to notice and the right to be heard; and such other

28 persons as the court may, in its discretion, direct. The child's
29 presence may be waived by the child's attorney at the request
30 of the child or if the child would suffer emotional harm. The
31 purpose of the hearing is to review the child's case, to
32 determine whether and under what conditions the child's
33 commitment to the department shall continue and to
34 determine what efforts are necessary to provide the child with
35 a permanent home. In the case of a child who will not be
36 returned to his or her parent, the court shall consider in-state
37 and out-of-state placement options, and, if the court considers
38 an out-of-state placement, the court shall determine whether
39 such placement is in the best interests of the child; in the case
40 of a child who has attained sixteen years of age, the court
41 shall determine the services needed to assist the child to make
42 the transition from foster care to independent living. In any
43 case in which the court decides to order the child placed in an
44 out-of-state facility or program it shall set forth in the order
45 directing the placement the reasons why the child was not
46 placed in an in-state facility or program. At the conclusion of
47 the hearing the court shall, in accordance with the best
48 interests of the child, enter an order containing all such
49 appropriate findings. The court order shall state: (1) Whether
50 or not the department made reasonable efforts to preserve the
51 family and to prevent out-of-home placement or that the
52 specific situation made such effort unreasonable; (2) whether
53 or not the department made reasonable efforts to finalize the
54 permanency plan for the child; and (3) identify services
55 required to meet the child's needs.

56 (c) The court shall conduct another permanency hearing
57 within twelve months thereafter for each child who remains
58 in the physical or legal custody of the department until the
59 child is placed in an adoptive home or returned to his or her
60 parents or placed in legal guardianship or permanently placed
61 with a fit and willing relative.

62 (d) The state department shall annually report to the court
63 the current status of the placements of children in permanent
64 care and custody of the state department who have not been
65 adopted.

66 (e) The state department shall file a report with the court
67 in any case where any child in the temporary or permanent
68 custody of the state receives more than three placements in
69 one year no later than thirty days after the third placement.
70 This report shall be provided to all parties and persons
71 entitled to notice and the right to be heard. Upon motion by
72 any party, the court shall review these placements and
73 determine what efforts are necessary to provide the child with
74 a permanent home: *Provided*, That no report shall be
75 provided to any parent or parent's attorney whose parental
76 rights have been terminated pursuant to this article.

77 (f) The state department shall notify, in writing, the court,
78 the child, if over the age of twelve, the child's attorney, the
79 parents and the parents' attorney forty-eight hours prior to the
80 move if this is a planned move, or within forty-eight hours of
81 the next business day after the move if this is an emergency
82 move, except where such notification would endanger the
83 child or the foster family. This notice shall not be required in
84 any case where the child is in imminent danger in the child's
85 current placement. The location of the child need not be
86 disclosed, but the purpose of the move should be. This
87 requirement is not waived by placement of the child in a
88 home or other residence maintained by a private provider.
89 No notice shall be provided pursuant to this provision to any
90 parent or parent's attorney whose parental rights have been
91 terminated pursuant to this article.

92 (g) Nothing in this article precludes any party from
93 petitioning the court for review of the child's case at any
94 time. The court shall grant such petition upon a showing that

95 there is a change in circumstance or needs of the child that
96 warrants court review.

97 (h) Any foster parent, preadoptive parent or relative
98 providing care for the child shall be given notice of and the
99 right to be heard at the permanency hearing provided in this
100 section.

**§49-6-12. Improvement period in cases of child neglect or
abuse.**

1 (a) A court may grant a respondent an improvement period
2 of a period not to exceed three months prior to making a
3 finding that a child is abused or neglected pursuant to section
4 two of this article only when:

5 (1) The respondent files a written motion requesting the
6 improvement period;

7 (2) The respondent demonstrates, by clear and convincing
8 evidence, that the respondent is likely to fully participate in
9 the improvement period and the court further makes a
10 finding, on the record, of the terms of the improvement
11 period;

12 (3) In the order granting the improvement period, the court
13 (A) orders that a hearing be held to review the matter within
14 sixty days of the granting of the improvement period; or (B)
15 orders that a hearing be held to review the matter within
16 ninety days of the granting of the improvement period and
17 that the department submit a report as to the respondents
18 progress in the improvement period within sixty days of the
19 order granting the improvement period; and

20 (4) The order granting the improvement period requires
21 the department to prepare and submit to the court an

22 individualized family case plan in accordance with the
23 provisions of section three, article six-d of this chapter;

24 (b) After finding that a child is an abused or neglected
25 child pursuant to section two of this article, a court may grant
26 a respondent an improvement period of a period not to
27 exceed six months when:

28 (1) The respondent files a written motion requesting the
29 improvement period;

30 (2) The respondent demonstrates, by clear and convincing
31 evidence, that the respondent is likely to fully participate in
32 the improvement period and the court further makes a
33 finding, on the record, of the terms of the improvement
34 period;

35 (3) In the order granting the improvement period, the court
36 (A) orders that a hearing be held to review the matter within
37 sixty days of the granting of the improvement period; or (B)
38 orders that a hearing be held to review the matter within
39 ninety days of the granting of the improvement period and
40 that the department submit a report as to the respondent's
41 progress in the improvement period within sixty days of the
42 order granting the improvement period;

43 (4) Since the initiation of the proceeding, the respondent
44 has not previously been granted any improvement period or
45 the respondent demonstrates that since the initial
46 improvement period, the respondent has experienced a
47 substantial change in circumstances. Further, the respondent
48 shall demonstrate that due to that change in circumstances the
49 respondent is likely to fully participate in a further
50 improvement period; and

51 (5) The order granting the improvement period requires
52 the department to prepare and submit to the court an

53 individualized family case plan in accordance with the
54 provisions of section three, article six-d of this chapter.

55 (c) The court may grant an improvement period not to
56 exceed six months as a disposition pursuant to section five of
57 this article when:

58 (1) The respondent moves in writing for the improvement
59 period;

60 (2) The respondent demonstrates, by clear and convincing
61 evidence, that the respondent is likely to fully participate in
62 the improvement period and the court further makes a
63 finding, on the record, of the terms of the improvement
64 period;

65 (3) In the order granting the improvement period, the
66 court:

67 (A) Orders that a hearing be held to review the matter
68 within sixty days of the granting of the improvement period;
69 or

70 (B) Orders that a hearing be held to review the matter
71 within ninety days of the granting of the improvement
72 period and that the department submit a report as to the
73 respondent's progress in the improvement period within
74 sixty days of the order granting the improvement period;

75 (4) Since the initiation of the proceeding, the respondent
76 has not previously been granted any improvement period or
77 the respondent demonstrates that since the initial
78 improvement period, the respondent has experienced a
79 substantial change in circumstances. Further, the respondent
80 shall demonstrate that due to that change in circumstances,
81 the respondent is likely to fully participate in the
82 improvement period; and

83 (5) The order granting the improvement period shall
84 require the department to prepare and submit to the court an
85 individualized family case plan in accordance with the
86 provisions of section three, article six-d of this chapter.

87 (d) When any improvement period is granted to a
88 respondent pursuant to the provisions of this section, the
89 respondent shall be responsible for the initiation and
90 completion of all terms of the improvement period. The court
91 may order the state department to pay expenses associated
92 with the services provided during the improvement period
93 when the respondent has demonstrated that he or she is
94 unable to bear such expenses.

95 (e) When any improvement period is granted to a
96 respondent pursuant to the provisions of this section, the
97 respondent shall execute a release of all medical information
98 regarding that respondent, including, but not limited to,
99 information provided by mental health and substance abuse
100 professionals and facilities. Such release shall be accepted by
101 any such professional or facility regardless of whether the
102 release conforms to any standard required by that facility.

103 (f) When any respondent is granted an improvement
104 period pursuant to the provisions of this article, the
105 department shall monitor the progress of such person in the
106 improvement period. When the respondent fails to participate
107 in any service mandated by the improvement period, the state
108 department shall initiate action to inform the court of that
109 failure. When the department demonstrates that the
110 respondent has failed to participate in any provision of the
111 improvement period, the court shall forthwith terminate the
112 improvement period.

113 (g) A court may extend any improvement period granted
114 pursuant to subsections (b) or (c) of this section for a period
115 not to exceed three months when the court finds that the

116 respondent has substantially complied with the terms of the
117 improvement period; that the continuation of the
118 improvement period will not substantially impair the ability
119 of the department to permanently place the child; and that
120 such extension is otherwise consistent with the best interest
121 of the child.

122 (h) Upon the motion by any party, the court shall terminate
123 any improvement period granted pursuant to this section
124 when the court finds that respondent has failed to fully
125 participate in the terms of the improvement period.

126 (i) This section may not be construed to prohibit a court
127 from ordering a respondent to participate in services designed
128 to reunify a family or to relieve the department of any duty to
129 make reasonable efforts to reunify a family required by state
130 or federal law.

131 (j) Any hearing scheduled pursuant to the provisions of
132 this section may be continued only for good cause upon a
133 written motion properly served on all parties. When a court
134 grants such continuance, the court shall enter an order
135 granting the continuance which shall specify a future date
136 when the hearing will be held.

137 (k) Any hearing to be held at the end of an improvement
138 period shall be held as nearly as practicable on successive
139 days and shall be held as close in time as possible after the
140 end of said improvement period and shall be held no later
141 than sixty days of the termination of such improvement
142 period.

143 (l) Notwithstanding any other provision of this section, no
144 combination of any improvement periods or extensions
145 thereto may cause a child to be in foster care more than
146 fifteen months of the most recent twenty-two months, unless
147 the court finds compelling circumstances by clear and

148 convincing evidence that it is in the child's best interests to
149 extend the time limits contained in this paragraph.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED OF
BEING ABUSED OR NEGLECTED.**

§49-6A-5. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this
2 article shall be made immediately by telephone to the local
3 state department child protective service agency and shall be
4 followed by a written report within forty-eight hours if so
5 requested by the receiving agency. The state department
6 shall establish and maintain a twenty-four hour, seven-day-a-
7 week telephone number to receive such calls reporting
8 suspected or known child abuse or neglect.

9 (b) A copy of any report of serious physical abuse, sexual
10 abuse or assault shall be forwarded by the department to the
11 appropriate law-enforcement agency, the prosecuting
12 attorney or the coroner or medical examiner's office. All
13 reports under this article shall be confidential. Reports of
14 known or suspected institutional child abuse or neglect shall
15 be made and received as all other reports made pursuant to
16 this article.

**ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE
SERVICES ACT.**

§49-6D-3. Unified child and family case plans.

1 (a) The Department of Health and Human Resources shall
2 develop a unified child and family case plan for every family
3 wherein a person has been referred to the department after
4 being allowed an improvement period or where the child is
5 placed in foster care. The case plan must be filed within sixty
6 days of the child coming into foster care or within thirty days

7 of the inception of the improvement period, whichever occurs
8 first. The department may also prepare a case plan for any
9 person who voluntarily seeks child abuse and neglect services
10 from the department, or who is referred to the department by
11 another public agency or private organization. The case plan
12 provisions shall comply with federal law and the rules of
13 procedure for child abuse and neglect proceedings.

14 (b) The department shall convene a multidisciplinary
15 treatment team, which shall develop the case plan. Parents,
16 guardians or custodians shall participate fully in the
17 development of the case plan, and the child shall also fully
18 participate if sufficiently mature and the child's participation
19 is otherwise appropriate. The case plan may be modified
20 from time to time to allow for flexibility in goal development,
21 and in each such case the modifications shall be submitted to
22 the court in writing. Reasonable efforts to place a child for
23 adoption or with a legal guardian may be made at the same
24 time as reasonable efforts are being made to prevent removal
25 or to make it possible for a child to return safely home. The
26 court shall examine the proposed case plan or any
27 modification thereof, and upon a finding by the court that the
28 plan or modified plan can be easily communicated, explained
29 and discussed so as to make the participants accountable and
30 able to understand the reasons for any success or failure
31 under the plan, the court shall inform the participants of the
32 probable action of the court if goals are met or not met.

33 (c) In furtherance of the provisions of this article, the
34 department shall, within the limits of available funds,
35 establish programs and services for the following purposes:

36 (1) For the development and establishment of training
37 programs for professional and paraprofessional personnel in
38 the fields of medicine, law, education, social work and other
39 relevant fields who are engaged in, or intend to work in, the
40 field of the prevention, identification and treatment of child

41 abuse and neglect; and training programs for children, and for
42 persons responsible for the welfare of children, in methods of
43 protecting children from child abuse and neglect;

44 (2) For the establishment and maintenance of centers,
45 serving defined geographic areas, staffed by multidisciplinary
46 teams and community teams of personnel trained in the
47 prevention, identification and treatment of child abuse and
48 neglect cases, to provide a broad range of services related to
49 child abuse and neglect, including direct support as well as
50 providing advice and consultation to individuals, agencies
51 and organizations which request such services;

52 (3) For furnishing services of multidisciplinary teams and
53 community teams, trained in the prevention, identification
54 and treatment of child abuse and neglect cases, on a
55 consulting basis to small communities where such services
56 are not available;

57 (4) For other innovative programs and projects that show
58 promise of successfully identifying, preventing or remedying
59 the causes of child abuse and neglect, including, but not
60 limited to, programs and services designed to improve and
61 maintain parenting skills, programs and projects for parent
62 self help, and for prevention and treatment of drug-related
63 child abuse and neglect; and

64 (5) Assisting public agencies or nonprofit private
65 organizations or combinations thereof in making applications
66 for grants from, or in entering into contracts with, the
67 Secretary of the federal Department of Health and Human
68 Services for demonstration programs and projects designed
69 to identify, prevent and treat child abuse and neglect.

70 (d) Agencies, organizations and programs funded to carry
71 out the purposes of this section shall be structured so as to
72 comply with any applicable federal law, any regulation of the

73 federal Department of Health and Human Services or the
74 secretary thereof, and any final comprehensive plan of the
75 federal advisory board on child abuse and neglect. In
76 funding organizations, the department shall, to the extent
77 feasible, ensure that parental organizations combating child
78 abuse and neglect receive preferential treatment.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter or by
2 order of the court, all records and information concerning a
3 child or juvenile which are maintained by the Division of
4 Juvenile Services, the Department of Health and Human
5 Resources, a child agency or facility, court or law-
6 enforcement agency shall be kept confidential and shall not
7 be released or disclosed to anyone, including any federal or
8 state agency.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section or any other provision of this code to the
11 contrary, records concerning a child or juvenile, except
12 adoption records and records disclosing the identity of a
13 person making a complaint of child abuse or neglect shall be
14 made available:

15 (1) Where otherwise authorized by this chapter;

16 (2) To:

17 (A) The child;

18 (B) A parent whose parental rights have not been
19 terminated; or

20 (C) The attorney of the child or parent;

21 (3) With the written consent of the child or of someone
22 authorized to act on the child's behalf; or

23 (4) Pursuant to an order of a court of record: *Provided*,
24 That the court shall review such record or records for
25 relevancy and materiality to the issues in the proceeding and
26 safety, and may issue an order to limit the examination and
27 use of the records or any part thereof.

28 (c) In addition to those persons or entities to whom
29 information may be disclosed under subsection (b) of this
30 section, information related to child abuse or neglect
31 proceedings, except information relating to the identity of the
32 person reporting or making a complaint of child abuse or
33 neglect, shall be made available, upon request, to:

34 (1) Federal, state or local government entities, or any
35 agent of such entities, including law-enforcement agencies
36 and prosecuting attorneys, having a need for such information
37 in order to carry out its responsibilities under law to protect
38 children from abuse and neglect;

39 (2) The child fatality review team;

40 (3) Child abuse citizen review panels;

41 (4) Multidisciplinary investigative and treatment teams;
42 or

43 (5) A grand jury, circuit court or family court, upon a
44 finding that information in the records is necessary for the
45 determination of an issue before the grand jury, circuit court
46 or family court.

47 (d) In the event of a child fatality or near fatality due to
48 child abuse and neglect, information relating to such fatality
49 or near fatality shall be made public by the Department of

50 Health and Human Resources and to the entities described in
51 subsection (c) of this section, all under the circumstances
52 described in that subsection: *Provided*, That information
53 released by the Department of Health and Human Resources
54 pursuant to this subsection shall not include the identity of a
55 person reporting or making a complaint of child abuse or
56 neglect. For purposes of this subsection, “near fatality”
57 means any medical condition of the child which is certified
58 by the attending physician to be life threatening.

59 (e) Except in juvenile proceedings which are transferred
60 to criminal proceedings, law-enforcement records and files
61 concerning a child or juvenile shall be kept separate from the
62 records and files of adults and not included within the court
63 files. Law-enforcement records and files concerning a child
64 or juvenile shall only be open to inspection pursuant to the
65 provisions of sections seventeen and eighteen, article five of
66 this chapter.

67 (f) Any person who willfully violates the provisions of
68 this section is guilty of a misdemeanor and, upon conviction
69 thereof, shall be fined not more than \$1,000, or confined in
70 the county or regional jail for not more than six months, or be
71 both fined and confined. A person convicted of violating the
72 provisions of this section shall also be liable for damages in
73 the amount of \$300 or actual damages, whichever is greater.

74 (g) Notwithstanding the provisions of this section, or any
75 other provision of this code to the contrary, the name and
76 identity of any juvenile adjudicated or convicted of a violent
77 or felonious crime shall be made available to the public.

**§49-7-36. Quarterly status review and yearly permanency
hearings.**

1 (a) For each child who remains in foster care as a result
2 of a juvenile proceeding or as a result of a child abuse and

3 neglect proceeding, the circuit court with the assistance of the
4 multidisciplinary treatment team shall conduct quarterly
5 status reviews in order to determine the safety of the child,
6 the continuing necessity for and appropriateness of the
7 placement, the extent of compliance with the case plan, and
8 the extent of progress which has been made toward
9 alleviating or mitigating the causes necessitating placement
10 in foster care, and to project a likely date by which the child
11 may be returned to and safety maintained in the home or
12 placed for adoption or legal guardianship. Quarterly status
13 reviews shall commence three months after the entry of the
14 placement order. The permanency hearing provided for in
15 subsection (c) of this section may be considered a quarterly
16 status review.

17 (b) For each transitioning adult as that term is defined in
18 §49-2B-2(x) who remains in foster care, the circuit court
19 shall conduct status review hearings as described in
20 subsection (a) of this section once every three months until
21 permanency is achieved.

22 (c) For each child or transitioning adult who continues to
23 remain in foster care, the circuit court shall conduct a
24 permanency hearing no later than twelve months after the date
25 the child or transitioning adult is considered to have entered
26 foster care, and at least once every twelve months thereafter
27 until permanency is achieved. For purposes of permanency
28 planning for transitioning adults, the circuit court shall make
29 factual findings and conclusions of law as to whether the
30 department made reasonable efforts to finalize a permanency
31 plan to prepare a transitioning adult for emancipation or
32 independence or another approved permanency option such
33 as, but not limited to, adoption or legal guardianship pursuant
34 to the West Virginia Guardianship and Conservatorship Act.

35 (d) Nothing in this section shall be construed to abrogate
36 the responsibilities of the circuit court from conducting

37 required hearings as provided in other provisions of this code,
38 procedural court rules, or setting required hearings at the
39 same time.

CHAPTER 27

**(Com. Sub. for S. B. 161 - By Senators
Foster, Palumbo, Klempa, Fanning,
Unger, Kessler, Mr. President,
Jenkins, Browning, Kirkendoll,
Wills, Yost, Stollings and McCabe)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, all relating to mandatory reporting of abuse and neglect of children; adding promoting adult responsibility and prevention to the purpose; adding certain persons to the mandatory reporting list for all abuse or neglect of children; creating a requirement that certain adults report sexual abuse of children when observed or when received credible reports; allowing for exceptions; requiring law enforcement who receive a report of sexual abuse to alert the Department of Health and Human Resources; encouraging law-enforcement agencies to coordinate in investigating a report; increasing the criminal penalties for failure to report; creating a crime and criminal penalties for all adults who fail to report sexual abuse of children; and requiring and amending certain educational programs and trainings.

Be it enacted by the Legislature of West Virginia:

That §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-1. Purpose.

1 It is the purpose of this article, through the complete
2 reporting of child abuse and neglect, to protect the best
3 interests of the child, to offer protective services in order to
4 prevent any further harm to the child or any other children
5 living in the home, to stabilize the home environment, to
6 preserve family life whenever possible, to promote adult
7 responsibility for protecting children and to encourage
8 cooperation among the states to prevent future incidents of
9 child abuse and neglect and in dealing with the problems of
10 child abuse and neglect.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school
3 teacher or other school personnel, social service worker, child
4 care or foster care worker, emergency medical services
5 personnel, peace officer or law-enforcement official, humane
6 officer, member of the clergy, circuit court judge, family
7 court judge, employee of the Division of Juvenile Services,
8 magistrate, youth camp administrator or counselor, employee,
9 coach or volunteer of an entity that provides organized
10 activities for children, or commercial film or photographic
11 print processor who has reasonable cause to suspect that a
12 child is neglected or abused or observes the child being
13 subjected to conditions that are likely to result in abuse or

14 neglect shall immediately, and not more than forty-eight
15 hours after suspecting this abuse or neglect, report the
16 circumstances or cause a report to be made to the Department
17 of Health and Human Resources: *Provided*, That in any case
18 where the reporter believes that the child suffered serious
19 physical abuse or sexual abuse or sexual assault, the reporter
20 shall also immediately report, or cause a report to be made, to
21 the State Police and any law-enforcement agency having
22 jurisdiction to investigate the complaint: *Provided, however*,
23 That any person required to report under this article who is a
24 member of the staff or volunteer of a public or private
25 institution, school, entity that provides organized activities
26 for children, facility or agency shall also immediately notify
27 the person in charge of the institution, school, entity that
28 provides organized activities for children, facility or agency,
29 or a designated agent thereof, who may supplement the report
30 or cause an additional report to be made.

31 (b) Any person over the age of eighteen who receives a
32 disclosure from a credible witness or observes any sexual
33 abuse or sexual assault of a child, shall immediately, and not
34 more than forty-eight hours after receiving such a disclosure
35 or observing the sexual abuse or sexual assault, report the
36 circumstances or cause a report to be made to the Department
37 of Health and Human Resources or the State Police or other
38 law-enforcement agency having jurisdiction to investigate the
39 report. In the event that the individual receiving the
40 disclosure or observing the sexual abuse or sexual assault has
41 a good faith belief that the reporting of the event to the police
42 would expose either the reporter, the subject child, the
43 reporter's children or other children in the subject child's
44 household to an increased threat of serious bodily injury, the
45 individual may delay making the report while he or she
46 undertakes measures to remove themselves or the affected
47 children from the perceived threat of additional harm:
48 *Provided*, That the individual makes the report as soon as

49 practicable after the threat of harm has been reduced. The
50 law-enforcement agency that receives a report under this
51 subsection shall report the allegations to the Department of
52 Health and Human Resources and coordinate with any other
53 law-enforcement agency, as necessary to investigate the
54 report.

55 (c) Nothing in this article is intended to prevent
56 individuals from reporting suspected abuse or neglect on their
57 own behalf. In addition to those persons and officials
58 specifically required to report situations involving suspected
59 abuse or neglect of children, any other person may make a
60 report if such person has reasonable cause to suspect that a
61 child has been abused or neglected in a home or institution or
62 observes the child being subjected to conditions or
63 circumstances that would reasonably result in abuse or
64 neglect.

§49-6A-8. Failure to report; penalty.

1 Any person, official or institution required by this article
2 to report a case involving a child known or suspected to be
3 abused or neglected, or required by section five of this article
4 to forward a copy of a report of serious injury, who
5 knowingly fails to do so or knowingly prevents another
6 person acting reasonably from doing so, is guilty of a
7 misdemeanor and, upon conviction thereof, shall be confined
8 in jail not more than thirty days or fined not more than
9 \$1,000, or both.

§49-6A-10. Educational programs.

1 Subject to appropriation in the budget bill, the state
2 department shall conduct educational and training programs
3 for persons required to report suspected abuse or neglect, and
4 the general public, as well as implement evidence-based

5 programs that reduce incidents of child maltreatment
6 including sexual abuse. Training for persons require to report
7 and the general public shall include indicators of child abuse
8 and neglect, tactics used by sexual abusers, how and when to
9 make a report, and protective factors that prevent abuse and
10 neglect in order to promote adult responsibility for protecting
11 children, encourage maximum reporting of child abuse and
12 neglect, and to improve communication, cooperation and
13 coordination among all agencies involved in the
14 identification, prevention and treatment of the abuse and
15 neglect of children.



CHAPTER 28

**(Com. Sub. for H. B. 4063 - By Delegates
L. Phillips, Crosier, D. Poling, D. Campbell,
M. Poling, Iaquina, Ireland, O'Neal,
Lane and Ellem)**

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

***CLERK'S NOTE:** It has been determined that Com. Sub. for H. B. 4063, originally styled as Chapter 28 was enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H. B. 4063 did not become law.



CHAPTER 29

**(Com. Sub. for H. B. 4398 - By Delegates
Marshall, Iaquina, Reynolds,
Stowers, Anderson and Evans)**

[Passed March 7, 2012; in effect from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Board of Coal Mine Health and Safety; Department of Administration/Office of Technology; Department of Education; Division of Corrections; Division of Highways; Division of Tourism; Insurance Commission; Regional Jail Authority; State Fire Marshal; Tax Department and West Virginia State Senate to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the Court of Claims
3 concerning various claims against the state and agencies
4 thereof and in respect to each of the following claims, the
5 Legislature adopts those findings of fact as its own and in
6 respect of certain claims herein, the Legislature has
7 independently made findings of fact and determinations of
8 award and hereby declares it to be the moral obligation of the

9 state to pay each such claim in the amount specified below
10 and directs the Auditor to issue warrants for the payment
11 thereof out of any fund appropriated and available for the
12 purpose.

13 (a) *Claim against the Board of Coal Mine Health and*
14 *Safety:*

15 (TO BE PAID FROM GENERAL REVENUE FUND)

16 (1) Nicholas S. Preservati \$12,556.00

17 (b) *Claim against the Department of Administration/*
18 *Office of Technology:*

19 (TO BE PAID FROM SPECIAL REVENUE FUND)

20 (1) Infoprint Solutions Company \$83,174.39

21 (c) *Claim against the Department of Education:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) AB Contracting Inc. \$20,000.00

24 (d) *Claims against the Division of Corrections:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) Christopher Blackwell \$25.00

27 (2) Brandon Butler \$25.00

28 (3) Merle Casto \$12.95

29 (4) Ricoh Americas Corporation \$370.00

30	(5) Verizon Network Integration Corporation . . .	\$7,164.06
31	(6) WV Public Employees Insurance	
32	Agency	\$438,129.71
33	(7) WV Regional Jail Authority	\$5,458,871.50
34	<i>(e) Claims against the Division of Highways:</i>	
35	(TO BE PAID FROM STATE ROAD FUND)	
36	(1) Joel Abbott	\$2,495.78
37	(2) Cinnament Adkins	\$300.00
38	(3) Daniel Adkins	\$221.47
39	(4) Mark E. Agosti	\$304.00
40	(5) Carol Lee Alessio	\$216.40
41	(6) Marlene E. Alford	\$222.39
42	(7) Nicole Allen	\$500.00
43	(8) Jeffrey D. Anderson	\$500.00
44	(9) Nicholas Angell	\$153.70
45	(10) Ronald Gene Arbaugh Jr.	\$373.18
46	(11) Reva Gail Arthur	\$763.07
47	(12) David K. Ash Sr.	\$500.00
48	(13) Richard Ashmore	\$434.07

420	CLAIMS	[Ch. 29
49	(14) William J. Baker	\$455.80
50	(15) Gloria E. Barkaszi	\$100.00
51	(16) Jarrid Carl Basham	\$500.00
52	(17) Brian Baxter	\$149.46
53	(18) Hope Beasley	\$615.86
54	(19) Wilma Jean Beegle-German	\$460.04
55	(20) Terri Ane' Berkley	\$500.00
56	(21) Franklin M. Bevins and Martha Bevins . .	\$500.00
57	(22) Mae Bills	\$390.68
58	(23) Connie Blair and Larry Blair	\$183.38
59	(24) Wendy Blankenship	\$412.67
60	(25) Mary Jane Bober	\$297.38
61	(26) Scott D. Bolen	\$891.93
62	(27) Anthony Bongiovanni	\$88.48
63	(28) Mary Bowles and Loretta Bowles	\$500.00
64	(29) Rudolph Bozarth	\$247.10
65	(30) Janet Brammer	\$2,517.68
66	(31) James H. Brent and Betty Brent	\$250.00
67	(32) Chad Brown	\$265.69

68	(33) Larry D. Brown	\$115.49
69	(34) Hillary Bruer	\$300.00
70	(35) Jennifer Burch	\$1,000.00
71	(36) Kimberly D. Burford	\$160.00
72	(37) Donald E. Burkey	\$500.00
73	(38) Darlene K. Burns	\$113.95
74	(39) Melina Bush	\$293.62
75	(40) Heather M. Buzminsky	\$632.08
76	(41) Michael F. Cain	\$500.00
77	(42) Lyndsey Campbell	\$500.00
78	(43) Brenda Cappellini	\$444.85
79	(44) Tonya Carnahan	\$445.20
80	(45) Christopher F. Carney	\$169.55
81	(46) Jay Reed Carper and Donna E. Carper ...	\$963.50
82	(47) Brittany Carte	\$258.64
83	(48) Brenda K. Chamblin	\$495.87
84	(49) Kimberly Childers	\$483.19
85	(50) Christopher Clagg	\$946.70
86	(51) Sara Clay	\$500.00

422	CLAIMS	[Ch. 29
87	(52) Lea Ann Cleavenger	\$350.00
88	(53) Pamela Clinton	\$86.85
89	(54) Dorothy Cobb	\$250.00
90	(55) Eric Coffman	\$441.65
91	(56) Brenda J. Cogar	\$198.21
92	(57) Tamera Coleman	\$250.00
93	(58) Sedede Colliers	\$549.28
94	(59) Michael B. Conoway and Lisa Conoway .	\$542.10
95	(60) John R. Cook	\$385.59
96	(61) Tommy Cook	\$432.38
97	(62) Patricia M. Cooper	\$545.18
98	(63) Thomas L. Coping and Lori A. Coping ..	\$207.95
99	(64) Tamela Corder	\$263.94
100	(65) Stephen Coyle	\$108.19
101	(66) Wendy A. Craig	\$501.02
102	(67) Robert Dale Crim	\$240.57
103	(68) Ronald R. Crim Sr.	\$380.85
104	(69) Donald Crosen	\$250.00
105	(70) Barbara J. Crouse	\$500.00

106	(71) Nicholas Cumberledge and	
107	Elizabeth Cumberledge	\$300.00
108	(72) Doran R. Daugherty	\$90.53
109	(73) Leslie Davis	\$814.24
110	(74) Lisa M. Davis	\$382.82
111	(75) Carolyn L. Dawson	\$226.42
112	(76) Henry G. Dean	\$231.08
113	(77) Karen Deavers	\$209.82
114	(78) Andrew DeCoy	\$140.03
115	(79) Elizabeth V.B. Deiss	\$764.68
116	(80) Misty Demidovich	\$144.99
117	(81) Aloma Doak	\$295.32
118	(82) Gregg P. Dorfner	\$434.60
119	(83) Theodore E. Dragisich	\$411.45
120	(84) Donna Drown	\$226.93
121	(85) Sharon Duncan	\$103.83
122	(86) Robert E. Duvall and	
123	Elizabeth C. Duvall	\$250.00
124	(87) Jeff Eanes	\$261.80
125	(88) Margaret A. Easton	\$58.19

424	CLAIMS	[Ch. 29
126	(89) Debra K. Ekis	\$100.24
127	(90) Joey Epling	\$164.75
128	(91) William C. Evans	\$254.50
129	(92) Terri L. Farley	\$500.00
130	(93) Kathryn J. Felitsky	\$79.50
131	(94) Emanuel Ferguson	\$500.00
132	(95) Bryan Ford	\$445.17
133	(96) Char G. Fox	\$397.68
134	(97) Charles E. Frick	\$1,000.00
135	(98) James A. Mays and Bonnie J. Friend	\$238.50
136	(99) Kristie Garrison	\$210.94
137	(100) Ronald Gifford	\$90.00
138	(101) David P. Gillispie	\$100.00
139	(102) Dwight Goff and Debra Goff	\$381.37
140	(103) Richard Gonzalez	\$450.00
141	(104) Juanita D. Gore	\$500.00
142	(105) Denzil Graham	\$717.73
143	(106) Denzil Graham and Shelley Graham . . .	\$619.59
144	(107) Kelsey Graham and Robin Graham	\$130.00

145	(108) Gary J. Gray and Mary C. Gray	\$244.09
146	(109) Edward L. Green	\$1,000.00
147	(110) Roger L. Green	\$81.20
148	(111) Rachel Greene	\$159.00
149	(112) Dwight Haddix	\$448.33
150	(113) Robert Ray Haines	\$155.19
151	(114) Dolores Halburn	\$487.09
152	(115) Ronald Hall	\$500.00
153	(116) Homer D. Ham	\$162.71
154	(117) Karla Hanes	\$500.00
155	(118) Jared B. Knight and Mary M. Hanna .	\$1,000.00
156	(119) William B. Haraden	\$496.64
157	(120) Anthony Harbison	\$599.00
158	(121) Steven Hardman	\$473.78
159	(122) Kirk Harman	\$323.71
160	(123) Angelia Harper, as Natural Mother	
161	and Admin. of the Estate of	
162	Justin Janes	\$355,000.00
163	(124) Daniel Harrington and	
164	Dolores Harrington	\$77.38
165	(125) Zachary P. Hartzell	\$217.00

426	CLAIMS	[Ch. 29
166	(126) Fred Harvey	\$250.00
167	(127) William Hawker	\$300.00
168	(128) Eric M. Hayhurst	\$219.38
169	(129) Sharla Hays	\$378.71
170	(130) Richard Heath	\$537.58
171	(131) Erica Henning	\$181.50
172	(132) Kyle Hess and Earl K. Hess	\$450.00
173	(133) Floyd W. Hinkle	\$412.53
174	(134) Sandra Hissom	\$500.00
175	(135) William E. Hoffer	\$615.00
176	(136) Michelle Holley and Roger Holley	\$100.00
177	(137) Lori Honaker and Tessa Honaker	\$500.00
178	(138) Ronald W. Houchins	\$495.87
179	(139) Terry A. Howell	\$221.43
180	(140) Cathy Hudnall	\$226.90
181	(141) Teresa Hylton	\$160.13
182	(142) Gerry Jacobs	\$103.88
183	(143) Timothy P. James	\$144.58
184	(144) Paul Jaquay	\$173.24

185	(145) Cheryl Jarvis	\$508.43
186	(146) Alan Jenkins Jr.	\$84.80
187	(147) John Jones	\$500.00
188	(148) Letty R. Jones	\$278.77
189	(149) Terry Jordan	\$30,000.00
190	(150) Lori Adkins and Trenton Justice	\$121.90
191	(151) Retus Jay Justice	\$1,000.00
192	(152) Robert A. Kalo	\$250.00
193	(153) David Karickhoff	\$250.00
194	(154) Chandra Kennedy and Charles Kennedy ..	\$98.84
195	(155) Dr. Thomas J. Kennedy	\$483.04
196	(156) Wayne R. Kerby	\$500.00
197	(157) Samuel E. Kerwood	\$450.00
198	(158) Trisha L. Kindberg	\$272.14
199	(159) Jack L. Kinder	\$408.10
200	(160) Andrea Kirby	\$339.06
201	(161) Terri Kittinger	\$101.56
202	(162) Tom Klug	\$57.94
203	(163) Cathy Kompardo-Zeiler	\$137.80

428	CLAIMS	[Ch. 29
204	(164) Debra L. Kuzma	\$238.49
205	(165) Deloris Landis and Ronald Landis	\$458.88
206	(166) Robert Allen Lang and Linda C. Lang	\$426.13
207	(167) Bruce Lane	\$295.00
208	(168) Keith L. Leavengood	\$4,000.00
209	(169) Rachel M. Lemon	\$242.74
210	(170) Erica N. Lewis	\$391.04
211	(171) Patty S. Lewis	\$339.22
212	(172) Stephen William Logan	\$308.78
213	(173) Debra Longstreth	\$1,152.26
214	(174) Tammy R. Losh	\$475.89
215	(175) Janet C. Louden	\$85.50
216	(176) Nellie Lowry	\$262.99
217	(177) Lois Lucas	\$687.60
218	(178) Sylvia M. Lucas	\$62.54
219	(179) Michael Maddox	\$206.65
220	(180) Thomas A. Maglich	\$320.10
221	(181) Melissa Mahoney and	
222	Elizabeth Mahoney	\$272.37
223	(182) Freddie A. Marks	\$870.00

224	(183) Allen R. Marple	\$2,798.31
225	(184) Jennifer Martin	\$192.92
226	(185) Debra Massey	\$95.35
227	(186) Jeffry Matthews	\$297.75
228	(187) Marvin Maynard and Selena Maynard ...	\$243.80
229	(188) Charity Mays	\$1,385.80
230	(189) Olivia Maze	\$237.39
231	(190) Jason M. Mazza	\$375.21
232	(191) Donald F. McCallister	\$173.04
233	(192) Brenda McClelland	\$250.00
234	(193) Frances M. McCune	\$138.61
235	(194) Roy J. McDaniel	\$1,069.61
236	(195) Randy A. McDonald	\$50,000.00
237	(196) Mickeal Wayne McGraw	\$252.28
238	(197) Jonathan McIntyre	\$280.90
239	(198) Catherine T. McKinney	\$500.00
240	(199) James McKown and Karen McKown ..	\$139.82
241	(200) Ricky Meadows	\$313.04
242	(201) Rusti Menendez-Young	\$623.65
243	(202) Virginia Metrick	\$250.00

430	CLAIMS	[Ch. 29
244	(203) David R. Michaels	\$200.00
245	(204) John Miller and Mary Miller	\$500.00
246	(205) Amanda L. Minnix and	
247	and Rodney K. Minnix	\$261.31
248	(206) Gregory K. Mitchell Jr.	\$621.61
249	(207) Bradley Moore	\$835.27
250	(208) Eustacia Moore	\$190.00
251	(209) Earl Morgan and Connie Morgan	\$274.85
252	(210) Patrick J. Morgan and	
253	Tammy S. Morgan	\$378.21
254	(211) William J. Morris and	
255	Linda Morris-Angus	\$112.25
256	(212) Amy Mullins	\$193.17
257	(213) Mildred Mullins	\$1,058.22
258	(214) Russell Keith Myers	\$1,000.00
259	(215) Ted S. Nance	\$2,469.41
260	(216) Anna L. Naylor	\$156.88
261	(217) David P. Nelson	\$437.99
262	(218) James Ninehouser	\$250.00
263	(219) Robert E. Norman	\$207.11

Ch. 29]	CLAIMS	431
264	(220) Virginia Nottingham	\$250.00
265	(221) Jarred Nutter	\$248.87
266	(222) Misty Nuzum	\$230.00
267	(223) James T. Ogden	\$62.01
268	(224) Perry R. Osborne	\$373.82
269	(225) Susan Owens	\$500.00
270	(226) Geary Grant Oxley	\$303.63
271	(227) Steven E. Page	\$163.19
272	(228) Cynthia Parsons and Timothy Parsons . .	\$476.16
273	(229) Derek Parsons	\$1,566.18
274	(230) James G. Pauley	\$250.00
275	(231) David Payne	\$500.00
276	(232) Kennie D. Payne and Carol Payne	\$551.72
277	(233) Anthony Pepe	\$111.00
278	(234) Virginia Perrine	\$1,506.95
279	(235) Angel Navy Perry and Mark A. Perry . .	\$612.66
280	(236) Dennis Perry	\$486.20
281	(237) Joseph M. Peterson	\$568.37
282	(238) Joy Pickens	\$79.50

432	CLAIMS	[Ch. 29
283	(239) Otis Pinson	\$150.00
284	(240) Joshua Polan	\$500.00
285	(241) George G. Potter	\$192.11
286	(242) Anna Pratt and Glenn Pratt	\$242.32
287	(243) Frank Jay Prebeg	\$98.99
288	(244) Arthur Lee Preston	\$404.41
289	(245) Mary Jane Price	\$5,000.00
290	(246) Norma J. Price	\$261.95
291	(247) Courtney Pride	\$234.27
292	(248) Billie Jo Pyles	\$124.02
293	(249) Charles C. Raber Jr.	\$373.12
294	(250) Carolyn L. Raines	\$125.08
295	(251) Karen Ratcliffe and Kit Ratcliffe	\$4,813.00
296	(252) Christopher Riffe	\$165,000.00
297	(253) Elisha Riffe	\$9,000.00
298	(254) Kenneth B. Riley	\$106.60
299	(255) Rachel S. Rinehart and	
300	Mark W. Rinehart	\$375.00
301	(256) Janet D. Robbins	\$97.65

302	(257) Shirley Roberts	\$148.40
303	(258) Cheryl S. Rollins	\$500.00
304	(259) Joseph M. Roush and Carol L. Roush ..	\$319.48
305	(260) Cindi J. Royer	\$553.45
306	(261) Beverly Sanders	\$1,000.00
307	(262) Amy Sandy	\$144.16
308	(263) Nathan B. Sayre	\$302.10
309	(264) Christi A. Schroyer	\$500.00
310	(265) Tammy J. Scott	\$91.16
311	(266) John Houck and Katherine M. Seibel ..	\$158.95
312	(267) Donald L. Sevier and	
313	Cassandra L. Sevier	\$1,000.00
314	(268) Ronald Shaw	\$171.19
315	(269) Thomas V. Sheppard	\$500.00
316	(270) David A. Sidiropolis	\$500.00
317	(271) Helen Sigman	\$250.00
318	(272) James R. Simons	\$310.53
319	(273) Wilburn Siner	\$500.00
320	(274) Brenda Sirk	\$179.00

434	CLAIMS	[Ch. 29
321	(275) Christina Skeens	\$380.20
322	(276) Gerald Slaughter	\$225.00
323	(277) Brian Smith	\$46.95
324	(278) Justin A. Smith	\$236.00
325	(279) M.E. Walker and	
326	Megan Walker Smith	\$1,000.00
327	(280) Michael A. Smith	\$1,046.12
328	(281) Sandra K. Smolder	\$1,000.00
329	(282) Ricky K. Snodgrass	\$703.13
330	(283) Eric Spatafore	\$300.00
331	(284) Elizabeth Spaulding	\$500.00
332	(285) Audrey L. Spearing	\$127.20
333	(286) Darrell Spurlock	\$250.00
334	(287) Thomas F. Stark and Mary F. Stark	\$500.00
335	(288) Rebecca Staten	\$500.00
336	(289) Matthew R. Stefan	\$135.68
337	(290) Carl Stein	\$130,000.00
338	(291) Faye J. Stephens	\$153.13
339	(292) Natasha Stephens and	
340	Anthony P. Stephens	\$675.54

Ch. 29]	CLAIMS	435
341	(293) Deborah Sterling	\$178.00
342	(294) Cheryl Sterner	\$307.05
343	(295) Samuel S. Stewart and	
344	Gertrude Stewart	\$500.00
345	(296) Shirley A. Stiltner	\$426.90
346	(297) Giget Stover	\$200.29
347	(298) Todd Strickland	\$144.72
348	(299) Timothy Sullivan and	
349	Rebecca A. Sullivan	\$1,000.00
350	(300) Jill Swan	\$100.00
351	(301) John E. Sweeney	\$103.83
352	(302) Charles Swiger and Sandra Swiger	\$431.76
353	(303) Araya Taupradist	\$100.00
354	(304) Wesley Lynn Taylor	\$123.97
355	(305) Tifney D. Terry-Franks	\$174.19
356	(306) Richard Thomas	\$500.00
357	(307) Samuel Thomas	\$161.45
358	(308) David Thompson	\$500.00
359	(309) Edna P. Thompson	\$284.08
360	(310) Brian Keith Tolley	\$387.20

436	CLAIMS	[Ch. 29
361	(311) Linda S. Totten	\$218.12
362	(312) David J. Troia	\$135.50
363	(313) Tonya Michelle Tucker, as Admin.	
364	of the Estate of Jesse Tucker	\$600,000.00
365	(314) Larry D. Turner	\$500.00
366	(315) Charles L. Turner Jr.	\$1,800.00
367	(316) Rebecca Tustin	\$150.00
368	(317) Charles L. Urling Jr.	\$200.34
369	(318) Jonathan Burson and Donna Vaughan . .	\$972.83
370	(319) Ronald Hambrick and Linda Vineyard .	\$269.00
371	(320) Dennis L. Ward and Terri Ward	\$250.00
372	(321) Dale C. Waters	\$177.82
373	(322) Pamela Wehler	\$500.00
374	(323) Robert J. Weidlich	\$143.54
375	(324) Amanda M. White	\$79.50
376	(325) Lawrence White	\$739.70
377	(326) Sharon K. White	\$416.17
378	(327) Andre Wilkinson	\$500.00
379	(328) Karen J. Wilkinson	\$299.95
380	(329) Denise Williams	\$500.00

Ch. 29]	CLAIMS	437
381	(330) Gary Williams	\$500.00
382	(331) Mary Ann Williams	\$268.75
383	(332) Russell Williams	\$76.52
384	(333) Jesse Wills	\$90.10
385	(334) Margaret S. Wilson	\$138.17
386	(335) Jeremy Winters	\$778.14
387	(336) Terry J. Woodside as Admin. of the	
388	Estate of Terry J. Woodside Jr. . .	\$250,000.00
389	(337) Howard Wrenn and Sandra Belcher, as	
390	Natural Parents And Co-Admin.	
391	of the Estate of Matthew Wrenn .	\$355,000.00
392	(338) Joyce Yirberg	\$2,222.50
393	(339) Jodi Young	\$983.88
394	(340) Jennifer Isabell and Matthew Allen	
395	Zickafoose, as Admin. of the Estate	
396	of Andrew Zickafoose, Deceased	\$500.00
397	(341) John G. Blevins	\$93.49
398	(342) Cynthia Hammond	\$250.00
399	(343) Lucinda Riffle	\$160.02
400	(344) Tyler Spear	\$45.51
401	(345) Michael Benner	\$232.00
402	(346) Ralph Scarberry	\$149.46

438	CLAIMS	[Ch. 29
403	(347) Earl S. Hescht	\$195.36
404	(348) Valley Volunteer Fire Department Inc . .	\$500.00
405	<i>(f) Claim against the Division of Tourism:</i>	
406	(TO BE PAID FROM SPECIAL REVENUE FUND)	
407	(1) Temporary Employment Services Inc.	\$474.15
408	<i>(g) Claim against the Insurance Commission:</i>	
409	(TO BE PAID FROM SPECIAL REVENUE FUND)	
410	(1) Greenbrooke Associates LLC	\$269,026.62
411	<i>(h) Claims against the Regional Jail Authority:</i>	
412	(TO BE PAID FROM SPECIAL REVENUE FUND)	
413	(1) Mary Balmer-Gage	\$1,571.00
414	(2) Charles L. Chipley Jr.	\$51.12
415	(3) James A. Clemens and Mary F. Clemens . . .	\$87.00
416	(4) Brent M. Combs	\$15.45
417	(5) Ronald D. Deuley	\$535.00
418	(6) Shane Elkins	\$250.00
419	(7) Ned Crouch and Renee Henline	\$11.04
420	(8) Jason Allen Hensley	\$140.00
421	(9) Jeffrey King	\$24.14
422	(10) Stacey A. Long	\$95.00

423	(11) Robert W. Moats	\$32.00
424	(12) William E. Smith	\$299.00
425	(13) Timothy Thorne	\$830.00
426	<i>(i) Claim against the State Fire Marshal:</i>	
427	(TO BE PAID FROM SPECIAL REVENUE FUND)	
428	(1) Ronceverte Volunteer Fire Department .	\$10,238.49
429	<i>(j) Claim against the Tax Department:</i>	
430	(TO BE PAID FROM GENERAL REVENUE FUND)	
431	(1) Greenbrooke Associates LLC	\$119,461.89
432	<i>(k) Claim against the State Senate:</i>	
433	(TO BE PAID FROM GENERAL REVENUE FUND)	
434	(1) AT & T	\$526.23

435 The Legislature finds that the above moral obligations
436 and the appropriations made in satisfaction thereof shall be
437 the full compensation for all claimants and that prior to the
438 payments to any claimant provided in this bill, the Court of
439 Claims shall receive a release from said claimant releasing
440 any and all claims for moral obligations arising from the
441 matters considered by the Legislature in the finding of the
442 moral obligations and the making of the appropriations for
443 said claimant. The Court of Claims shall deliver all releases
444 obtained from claimants to the department against which the
445 claim was allowed.



CHAPTER 30

**(Com. Sub. for S. B. 615 - By Senators
Kirkendoll, Hall, Wells and Stollings)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to making West Virginia's Water Pollution Control Act consistent with the federal Water Pollution Control Act, also known as the Clean Water Act, by clarifying that compliance with the effluent limits contained in a National Pollution Discharge Elimination System permit is deemed compliant with West Virginia's Water Pollution Control Act.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided, That:*

4 (1) Where necessary and proper, the secretary may
5 specify a reasonable time for persons not complying with

6 such standards and limitations to comply therewith, and upon
7 the expiration of any such period of time, the secretary shall
8 revoke or modify any permit previously issued which
9 authorized the discharge of treated or untreated sewage,
10 industrial wastes or other wastes into the waters of this state
11 which result in reduction of the quality of such waters below
12 the standards and limitations established therefor by rules of
13 the board or secretary;

14 (2) Notwithstanding any rule or permit condition to the
15 contrary, and except for any standard imposed under section
16 307 of the federal Water Pollution Control Act for a toxic
17 pollutant injurious to human health, compliance with a permit
18 issued pursuant to this article shall be deemed compliance for
19 purposes of both this article and sections 301, 302, 306, 307
20 and 403 of the federal Water Pollution Control Act. Nothing
21 in this section, however, prevents the secretary from
22 modifying, reissuing or revoking a permit during its term.
23 The provisions of this section addressing compliance with a
24 permit are intended to apply to all existing and future
25 discharges and permits without the need for permit
26 modifications. However, should any such modification be
27 necessary under the terms of this article, then the secretary
28 shall immediately commence the process to effect such
29 modifications; and

30 (3) The Legislature finds that there are concerns within
31 West Virginia regarding the applicability of the research
32 underlying the federal selenium criteria to a state such as
33 West Virginia which has high precipitation rates and free-
34 flowing streams and that the alleged environmental impacts
35 that were documented in applicable federal research have not
36 been observed in West Virginia and, further, that
37 considerable research is required to determine if selenium is
38 having an impact on West Virginia streams, to validate or
39 determine the proper testing methods for selenium and to
40 better understand the chemical reactions related to selenium

41 mobilization in water. For existing NPDES permits, the
42 department may extend the time period for achieving water
43 quality-based effluent limits for selenium discharges into
44 waters supporting aquatic life uses to July 1, 2012, upon
45 compliance with all federally required public notice
46 requirements for such modifications, upon a finding that the
47 permittee cannot comply with its existing compliance
48 schedule and that an extension is not in violation of any state
49 or federal laws, rules or regulations. The West Virginia
50 Department of Environmental Protection is hereby directed
51 to undertake a comprehensive study relating to selenium and
52 prepare a report detailing such findings and submitting the
53 report to the Joint Committee on Government and Finance no
54 later than January 1, 2010. In conducting such study, the
55 West Virginia Department of Environmental Protection shall
56 consult with, among others, West Virginia University and the
57 West Virginia Water Research Institute.



CHAPTER 31

**(Com. Sub. for H. B. 4351 - By Mr. Speaker,
Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §15-5B-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-5B-6; to amend and reenact §22A-1-4, §22A-1-14 and §22A-1-21 of said code; to amend said code by adding thereto two new sections, designated §22A-1-13a and §22A-1-40; to amend said code by

adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to amend and reenact §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to amend said code by adding thereto a new section, designated §22A-2-43a; to amend and reenact §22A-6-4 of said code; to amend said code by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-5a; and to amend said code by adding thereto a new article, designated §22A-12-1, all relating to mine safety generally; requiring coal mine operators to provide reports to and notify certain entities in the event of an emergency; establishing a mine safety anonymous tip hotline; exempting information provided to the hotline from the Freedom of Information Act; permitting the Director of the Office of Miners' Health, Safety and Training to share information regarding certification suspensions or revocations with other states and to promulgate certain legislative rules; requiring a study be conducted regarding mine inspector qualifications, compensation, training and inspections; creating a criminal offense and establishing criminal penalties for providing advance notice of an inspection or an inspector's presence at a mine; increasing civil and criminal penalties; requiring operator or employer to investigate complaints involving impaired miners; creating criminal offense and penalty for willful violation of mine safety laws, rules or standards causing a fatality; providing confidentiality of certain meetings relating to violations and mining accidents; excepting certain statements from release under freedom of information act; providing conditions relating to statements to director; allowing designation of certain persons by miner family members to attend interviews and hearings in certain circumstances and providing limitations thereto; providing that Director prepare and distribute list containing certain information of persons to assist families following accidents; providing for suspension of mining certificates in certain

circumstances; requiring coal mining operators and certain employers to implement substance abuse screening policy and program for certain persons; providing procedures and minimum requirements of substance abuse screening policy and program; requiring substance abuse screening upon preemployment, rehiring or transfer of miner; requiring coal mine operators to provide notification to the Director of the Office of Miners' Health, Safety and Training of certain information at specified intervals and upon certain events related to substance abuse violations; allowing operator policies to be more restrictive than minimum statutory requirements; requiring substance abuse screening of all persons in safety sensitive positions; requiring immediate suspension of miner certificates as a result of suspensions or revocations for substance abuse in other jurisdictions and reciprocity; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing exemptions from and exceptions to the disclosure of substance abuse screening results; providing rule-making on thresholds and other protocols and requirements; providing internal effective dates; revising procedure for approval, review, comment and enforcement of mine ventilation plans; increasing the number of days an apprentice must work within sight and sound of mine foreman or experienced miner; authorizing additional training when certain conduct creating hazardous condition at mine; requiring methane detectors be maintained in accordance with manufacturer specifications; requiring periodic review copies of fire boss books by the mining superintendent or senior person at the mine, and duties thereto; requiring director to proscribe fire boss book; revising and expanding examination and reporting requirements relating to certain inspections; increasing the percentage of rock dust to be maintained in coal mines and providing certain information upon request; prescribing actions required to detect and respond to excess methane gas levels in coal mines; establishing safety levels and testing requirements relating to methane and providing for rules relating thereto and requiring certain action

at certain levels; prescribing requirements for persons to operate or repair mining machinery; providing for increased training regarding the use of self-contained self-rescue devices; providing additional notification by coal mine operators in the event of an accident; allowing reduction of civil penalties when mitigating circumstances exist; authorizing board to conduct investigation in accidents resulting in a fatality; requiring study of and report on the safety of working or traveling in bleeder or gob areas of certain coal mines; requiring studies of expanding certification and mandatory substance abuse program and authorizing emergency rule-making by the Board and Director relating thereto; directing additional education for certain miners rights and protections; requiring study of and report on education, training and examination associated with certifying miners; and requiring a study and report on enforcement procedures.

Be it enacted by the Legislature of West Virginia:

That §15-5B-3 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 §15-5B-6; that §22A-1-4, §22A-1-14 and §22A-1-21 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-1-13a and §22A-1-40; that said code be amended by adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; that §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-2-43a; that §22A-6-4 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-5a; and that said code be amended by adding thereto a new article, designated §22A-12-1, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.****§15-5B-3. Emergency mine response.**

1 (a) To assist the Division of Homeland Security and
2 Emergency Management in implementing and operating the
3 Mine and Industrial Accident Rapid Response System, the
4 Office of Miners' Health, Safety and Training shall, on a
5 quarterly basis, provide the emergency operations center with
6 a mine emergency contact list. In the event of any change in
7 the information contained in the mine emergency contact list,
8 the changes shall be provided immediately to the emergency
9 operations center. The mine emergency contact list shall
10 include the following information:

11 (1) The names and telephone numbers of the Director of
12 the Office of Miners' Health, Safety and Training, or his or
13 her designee, including at least one telephone number at
14 which the director or designee may be reached at any time;

15 (2) The names and telephone numbers of all district mine
16 inspectors, including at least one telephone number for each
17 inspector at which each inspector may be reached at any time;

18 (3) A current listing of all regional offices or districts of
19 the Office of Miners' Health, Safety and Training, including
20 a detailed description of the geographical areas served by
21 each regional office or district; and

22 (4) The names, locations and telephone numbers of all
23 mine rescue stations, including at least one telephone number
24 for each station that may be called twenty-four hours a day
25 and a listing of all mines that each mine rescue station serves

26 in accordance with the provisions of section thirty-five,
27 article one, chapter twenty-two-a of this code.

28 (b) Upon the receipt of an emergency call regarding any
29 accident, as defined in section sixty-six, article two, chapter
30 twenty-two-a of this code, in or about any mine, the
31 emergency operations center shall immediately notify:

32 (1) The Director of the Office of Miners' Health, Safety
33 and Training or his or her designee;

34 (2) The district mine inspector assigned to the district or
35 region in which the accident occurred; and

36 (3) Local emergency service personnel in the area in
37 which the accident occurred.

38 (c) The director or his or her designee shall determine the
39 necessity for and contact all mine rescue stations that provide
40 rescue coverage to the mine in question.

41 (d) In the event that an emergency call regarding any
42 accident, as defined in section sixty-six, article two, chapter
43 twenty-two-a of this code, in or about any mine, is initially
44 received by a county answering point, as defined in article
45 six, chapter twenty-four of this code, the call shall be
46 immediately forwarded to the Mine and Industrial Accident
47 Emergency Operations Center.

48 (e) Nothing in this section shall be construed to relieve an
49 operator, as defined in section two, article one, chapter
50 twenty-two-a of this code, from any reporting or notification
51 obligation under section sixty-six, article two, chapter
52 twenty-two-a of this code and under federal law.

53 (f) The Mine and Industrial Accident Rapid Response
54 System and the emergency operations center are designed
55 and intended to provide communications assistance to
56 emergency responders and other responsible persons.
57 Nothing in this section shall be construed to conflict with
58 the responsibility and authority of an operator to provide
59 mine rescue coverage in accordance with the provisions of
60 section thirty-five, article one, chapter twenty-two-a of this
61 code or the authority of the Director of the Office of
62 Miners' Health, Safety and Training to assign mine rescue
63 teams under the provisions of subsection (d) of said section
64 or to exercise any other authority provided in chapter
65 twenty-two-a of this code.

§15-5B-6. Mine Safety Anonymous Tip Hotline.

1 The Director of the Division of Homeland Security and
2 Emergency Management shall maintain a toll free number
3 that allows callers to report mine safety violations and
4 hazardous coal mining conditions and practices. The
5 information collected shall be provided to the Office of
6 Miners' Health, Safety and Training. No information may
7 be submitted to the Office of Miners' Health, Safety and
8 Training that would allow identification of the person
9 placing the call. The calls are confidential and any
10 documentation thereof or related thereto is not subject to
11 release and is exempt from the provisions of article one,
12 chapter twenty-nine-b of this code. The director shall
13 distribute printed information to all state mining operations
14 alerting miners to the existence of the toll free line. Each
15 mining operation shall post this notice at the location used
16 to post notices pursuant to section eighteen, article one,
17 chapter twenty-two-a of this code.

CHAPTER 22A. MINER HEALTH, SAFETY AND TRAINING.**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.****§22A-1-4. Powers and duties of the Director of the Office of Miners' Health, Safety and Training**

1 (a) The Director of the Office of Miners' Health, Safety
2 and Training is hereby empowered and it is his or her duty to
3 administer and enforce the provisions of this chapter relating
4 to health and safety inspections and enforcement and training
5 in coal mines, underground clay mines, open pit mines,
6 cement manufacturing plants and underground limestone and
7 sandstone mines.

8 (b) The Director of the Office of Miners' Health, Safety
9 and Training has full charge of the division. The director has
10 the power and duty to:

11 (1) Supervise and direct the execution and enforcement
12 of the provisions of this article.

13 (2) Employ such assistants, clerks, stenographers and
14 other employees as may be necessary to fully and effectively
15 carry out his or her responsibilities and fix their
16 compensation, except as otherwise provided in this article.

17 (3) Assign mine inspectors to divisions or districts in
18 accordance with the provisions of section eight of this article
19 as may be necessary to fully and effectively carry out the
20 provisions of this law, including the training of inspectors for
21 the specialized requirements of surface mining, shaft and
22 slope sinking and surface installations and to supervise and
23 direct the mine inspectors in the performance of their duties.

24 (4) Suspend, for good cause, any mine inspector without
25 compensation for a period not exceeding thirty days in any
26 calendar year.

27 (5) Prepare report forms to be used by mine inspectors in
28 making their findings, orders and notices, upon inspections
29 made in accordance with this article.

30 (6) Hear and determine applications made by mine
31 operators for the annulment or revision of orders made by
32 mine inspectors, and to make inspections of mines, in
33 accordance with the provisions of this article.

34 (7) Cause a properly indexed permanent and public
35 record to be kept of all inspections made by himself or by
36 mine inspectors.

37 (8) Make annually a full and complete written report of the
38 administration of the office to the Governor and the Legislature
39 of the state for the year ending June 30. The report shall include
40 the number of visits and inspections of mines in the state by
41 mine inspectors, the quantity of coal, coke and other minerals
42 (excluding oil and gas) produced in the state, the number of
43 individuals employed, number of mines in operation, statistics
44 with regard to health and safety of persons working in the mines
45 including the causes of injuries and deaths, improvements made,
46 prosecutions, the total funds of the office from all sources
47 identifying each source of the funds, the expenditures of the
48 office, the surplus or deficit of the office at the beginning and
49 end of the year, the amount of fines collected, the amount of
50 fines imposed, the value of fines pending, the number and type
51 of violations found, the amount of fines imposed, levied and
52 turned over for collection, the total amount of fines levied but
53 not paid during the prior year, the titles and salaries of all
54 inspectors and other officials of the office, the number of
55 inspections made by each inspector, the number and type of
56 violations found by each inspector. However, no inspector may

57 be identified by name in this report. Such reports shall be filed
58 with the Governor and the Legislature on or before December 31
59 of the same year for which it was made, and shall upon proper
60 authority be printed and distributed to interested persons.

61 (9) Call or subpoena witnesses, for the purpose of
62 conducting hearings into mine fires, mine explosions or any
63 mine accident; to administer oaths and to require production
64 of any books, papers, records or other documents relevant or
65 material to any hearing, investigation or examination of any
66 mine permitted by this chapter. Any witness so called or
67 subpoenaed shall receive \$40 per diem and shall receive
68 mileage at the rate of \$.15 for each mile actually traveled,
69 which shall be paid out of the State Treasury upon a
70 requisition upon the State Auditor, properly certified by the
71 witness.

72 (10) Institute civil actions for relief, including permanent
73 or temporary injunctions, restraining orders, or any other
74 appropriate action in the appropriate federal or state court
75 whenever any operator or the operator's agent violates or
76 fails or refuses to comply with any lawful order, notice or
77 decision issued by the director or his or her representative.

78 (11) Beginning January 1, 2013, the director shall share
79 information regarding suspension or revocation of a
80 certificate of a certified person, as defined in this article for
81 violation of the substance abuse provisions of article one-a of
82 this chapter with other states that subject similar persons to
83 disciplinary action for violation of a substance abuse policy.

84 (12) The director shall propose rules for legislative
85 approval pursuant to article three, chapter twenty-nine-a of
86 this code, a rule establishing a program for the sharing of
87 information between employers who employ certified persons
88 regarding the discharge of persons in safety sensitive
89 positions as defined in section one, article one-a of this

90 chapter for violation of an employer's substance abuse
91 policy.

92 (13) Perform all other duties which are expressly imposed
93 upon him or her by the provisions of this chapter.

94 (14) Impose reasonable fees upon applicants taking tests
95 administered pursuant to the requirements of this chapter.

96 (15) Impose reasonable fees for the issuance of
97 certifications required under this chapter.

98 (16) Prepare study guides and other forms of publications
99 relating to mine safety and charge a reasonable fee for the
100 sale of the publications.

101 (17) Make all records of the office open for inspection of
102 interested persons and the public.

103 (c) The Director of the Office of Miners' Health, Safety
104 and Training, or his or her designee, upon receipt of the list
105 of approved innovative mine safety technologies from the
106 Mine Safety Technology Task Force, has thirty days to
107 approve or amend the list as provided in section four, article
108 thirteen-bb, chapter eleven of this code. At the expiration of
109 the time period, the director shall publish the list of approved
110 innovative mine safety technologies as provided in section
111 four, article thirteen-bb, chapter eleven of this code.

**§22A-1-13a. Study of mine inspector qualification, compensation,
training and inspection programs.**

1 The director is directed to conduct a study of the
2 minimum qualifications for mine inspectors, the minimum
3 compensation paid to mine inspectors and the overall training
4 program established for mine inspectors. The study shall
5 identify ways to attract and retain new, qualified mine
6 inspectors to minimize the effect of the anticipated retirement

7 of a significant number of current inspectors. Additionally,
8 the study shall examine ways to improve the training
9 programs for mine inspectors by focusing on technological
10 advances in coal mining techniques, best practices used in
11 modern coal mines and proper mine ventilation. Further, the
12 director shall perform an assessment of the resources and
13 qualification of inspectors necessary to approve mine
14 ventilation plans. Finally, the study shall make
15 recommendations on how to reassess mine inspection
16 priorities to ensure that mines having a history of numerous
17 safety violations are inspected more frequently than mines
18 having a history of comparatively few safety violations while
19 preserving the minimum number of inspections required by
20 the code. By December 31, 2012, the Office of Miners'
21 Health, Safety and Training shall report to the Legislature's
22 Joint Committee on Government and Finance with
23 recommendations regarding the implementation of its
24 findings.

**§22A-1-14. Director and inspectors authorized to enter mines;
duties of inspectors to examine mines; no advance
notice of an inspection; reports after fatal
accidents.**

1 (a) The director, or his or her authorized representative,
2 has authority to visit, enter, and examine any mine, whether
3 underground or on the surface, and may call for the assistance
4 of any district mine inspector or inspectors whenever
5 assistance is necessary in the examination of any mine. The
6 operator of every coal mine shall furnish the director or his or
7 her authorized representative proper facilities for entering the
8 mine and making examination or obtaining information.

9 (b) If miners or one of their authorized representatives,
10 have reason to believe, at any time, that dangerous conditions
11 are existing or that the law is not being complied with, they

12 may request the director to have an immediate investigation
13 made.

14 (c) Mine inspectors shall devote their full-time and
15 undivided attention to the performance of their duties, and
16 they shall examine all of the mines in their respective districts
17 at least four times annually, and as often, in addition thereto,
18 as the director may direct, or the necessities of the case or the
19 condition of the mine or mines may require, with no advance
20 notice of inspection provided to any person, and they shall
21 make a personal examination of each working face and all
22 entrances to abandoned parts of the mine where gas is known
23 to liberate, for the purpose of determining whether an
24 imminent danger, referred to in section fifteen of this article,
25 exists in the mine, or whether any provision of article two of
26 this chapter is being violated or has been violated within the
27 past forty-eight hours in the mine. No other person shall,
28 with the intent of undermining the integrity of an
29 unannounced mine inspection, provide advance notice of any
30 inspection or of an inspector's presence at a mine to any
31 person at that mine. Any person who, with the requisite
32 intent, knowingly causes or conspires to provide advance
33 notice of any inspection or of an inspector's presence at a
34 mine is guilty of a felony and, upon conviction thereof, shall
35 be fined not more than \$15,000 or imprisoned in a state
36 correctional facility not less than one year and not more than
37 five years, or both fined and imprisoned.

38 (d) In addition to the other duties imposed by this article
39 and article two of this chapter, it is the duty of each inspector
40 to note each violation he or she finds and issue a finding,
41 order, or notice, as appropriate for each violation so noted.
42 During the investigation of any accident, any violation may
43 be noted whether or not the inspector actually observes the
44 violation and whether or not the violation exists at the time
45 the inspector notes the violation, so long as the inspector has

46 clear and convincing evidence the violation has occurred or
47 is occurring.

48 (e) On or after July 1, 2012, an inspector shall require the
49 operator or other employer to investigate all complaints
50 received by the Office of Miners' Health, Safety and Training
51 involving a certified person's substance abuse or alcohol
52 related impairment at a mine. Within thirty days following
53 notification by the Office of Miners' Health, Safety and
54 Training to the operator or other employer of the complaint,
55 the operator or other employer shall file with the Director a
56 summary of its investigation into the alleged substance abuse
57 or alcohol related impairment of a certified person.

58 (f) The mine inspector shall visit the scene of each fatal
59 accident occurring in any mine within his or her district and
60 shall make an examination into the particular facts of the
61 accident; make a report to the director, setting forth the
62 results of the examination, including the condition of the
63 mine and the cause or causes of the fatal accident, if known,
64 and all the reports shall be made available to the interested
65 parties, upon written requests.

66 (g) At the commencement of any inspection of a coal mine
67 by an authorized representative of the director, the authorized
68 representative of the miners at the mine at the time of the
69 inspection shall be given an opportunity to accompany the
70 authorized representative of the director on the inspection.

§22A-1-21. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 of any health or safety rule occurs or who violates any other
3 provisions of this chapter shall be assessed a civil penalty by
4 the director under subdivision (3) of this subsection, which
5 shall be not more than \$5,000, for each violation, unless the
6 director determines that it is appropriate to impose a special
7 assessment for the violation, pursuant to the provisions of

8 subdivision (2), subsection (b) of this section. Each violation
9 constitutes a separate offense. In determining the amount of
10 the penalty, the director shall consider the operator's history
11 of previous violations, whether the operator was negligent,
12 the appropriateness of the penalty to the size of the business
13 of the operator charged, the gravity of the violation and the
14 demonstrated good faith of the operator charged in attempting
15 to achieve rapid compliance after notification of a violation.

16 (2) Revisions to the assessment of civil penalties shall be
17 proposed as legislative rules in accordance with the
18 provisions of article three, chapter twenty-nine-a of this code.

19 (3) Any miner who knowingly violates any health or
20 safety provision of this chapter or health or safety rule
21 promulgated pursuant to this chapter is subject to a civil
22 penalty assessed by the director under subdivision (4) of this
23 subsection which shall not be more than \$250 for each
24 occurrence of the violation.

25 (4) A civil penalty under subdivision (1) or (2) of
26 subsection (a) of this section or subdivision (1) or (2) of
27 subsection (b) of this section shall be assessed by the director
28 only after the person charged with a violation under this
29 chapter or rule promulgated pursuant to this chapter has been
30 given an opportunity for a public hearing and the director has
31 determined, by a decision incorporating the director's
32 findings of fact in the decision, that a violation did occur and
33 the amount of the penalty which is warranted and
34 incorporating, when appropriate, an order in the decision
35 requiring that the penalty be paid. Any hearing under this
36 section shall be of record.

37 (5) If the person against whom a civil penalty is assessed
38 fails to pay the penalty within the time prescribed in the
39 order, the director may file a petition for enforcement of the
40 order in any appropriate circuit court. The petition shall

41 designate the person against whom the order is sought to be
42 enforced as the respondent. A copy of the petition shall
43 immediately be sent by certified mail, return receipt
44 requested, to the respondent and to the representative of the
45 miners at the affected mine or the operator, as the case may
46 be. The director shall certify and file in the court the record
47 upon which the order sought to be enforced was issued. The
48 court has jurisdiction to enter a judgment enforcing,
49 modifying and enforcing as modified, or setting aside, in
50 whole or in part, the order and decision of the director or it
51 may remand the proceedings to the director for any further
52 action it may direct. The court shall consider and determine
53 de novo all relevant issues, except issues of fact which were
54 or could have been litigated in review proceedings before a
55 circuit court under section twenty of this article and, upon the
56 request of the respondent, those issues of fact which are in
57 dispute shall be submitted to a jury. On the basis of the jury's
58 findings the court shall determine the amount of the penalty
59 to be imposed. Subject to the direction and control of the
60 Attorney General, attorneys appointed for the director may
61 appear for and represent the director in any action to enforce
62 an order assessing civil penalties under this subdivision.

63 (b) (1) Any operator who knowingly violates a health or
64 safety provision of this chapter or health or safety rule
65 promulgated pursuant to this chapter, or knowingly violates or
66 fails or refuses to comply with any order issued under section
67 fifteen of this article, or any order incorporated in a final
68 decision issued under this article, except an order incorporated
69 in a decision under subsection (a) of this section or subsection
70 (b), section twenty-two of this article, shall be assessed a civil
71 penalty by the director under subdivision (5), subsection (a) of
72 this section of not more than \$5,000 and for a second or
73 subsequent violation assessed a civil penalty of not more than
74 \$10,000, unless the director determines that it is appropriate to
75 impose a special assessment for the violation, pursuant to the
76 provisions of subdivision (2) of this subsection.

77 (2) In lieu of imposing a civil penalty pursuant to the
78 provisions of subsection (a) of this section or subdivision (1)
79 of this subsection, the director may impose a special
80 assessment if an operator violates a health or safety provision
81 of this chapter or health or safety rule promulgated pursuant
82 to this chapter and the violation is of serious nature and
83 involves one or more of the following by the operator:

84 (A) Violations involving fatalities and serious injuries;

85 (B) Failure or refusal to comply with any order issued
86 under section fifteen of this article;

87 (C) Operation of a mine in the face of a closure order;

88 (D) Violations involving an imminent danger;

89 (E) Violations involving an extraordinarily high degree
90 of negligence or gravity or other unique aggravating
91 circumstances; or

92 (F) A discrimination violation under section twenty-two
93 of this article.

94 In situations in which the director determines that there
95 are factors present which would make it appropriate to
96 impose a special assessment, the director shall assess a civil
97 penalty of at least \$5,000 and not more than \$10,000.

98 (c) Whenever a corporate operator knowingly violates a
99 health or safety provision of this chapter or health or safety
100 rules promulgated pursuant to this chapter, or knowingly
101 violates or fails or refuses to comply with any order issued
102 under this law or any order incorporated in a final decision
103 issued under this law, except an order incorporated in a
104 decision issued under subsection (a) of this section or
105 subsection (b), section twenty-two of this article, any

106 director, officer or agent of the corporation who knowingly
107 authorized, ordered or carried out the violation, failure or
108 refusal is subject to the same civil penalties that may be
109 imposed upon a person under subsections (a) and (b) of this
110 section.

111 (d) Whoever knowingly makes any false statement,
112 representation or certification in any application, record,
113 report, plan or other document filed or required to be
114 maintained pursuant to this law or any order or decision
115 issued under this law is guilty of a misdemeanor and, upon
116 conviction thereof, shall be fined not more than \$10,000 or
117 confined in jail not more than one year, or both fined and
118 confined. The conviction of any person under this subsection
119 shall result in the revocation of any certifications held by the
120 person under this chapter which certified or authorized the
121 person to direct other persons in coal mining by operation of
122 law and bars that person from being issued any license under
123 this chapter, except a miner's certification, for a period of not
124 less than one year or for a longer period as may be
125 determined by the director.

126 (e) Whoever willfully distributes, sells, offers for sale,
127 introduces or delivers in commerce any equipment for use in
128 a coal mine, including, but not limited to, components and
129 accessories of the equipment, who willfully misrepresents the
130 equipment as complying with the provisions of this law, or
131 with any specification or rule of the director applicable to the
132 equipment, and which does not comply with the law,
133 specification or rule, is guilty of a misdemeanor and, upon
134 conviction thereof, is subject to the same fine and
135 confinement that may be imposed upon a person under
136 subsection (d) of this section.

137 (f) Any person who willfully violates any safety standard
138 pursuant to this chapter or a rule promulgated thereunder that
139 causes a fatality or who willfully orders or carries out such

140 violation that causes a fatality is guilty of a felony and, upon
141 conviction thereof, shall be fined not more than \$10,000 or
142 confined in a state correctional facility not less than one year
143 and not more than five years, or both fined and imprisoned.

144 (g) There is continued in the Treasury of the State of
145 West Virginia a Special Health, Safety and Training Fund.
146 All civil penalty assessments collected under this section
147 shall be collected by the director and deposited with the
148 Treasurer of the State of West Virginia to the credit of the
149 Special Health, Safety and Training Fund. The fund shall be
150 used by the director who is authorized to expend the moneys
151 in the fund for the administration of this chapter.

**§22A-1-40. Reporting violations, accident investigations;
witness interviews.**

1 (a) To the extent permitted by law, any person meeting
2 with, or providing a statement to, the director may request to
3 do so on a confidential basis without the consent, presence,
4 involvement or knowledge of any third party. Upon such a
5 request, the director shall keep the identity of any individual
6 providing such a statement and the statement itself
7 confidential, to the extent permitted by law, and the statement
8 shall be exempt from disclosure under article one, chapter
9 twenty-nine-b of this code. Nothing in this section precludes
10 a person from being represented when speaking with the
11 director. Further, nothing in this section precludes a person
12 under subpoena or who is voluntarily speaking with the
13 director from authorizing any other person from participation
14 in such meeting or statement.

15 (b) If any miner is entrapped, fatally injured or otherwise
16 unable, as the result of an accident, to designate a
17 representative to observe witness interviews and
18 investigatory hearings conducted in an accident investigation,
19 the miner's closest relative may designate one representative

20 who may, subject to subsection (a) of this section, attend
21 witness interviews and investigatory hearings regarding the
22 accident for the sole purpose of observing such interviews
23 and hearings and conveying information to the accident
24 victim's family: *Provided*, That the right of a designated
25 representative to observe witness interviews and
26 investigatory hearings pursuant to this subsection shall be
27 subject to subsection (a) of this section and shall not extend
28 to interviews or investigatory hearings of a criminal nature
29 conducted by state or federal inspectors or other state or
30 federal law enforcement officers. No more than five
31 representatives designated pursuant to this section may attend
32 witness interviews and investigatory hearings for the purpose
33 of observing such interviews and hearings and conveying
34 information to accident victims' families.

35 (c) The director shall, in consultation with the Board of
36 Coal Mine Health and Safety, develop a list of persons skilled
37 in the fields of grief and crisis management, communications
38 and family support. Following any mining accident
39 involving entrapped miners or fatal injuries, the director shall
40 promptly provide the list of such individuals to the families
41 of the accident victim or victims. The individuals contained
42 on the list developed by the director shall be available as a
43 resource to families of accident victims who seek their
44 assistance. The list shall also contain a reference to this code
45 section and a statement that the family has the right to
46 designate a representative of their choosing regardless of
47 whether that person is named on the list.

**ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY
AND TRAINING; ADMINISTRATION;
SUBSTANCE ABUSE.**

**§22A-1A-1. Substance abuse screening; minimum requirements;
standards and procedures for screening.**

1 (a) Every employer of certified persons, as defined in
2 section two, article one of this chapter, shall implement a

3 substance abuse screening policy and program that shall, at
4 a minimum, include:

5 (1) A preemployment, ten-panel urine test for the
6 following and any other substances as set out in rules adopted
7 by the Office of Miners' Health, Safety and Training:

8 (A) Amphetamines,

9 (B) Cannabinoids/THC,

10 (C) Cocaine,

11 (D) Opiates,

12 (E) Phencyclidine (PCP),

13 (F) Benzodiazepines,

14 (G) Propoxyphene,

15 (H) Methadone,

16 (I) Barbiturates, and

17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are
19 certified as complying with standards and procedures set out
20 in the United States Department of Transportation's rule, 49
21 CFR Part 40, which may be amended from time to time by
22 legislative rule of the Office of Miners' Health, Safety and
23 Training. Collected samples shall be tested by laboratories
24 certified by the United States Department of Health and
25 Human Services, Substance Abuse and Mental Health
26 Services Administration (SAMHSA) for collection and
27 testing. Notwithstanding the provisions of this subdivision,
28 the mine operator may implement a more stringent substance
29 abuse screening policy and program;

30 (2) A random substance abuse testing program covering
31 the substances referenced in subdivision (1) of this
32 subsection. “Random testing” means that each person subject
33 to testing has a statistically equal chance of being selected for
34 testing at random and at unscheduled times. The selection of
35 persons for random testing shall be made by a scientifically
36 valid method, such as a random number table or a
37 computer-based random number generator that is matched
38 with the persons’ social security numbers, payroll
39 identification numbers, or other comparable identifying
40 numbers; and

41 (3) Review of the substance abuse screening program
42 with all persons required to be tested at the time of
43 employment, upon a change in the program and annually
44 thereafter.

45 (b) For purposes of this subsection, preemployment
46 testing shall be required upon hiring by a new employer,
47 rehiring by a former employer following a termination of the
48 employer/employee relationship, or transferring to a West
49 Virginia mine from an employer’s out-of-state mine to the
50 extent that any substance abuse test required by the employer
51 in the other jurisdiction does not comply with the minimum
52 standards for substance abuse testing required by this article.
53 Furthermore, the provisions of this section apply to all
54 employers that employ certified persons who work in mines,
55 regardless of whether that employer is an operator,
56 contractor, subcontractor or otherwise.

57 (c) The employer or his or her agent shall notify the
58 director at least quarterly, on a form prescribed by the
59 director, of the number of pre-employment substance abuse
60 screening tests administered during the prior calendar quarter
61 and the number of positive test results associated with the
62 substance abuse screening tests administered.

63 (d) The employer or his or her agent shall notify the
64 director, on a form prescribed by the director, within seven
65 days following completion of an arbitration conducted
66 pursuant to a collective bargaining agreement applicable to
67 the certified person, if any, of discharging a certified person
68 for violation of the employer's substance abuse screening
69 policy and program. The notification shall be accompanied
70 by a record of the test showing positive results or other
71 violation. Notice shall result in the immediate temporary
72 suspension of all certificates held by the certified person who
73 failed the screening, pending a hearing before the board of
74 appeals pursuant to section two of this article.

75 (e) Suspension or revocation of a certified person's
76 certificate as a miner or other miner specialty in another
77 jurisdiction by the applicable regulatory or licensing
78 authority for substance abuse-related matters shall result in
79 the director immediately and temporarily suspending the
80 certified person's West Virginia certificate until such time as
81 the certified person's certification is reinstated in the other
82 jurisdiction.

83 (f) The provisions of this article shall not be construed to
84 preclude an employer from developing or maintaining a drug
85 and alcohol abuse policy, testing program or substance abuse
86 program that exceeds the minimum requirements set forth in
87 this section. The provisions of this article shall also not be
88 construed to require an employer to alter, amend, revise or
89 otherwise change, in any respect, a previously established
90 substance abuse screening policy and program that meets or
91 exceeds the minimum requirements set forth in this section.
92 The provisions of this article shall require an employer to
93 subject its employees who as part of their employment are
94 regularly present at a mine and who are employed in a safety-
95 sensitive position to preemployment and random substance
96 abuse tests: *Provided*, That each employer shall retain the
97 discretion to establish the parameters of its substance abuse
98 screening policy and program so long as it meets the

99 minimum requirements of this article. For purposes of this
100 section, a “safety-sensitive position” means an employment
101 position where the employee’s job responsibilities include
102 duties and activities that involve the personal safety of the
103 employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

1 (a) Any hearing conducted after the temporary suspension
2 of a certified person’s certificate pursuant to this article, shall
3 be conducted within sixty days of the temporary suspension.
4 The Board of Appeals shall make every effort to hold the
5 hearing within forty days of the temporary suspension.

6 (b) All hearings of the Board of Appeals pursuant to this
7 section shall be conducted in accordance with the provisions
8 of subsection (c), section thirty-one, article one of this
9 chapter. The Board of Appeals may suspend the certificate
10 or certificates of a certified person for violation of this article
11 or for any other violation of this chapter pertaining to
12 substance abuse. The Board of Appeals may impose further
13 disciplinary actions for repeat violations. The director shall
14 have the authority to propose legislative rules for
15 promulgation in accordance with article three, chapter
16 twenty-nine-a of this code to establish the disciplinary actions
17 referenced in this section following the receipt of
18 recommendations from the Board of Coal Mine Health and
19 Safety following completion of the study required pursuant
20 to section fourteen, article six of this chapter. The legislative
21 rules authorized by this subsection shall not, however,
22 include any provisions requiring an employer to take or
23 refrain from taking any specific personnel action or
24 mandating any employer to establish or maintain an
25 employer-funded substance abuse rehabilitation program.

26 (c) No person whose certification is suspended or
27 revoked under this section may perform any duties under any

28 other certification issued under this chapter, during the period
29 of the suspension imposed by the Board of Appeals.

30 (d) Any party adversely affected by a final order or
31 decision issued by the Board of Appeals hereunder is entitled
32 to judicial review thereof pursuant to section four, article
33 five, chapter twenty-nine-a of this code.

§22A-1A-3. Disclosure of records exempt; exceptions.

1 Records of substance abuse and alcohol screening tests,
2 written or otherwise, received by the Office of Miners'
3 Health, Safety and Training, its employees, agents and
4 representatives are confidential communications and are
5 exempt from disclosure under article one, chapter
6 twenty-nine-b of the code, except as follows:

7 (a) Where release of the information is authorized solely
8 pursuant to a written consent form signed voluntarily by the
9 person tested. The consent form shall contain the following:

10 (1) The name of the person who is authorized to obtain
11 the information;

12 (2) The purpose of the disclosure;

13 (3) The precise information to be disclosed;

14 (4) The duration of the consent; and

15 (5) The signature of the person authorizing the release of
16 the information;

17 (b) Where the release of the information is compelled by
18 the Board of Appeals or a court of competent jurisdiction;

19 (c) Where the release of the information is relevant to a
20 legal claim asserted by the person tested;

21 (d) Where the information is used by the entity
22 conducting the substance abuse or alcohol screening test in
23 defense of a civil or administrative action related to the
24 testing or results, or to consult with its legal counsel; or

25 (e) Where release of the information is deemed
26 appropriate by the Board of Appeals or a court of competent
27 jurisdiction in a disciplinary proceeding.

§22A-1A-4. Effective date.

1 The provisions of this article are effective beginning
2 January 1, 2013.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

1 (a) A mine operator shall submit a detailed ventilation
2 plan and any addendums to the director for review and
3 comment. The mine operator shall review the plan with the
4 director and address concerns to the extent practicable. The
5 operator shall deliver to the miners' representative employed
6 by the operator at the mine, if any, a copy of the operator's
7 proposed annual ventilation plan at least ten days prior to the
8 date of submission. The miners' representative, if any, shall
9 be afforded the opportunity to submit written comments to
10 the operator prior to such submission; in addition the miners'
11 representative, if any, may submit written comments to the
12 director. The director shall submit any concern that is not
13 addressed to the United States Department of Labor - Mine
14 Safety and Health Administration [MSHA] through
15 comments to the plan. The mine operator shall provide a
16 copy of the plan to the director ten days prior to the submittal
17 of the plan to MSHA.

18 (b) The operator shall give the director a copy of the
19 MSHA-approved plan and any addendums as soon as the
20 operator receives the approval.

21 (c) In the event of an unforeseen situation requiring
22 immediate action on a plan revision, the operator shall submit
23 the proposed revision to the director and the miners'
24 representative, if any, employed by the operator at the mine
25 when the proposed revision is submitted to MSHA. The
26 director shall work with the operator to review and comment on
27 the proposed plan revision to MSHA as quickly as possible.

28 (d) Upon approval by MSHA, the plan is enforceable by
29 the director. The approved plan and all revisions and
30 addendums thereto shall be posted on the mine bulletin board
31 and made available for inspection by the miners at that mine
32 for the period of time that they are in effect.

**§22A-2-12. Instruction of employees and supervision of
apprentices; annual examination of persons
using approved methane detecting devices;
records of examination; maintenance of
methane detectors, etc.**

1 (a) The Office of Miners' Health, Safety and Training
2 shall prescribe and establish a course of instruction in mine
3 safety and particularly in dangers incident to employment in
4 mines and in mining laws and rules, which course of
5 instruction shall be successfully completed within twelve
6 weeks after any person is first employed as a miner. It is
7 further the duty and responsibility of the Office of Miners'
8 Health, Safety and Training to see that the course is given to
9 all persons as above provided after their first being employed
10 in any mine in this state. In addition to other enforcement
11 actions available to the director, upon a finding by the
12 director of the existence of a pattern of conduct creating a
13 hazardous condition at a mine, the director shall notify the
14 Board of Miners' Training, Education and Certification,
15 which shall cause additional training to occur at the mine
16 addressing such safety issue or issues identified by the
17 director, pursuant to article seven of this chapter.

18 (b) It is the duty of the mine foreman or the assistant mine
19 foreman of every coal mine in this state to see that every person
20 employed to work in the mine is, before beginning work therein,
21 instructed in the particular danger incident to his or her work in
22 the mine, and furnished a copy of the mining laws and rules of
23 the mine. It is the duty of every mine operator who employs
24 apprentices, as that term is used in sections three and four, article
25 eight of this chapter to ensure that the apprentices are effectively
26 supervised with regard to safety practices and to instruct
27 apprentices in safe mining practices. Every apprentice shall work
28 under the direction of the mine foreman or his or her assistant
29 mine foreman and they are responsible for his or her safety. The
30 mine foreman or assistant mine foreman may delegate the
31 supervision of an apprentice to an experienced miner, but the
32 foreman and his or her assistant mine foreman remain responsible
33 for the apprentice. During the first one hundred twenty days of
34 employment in a mine, the apprentice shall work within sight and
35 sound of the mine foreman, assistant mine foreman, or an
36 experienced miner, and in a location that the mine foreman,
37 assistant mine foreman or experienced miner can effectively
38 respond to cries for help of the apprentice. The location shall be
39 on the same side of any belt, conveyor or mining equipment.

40 (c) Persons whose duties require them to use an approved
41 methane detecting device or other approved methane
42 detectors shall be examined at least annually as to their
43 competence by a qualified official from the Office of Miners'
44 Health, Safety and Training and a record of the examination
45 shall be kept by the operator and the office. Approved
46 methane detecting devices and other approved methane
47 detectors shall be given proper maintenance and shall be
48 tested before each working shift. Each operator shall provide
49 for the proper maintenance and care of the permissible
50 approved methane detecting device or any other approved
51 device for detecting methane and oxygen deficiency by a
52 person trained in the maintenance, and, before each shift, care
53 shall be taken to ensure that the approved methane detecting

54 device or other device is in a permissible condition and
55 maintained according to manufacturer's specifications.

§22A-2-16. Examinations of reports of fire bosses.

1 The mine foreman shall, each day, read carefully and
2 countersign with ink or indelible pencil all reports entered in
3 the record book of the fire bosses. The mine foreman shall
4 supervise the fire boss or fire bosses, except as provided in
5 section twenty-one of this article. No less frequently than bi-
6 weekly, the superintendent or, if there is no superintendent,
7 the senior person at the mine shall obtain complete copies of
8 the books of the fire bosses, and acknowledge that he or she
9 has reviewed such copies and acted accordingly. This
10 acknowledgment shall be made by signing a book prescribed
11 by the director for that purpose.

**§22A-2-20. Preparation of danger signal by fire boss or certified
person acting as such prior to examination;
report; records open for inspection.**

1 (a) It is the duty of the fire boss, or a certified person
2 acting as such, to prepare a danger signal (a separate signal
3 for each shift) with red color at the mine entrance at the
4 beginning of his or her shift or prior to his or her entering the
5 mine to make his or her examination and, except for those
6 persons already on assigned duty, no person except the mine
7 owner, operator or agent, and only then in the case of
8 necessity, shall pass beyond this danger signal until the mine
9 has been examined by the fire boss or other certified person
10 and the mine or certain parts thereof reported by him or her
11 to be safe. When reported by him or her to be safe, the danger
12 sign or color thereof shall be changed to indicate that the
13 mine is safe in order that employees going on shift may begin
14 work. Each person designated to make the fire boss
15 examinations shall be assigned a definite underground area of
16 the mine, and, in making his or her examination shall
17 examine all active working places in the assigned area and
18 make tests with an approved device for accumulations of

19 methane and oxygen deficiency; examine seals and doors;
20 examine and test the roof, face and ribs in the working places
21 and on active roadways and travelways, approaches to
22 abandoned workings, accessible falls in active sections and
23 areas where any person is scheduled to work or travel
24 underground. He or she shall place his or her initials and the
25 date at or near the face of each place he or she examines.
26 Should he or she find a condition which he or she considers
27 dangerous to persons entering the areas, he or she shall place
28 a conspicuous danger sign at all entrances to the place or
29 places. Only persons authorized by the mine management
30 may enter the places while the sign is posted and only for the
31 purpose of eliminating the dangerous condition. Upon
32 completing his or her examination he or she shall report by
33 suitable communication system or in person the results of this
34 examination to a certified person designated by mine
35 management to receive and record the report, at a designated
36 station on the surface of the premises of the mine or
37 underground, before other persons enter the mine to work in
38 coal-producing shifts. He or she shall also record the results
39 of his or her examination with ink or indelible pencil in a
40 book prescribed by the director, kept for the purpose at a
41 place on the surface of the mine designated by mine
42 management. All records of daily and weekly reports, as
43 prescribed herein, shall be open for inspection by interested
44 persons.

45 (b) *Supplemental examination.* -- When it becomes
46 necessary to have workers enter areas of the mine not
47 covered during the preshift examination, a supplemental
48 examination shall be performed by a fire boss or certified
49 person acting as such within three hours before any person
50 enters the area. The fire boss or certified person acting as
51 such shall examine the area for hazardous conditions,
52 determine if air is traveling in its proper direction and test for
53 oxygen deficiency and methane.

54 (c) Each examined area shall be certified by date, time
55 and the initials of the examiner.

56 (d) The results of the examination shall be recorded with
57 ink or indelible pencil by the examiner in the book referenced
58 in subsection (a) of this section before he or she leaves the
59 mine on that shift.

§22A-2-24. Control of coal dust; rock dusting.

1 (a) In all mines, dangerous accumulations of fine, dry
2 coal and coal dust shall be removed from the mine, and all
3 dry and dusty operating sections and haulageways and
4 conveyors and back entries shall be rock dusted or dust
5 allayed by other methods as may be approved by the director.

6 (b) All mines or locations in mines that are too wet or too
7 high in incombustible content for a coal dust explosion to
8 initiate or propagate are not required to be rock dusted during
9 the time any of these conditions prevail. Coal dust and other
10 dust in suspension in unusual quantities shall be allayed by
11 sprinkling or other dust allaying devices.

12 (c) In all dry and dusty mines or sections thereof, rock
13 dust shall be applied and maintained upon the roof, floor and
14 sides of all operating sections, haulageways and parallel
15 entries connected thereto by open crosscuts. Back entries
16 shall be rock dusted. Rock dust shall be so applied to include
17 the last open crosscut of rooms and entries, and to within
18 forty feet of faces. Rock dust shall be maintained in a
19 quantity that the incombustible content of the mine dust that
20 could initiate or propagate an explosion shall not be less than
21 eighty percent. The incombustible content of mine dust in
22 return entries shall also be equal to or greater than eighty
23 percent.

24 (d) Rock dust shall not contain more than five percent by
25 volume of quartz or free silica particles and shall be
26 pulverized so that one hundred percent will pass through a

27 twenty mesh screen and seventy percent or more will pass
28 through a two hundred mesh screen.

29 (e) If requested by the director, an operator shall provide
30 records establishing the quantity of bulk and bag rock dust
31 purchased for a period not to exceed the immediately
32 preceding six months.

§22A-2-43. Actions to detect and respond to excess methane.

1 The following actions are required to detect and respond
2 to excess methane:

3 (a) *Hand-held testing required.* -- In any mine, no
4 electrical equipment or permissible diesel powered equipment
5 may be brought in by the last open crosscut until a qualified
6 person tests for methane. If one percent or more methane is
7 present, the equipment may not be taken into the area until
8 the methane concentration is reduced to less than one percent.
9 Thereafter, subsequent methane examinations shall be made
10 at least every twenty minutes while any electrical or diesel
11 powered equipment is present and energized.

12 (b) *Location of tests.* -- Tests for methane concentrations
13 under this section shall be made at least twelve inches from
14 the roof, face, ribs and floor.

15 (c) *Working places and intake air courses.* --

16 (1) When one percent or more methane is present in a
17 working place or an intake air course, including an air course
18 in which a belt conveyor is located or in an area where
19 mechanized mining equipment is being installed or removed:

20 (A) Except intrinsically safe atmospheric monitoring
21 systems (AMS), electrically powered equipment in the
22 affected area shall be de-energized and other mechanized
23 equipment shall be shut off.

24 (B) Changes or adjustments shall be made at once to the
25 ventilation system to reduce the concentration of methane to
26 less than one percent.

27 (C) No other work shall be permitted in the affected area
28 until the methane concentration is less than one percent.

29 (2) When one and five-tenths percent or more methane is
30 present in a working place or an intake air course, including
31 an air course in which a belt conveyor is located or in an area
32 where mechanized mining equipment is being installed or
33 removed:

34 (A) Except for the mine foreman, assistant mine foreman,
35 or individuals authorized by the mine foreman or assistant
36 mine foreman, all individuals shall be withdrawn from the
37 affected area. If a federal or state mine inspector is present in
38 the area of the mine where one and five-tenths percent or
39 more of methane is detected, the federal or state mine
40 inspector and the miners' representative, if any, may remain
41 in the area with the mine foreman, assistant mine foreman or
42 other individuals authorized by the mine foreman or assistant
43 mine foreman.

44 (B) Except for intrinsically safe AMS, electrically
45 powered equipment in the affected area shall be disconnected
46 at the power source.

47 (d) *Return air split.--*

48 (1) When one percent or more methane is present in a
49 return air split between the last working place on a working
50 section and where that split of air meets another split of air or
51 the location at which the split is used to ventilate seals or
52 worked-out areas, changes or adjustments shall be made at
53 once to the ventilation system to reduce the concentration of
54 methane in the return air to less than one percent.

55 (2) When one and five-tenths percent or more methane is
56 present in a return air split between the last working place on
57 a working section and where that split of air meets another
58 split of air or the location where the split is used to ventilate
59 seals or worked-out areas, except for the mine foreman,
60 assistant mine foreman or individuals authorized by the mine
61 or assistant mine foreman, all individuals shall be withdrawn
62 from the affected area. If a federal or state mine inspector is
63 present in the area of the mine where one and five-tenths
64 percent or more of methane is detected, the federal or state
65 mine inspector and the miners' representative, if any, may
66 remain in the area with the mine foreman, assistant mine
67 foreman or other individuals authorized by the mine foreman
68 or assistant mine foreman.

69 (3) Other than intrinsically safe AMS, equipment in the
70 affected area shall be de-energized, electric power shall be
71 disconnected at the power source and other mechanized
72 equipment shall be shut off.

73 (4) No other work shall be permitted in the affected area
74 until the methane concentration in the return air is less than
75 one percent.

76 (e) *Return air split alternative.* --

77 (1) The provisions of this paragraph may apply if:

78 (A) The quantity of air in the split ventilating the active
79 workings is at least twenty seven thousand cubic feet per
80 minute in the last open crosscut or the quantity specified in
81 the approved ventilation plan, whichever is greater.

82 (B) The methane content of the air in the split is
83 continuously monitored during mining operations by an AMS
84 that gives a visual and audible signal on the working section
85 when the methane in the return air reaches one and five-
86 tenths percent and the methane content is monitored as
87 specified in the approved ventilation plan.

88 (C) Rock dust is continuously applied with a mechanical
89 duster to the return air course during coal production at a
90 location in the air course immediately outby the most inby
91 monitoring point.

92 (2) When one and five-tenths percent or more methane is
93 present in a return air split between a point in the return
94 opposite the section loading point and where that split of air
95 meets another split of air or where the split of air is used to
96 ventilate seals or worked-out areas:

97 (A) Changes or adjustments shall be made at once to the
98 ventilation system to reduce the concentration of methane in
99 the return air below one and five-tenths percent.

100 (B) Except for the mine foreman, assistant mine foreman
101 or individuals authorized by the mine foreman or assistant
102 mine foreman, all individuals shall be withdrawn from the
103 affected area. If a federal or state mine inspector is present in
104 the area of the mine where one and five-tenths percent or
105 more of methane is detected, the federal or state mine
106 inspector and the miners' representative, if any, may remain
107 in the area with the mine foreman, assistant mine foreman or
108 other individuals authorized by the mine foreman or assistant
109 mine foreman.

110 (C) Except for intrinsically safe AMS, equipment in the
111 affected area shall be de-energized, electric power shall be
112 disconnected at the power source and other mechanized
113 equipment shall be shut off.

114 (D) No other work shall be permitted in the affected area
115 until the methane concentration in the return air is less than
116 one and five-tenths percent.

117 (f) *Bleeders and other return air courses.--*

118 The concentration of methane in a bleeder split of air
119 immediately before the air in the split joins another split of

120 air, or in a return air course other than as described in
121 subsections (d) and (e) of this section, shall not exceed two
122 percent.

123 (g) *Machine mounted methane monitors.* --

124 (1) Approved methane monitors shall be installed and
125 maintained on all face cutting machines, continuous miners,
126 longwall face equipment and other mechanized equipment
127 used to extract coal or load coal within the working place.

128 (2) The sensing device for methane monitors on longwall
129 shearing machines shall be installed at the return air end of
130 the longwall face. An additional sensing device also shall be
131 installed on the longwall shearing machine, downwind and as
132 close to the cutting head as practicable. An alternative
133 location or locations for the sensing device required on the
134 longwall shearing machine may be approved in the
135 ventilation plan.

136 (3) The sensing devices of methane monitors shall be
137 installed as close to the working face as practicable.

138 (4) Methane monitors shall be maintained in permissible
139 and proper operating condition and shall be calibrated with a
140 known air-methane mixture at least once every fifteen days
141 and a record of the calibration shall be recorded with ink or
142 indelible pencil by the person performing the calibration in a
143 book prescribed by the director and maintained on the
144 surface. Calibration records shall be retained for inspection
145 for at least one year from the date of the test. To assure that
146 methane monitors are properly maintained and calibrated, the
147 operator shall use persons properly trained in the
148 maintenance, calibration, and permissibility of methane
149 monitors to calibrate and maintain the devices.

150 (h) *Automatic de-energization of extraction apparatus.* --

151 When the methane concentration at any
152 machine-mounted methane monitor reaches one percent, the
153 monitor shall give a warning signal. The warning signal
154 device of the methane monitor shall be visible to a person
155 operating the equipment on which the monitor is mounted.
156 The methane monitor shall automatically de-energize the
157 extraction apparatus on the machine on which it is mounted,
158 but not the machine as a whole to facilitate proper mining
159 procedures, when:

160 (1) The methane concentration at any machine-mounted
161 methane monitor reaches one and twenty-five one hundredths
162 percent for a sustained period; or

163 (2) The monitor is not operating properly.

164 The machine's extraction apparatus may not again be
165 started in that place until the methane concentration measured
166 by the methane monitor is less than one percent.

167 (i) Compliance schedule for machine refit.--

168 Within one hundred twenty days of the effective date of
169 the amendments to this section, the Board of Coal Mine
170 Health and Safety shall promulgate legislative rules pursuant
171 to article three, chapter twenty-nine-a of this code
172 establishing calibration procedures, defining the term
173 "sustained period" for purposes of implementing this section,
174 and establishing a compliance schedule setting forth the time
175 frame in which all new and existing face cutting machines,
176 continuous miners, longwall face equipment and other
177 mechanized equipment used to extract coal or load coal
178 within the working place shall be refitted with methane
179 monitors. Enforcement of subsections (g) and (h) of this
180 section shall not commence until after the time frame is
181 established by rule.

§22A-2-43a. Operation of cutting and mining machines; repair and maintenance of same.

1 (a) *Qualified person to operate cutting machine.* -- No
2 person shall be placed in charge of a coal-cutting machine in
3 any mine who is not a qualified person, capable of
4 determining the safety of the roof and sides of the working
5 places and of detecting the presence of explosive gas, unless
6 they are accompanied by a certified or qualified person who
7 has passed such an examination.

8 (b) *Operation of mining machines.* -- Machine operators
9 and helpers shall use care while operating mining machines.
10 They shall examine the roof of the working place to see that
11 it is safe before starting to operate the machine. They shall
12 not move the machine while the cutter chain is in motion.
13 Additionally, no person shall operate the cutterhead on any
14 continuous miner while the machine is moving from place to
15 place underground: *Provided*, That a cutterhead may be
16 operated during clean up or when the machine is extracting
17 coal.

18 (c) *Repair and maintenance of mining machines.* -- (1)
19 Repairs or maintenance shall not be performed on mining
20 machines until the power is off and locked and tagged, if
21 required by law, and the machinery is blocked against
22 motion, except where machinery motion is necessary to make
23 adjustments. For purposes of this subsection, the following
24 terms shall have the following meanings:

25 (A) "Maintenance" means the labor of keeping machinery
26 in good working order and includes cleaning, clearing
27 jammed material or conducting examinations on or in close
28 proximity to machinery; and

29 (B) "Repair" means to fix, mend, or restore to good
30 working order.

31 (d) Methods to comply with the standard to prevent
32 inadvertent or unexpected motion include:

33 (A) Opening the circuit breaker for the affected
34 machinery, provided no energized parts or conductors are
35 exposed, and placing the run selector switch for startup of the
36 machinery in the “off” position. On longwall machinery, this
37 would include placing the lockout switch in the lockout
38 position in the area where the repair or maintenance is being
39 performed. A qualified electrician is required to de-energize
40 a circuit breaker if there are exposed energized parts or
41 conductors; or

42 (B) Opening the circuit breaker at the power center that
43 supplies power for the affected machinery and disengaging
44 the power cable coupler that supplies power to the
45 machinery; or

46 (C) Opening a manual visible disconnect switch, either
47 within the circuit or onboard the machinery, and securing the
48 switch against reenergization, as required by law. A control
49 circuit start-stop switch does not constitute a manual
50 disconnect; or

51 (D) In cases such as steeply inclined belt conveyors and
52 suspended loads, when removing the power alone will not
53 ensure against unintentional or inadvertent movement, the
54 machinery shall be physically blocked, in addition to
55 removing the power by one of the three methods described
56 above. Physical blocking may be achieved by the use of such
57 devices as bars, chocks or clamps.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or
2 goggles to protect their eyes. All employees shall have
3 approved goggles or shields and use the same where there is
4 a hazard from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all
6 other persons employed around moving equipment on the
7 surface and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which
9 may injure hands is handled, but gloves with gauntleted cuffs
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine: *Provided*, That metatarsal
13 guards are not required to be worn by persons when working
14 in those areas of underground mine workings which average
15 less than forty-eight inches in height as measured from the
16 floor to the roof of the underground mine workings.

17 (e) Approved eye protection shall be worn by all persons
18 while being transported in open-type man trips.

19 (f)(1) A self-contained self-rescue device approved by the
20 director shall be worn by each person underground or kept
21 within his or her immediate reach and the device shall be
22 provided by the operator. The self-contained self-rescue
23 device shall be adequate to protect a miner for one hour or
24 longer. Each operator shall train each miner in the use of the
25 device and refresher training courses for all underground
26 employees shall be held once each quarter. Quarters shall be
27 based on a calendar year.

28 (2) In addition to the requirements of subdivision (1) of
29 this subsection, the operator shall also provide caches of
30 additional self-contained self-rescue devices throughout the
31 mine in accordance with a plan approved by the director.
32 Each additional self-contained self-rescue device shall be
33 adequate to protect a miner for one hour or longer. The total
34 number of additional self-contained self-rescue devices, the
35 total number of storage caches and the placement of each
36 cache throughout the mine shall be established by rule
37 pursuant to subsection (i) of this section. A luminescent sign
38 with the words “**SELF-CONTAINED SELF-RESCUER**”
39 or “**SELF-CONTAINED SELF-RESCUERS**” shall be
40 conspicuously posted at each cache and luminescent direction
41 signs shall be posted leading to each cache. Lifeline cords or
42 other similar device, with reflective material at twenty-five

43 foot intervals, shall be attached to each cache from the last
44 open crosscut to the surface. The operator shall conduct
45 weekly inspections of each cache and each lifeline cord or
46 other similar device to ensure operability.

47 (3) Any person that, without the authorization of the
48 operator or the director, knowingly removes or attempts to
49 remove any self-contained self-rescue device or lifeline cord
50 from the mine or mine site with the intent to permanently
51 deprive the operator of the device or lifeline cord or
52 knowingly tampers with or attempts to tamper with the
53 device or lifeline cord shall be guilty of a felony and, upon
54 conviction thereof, shall be imprisoned in a state correctional
55 facility for not less than one year nor more than ten years or
56 fined not less than \$10,000 nor more than \$100,000, or both.

57 (g) (1) A wireless emergency communication device
58 approved by the director and provided by the operator shall
59 be worn by each person underground. The wireless
60 emergency communication device shall, at a minimum, be
61 capable of receiving emergency communications from the
62 surface at any location throughout the mine. Each operator
63 shall train each miner in the use of the device and provide
64 refresher training courses for all underground employees
65 during each calendar year. The operator shall install in or
66 around the mine any and all equipment necessary to transmit
67 emergency communications from the surface to each wireless
68 emergency communication device at any location throughout
69 the mine.

70 (2) Any person that, without the authorization of the
71 operator or the director, knowingly removes or attempts to
72 remove any wireless emergency communication device or
73 related equipment, from the mine or mine site with the intent
74 to permanently deprive the operator of the device or
75 equipment or knowingly tampers with or attempts to tamper
76 with the device or equipment shall be guilty of a felony and,
77 upon conviction thereof, shall be imprisoned in a state
78 correctional facility for not less than one year nor more than

79 ten years or fined not less than \$10,000 nor more than
80 \$100,000, or both.

81 (h) (1) A wireless tracking device approved by the director
82 and provided by the operator shall be worn by each person
83 underground. In the event of an accident or other emergency, the
84 tracking device shall, at a minimum, be capable of providing
85 real-time monitoring of the physical location of each person
86 underground: *Provided*, That no person shall discharge or
87 discriminate against any miner based on information gathered by
88 a wireless tracking device during nonemergency monitoring.
89 Each operator shall train each miner in the use of the device and
90 provide refresher training courses for all underground employees
91 during each calendar year. The operator shall install in or around
92 the mine all equipment necessary to provide real-time
93 emergency monitoring of the physical location of each person
94 underground.

95 (2) Any person that, without the authorization of the
96 operator or the director, knowingly removes or attempts to
97 remove any wireless tracking device or related equipment,
98 approved by the director, from a mine or mine site with the
99 intent to permanently deprive the operator of the device or
100 equipment or knowingly tampers with or attempts to tamper
101 with the device or equipment shall be guilty of a felony and,
102 upon conviction thereof, shall be imprisoned in a state
103 correctional facility for not less than one year nor more than
104 ten years or fined not less than \$10,000 nor more than
105 \$100,000, or both.

106 (i) The director may promulgate emergency and
107 legislative rules to implement and enforce this section
108 pursuant to the provisions of article three, chapter
109 twenty-nine-a of this code.

**§22A-2-66. Accident; notice; investigation by Office of Miners'
Health, Safety and Training.**

1 (a) For the purposes of this section, the term "accident"
2 means:

- 3 (1) The death of an individual at a mine;
- 4 (2) An injury to an individual at a mine which has a
5 reasonable potential to cause death;
- 6 (3) The entrapment of an individual;
- 7 (4) The unplanned inundation of a mine by a liquid or gas;
- 8 (5) The unplanned ignition or explosion of gas or dust;
- 9 (6) The unplanned ignition or explosion of a blasting
10 agent or an explosive;
- 11 (7) An unplanned fire in or about a mine not extinguished
12 within five minutes of ignition;
- 13 (8) An unplanned roof fall at or above the anchorage zone
14 in active workings where roof bolts are in use or an
15 unplanned roof or rib fall in active workings that impairs
16 ventilation or impedes passage;
- 17 (9) A coal or rock outburst that causes withdrawal of
18 miners or which disrupts regular mining activity for more
19 than one hour;
- 20 (10) An unstable condition at an impoundment, refuse
21 pile or culm bank which requires emergency action in order
22 to prevent failure, or which causes individuals to evacuate an
23 area, or the failure of an impoundment, refuse pile or culm
24 bank;
- 25 (11) Damage to hoisting equipment in a shaft or slope
26 which endangers an individual or which interferes with use
27 of the equipment for more than thirty minutes; and
- 28 (12) An event at a mine which causes death or bodily injury
29 to an individual not at the mine at the time the event occurs.

30 (b) Whenever any accident occurs in or about any coal mine
31 or the machinery connected therewith, it is the duty of the
32 operator or the mine foreman in charge of the mine to give
33 notice, within fifteen minutes of ascertaining the occurrence of
34 an accident, to the Mine and Industrial Accident Emergency
35 Operations Center at the statewide telephone number
36 established by the Director of the Division of Homeland
37 Security and Emergency Management pursuant to the
38 provisions of article five-b, chapter fifteen of this code stating
39 the particulars of the accident: *Provided*, That the operator or the
40 mine foreman in charge of the mine may comply with this notice
41 requirement by immediately providing notice to the appropriate
42 local organization for emergency services as defined in section
43 eight, article five of said chapter, or the appropriate local
44 emergency telephone system operator as defined in article six,
45 chapter twenty-four of this code: *Provided, however*, That if,
46 immediately upon ascertaining the occurrence of an accident, the
47 operator or the mine foreman in charge of the mine provides
48 notice to the local organization for emergency services as
49 defined in section eight, article five, chapter fifteen of this code,
50 or the appropriate local emergency telephone system operator as
51 defined in article six, chapter twenty-four of this code, then, in
52 order to comply with this subsection, the operator or mine
53 foreman in charge of the mine shall also give notice to the Mine
54 and Industrial Accident Emergency Operations Center at the
55 statewide number identified in this subsection within fifteen
56 minutes of completing the telephone call to the local
57 organization for emergency services or the appropriate local
58 emergency telephone system operator, as applicable: *Provided*,
59 *further*, That nothing in this subsection shall be construed to
60 relieve the operator from any reporting or notification
61 requirement under federal law.

62 (c) The Director of the Office of Miners' Health, Safety and
63 Training shall impose, pursuant to rules authorized in this
64 section, a civil administrative penalty of \$100,000 on the
65 operator if it is determined that the operator or the mine foremen
66 in charge of the mine failed to give immediate notice as required

67 in this section: *Provided*, That the director may waive imposition
68 of the civil administrative penalty at any time if he or she finds
69 that the failure to give immediate notice was caused by
70 circumstances wholly outside the control of the operator:
71 *Provided, however*, That the assessment of the civil
72 administrative penalty set forth in this subsection may be
73 appealed to the Board of Appeals, and the Board of Appeals
74 may, by unanimous vote, reduce the amount of the civil
75 administrative penalty upon a finding of mitigating
76 circumstances warranting the imposition of a lesser amount.

77 (d) If anyone is fatally injured, the inspector shall
78 immediately go to the scene of the accident and make
79 recommendations and render assistance as he or she may
80 deem necessary for the future safety of the men and
81 investigate the cause of the explosion or accident and make
82 a record. He or she shall preserve the record with the other
83 records in his or her office. The cost of the investigation
84 records shall be paid by the Office of Miners' Health, Safety
85 and Training. A copy shall be furnished to the operator and
86 other interested parties. To enable him or her to make an
87 investigation, he or she has the power to compel the
88 attendance of witnesses and to administer oaths or
89 affirmations. The director has the right to appear and testify
90 and to offer any testimony that may be relevant to the
91 questions and to cross-examine witnesses.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-4. Board powers and duties.

1 (a) The board shall adopt as standard rules the "coal mine
2 health and safety provisions of this chapter". Such standard
3 rules and any other rules shall be adopted by the board
4 without regard to the provisions of chapter twenty-nine-a of
5 this code. The Board of Coal Mine Health and Safety shall
6 devote its time toward promulgating rules in those areas

7 specifically directed by this chapter and those necessary to
8 prevent fatal accidents and injuries.

9 (b) The board shall review such standard rules and, when
10 deemed appropriate to improve or enhance coal mine health
11 and safety, revise the same or develop and promulgate new
12 rules dealing with coal mine health and safety.

13 (c) The board shall develop, promulgate and revise, as
14 may be appropriate, rules as are necessary and proper to
15 effectuate the purposes of article two of this chapter and to
16 prevent the circumvention and evasion thereof, all without
17 regard to the provisions of chapter twenty-nine-a of this code:

18 (1) Upon consideration of the latest available scientific
19 data in the field, the technical feasibility of standards, and
20 experience gained under this and other safety statutes, such
21 rules may expand protections afforded by this chapter
22 notwithstanding specific language therein, and such rules
23 may deal with subject areas not covered by this chapter to the
24 end of affording the maximum possible protection to the
25 health and safety of miners.

26 (2) No rules promulgated by the board shall reduce or
27 compromise the level of safety or protection afforded miners
28 below the level of safety or protection afforded by this
29 chapter.

30 (3) Any miner or representative of any miner, or any coal
31 operator has the power to petition the circuit court of
32 Kanawha County for a determination as to whether any rule
33 promulgated or revised reduces the protection afforded
34 miners below that provided by this chapter, or is otherwise
35 contrary to law: *Provided*, That any rule properly
36 promulgated by the board pursuant to the terms and
37 conditions of this chapter creates a rebuttable presumption
38 that said rule does not reduce the protection afforded miners
39 below that provided by this chapter.

40 (4) The director shall cause proposed rules and a notice
41 thereof to be posted as provided in section eighteen, article
42 one of this chapter. The director shall deliver a copy of such
43 proposed rules and accompanying notice to each operator
44 affected. A copy of such proposed rules shall be provided to
45 any individual by the director's request. The notice of
46 proposed rules shall contain a summary in plain language
47 explaining the effect of the proposed rules.

48 (5) The board shall afford interested persons a period of
49 not less than thirty days after releasing proposed rules to
50 submit written data or comments. The board may, upon the
51 expiration of such period and after consideration of all
52 relevant matters presented, promulgate such rules with such
53 modifications as it may deem appropriate.

54 (6) On or before the last day of any period fixed for the
55 submission of written data or comments under subdivision (5)
56 of this section, any interested person may file with the board
57 written objections to a proposed rule, stating the grounds
58 therefor and requesting a public hearing on such objections.
59 As soon as practicable after the period for filing such
60 objections has expired, the board shall release a notice
61 specifying the proposed rules to which objections have been
62 filed and a hearing requested.

63 (7) Promptly after any such notice is released by the
64 board under subdivision (6) of this section, the board shall
65 issue notice of, and hold a public hearing for the purpose of
66 receiving relevant evidence. Within sixty days after
67 completion of the hearings, the board shall make findings of
68 fact which shall be public, and may promulgate such rules
69 with such modifications as it deems appropriate. In the event
70 the board determines that a proposed rule should not be
71 promulgated or should be modified, it shall within a
72 reasonable time publish the reasons for its determination.

73 (8) All rules promulgated by the board shall be published
74 in the State Register and continue in effect until modified or
75 superseded in accordance with the provisions of this chapter.

76 (d) To carry out its duties and responsibilities, the board
77 is authorized to employ such personnel, including legal
78 counsel, experts and consultants, as it deems necessary. In
79 addition, the board, within the appropriations provided for by
80 the Legislature, may conduct or contract for research and
81 studies and is entitled to the use of the services, facilities and
82 personnel of any agency, institution, school, college or
83 university of this state.

84 (e) The director shall within sixty days of a coal mining
85 fatality or fatalities provide the board with all available
86 reports regarding such fatality or fatalities.

87 The board shall review all reports and any recommended
88 rules submitted by the director, receive any additional
89 information it requests, and may, on its own initiative,
90 investigate the circumstances surrounding a coal mining
91 fatality or fatalities and ascertain the cause or causes of such
92 coal mining fatality or fatalities. In order to investigate a coal
93 mining fatality or fatalities, a majority of the board must vote
94 in favor of commencing an investigation. Within ninety days
95 of the receipt of the Federal Mine Safety and Health
96 Administration's fatal accident report and the director's
97 report and recommended rules, the board shall review and
98 consider the presentation of said report and rules and the
99 results of its own investigation, if any, and, if a majority of all
100 voting board members determines that additional rules can
101 assist in the prevention of the specific type of fatality, the
102 board shall either accept and promulgate the director's
103 recommended rules, amend the director's recommended rules
104 or draft new rules, as are necessary to prevent the recurrence
105 of such fatality. If the board chooses to amend the director's
106 recommended rules or draft its own rules, a vote is required
107 within one hundred twenty days as to whether to promulgate

108 the amended rule or the rule drafted by the board: *Provided,*
109 That the board may, by majority vote, find that exceptional
110 circumstances exist and the deadline cannot be met:
111 *Provided, however,* That under no circumstances shall such
112 deadline be extended by more than a total of ninety days. A
113 majority vote of the board is required to promulgate any such
114 rule.

115 The board shall annually, not later than July 1, review the
116 major causes of coal mining injuries during the previous
117 calendar year, reviewing the causes in detail, and shall
118 promulgate such rules as may be necessary to prevent the
119 recurrence of such injuries.

120 Further, the board shall, on or before January 10, of each
121 year, submit a report to the Governor, President of the Senate
122 and Speaker of the House, which report shall include, but is
123 not limited to:

124 (1) The number of fatalities during the previous calendar
125 year, the apparent reason for each fatality as determined by
126 the office of miners' health, safety and training and the
127 action, if any, taken by the board to prevent such fatality;

128 (2) Any rules promulgated by the board during the last
129 year;

130 (3) What rules the board intends to promulgate during the
131 current calendar year;

132 (4) Any problem the board is having in its effort to
133 promulgate rules to enhance health and safety in the mining
134 industry;

135 (5) Recommendations, if any, for the enactment, repeal or
136 amendment of any statute which would cause the
137 enhancement of health and safety in the mining industry;

138 (6) Any other information the board deems appropriate;

139 (7) In addition to the report by the board, as herein
140 contained, each individual member of said board has right to
141 submit a separate report, setting forth any views contrary to
142 the report of the board, and the separate report, if any, shall
143 be appended to the report of the board and be considered a
144 part thereof.

§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and pillar sections.

1 The Board of Coal Mine Health and Safety is directed to
2 study the safety of working or traveling in bleeder or gob
3 areas of a longwall panel or pillar section of a mine where
4 only one travelable entry in and out of the area exists. The
5 study shall consider what additional roof control or other
6 measures, if any, should be implemented to ensure that
7 underground miners who work or travel in bleeder or gob
8 areas of a longwall panel or pillar section having only one
9 travelable entry in and out of the areas are at least as safe as
10 miners working in comparable areas with multiple travelable
11 entries in and out of the areas. By December 31, 2012, the
12 board shall report to the Legislature's Joint Committee on
13 Government and Finance with recommendations regarding
14 implementation of the findings of this study.

§22A-6-14. Study of mandatory substance abuse program.

1 The Board of Coal Mine Health and Safety is directed to
2 study the mandatory substance abuse screening policy and
3 program requirements of article one-a of this chapter and
4 make recommendations to the director regarding: (a)
5 Establishment of guidelines to be employed by the Board of
6 Appeals when administering disciplinary actions to certified
7 persons pursuant to article one-a of this chapter; (b) requiring
8 certification by the Office of Miners' Health, Safety and
9 Training of persons who regularly work at mines who are not
10 presently required to obtain certification; and (c)

11 establishment of additional minimum requirements,
12 parameters, methodologies and protocols to be integrated into
13 the substance abuse screening policy and program
14 requirements of article one-a of this chapter. By August 31,
15 2012, the board shall submit its report to the director. The
16 director is authorized to propose for legislative promulgation,
17 legislative rules pursuant to article three, chapter twenty-
18 nine-a of this code regarding the implementation of the
19 findings of this study. These rules shall be initially
20 promulgated as emergency rules by the director pursuant to
21 the provisions of section fifteen, article three, chapter twenty-
22 nine-a of the code by December 31, 2012, and shall include
23 the establishment of certification requirements recommended
24 by the board for persons who regularly work at mines that are
25 not presently required to obtain certification and
26 establishment of guidelines to be employed by the Board of
27 Appeals when administering disciplinary actions to certified
28 persons pursuant to article one-a of this chapter.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for a
2 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 requiring
5 certification under this article or any other provision of this
6 code. The specialties include, but are not limited to,
7 underground miner, surface miner, apprentice, underground
8 mine foreman-fire boss, assistant underground mine
9 foreman-fire boss, shotfirer, mine electrician and belt
10 examiner. Notwithstanding the provisions of this section, the
11 director may by rule further subdivide the classifications for
12 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 program
25 of continuing education and training of certified persons and
26 other miners on an annual basis: *Provided*, That the
27 standards shall be consistent with the provisions of section
28 seven of this article. Prior to issuing the standards, the board
29 shall conduct public hearings at which the parties who may
30 be affected by its actions may be heard. The education and
31 training shall be provided in a manner determined by the
32 director to be sufficient to meet the standards established by
33 the board.

34 (e) The board may, in conjunction with any state, local or
35 federal agency or any other person or institution, provide for
36 the payment of a stipend to prospective miners enrolled in
37 one or more of the programs of miner education, training and
38 certification provided in this article or any other provision of
39 this code.

40 (f) The board may also, from time to time, conduct any
41 hearings and other oversight activities required to ensure full
42 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 Office
45 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.

52 (i) As part of the annual training required by this section,
53 the board shall include training of certified persons and other
54 miners, instruction on miners' rights as they relate to the
55 operation of unsafe equipment as provided in section
56 seventy-one of article two of this chapter, his or her right to
57 withdrawal from unsafe conditions as provided in section
58 seventy-one-a of article two of this chapter and his or her
59 rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

1 The board is directed to conduct a study of the overall
2 program of education, training and examination associated
3 with the various miner specialties requiring certification
4 under this article or any other provision of this code. The
5 study shall identify ways to enhance miner education and
6 training to adequately reflect technological advances in coal
7 mining techniques and best practices used in modern coal
8 mines, and improve supervision of apprentice miners.
9 Furthermore, the board shall place particular emphasis in its
10 study on ways to improve education and training in the areas
11 of proper mine ventilation, methane monitoring and
12 equipment de-energization, fire-boss procedures and overall
13 core mining competencies. By December 31, 2012, the board
14 shall report to the Legislature's Joint Committee on
15 Government and Finance with recommendations regarding
16 the implementation of the findings of this study.

ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.

§22A-12-1. Report on enforcement procedures.

1 The director shall, by December 31, 2013, report to the
2 Legislature and Governor on the need for revisions in the

3 state's underground mine safety enforcement procedures.
4 The director shall initiate the study using appropriate
5 academic resources and mining safety organizations to
6 conduct a program review of state enforcement procedures to
7 evaluate what reforms will assure that mining operations
8 follow state mandated safety protocols. The report shall
9 include recommended legislation, rules and policies, consider
10 various options for improving inspections, accountability and
11 equitable and timely administrative procedures that cause
12 remediation of hazardous working conditions.



CHAPTER 32

(S. B. 575 - By Senator Foster)

[Passed March 8, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to repeal §16-5V-22 of the Code of West Virginia, 1931,
as amended, relating to the Emergency Medical Services
Retirement System, prior disability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§1. Repeal of section relating to prior disability.

1 Section twenty-two, article five-v, chapter sixteen of the
2 Code of West Virginia, 1931, as amended, is hereby repealed.



CHAPTER 33

**(S. B. 385 - By Senators Unger, Beach,
Kessler, Mr. President, Klempa and Jenkins)**

[Passed March 2, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §61-3C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-1 of said code, all relating to updating the definition of “computer” in the commission of certain crimes.

Be it enacted by the Legislature of West Virginia:

That §61-3C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 otherwise:

3 (a) “Access” means to instruct, communicate with, store
4 data in, retrieve data from, intercept data from or otherwise
5 make use of any computer, computer network, computer
6 program, computer software, computer data or other
7 computer resources.

8 (b) “Authorization” means the express or implied consent
9 given by a person to another to access or use said person's
10 computer, computer network, computer program, computer
11 software, computer system, password, identifying code or
12 personal identification number.

13 (c) “Computer” means an electronic, magnetic, optical,
14 electrochemical or other high-speed data processing device
15 performing logical, arithmetic or storage functions and
16 includes any data storage facility or communication facility
17 directly related to or operating in conjunction with such
18 device. The term “computer” includes any connected or
19 directly related device, equipment or facility which enables
20 the computer to store, retrieve or communicate computer
21 programs, computer data or the results of computer
22 operations to or from a person, another computer or another
23 device, file servers, mainframe systems, desktop personal
24 computers, laptop personal computers, tablet personal
25 computers, cellular telephones, game consoles and any other
26 electronic data storage device or equipment, but such term
27 does not include an automated typewriter or typesetter, a
28 portable hand-held calculator or other similar device.

29 (d) “Computer contaminant” means any set of computer
30 instructions that are designed to damage or destroy
31 information within a computer, computer system or computer
32 network without the consent or permission of the owner of
33 the information. They include, but are not limited to, a group
34 of computer instructions commonly called viruses or worms
35 that are self-replicating or self-propagating and are designed
36 to contaminate other computer programs or computer data,
37 consume computer resources or damage or destroy the
38 normal operation of the computer.

39 (e) “Computer data” means any representation of
40 knowledge, facts, concepts, instruction or other information
41 computed, classified, processed, transmitted, received,

42 retrieved, originated, stored, manifested, measured, detected,
43 recorded, reproduced, handled or utilized by a computer,
44 computer network, computer program or computer software
45 and may be in any medium, including, but not limited to,
46 computer printouts, microfilm, microfiche, magnetic storage
47 media, optical storage media, punch paper tape or punch
48 cards, or it may be stored internally in read-only memory or
49 random access memory of a computer or any other peripheral
50 device.

51 (f) “Computer network” means a set of connected devices
52 and communication facilities, including more than one
53 computer, with the capability to transmit computer data
54 among them through such communication facilities.

55 (g) “Computer operations” means arithmetic, logical,
56 storage, display, monitoring or retrieval functions or any
57 combination thereof and includes, but is not limited to,
58 communication with, storage of data in or to, or retrieval of
59 data from any device and the human manual manipulation of
60 electronic magnetic impulses. A “computer operation” for a
61 particular computer shall also mean any function for which
62 that computer was designed.

63 (h) “Computer program” means an ordered set of
64 computer data representing instructions or statements, in a
65 form readable by a computer, which controls, directs or
66 otherwise influences the functioning of a computer or
67 computer network.

68 (i) “Computer software” means a set of computer
69 programs, procedures and associated documentation
70 concerned with computer data or with the operation of a
71 computer, computer program or computer network.

72 (j) “Computer services” means computer access time,
73 computer data processing or computer data storage and the
74 computer data processed or stored in connection therewith.

75 (k) "Computer supplies" means punch cards, paper tape,
76 magnetic tape, magnetic disks or diskettes, optical disks or
77 diskettes, disk or diskette packs, paper, microfilm and any
78 other tangible input, output or storage medium used in
79 connection with a computer, computer network, computer
80 data, computer software or computer program.

81 (l) "Computer resources" includes, but is not limited to,
82 information retrieval; computer data processing, transmission
83 and storage; and any other functions performed, in whole or
84 in part, by the use of a computer, computer network,
85 computer software or computer program.

86 (m) "Owner" means any person who owns or leases or is
87 a licensee of a computer, computer network, computer data,
88 computer program, computer software, computer resources
89 or computer supplies.

90 (n) "Person" means any natural person, general
91 partnership, limited partnership, trust, association,
92 corporation, joint venture or any state, county or municipal
93 government and any subdivision, branch, department or
94 agency thereof.

95 (o) "Property" includes:

96 (1) Real property;

97 (2) Computers and computer networks;

98 (3) Financial instruments, computer data, computer
99 programs, computer software and all other personal property
100 regardless of whether they are:

101 (i) Tangible or intangible;

102 (ii) In a format readable by humans or by a computer;

103 (iii) In transit between computers or within a computer
104 network or between any devices which comprise a computer;
105 or

106 (iv) Located on any paper or in any device on which it is
107 stored by a computer or by a human; and

108 (4) Computer services.

109 (p) "Value" means having any potential to provide any
110 direct or indirect gain or advantage to any person.

111 (q) "Financial instrument" includes, but is not limited to,
112 any check, draft, warrant, money order, note, certificate of
113 deposit, letter of credit, bill of exchange, credit or debit card,
114 transaction authorization mechanism, marketable security or
115 any computerized representation thereof.

116 (r) "Value of property or computer services" shall be: (1)
117 The market value of the property or computer services at the
118 time of a violation of this article; or (2) if the property or
119 computer services are unrecoverable, damaged or destroyed
120 as a result of a violation of section six or seven of this article,
121 the cost of reproducing or replacing the property or computer
122 services at the time of the violation.

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR
EXHIBITION OF OBSCENE MATTER
TO MINORS.**

§61-8A-1. Definitions.

1 When used in this article, the following words, and any
2 variations thereof required by the context, shall have the
3 meaning ascribed to them in this section:

4 (a) “Adult” means a person eighteen years of age or
5 older.

6 (b) “Computer” means an electronic, magnetic, optical,
7 electrochemical or other high-speed data processing device
8 performing logical, arithmetic or storage functions and
9 includes any data storage facility or communication facility
10 directly related to or operating in conjunction with such
11 device. As used in this article, computer includes file servers,
12 mainframe systems, desktop personal computers, laptop
13 personal computers, tablet personal computers, cellular
14 telephones, game consoles and any electronic data storage
15 device or equipment. The term “computer” includes any
16 connected or directly related device, equipment or facility
17 which enables the computer to store, retrieve or communicate
18 computer programs, computer data or the results of computer
19 operations to or from a person, another computer or another
20 device, but such term does not include an automated
21 typewriter or typesetter, a portable hand-held calculator or
22 other similar device.

23 (c) “Computer network” means the interconnection of
24 hardware or wireless communication lines with a computer
25 through remote terminals, or a complex consisting of two or
26 more interconnected computers.

27 (d) “Display” means to show, exhibit or expose matter, in
28 a manner visible to general or invited public, including
29 minors. As used in this article, display shall include the
30 placing or exhibiting of matter on or in a billboard, viewing
31 screen, theater, marquee, newsstand, display rack, window,
32 showcase, display case or similar public place.

33 (e) “Distribute” means to transfer possession, transport,
34 transmit, sell or rent, whether with or without consideration.

35 (f) “Employee” means any individual who renders
36 personal services in the course of a business, who receives

37 compensation and who has no financial interest in the
38 ownership or operation of the business other than his or her
39 salary or wages.

40 (g) “Internet” means the international computer network
41 of both federal and nonfederal interoperable packet switched
42 data networks.

43 (h) “Knowledge of the character of the matter” means
44 having awareness of or notice of the overall sexual content
45 and character of matter as depicting, representing or
46 describing obscene matter.

47 (i) “Matter” means any visual, audio, or physical item,
48 article, production transmission, publication, exhibition, or
49 live performance, or reproduction thereof, including any two-
50 or three- dimensional visual or written material, film, picture,
51 drawing, video, graphic, or computer generated or
52 reproduced image; or any book, magazine, newspaper or
53 other visual or written material; or any motion picture or
54 other pictorial representation; or any statue or other figure; or
55 any recording, transcription, or mechanical, chemical, or
56 electrical reproduction; or any other articles, video laser disc,
57 computer hardware and software, or computer generated
58 images or message recording, transcription, or object, or any
59 public or commercial live exhibition performed for
60 consideration or before an audience of one or more.

61 (j) “Minor” means an unemancipated person under
62 eighteen years of age.

63 (k) “Obscene matter” means matter that:

64 (1) An average person, applying contemporary adult
65 community standards, would find, taken as a whole, appeals
66 to the prurient interest, is intended to appeal to the prurient
67 interest, or is pandered to a prurient interest;

68 (2) An average person, applying community standards,
69 would find depicts or describes, in a patently offensive way,
70 sexually explicit conduct; and

71 (3) A reasonable person would find, taken as a whole,
72 lacks serious literary, artistic, political or scientific value.

73 (l) "Parent" includes a biological or adoptive parent, legal
74 guardian or legal custodian.

75 (m) "Person" means any adult, partnership, firm,
76 association, corporation or other legal entity.

77 (n) "Sexually explicit conduct" means an ultimate sexual
78 act, normal or perverted, actual or simulated, including sexual
79 intercourse, sodomy, oral copulation, sexual bestiality, sexual
80 sadism and masochism, masturbation, excretory functions
81 and lewd exhibition of the genitals.



CHAPTER 34

(Com. Sub. for S. B. 566 - By Senators Wills and Foster)

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §25-1-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of Corrections to contract with nonprofit or charitable entities, including, but not limited to, nonprofit community mental health clinics, operating half-way houses or transitional housing facilities for the placement of persons in the commissioner's custody, whether confined or under parole

supervision; requiring persons with the ability to pay to reimburse the state for the costs of the placement; and requiring the Division of Corrections to provide certain information about the placements to the Governor.

Be it enacted by the Legislature of West Virginia:

That §25-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND
CORRECTIONS MANAGEMENT.**

**§25-1-3. Institutions managed by Commissioner of Corrections;
certain institutions transferred to Department of
Health and Human Resources; establishment of
work and study release units; contracting with
certain entities for reentry and direct placement
services; reports to Governor.**

1 (a) The Commissioner of Corrections shall manage,
2 direct, control and govern the following penal or correctional
3 institutions and any others placed under his or her jurisdiction
4 or control:

5 Mount Olive Correctional Complex;

6 Huttonsville Correctional Center;

7 Anthony Correctional Center;

8 Denmark Correctional Center;

9 Pruntytown Correctional Center;

10 Northern West Virginia Correctional Center;

11 St. Marys Correctional Center;

- 12 Lakin Correctional Center;
13 Ohio County Correctional Center;
14 Beckley Correctional Center; and
15 Martinsburg Correctional Center.

16 (b) The Commissioner of Corrections may contract with
17 the county commission of McDowell County to house and
18 incarcerate inmates at the Stevens Correctional Center
19 consistent with all requirements and standards governing the
20 Division of Corrections.

21 (c) Jurisdiction of and title to the West Virginia
22 Children's Home at Elkins are hereby transferred to the
23 Department of Health and Human Resources, which is the
24 custodian of all deeds and other muniments of title to the
25 property and shall record those that are susceptible of
26 recordation to be recorded in the proper offices.
27 Notwithstanding any provision of this code to the contrary,
28 the West Virginia Children's Home shall be managed and
29 controlled by a superintendent appointed by the
30 Commissioner of the Division of Human Services.

31 (d) The Commissioner of Corrections may establish work
32 and study release units as extensions and subsidiaries of those
33 state institutions under his or her control and authority. The
34 work and study release units may be coeducational and shall
35 be managed, directed and controlled as provided in this
36 article.

37 (e)(1) The commissioner may contract with nonprofit or
38 charitable entities, including but not limited to nonprofit
39 community mental health clinics, operating half-way houses
40 or transitional housing facilities for the placement of persons
41 in the commissioner's custody, whether confined or under
42 parole supervision, as long as such facilities meet standards
43 and criteria established by the commissioner.

44 (2)(A) The Commissioner of Corrections may direct that
45 a person who is placed in a half-way house or transitional
46 housing facility under this section make reimbursement to the
47 state in the amount of a reasonable sum calculated to offset
48 all or part of the costs of the placement.

49 (B) Prior to ordering the person to make the
50 reimbursement, the commissioner, or his or her designee,
51 shall consider the following:

52 (i) The person's ability to pay;

53 (ii) The nature and extent of the person's responsibilities
54 to his or her dependents, if any;

55 (iii) The length of probable incarceration under the
56 court's sentence; and

57 (iv) The effect, if any, that reimbursement might have on
58 the person's rehabilitation.

59 (f) The Division of Corrections shall provide the number
60 of persons placed in a half-way house or a transitional
61 housing facility pursuant to subsection (e) of this section in
62 its report made pursuant to section twenty, article one,
63 chapter five of this code, and shall describe its plans to use
64 the authority provided under the provisions of subsection (e)
65 of this section in furtherance of the duties and responsibilities
66 imposed by this article.

67 (g) Any person employed by the Office of Public
68 Institutions who on the effective date of this article is a
69 classified civil service employee shall, within the limits
70 contained in section two, article six, chapter twenty-nine of
71 this code, remain in the civil service system as a covered
72 employee.



CHAPTER 35

**(S. B. 156 - By Senators Laird,
Tucker, Yost, Barnes, D. Facemire,
Klempa and Unger)**

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §25-7-11 of the Code of West Virginia, 1931, as amended, relating to continuing the Correctional Industries Account; increasing the maximum amount that may be maintained in the Correctional Industries Account; directing that excess funds in the Correctional Industries Account at the end of any fiscal year be deposited into a new special revenue fund to be known as the Division of Corrections Additional Operations Account; and specifying the purposes for expenditures from the Division of Corrections Additional Operations Account.

Be it enacted by the Legislature of West Virginia:

That §25-7-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.

§25-7-11. Correctional industries account.

- 1 (a) The Correctional Industries Account is continued in
- 2 the State Treasury. All funds collected from the sale or
- 3 disposition of articles and products manufactured or produced

4 by correctional industries in accordance with this article shall
5 be deposited in this account.

6 (b) Except as provided in subsection (c) of this section,
7 funds collected and deposited may be used only to purchase
8 manufacturing supplies, equipment, machinery and materials
9 used to carry out the purposes of this article; to pay necessary
10 personnel; and to defray necessary expenses, including
11 inmate earnings, all of which are under the direction of the
12 commissioner and subject to the commissioner's approval.

13 (c) The Correctional Industries Account may not be
14 maintained in excess of the amount necessary to efficiently
15 and properly carry out the purposes of this article. In no
16 event may the Correctional Industries Account be maintained
17 in excess of \$2 million. Any moneys in the account
18 exceeding \$2 million shall be transferred at the end of each
19 fiscal year into the Division of Corrections Additional
20 Operations Account established pursuant to subsection (d) of
21 this section.

22 (d) There is hereby created in the State Treasury a special
23 revenue account known as the Additional Operations
24 Account. The commissioner is authorized to use funds from
25 the account to offset operational costs, for building and
26 maintenance, purchases, equipment repair or replacement for
27 the Division of Corrections and to defray necessary expenses
28 incident to those activities.



CHAPTER 36

**(H. B. 4522 - By Delegates Poore, Hunt,
Sobonya, Guthrie, Ireland, Lawrence,
Michael, Miley, White, Frazier and Skaff)**

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §51-2A-9 of the Code of West Virginia, 1931, as amended, relating to providing additional contempt powers for family court judges in civil contempt cases; and providing for alternatives to incarceration until the person has purged himself or herself of the contempt.

Be it enacted by the Legislature of West Virginia:

That §51-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-9. Contempt powers of family court judge.

1 (a) In addition to the powers of contempt established in
2 chapter forty-eight of this code, a family court judge may:

3 (1) Sanction persons through civil contempt proceedings
4 when necessary to preserve and enforce the rights of private
5 parties or to administer remedies granted by the court;

6 (2) Regulate all proceedings in a hearing before the
7 family court judge; and

8 (3) Punish direct contempts that are committed in the
9 presence of the court or that obstruct, disrupt or corrupt the
10 proceedings of the court.

11 (b) A family court judge may enforce compliance with
12 his or her lawful orders with remedial or coercive sanctions
13 designed to compensate a complainant for losses sustained
14 and to coerce obedience for the benefit of the complainant.
15 Sanctions must give the contemnor an opportunity to purge
16 himself or herself. In selecting sanctions, the court must use
17 the least possible power adequate to the end proposed. A
18 person who lacks the present ability to comply with the order
19 of the court may not be confined for a civil contempt.
20 Sanctions may include, but are not limited to, seizure or
21 impoundment of property to secure compliance with a prior
22 order. Ancillary relief may provide for an award of attorney's
23 fees.

24 (c) Upon a finding that a person is in civil contempt, the
25 court, when otherwise appropriate and in its discretion, and
26 as an alternative to incarceration, may place the person on
27 work release, in a weekend jail program, in an existing
28 community service program, in an existing day-reporting
29 center program, in any other existing community corrections
30 program or on home confinement until the person has purged
31 himself or herself of the contempt.



CHAPTER 37

**(H. B. 4291 - By Delegates Miley,
Frazier, Longstreth, Barill and Manchin)**

[Passed February 15, 2012; in effect from passage.]

[Approved by the Governor on February 22, 2012.]

AN ACT to amend and reenact §51-8-8 of the Code of West Virginia, 1931, as amended, relating to county law libraries operated by the Supreme Court of Appeals and circuit courts; providing that circuit courts may no longer establish county law libraries; and providing that the Supreme Court of Appeals alone shall determine the appropriate number thereof.

Be it enacted by the Legislature of West Virginia:

That §51-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. STATE AND COUNTY LAW LIBRARIES; LAW CLERKS.

§51-8-8. Authority to establish county law libraries; under control of circuit judge; rules.

1 The Supreme Court of Appeals may establish county law
2 libraries which once established, are wholly under the
3 management of the circuit judge, with the assistance of the
4 circuit clerk. The Supreme Court of Appeals may determine
5 the appropriate number of law libraries that will be in
6 operation as well as the location of the libraries and may

7 expend funds for the purchase of books or other expenses
8 necessary for the operation of the county law libraries.

9 All county law libraries in operation shall be kept current
10 and the cost of the libraries, other than for provision of
11 adequate space, shall be borne by the state and paid from the
12 judicial branch appropriation. The county libraries shall be
13 available for use by the public subject to reasonable rules as
14 may be adopted by the circuit judge. County commissions
15 shall provide adequate space for the county libraries.



CHAPTER 38

**(Com. Sub. for S. B. 100 -
By Senator Palumbo)**

[Passed March 5, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §59-1-11 of the Code of West Virginia, 1931, as amended, relating to collecting fees by circuit clerks; removing the requirement that the circuit clerk charge three times the amount of actual postage when sending certain documents by mail or express; and allowing for the collection of a fee equal to the actual amount of the postage and express costs for sending decrees, orders or records that have not been ordered to be sent by mail or express.

Be it enacted by the Legislature of West Virginia:

That §59-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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
6 Civil Procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals or any
8 other action, cause, suit or proceeding, \$155, of which \$30
9 shall be deposited in the Courthouse Facilities Improvement
10 Fund created by section six, article twenty-six, chapter
11 twenty-nine of this code and \$20 deposited in the special
12 revenue account created in section six hundred three, article
13 twenty-six, chapter forty-eight of this code to provide legal
14 services for domestic violence victims;

15 (2) For instituting an action for medical professional
16 liability, \$280, of which \$10 shall be deposited in the
17 Courthouse Facilities Improvement Fund created by section
18 six, article twenty-six, chapter twenty-nine of this code;

19 (3) Beginning on and after July 1, 1999, for instituting an
20 action for divorce, separate maintenance or annulment, \$135;

21 (4) For petitioning for the modification of an order
22 involving child custody, child visitation, child support or
23 spousal support, \$85; and

24 (5) For petitioning for an expedited modification of a
25 child support order, \$35.

26 (b) In addition to the foregoing fees, the following fees
27 shall be charged and collected:

- 28 (1) For preparing an abstract of judgment, \$5;
- 29 (2) For a transcript, copy or paper made by the clerk for
30 use in any other court or otherwise to go out of the office, for
31 each page, \$1;
- 32 (3) For issuing a suggestion and serving notice to the
33 debtor by certified mail, \$25;
- 34 (4) For issuing an execution, \$25;
- 35 (5) For issuing or renewing a suggestee execution and
36 serving notice to the debtor by certified mail, \$25;
- 37 (6) For vacation or modification of a suggestee execution,
38 \$1;
- 39 (7) For docketing and issuing an execution on a transcript
40 of judgment from magistrate court, \$3;
- 41 (8) For arranging the papers in a certified question, writ
42 of error, appeal or removal to any other court, \$10, of which
43 \$5 shall be deposited in the Courthouse Facilities
44 Improvement Fund created by section six, article twenty-six,
45 chapter twenty-nine of this code;
- 46 (9) For each subpoena, on the part of either plaintiff or
47 defendant, to be paid by the party requesting the same, 50¢;
- 48 (10) For additional service, plaintiff or appellant, where
49 any case remains on the docket longer than three years, for
50 each additional year or part year, \$20; and
- 51 (11) For administering funds deposited into a federally
52 insured interest-bearing account or interest-bearing instrument
53 pursuant to a court order, \$50, to be collected from the party
54 making the deposit. A fee collected pursuant to this
55 subdivision shall be paid into the general county fund.

56 (c) In addition to the foregoing fees, a fee for the actual
57 amount of the postage and express may be charged and
58 collected for sending decrees, orders or records that have not
59 been ordered by the court to be sent by mail or express.

60 (d) The clerk shall tax the following fees for services in
61 a criminal case against a defendant convicted in such court:

62 (1) In the case of a misdemeanor, \$85; and

63 (2) In the case of a felony, \$105, of which \$10 shall be
64 deposited in the Courthouse Facilities Improvement Fund
65 created by section six, article twenty-six, chapter twenty-nine
66 of this code.

67 (e) The clerk of a circuit court shall charge and collect a
68 fee of \$25 per bond for services rendered by the clerk for
69 processing of criminal bonds and the fee shall be paid at the
70 time of issuance by the person or entity set forth below:

71 (1) For cash bonds, the fee shall be paid by the person
72 tendering cash as bond;

73 (2) For recognizance bonds secured by real estate, the fee
74 shall be paid by the owner of the real estate serving as surety;

75 (3) For recognizance bonds secured by a surety company,
76 the fee shall be paid by the surety company;

77 (4) For ten-percent recognizance bonds with surety, the
78 fee shall be paid by the person serving as surety; and

79 (5) For ten-percent recognizance bonds without surety,
80 the fee shall be paid by the person tendering ten percent of
81 the bail amount.

82 In instances in which the total of the bond is posted by
83 more than one bond instrument, the above fee shall be
84 collected at the time of issuance of each bond instrument

85 processed by the clerk and all fees collected pursuant to this
86 subsection shall be deposited in the Courthouse Facilities
87 Improvement Fund created by section six, article twenty-six,
88 chapter twenty-nine of this code. Nothing in this subsection
89 authorizes the clerk to collect the above fee from any person
90 for the processing of a personal recognizance bond.

91 (f) The clerk of a circuit court shall charge and collect a
92 fee of \$10 for services rendered by the clerk for processing of
93 bailpiece and the fee shall be paid by the surety at the time of
94 issuance. All fees collected pursuant to this subsection shall
95 be deposited in the Courthouse Facilities Improvement Fund
96 created by section six, article twenty-six, chapter twenty-nine
97 of this code.

98 (g) No clerk is required to handle or accept for
99 disbursement any fees, cost or amounts of any other officer
100 or party not payable into the county treasury except on
101 written order of the court or in compliance with the
102 provisions of law governing such fees, costs or accounts.



CHAPTER 39

**(Com. Sub. for H. B. 4422 - By Delegates
Butcher, Walker, D. Poling, Boggs,
Caupito, Martin, Stephens, Diserio,
Storch, Hamilton and Ellem)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3,
§21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as
amended, all relating to crane operator certification; redefining

a crane for the purposes of the act; clarifying those persons who are exempted from certification; expanding the type of equipment for which certification is required to operate; requiring adherence to standards established by the Occupational Safety and Health Administration of the United States Department of Labor; clarifying the minimum requirements for certification; authorizing the Commissioner of Labor to issue notices to cease and desist unlawful practices; authorizing the Commissioner of Labor to apply to the circuit court for injunctive relief; limiting reciprocity provisions; deleting obsolete provisions; and requiring certain crane operators to hold certain classes of certification as of November 10, 2014.

Be it enacted by the Legislature of West Virginia:

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

1 For purposes of this article:

2 (a) “Commissioner” means the Commissioner of the
3 Division of Labor, or his or her authorized representative.

4 (b) “Crane” means a power-operated hoisting machine
5 used in construction, demolition or excavation work, which
6 has a power-operated winch and load line and a power-
7 operated boom that moves laterally by the rotation of the
8 machine on a carrier, and which has a manufacturer’s rated
9 lifting capacity of more than two thousand pounds. “Crane”
10 does not mean a forklift, digger derrick truck, bucket truck or

11 any vehicle, aircraft or helicopter, or equipment which does
12 not have a power-operated winch and load line.

13 (c) “Emergency basis” means an occurrence of an event,
14 circumstance or situation that presents an imminent threat to
15 persons or property and constitutes a serious health or safety
16 hazard.

17 (d) “Employer” means any person, firm, corporation or
18 other entity who hires or permits any individual to work.

19 (e) “Employee” means any individual employed by an
20 employer and also as defined by the commissioner.

21 (f) “Tower crane” means a crane in which a boom,
22 swinging jib, or other structural member is mounted on a
23 vertical mast or tower.

24 (g) “Training or training course” means a course
25 approved by the commissioner which includes some form of
26 testing throughout, or a final written examination or practical
27 test, or both, which ensures, or tends to ensure that learning
28 has occurred and that the objectives of the training have been
29 realized. The commissioner will evaluate whether the
30 approved training adequately demonstrates competency to
31 safely operate cranes.

§21-3D-2. Certification required; exemptions.

1 (a) A person may not operate a crane or tower crane
2 without certification issued under this article except for those
3 persons exempted under subsection (b) of this section.

4 (b) A person is not required to obtain certification under
5 this article if the person:

6 (1) Is a member of the Department of Defense or Armed
7 Forces of the United States or an employee of the United

8 States, when such member or employee is engaged in the
9 work of a crane operator exclusively for such governmental
10 unit; or

11 (2) Is primarily an operator of farm machinery who is
12 performing the work of a crane operator as part of an
13 agricultural operation; or

14 (3) Is operating a crane on an emergency basis; or

15 (4) Is operating a crane for personal use and not for profit
16 on the site of real property which the person owns or leases;
17 or

18 (5) Is an Operator-in-Training under the direct
19 supervision of a certified crane operator and:

20 (A) Who is enrolled in an industry recognized in-house
21 training course based on the American National Standards
22 Institute Standards for Crane Operators and who is employed
23 by the entity that either taught the training course or
24 contracted to have the training course taught, all of which is
25 approved by the commissioner; or

26 (B) Who is enrolled in an apprenticeship program or
27 training program for crane operators approved by the United
28 States Department of Labor, Bureau of Apprenticeship and
29 Training;

30 (6) Is an employee of and operating a crane at the
31 direction of any manufacturing plant or other industrial
32 establishment, including any mill, factory, tannery, paper or
33 pulp mill, mine, colliery, breaker or mineral processing
34 operation, quarry, refinery or well or is an employee of and
35 operating a crane at the direction of the person, firm or
36 corporation who owns or is operating such plant or
37 establishment;

38 (7) Is an employee of a public utility operating a crane to
39 perform work in connection with facilities used to provide a
40 public service under the jurisdiction of the Public Service
41 Commission, Federal Energy Regulatory Commission or
42 Federal Communications Commission; or

43 (8) Is operating timbering harvesting machinery
44 associated with the production of timber and the
45 manufacturing of wood products.

§21-3D-3. Powers and duties of commissioner.

1 (a) The commissioner shall:

2 (1) Propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, which rules at the minimum must include
5 provisions for:

6 (A) A Class A certification program for individuals who
7 operate cranes or tower cranes in the State of West Virginia,
8 which must require both a written examination and a practical
9 demonstration, and which must be accredited by the
10 American National Standards Institute's Personnel
11 Certification Accreditation Program;

12 (B) A Class B certification program for individuals who
13 operate cranes or tower cranes in the State of West Virginia,
14 which must require the successful completion of a training
15 course;

16 (C) Certification categories including lattice boom truck
17 cranes; lattice boom crawler cranes; fixed cab-telescoping
18 boom cranes; swing cab-telescoping boom cranes; and tower
19 cranes: *Provided*, That the holders of a certification for the
20 large telescoping boom crane, upon application for
21 recertification, will be provided with a one time election to

22 either be certified as an operator of a fixed-cab or swing-cab
23 telescoping boom crane, and that holders of a certification for
24 the small telescoping boom crane, upon application for
25 recertification, will be automatically certified as a fixed cab
26 operator;

27 (D) Class A certification renewal requirements of
28 individuals who operate cranes in the State of West Virginia,
29 that must include a written examination and a current
30 physician's certificate at least every five years; and

31 (E) Class B certification renewal requirements of
32 individuals who operate cranes in the State of West Virginia,
33 that must include the successful completion of a training
34 course approved by the commissioner;

35 (2) Prescribe application forms for original and renewal
36 certification;

37 (3) Set application fees in amounts that are reasonable
38 and necessary to defray the costs of the administration of this
39 article in an amount not to exceed \$75 per year;

40 (4) Set examination and training course fees in an amount
41 not to exceed the actual cost of the examination and the
42 training course;

43 (5) Administer or cause to be administered the written
44 examination, practical demonstrations and the training course
45 as required for certification;

46 (6) Determine the standards for acceptable performance
47 on the written examination, practical demonstration and the
48 required training course: *Provided*, That the minimum
49 standards must be consistent with national standards, current
50 operating procedures and technology and be transferable to
51 other states where possible;

52 (7) Provide the option for applicants and crane operators
53 to take examinations that meet or exceed requirements for
54 national crane operator certification; and

55 (8) Take other action as necessary to enforce this article.

56 (b) The commissioner, or his or her designee, upon
57 receipt of information that a person has engaged in or is
58 engaging in an act that constitutes a violation of this article,
59 may issue a notice to the person to cease and desist and may
60 apply to the circuit court for an order enjoining the act. Upon
61 a showing that the person has engaged in or is engaging in an
62 act that constitutes a violation of this article, the court may
63 order an injunction, restraining order or other order as the
64 court considers appropriate.

§21-3D-4. Minimum certification requirements.

1 (a) The commissioner shall certify an applicant who:

2 (1) Is at least eighteen years of age;

3 (2) Meets the application requirements as prescribed by
4 rule;

5 (3) Passes the written examination;

6 (4) Passes the practical demonstration: *Provided*, That
7 the practical demonstration approved by the commissioner
8 may be administered on-site by a qualified company
9 representative;

10 (5) Presents the original, or a photographic copy, of a
11 physician's certificate that he or she is physically qualified to
12 drive a commercial motor vehicle as required by 49 C.F.R.
13 §391.41, as of the effective date of this article or an

14 equivalent physician's certificate as approved by the
15 commissioner; and

16 (6) Pays the appropriate fees.

17 (b) Certification issued under this article is valid
18 throughout the state and is not assignable or transferable, and
19 is valid for one year from the date on which it was issued.

20 (c) Notwithstanding any other provision of this article to
21 the contrary, the commissioner shall establish a dual
22 classification system of certification as follows:

23 (1) Class A certification, which will provide eligibility for
24 national certification, and for which the applicant must
25 achieve a passing score of seventy on the national
26 commission for the certification of crane operators written
27 examination;

28 (2) Class B certification, for which the commissioner may
29 accept a lesser score on the national commission for the
30 certification of crane operators written examination:
31 *Provided*, That this score may not be less than sixty for Class
32 B certification.

33 (d) On and after November 10, 2014:

34 (1) All individuals who operate cranes in the State of
35 West Virginia which are governed by the provisions of the
36 Occupational Safety and Health Administration of the United
37 States Department of Labor, 29 C.F.R §1926.1400, Subpart
38 CC, are required to hold a Class A certification; and

39 (2) All individuals who operate cranes in the State of
40 West Virginia which are not governed by any provision of
41 the Occupational Safety and Health Administration of the

42 United States Department of Labor are required to hold a
43 Class B certification.

§21-3D-9. Reciprocity.

1 The commissioner, in his or her discretion, may grant
2 certification to persons certified by other states, without
3 examination or without the required training upon
4 satisfactory proof that the qualifications for the applicants are
5 equal to the qualifications of this state: *Provided*, That the
6 other states extend similar reciprocity privileges to persons
7 certified by this state.



CHAPTER 40

**(S. B. 606 - By Senators Palumbo,
Unger, Jenkins, Klempa and Foster)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §60A-7-706 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §61-8C-6, §61-8C-7, §61-8C-8, §61-8C-9, §61-8C-10 and §61-8C-11, all relating to forfeiture of certain property; correcting a technical error; stating legislative findings; providing for the forfeiture of certain materials related to recording sexually explicit conduct of minors or soliciting minors; establishing a procedure for seizure of forfeitable property; creating procedures for forfeiture; setting process for disposition and distribution of forfeited moneys, securities and negotiable instruments; and creating process for disposition and distribution of other forfeited properties.

Be it enacted by the Legislature of West Virginia:

That §60A-7-706 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §61-8C-6, §61-8C-7, §61-8C-8, §61-8C-9, §61-8C-10 and §61-8C-11, all to read as follows:

**CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES
ACT.**

**ARTICLE 7. WEST VIRGINIA CONTRABAND
FORFEITURE ACT.**

**§60A-7-706. Disposition of forfeited moneys, securities or other
negotiable instruments; distribution of
proceeds.**

1 (a) Whenever moneys, securities or other negotiable
2 instruments are forfeited under the provisions of this article,
3 such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to the
5 office of the prosecuting attorney which initiated the
6 forfeiture proceeding;

7 (2) The balance shall be deposited in a special law-
8 enforcement investigation fund. The fund may be placed in
9 any interest-bearing depository insured by an agency of the
10 federal government. The fund shall be administered by the
11 chief of the law-enforcement agency that seized the forfeited
12 property.

13 (b) No funds shall be expended from the special law-
14 enforcement investigation fund except as follows:

15 (1) In the case of the funds belonging to the State Police,
16 the funds shall only be expended at the direction of the
17 Superintendent of the State Police and in accordance with the
18 provisions of article two, chapter eleven-b of this code and
19 the provisions of subdivision (10), subsection (b), section
20 two, article two, chapter twelve of this code;

21 (2) In the case of funds belonging to the office of either
22 the sheriff or prosecuting attorney of any county in which the
23 special fund has been created, the funds therein may only be
24 expended in the manner provided in sections four and five,
25 article five, chapter seven of this code; and

26 (3) In the case of funds belonging to the police
27 department of any municipality in which the special fund has
28 been created, the funds therein may only be expended in the
29 manner provided in section twenty-two, article thirteen,
30 chapter eight of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-6. Legislative findings.

1 The Legislature hereby finds and declares that the seizure
2 and sale of items under the provisions of this article is not
3 contemplated to be a forfeiture as the same is used in article
4 twelve, section five of the West Virginia Constitution and to
5 the extent that such seizure and sale may be found to be such
6 a forfeiture, the Legislature hereby finds and declares that the
7 proceeds from a seizure and sale under this article is not part
8 of net proceeds as the same is contemplated by such article
9 twelve, section five of the West Virginia Constitution.

§61-8C-7. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

1 (a) The following are subject to forfeiture:

2 (1) All visual depictions which have been manufactured,
3 distributed, dispensed or possessed in violation of article
4 eight-a or eight-c of this chapter or section fourteen-b, article
5 three-c of this chapter;

6 (2) All raw materials, products and equipment of any
7 kind which are used, or intended for use, in manufacturing,
8 processing, delivering, importing or exporting any visual
9 depictions or any crimes against children in violation of
10 article eight-a or eight-c of this chapter or section fourteen-b,
11 article three-c of this chapter;

12 (3) All books, records, research products and materials,
13 including hard drives, microfilm, tapes and data which are
14 used, or have been used, or are intended for use, in violation
15 of article eight-a or eight-c of this chapter or section fourteen-
16 b, article three-c of this chapter;

17 (4) All moneys, negotiable instruments, securities or
18 other things of value furnished or intended to be furnished in
19 violation of articles eight-a or eight-c of this chapter or
20 section fourteen-b, article three-c of this chapter by any
21 person in exchange for a visual depiction, all proceeds
22 traceable to the exchange and all moneys, negotiable
23 instruments and securities used, or which are intended to be
24 used, to facilitate any violation of article eight-a or eight-c of
25 this chapter or section fourteen-b, article three-c of this
26 chapter: *Provided*, That no property may be forfeited under
27 this subdivision, to the extent of the interest of an owner, by
28 reason of any act or omission established by that owner to
29 have been committed or omitted without his or her
30 knowledge or consent; and

31 (5) All conveyances, including aircraft, vehicles or
32 vessels, which are used, have been used, or are intended for
33 use, to transport, or in any manner to facilitate the
34 transportation, sale, receipt, possession or concealment of
35 property described in subdivision (1), (2) or (3) of this
36 subsection, except that:

37 (A) A conveyance used by any person as a common
38 carrier in the transaction of business as a common carrier
39 shall not be forfeited under this section unless it appears that
40 the person owning the conveyance is a consenting party or
41 privy to a violation of article eight-a or eight-c of this chapter
42 or section fourteen-b, article three-c of this chapter;

43 (B) A conveyance shall not be forfeited under the
44 provisions of this article if the person owning the conveyance
45 establishes that he or she neither knew, nor had reason to
46 know, that the conveyance was being employed or was likely
47 to be employed in a violation of article eight-a or eight-c of
48 this chapter or section fourteen-b, article three-c of this
49 chapter; and

50 (C) A bona fide security interest or other valid lien in any
51 conveyance shall not be forfeited under the provisions of this
52 article, unless the state proves by a preponderance of the
53 evidence that the holder of the security interest or lien either
54 knew, or had reason to know, that the conveyance was being
55 used or was likely to be used in a violation of article eight-a
56 or eight-c of this chapter or section fourteen-b, article three-c
57 of this chapter.

58 (b) Property subject to forfeiture under this article may be
59 seized by the State Police (hereinafter referred to as the
60 “appropriate person” in this article).

61 (c) Visual depictions which are manufactured, possessed,
62 transferred, sold or offered for sale in violation of this article

63 are contraband and shall be seized and summarily forfeited to
64 the state. Visual depictions which are seized or come into the
65 possession of the state, the owners of which are unknown, are
66 contraband and shall be summarily forfeited to the state upon
67 the seizure of the visual depictions.

68 (d) Notwithstanding any other provisions of this article to
69 the contrary, any items of tangible personal property sold to
70 a bona fide purchaser are not subject to forfeiture unless the
71 state establishes by clear and convincing proof that the bona
72 fide purchaser knew or should have known that the property
73 had in the previous three years next preceding the sale been
74 used in violation of this chapter.

75 (e) Notwithstanding any other provisions of this code to
76 the contrary, any person who has an ownership interest in
77 items of tangible personal property subject to forfeiture by
78 this article shall be presumed to be an innocent owner.
79 Unless the state establishes by clear and convincing proof
80 that the innocent owner knew or should have known that the
81 property subject to forfeiture had been used in violation of
82 article eight-a or eight-c of this chapter or section fourteen-b,
83 article three-c of this chapter and, if applicable, that the
84 innocent owner did not do all that reasonably could be
85 expected under the circumstances to terminate the illegal use
86 of the property once he or she had knowledge of it, the court
87 shall enter an order either: (1) Severing the property
88 appropriately; (2) transferring the property to the state with
89 a provision that the state shall compensate the innocent owner
90 to the extent of his or her ownership interest once a final
91 order of forfeiture has been entered and the property has been
92 reduced to liquid assets; or (3) permitting the innocent owner
93 to retain the property subject to a lien in favor of the state to
94 the extent of the forfeitable interest in the property. If the
95 state meets the burden set forth in this section, then the court
96 shall enter an order declaring the person with an ownership
97 interest is not an innocent owner and allowing forfeiture

98 proceedings to continue, pursuant to the requirements set
99 forth in this article.

§61-8C-8. Procedures for seizure of forfeitable property.

1 (a) Seizure of property made subject to forfeiture by the
2 provisions of this article may be made upon process issued by
3 any court of record having jurisdiction over the property.

4 (b) Notwithstanding the provisions of subsection (a) of
5 this section, seizure of property subject to forfeiture by the
6 provisions of this article may be made without process if:

7 (1) The seizure is incident to a lawful arrest or pursuant
8 to a search under a search warrant or an inspection warrant;

9 (2) The property subject to seizure has been the subject
10 of a prior judgment in favor of the state in a forfeiture
11 proceeding based upon this article;

12 (3) The appropriate person has probable cause to believe
13 that the property is directly or indirectly dangerous to health
14 or safety; or

15 (4) The appropriate person has probable cause to believe
16 that the property was used or intended for use in violation of
17 this chapter.

18 (c) In the event of seizure pursuant to subsection (b) of
19 this section, forfeiture proceedings shall be instituted within
20 ninety days of the seizure thereof.

21 (d) Property taken or detained under this section shall not
22 be subject to replevin, but is deemed to be in the custody of
23 the appropriate person, subject only to the orders and decrees
24 of the court having jurisdiction over the forfeiture
25 proceedings. When property is seized under this article, the
26 appropriate person may:

- 27 (1) Place the property under seal;
- 28 (2) Remove the property to a place designated by him or
29 her;
- 30 (3) Require the appropriate law-enforcement agency to
31 take custody of the property and remove it to an appropriate
32 location for disposition in accordance with law; or
- 33 (4) In the case of seized moneys, securities or other
34 negotiable instruments, place the assets in any interest-
35 bearing depository insured by an agency of the federal
36 government.

§61-8C-9. Procedures for forfeiture.

- 1 (a)(1) Any proceeding wherein the state seeks forfeiture
2 of property subject to forfeiture under this article shall be a
3 civil proceeding. A petition for forfeiture may be filed on
4 behalf of the state and any law-enforcement agency making
5 a seizure under this article by the prosecuting attorney of a
6 county, or duly appointed special prosecutor.
- 7 (2) A petition for forfeiture may be filed and proceedings
8 held thereon in the circuit court of the county wherein the
9 seizure was made, the real property subject to forfeiture is
10 situate or the circuit court of the county wherein any owner
11 of the property subject to forfeiture may reside.
- 12 (3) Any civil trial stemming from a petition for forfeiture
13 brought under this article at the demand of either party shall
14 be by jury.
- 15 (4) A petition for forfeiture of the seized property shall be
16 filed within ninety days after the seizure of the property in
17 question. The petition shall be verified by oath or affirmation
18 of a law-enforcement officer representing the law-

19 enforcement agency responsible for the seizure or the
20 prosecuting attorney and shall contain the following:

21 (A) A description of the property seized;

22 (B) A statement as to who is responsible for the seizure;

23 (C) A statement of the time and place of seizure;

24 (D) The identity of the owner or owners of the property,
25 if known;

26 (E) The identity of the person or persons in possession of
27 the property at the time seized, if known;

28 (F) A statement of facts upon which probable cause for
29 belief that the seized property is subject to forfeiture pursuant
30 to the provisions of this article is based;

31 (G) The identity of all persons or corporations having a
32 perfected security interest or lien in the subject property, as
33 well as the identity of all persons or corporations known to
34 the affiant who may be holding a possessory or statutory lien
35 against such property; and

36 (H) A prayer for an order directing forfeiture of the
37 seized property to the state, and vesting ownership of such
38 property in the state.

39 (b) At the time of filing or as soon as practicable
40 thereafter, a copy of the petition for forfeiture shall be served
41 upon the owner or owners of the seized property, as well as
42 all holders of a perfected security interest or lien or of a
43 possessory or statutory lien in the same class, if known.
44 Should diligent efforts fail to disclose the lawful owner or
45 owners of the seized property, a copy of the petition for
46 forfeiture shall be served upon any person who was in

47 possession or alleged to be in possession of the property at
48 the time of seizure, where such person's identity is known.
49 The above service shall be made pursuant to the provisions of
50 the West Virginia Rules of Civil Procedure. Any copy of the
51 petition for forfeiture so served shall include a notice
52 substantially as follows: "To any claimant to the within
53 described property: You have the right to file an answer to
54 this petition setting forth your title in, and right to possession
55 of, the property within thirty days from the service hereof. If
56 you fail to file an answer, a final order forfeiting the property
57 to the state will be entered, and such order is not subject to
58 appeal."

59 If no owner or possessors, lien holders or holders of a
60 security interest be found, then such service may be by Class
61 II legal publication in accordance with the provisions of
62 article three, chapter fifty-nine of this code, and the
63 publication area shall be the county wherein such property
64 was located at the time of seizure and the county wherein the
65 petition for forfeiture is filed.

66 (c) In addition to the requirements of subsection (b)
67 above, the prosecuting attorney or law-enforcement officer
68 upon whose oath or affirmation the petition for forfeiture is
69 based, shall be responsible for the publication of a further
70 notice. Such further notice that a petition for forfeiture has
71 been filed shall be published by Class II legal advertisement
72 in accordance with article three, chapter fifty-nine of this
73 code. The publication area shall be the county wherein the
74 property was seized and the county wherein the petition for
75 forfeiture is filed. The notice shall advise any claimant to the
76 property of their right to file a claim on or before the date set
77 forth in the notice, which date shall not be less than thirty
78 days from the date of the first publication. The notice shall
79 specify that any claim must clearly state the identity of the
80 claimant and an address where legal process can be served
81 upon that person. In addition such notice shall contain the
82 following information:

- 83 (1) A description of the property seized;
- 84 (2) A statement as to who is responsible for the seizure;
- 85 (3) A statement of the time and place of seizure;
- 86 (4) The identity of the owner or owners of the property,
87 if known;
- 88 (5) The identity of the person or persons in possession of
89 the property at the time of seizure, if known; and
- 90 (6) A statement that prayer for an order directing
91 forfeiture of the seized property to the state, and vesting
92 ownership of such property in the state shall be requested of
93 the court.
- 94 (d) If no answer or claim is filed within thirty days of the
95 date of service of the petition pursuant to subsection (b) of
96 this section, or within thirty days of the first publication
97 pursuant to subsection (b) of this section, the court shall enter
98 an order forfeiting the seized property to the state. If any
99 claim to the seized property is timely filed, a time and place
100 shall be set for a hearing upon such claim. The claimant or
101 claimants shall be given notice of such hearing not less than
102 ten days prior to the date set for the hearing.
- 103 (e) At the hearing upon the claim or claims, the state shall
104 have the burden of proving by a preponderance of the
105 evidence that the seized property is subject to forfeiture
106 pursuant to the provisions of this chapter.
- 107 (f) Any order forfeiting property to the state and entered
108 pursuant to this section perfects the state's right, title and
109 interest in the forfeited property and relates back to the date
110 of seizure: *Provided*, That in any proceeding under this
111 article the circuit court shall in its final order make specific

112 findings with respect to whether or not probable cause to
113 seize such property existed at the time of such seizure.

114 (g) During the pendency of a forfeiture proceeding, it is
115 unlawful for any property owner or holder of a bona fide
116 security interest or other valid lien holder to transfer or
117 attempt to transfer any ownership interest or security interest
118 in seized property with the intent to defeat the purpose of this
119 article, and the court wherein the petition for forfeiture is
120 filed may enjoin a property owner or holder of a security
121 interest or other lien holder from making such a transfer
122 should one come to its attention. Any such transfer which is
123 made in violation of the provisions of this subsection shall
124 have no effect upon an order of the court forfeiting seized
125 property to the state if a notice of lis pendens is filed prior to
126 the recording of the instrument of transfer.

127 (h) The court may void any transfer of property made
128 before or after a forfeiture proceeding has been commenced,
129 which is subject to forfeiture, if the transfer was not to a bona
130 fide purchaser without notice for value.

131 (i) An appeal of a decision of the circuit court concerning
132 a forfeiture proceeding brought pursuant to this chapter must
133 be filed within one hundred twenty days of the date of entry
134 of the final appealable order. The appellant shall be required
135 to give notice of intent to appeal within thirty days of the
136 entry of such appealable order.

**§61-8C-10. Disposition of forfeited moneys, securities or other
negotiable instruments; distribution of proceeds.**

1 (a) Whenever moneys, securities or other negotiable
2 instruments are forfeited under the provisions of this article,
3 such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to the
5 office of the prosecuting attorney which initiated the
6 forfeiture proceeding;

7 (2) The balance shall be deposited in a special law-
8 enforcement investigation fund. The fund may be placed in
9 any interest-bearing depository insured by an agency of the
10 federal government. The fund shall be administered by the
11 Superintendent of the State Police or his or her designee.

12 (b) No funds shall be expended from the special law-
13 enforcement investigation fund except as follows:

14 (1) In the case of funds belonging to the State Police, the
15 funds shall only be expended at the direction of the
16 Superintendent of the State Police and in accordance with the
17 provisions of article two, chapter eleven-b of this code and
18 the provisions of subdivision (10), subsection (b), section
19 two, article two, chapter twelve of this code;

20 (2) In the case of funds belonging to the office of the
21 prosecuting attorney of any county in which the special fund
22 has been created, the funds therein may only be expended in
23 the manner provided in sections four and five, article five,
24 chapter seven of this code; and

25 (3) In the case of funds belonging to the police
26 department of any municipality in which the special fund has
27 been created, the funds therein may only be expended in the
28 manner provided in section twenty-two, article thirteen,
29 chapter eight of this code.

**§61-8C-11. Disposition of other forfeited property; distribution
of proceeds.**

1 (a) When property other than that referred to in section
2 ten of this article is forfeited under this article, the circuit

3 court ordering the forfeiture, upon application by the
4 prosecuting attorney or the Superintendent of the State Police
5 or his or her designee, may direct that:

6 (1) Title to the forfeited property be vested in the law-
7 enforcement agency so petitioning;

8 (2) The law-enforcement agency responsible for the
9 seizure retain the property for official use; or

10 (3) The forfeited property shall be offered at public
11 auction to the highest bidder for cash. Notice of such public
12 auction shall be published as a Class III legal advertisement
13 in accordance with article three, chapter fifty-nine of this
14 code. The publication area shall be the county where the
15 public auction will be held.

16 (b) When a law-enforcement agency receives property
17 pursuant to this section, the court may, upon request of the
18 prosecuting attorney initiating the forfeiture proceeding,
19 require the law-enforcement agency to pay unto the office of
20 said prosecuting attorney a sum not to exceed ten percent of
21 the value of the property received to compensate said office
22 for actual costs and expenses incurred.

23 (c) The proceeds of every public sale conducted pursuant
24 to this section shall be paid and applied as follows: First, to
25 the balance due on any security interest preserved by the
26 court; second, to the costs incurred in the storage,
27 maintenance and security of the property; and third, to the
28 costs incurred in selling the property.

29 (d) Any proceeds of a public sale remaining after
30 distribution pursuant to subsection (c) of this section shall be
31 distributed as follows:

32 (1) Ten percent of such proceeds shall be tendered to the
33 office of the prosecuting attorney who initiated the forfeiture
34 proceeding.

35 (2) The balance shall be deposited in a special law-
36 enforcement investigation fund. Such fund shall be
37 administered by the Superintendent of the State Police or his
38 or her designee and shall take the form of an interest-bearing
39 account with any interest earned to be compounded to the
40 fund. Any funds deposited in the special law-enforcement
41 investigative fund pursuant to this article shall be expended
42 only to defray the costs of protracted or complex
43 investigations, to provide additional technical equipment or
44 expertise, to provide matching funds to obtain federal grants
45 or for such other law-enforcement purposes as the
46 Superintendent of the State Police or his or her designee may
47 deem appropriate; however, these funds may not be utilized
48 for regular operating needs.

49 (e) If more than one law-enforcement agency was
50 substantially involved in effecting the seizure and forfeiture
51 of property, the court wherein the petition for forfeiture was
52 filed shall equitably distribute the forfeited property among
53 the law-enforcement agencies. In the event of a public sale
54 of such property pursuant to subsection (a) of this section, the
55 court shall equitably distribute any proceeds remaining after
56 distribution pursuant to subsection (c) and subdivision (1),
57 subsection (d) of this section among such law-enforcement
58 agencies for deposit into their individual special law-
59 enforcement investigative fund. Equitable distribution shall
60 be based upon the overall contribution of the individual law-
61 enforcement agency to the investigation which led to the
62 seizure.

63 (f) Upon the sale of any forfeited property for which title
64 or registration is required by law, the state shall issue a title
65 or registration certificate to any bona fide purchaser at a

66 public sale of the property conducted pursuant to subsection
67 (a) of this section. Upon the request of the law-enforcement
68 agency receiving, pursuant to the order of the court, or
69 electing to retain, pursuant to subsection (a) of this section,
70 any forfeited property for which title or registration is
71 required by law, the state shall issue a title or registration
72 certificate to the appropriate governmental body.

73 (g) Any funds expended pursuant to the provisions of this
74 section shall only be expended in the manner provided in
75 subsection (b), section ten of this article.

76 (h) Every prosecuting attorney or law-enforcement
77 agency receiving forfeited property or proceeds from the sale
78 of forfeited property pursuant to this article shall submit an
79 annual report to the body which has budgetary authority over
80 such agency. Such report shall specify the type and
81 approximate value of all forfeited property and the amount of
82 proceeds from the sale of forfeited property received in the
83 preceding year. No county or municipality may use
84 anticipated receipts of forfeited property in their budgetary
85 process.

86 (i) In lieu of the sale of any forfeited property subject to
87 a bona fide security interest preserved by an order of the
88 court, the law-enforcement agency receiving the forfeited
89 property may pay the balance due on any security interest
90 preserved by the court from funds budgeted to the office or
91 department or from the special fund and retain possession of
92 the forfeited property for official use pursuant to subsection
93 (a) of this section.

94 (j) In every case where property is forfeited, disposition
95 of the forfeited property, in accordance with this article, shall
96 be made within six months of the date upon which the court
97 of jurisdiction orders forfeiture. Should the office or agency
98 receiving the property fail either to place the property in

99 official use or dispose of the property in accordance with law,
100 the court of jurisdiction shall cause disposition of the
101 property to be made with any proceeds therefrom to be
102 awarded to the state.

103 (k) No disposition shall occur until all applicable periods
104 for filing a notice of intent to appeal has expired and no party
105 in interest shall have filed such notice. The filing of the
106 notice of intent to appeal shall stay any such disposition until
107 the appeal has been finally adjudicated or until the appeal
108 period of one hundred eighty days has expired without an
109 appeal having actually been taken or filed, unless a valid
110 extension of the appeal has been granted by the circuit court
111 under the provisions of section seven, article four, chapter
112 fifty-eight of this code.

113 (l) The special law-enforcement investigative funds of
114 each law-enforcement agency may be placed in an interest-
115 bearing depository insured by the federal government.



CHAPTER 41

**(Com. Sub. for S. B. 411 -
By Senators Prezioso and Laird)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §61-3-22a, relating
to electronic cash register automated sales suppression devices
and phantom-ware; providing definitions; making it unlawful
to willfully and knowingly sell, purchase, install, transfer or
possess in this state any automated sales suppression device or

phantom-ware; providing criminal penalties and civil liability and civil remedies; establishing that such devices and software are contraband; and providing for the seizure and destruction of such devices.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-22a, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-22a. Possession or use of automated sales suppression devices; penalty.

1 (a) *General.* -- When used in this article, words defined
2 in subsection (b) of this section shall have the meanings
3 ascribed to them in this section, except in those instances
4 where a different meaning is provided in this article or the
5 context in which the word is used clearly indicates that a
6 different meaning is intended by the Legislature.

7 (b) *Definitions.* --

8 (1) “Automated sales suppression device” or “zapper”
9 means a software program, carried on a memory stick or
10 removable compact disc, accessed through an Internet link,
11 or accessed through any other means, that falsifies the
12 electronic records of electronic cash registers and other point-
13 of-sale systems, including, but not limited to, transaction data
14 and transaction reports.

15 (2) “Electronic cash register” means a device that keeps
16 a register or supporting documents through the means of an
17 electronic device or computer system designed to record

18 transaction data for the purpose of computing, compiling or
19 processing retail sales transaction data in whatever manner.

20 (3) “Phantom-ware” means a hidden, preinstalled or
21 installed at a later time programming option embedded in the
22 operating system of an electronic cash register or hardwired
23 into the electronic cash register that can be used to create a
24 virtual second till or may eliminate or manipulate transaction
25 records that may or may not be preserved in digital formats
26 to represent the true or manipulated record of transactions in
27 the electronic cash register.

28 (4) “Transaction data” includes items purchased by a
29 customer, the price for each item, a taxability determination
30 for each item, a segregated tax amount for each of the taxed
31 items, the amount of cash or credit tendered, the net amount
32 returned to the customer in change, the date and time of the
33 purchase, the name, address and identification number of the
34 vendor and the receipt or invoice number of the transaction.

35 (5) “Transaction report” means a report documenting, but
36 not limited to, the sales taxes collected, media totals and
37 discount voids at an electronic cash register that is printed on
38 cash register tape at the end of a day or shift, or a report
39 documenting every action at an electronic cash register that
40 is stored electronically.

41 (c) It is unlawful to willfully and knowingly sell,
42 purchase, install, transfer or possess in this state any
43 automated sales suppression device or zapper or phantom-
44 ware.

45 (d) Any person convicted of a violation of subsection (c)
46 of this section is guilty of a felony and, upon conviction
47 thereof, shall be confined in a correctional institution for not
48 less than one nor more than five years, or fined not less than
49 \$10,000 nor more than \$100,000, or both confined and fined.

50 (e) Any person violating subsection (c) of this section is
51 liable for all taxes and penalties due the state as the result of
52 the fraudulent use of an automated sales suppression device,
53 zapper or phantom-ware and shall forfeit all profits associated
54 with the sale or use of an automated sales suppression device
55 or phantom-ware.

56 (f) An automated sales suppression device or phantom-
57 ware and any cash register or device containing such device
58 or software is contraband and, as such, subject to seizure and
59 destruction by any duly authorized law-enforcement agency
60 in the state, including the Criminal Investigation Division of
61 the State Tax Department.



CHAPTER 42

**(Com Sub. for S. B. 212 - By Senators
Snyder, Green, Klempa, McCabe,
Williams, Sypolt, Palumbo, Foster,
Beach and Wells)**

[Amended and again passed March 16, 2012, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-3-49b, relating
to the disruption of communications and public utility services;
defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §61-3-49b, to read as
follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.**§61-3-49b. Disruption of communications and utilities services.**

1 (a) Any person who causes a disruption of
2 communications services or public utility services by the theft
3 or by intentionally damaging communications or public
4 utility equipment and by such conduct causes:

5 (1) A disruption of communication services or public
6 utility services to ten or more households or subscribers; or

7 (2) A loss in the value of the property in an amount of
8 one thousand dollars or more, shall be guilty of a
9 misdemeanor and, upon conviction thereof, for a first offense,
10 shall be sentenced to not more than two thousand hours of
11 court-approved community service or fined not more than
12 \$10,000, or both. For a second offense, the person is guilty
13 of a felony and, upon conviction thereof, shall be imprisoned
14 in a state correctional facility not less than one nor more than
15 five years or fined not more than \$10,000, or both. For third
16 and subsequent offenses, the person is guilty of a felony and,
17 upon conviction thereof, shall be imprisoned in a correctional
18 facility for not less than one nor more than ten years, or fined
19 not more than \$10,000, or both.

20 (b) As used in this section, communications and public
21 utility equipment includes but is not limited to public safety
22 communications towers and equipment, telephone lines,
23 communications towers and tower equipment, radio towers
24 and tower equipment, railroad and other industrial safety
25 communication devices or systems, electric towers and
26 equipment and electric transmission and distribution lines.

CHAPTER 43

**(S. B. 166 - By Senators Laird, Tucker,
Yost, Barnes, Plymale, Unger, Miller,
Jenkins, Wills and Klempa)**

[Passed March 8, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to making it a felony to disarm or attempt to disarm correctional officers.

Be it enacted by the Legislature of West Virginia:

That §61-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; penalties; definitions.

- 1 (a) Any person who by threats, menaces, acts or
- 2 otherwise, forcibly or illegally hinders or obstructs, or
- 3 attempts to hinder or obstruct, any law-enforcement officer,
- 4 probation officer or parole officer acting in his or her official
- 5 capacity is guilty of a misdemeanor and, upon conviction
- 6 thereof, shall be fined not less than \$50 nor more than \$500
- 7 or confined in jail not more than one year, or both fined and
- 8 confined.

9 (b) Any person who intentionally disarms or attempts to
10 disarm any law-enforcement officer, correctional officer,
11 probation officer or parole officer, acting in his or her official
12 capacity, is guilty of a felony and, upon conviction thereof,
13 shall be imprisoned in a state correctional facility not less
14 than one nor more than five years.

15 (c) Any person who, with intent to impede or obstruct a
16 law-enforcement officer in the conduct of an investigation of
17 a felony offense, knowingly and willfully makes a materially
18 false statement, is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not less than \$25 and not
20 more than \$200, or confined in jail for five days, or both
21 fined and confined. However, the provisions of this section
22 do not apply to statements made by a spouse, parent,
23 stepparent, grandparent, sibling, half sibling, child, stepchild
24 or grandchild, whether related by blood or marriage, of the
25 person under investigation. Statements made by the person
26 under investigation may not be used as the basis for
27 prosecution under this subsection. For the purposes of this
28 subsection, "law-enforcement officer" does not include a
29 watchman, a member of the West Virginia State Police or
30 college security personnel who is not a certified law-
31 enforcement officer.

32 (d) Any person who intentionally flees or attempts to flee
33 by any means other than the use of a vehicle from any law-
34 enforcement officer, probation officer or parole officer acting
35 in his or her official capacity who is attempting to make a
36 lawful arrest of the person, and who knows or reasonably
37 believes that the officer is attempting to arrest him or her, is
38 guilty of a misdemeanor and, upon conviction thereof, shall
39 be fined not less than \$50 nor more than \$500 or confined in
40 jail not more than one year, or both.

41 (e) Any person who intentionally flees or attempts to flee
42 in a vehicle from any law-enforcement officer, probation

43 officer or parole officer acting in his or her official capacity,
44 after the officer has given a clear visual or audible signal
45 directing the person to stop, is guilty of a misdemeanor and,
46 upon conviction thereof, shall be fined not less than \$500 nor
47 more than \$1,000 and shall be confined in a regional jail not
48 more than one year.

49 (f) Any person who intentionally flees or attempts to flee
50 in a vehicle from any law-enforcement officer, probation
51 officer or parole officer acting in his or her official capacity,
52 after the officer has given a clear visual or audible signal
53 directing the person to stop, and who operates the vehicle in
54 a manner showing a reckless indifference to the safety of
55 others, is guilty of a felony and, upon conviction thereof,
56 shall be fined not less than \$1,000 nor more than \$2,000, and
57 shall be imprisoned in a state correctional facility not less
58 than one nor more than five years.

59 (g) Any person who intentionally flees or attempts to flee
60 in a vehicle from any law-enforcement officer, probation
61 officer or parole officer acting in his or her official capacity,
62 after the officer has given a clear visual or audible signal
63 directing the person to stop, and who causes damage to the
64 real or personal property of any person during or resulting
65 from his or her flight, is guilty of a misdemeanor and, upon
66 conviction thereof, shall be fined not less than \$1,000 nor
67 more than \$3,000 and shall be confined in the county or
68 regional jail for not less than six months nor more than one
69 year.

70 (h) Any person who intentionally flees or attempts to flee
71 in a vehicle from any law-enforcement officer, probation
72 officer or parole officer acting in his or her official capacity,
73 after the officer has given a clear visual or audible signal
74 directing the person to stop, and who causes bodily injury to
75 any person during or resulting from his or her flight, is guilty
76 of a felony and, upon conviction thereof, shall be imprisoned

77 in a state correctional facility not less than three nor more
78 than ten years.

79 (i) Any person who intentionally flees or attempts to flee
80 in a vehicle from any law-enforcement officer, probation
81 officer or parole officer acting in his or her official capacity,
82 after the officer has given a clear visual or audible signal
83 directing the person to stop, and who causes death to any
84 person during or resulting from his or her flight, is guilty of
85 a felony and, upon conviction thereof, shall be punished by
86 a definite term of imprisonment in a state correctional facility
87 which is not less than five nor more than fifteen years. A
88 person imprisoned pursuant to the provisions of this
89 subsection is not eligible for parole prior to having served a
90 minimum of three years of his or her sentence or the
91 minimum period required by the provisions of section
92 thirteen, article twelve, chapter sixty-two of this code,
93 whichever is greater.

94 (j) Any person who intentionally flees or attempts to flee
95 in a vehicle from any law-enforcement officer, probation
96 officer or parole officer acting in his or her official capacity,
97 after the officer has given a clear visual or audible signal
98 directing the person to stop, and who is under the influence
99 of alcohol, controlled substances or drugs at the time, is
100 guilty of a felony and, upon conviction thereof, shall be
101 imprisoned in a state correctional facility not less than three
102 nor more than ten years.

103 (k) For purposes of this section, the term “vehicle”
104 includes any motor vehicle, motorcycle, motorboat, all-
105 terrain vehicle or snowmobile, as those terms are defined in
106 section one, article one, chapter seventeen-a of this code,
107 whether or not it is being operated on a public highway at the
108 time and whether or not it is licensed by the state.

109 (l) For purposes of this section, the terms “flee”, “fleeing”
110 and “flight” do not include any person’s reasonable attempt
111 to travel to a safe place, allowing the pursuing law-
112 enforcement officer to maintain appropriate surveillance, for
113 the purpose of complying with the officer’s direction to stop.

114 (m) The revisions to subsections (e), (f), (g) and (h) of
115 this section enacted during the regular session of the 2010
116 regular legislative session shall be known as the Jerry Alan
117 Jones Act.



CHAPTER 44

**(Com Sub. for S. B. 165 - By Senators
Laird, Tucker, Yost, Barnes,
Plymale, Unger and Wills)**

[Passed February 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on February 15, 2012.]

AN ACT to amend and reenact §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, all relating to prohibiting sexual acts between persons who are incarcerated, on probation or parole with state and local jail, correctional, probation and parole employees or contractors; prohibiting sexual contact; removing consent of victim as a defense for criminal acts; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8B-2 and §61-8B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.**§61-8B-2. Lack of consent.**

1 (a) Whether or not specifically stated, it is an element of
2 every offense defined in this article that the sexual act was
3 committed without the consent of the victim.

4 (b) Lack of consent results from:

5 (1) Forcible compulsion;

6 (2) Incapacity to consent; or

7 (3) If the offense charged is sexual abuse, any
8 circumstances in addition to the forcible compulsion or
9 incapacity to consent in which the victim does not expressly
10 or impliedly acquiesce in the actor's conduct.

11 (c) A person is deemed incapable of consent when such
12 person is:

13 (1) Less than sixteen years old;

14 (2) Mentally defective;

15 (3) Mentally incapacitated;

16 (4) Physically helpless; or

17 (5) Subject to confinement or supervision by a state or
18 local government entity, when the actor is a person prohibited
19 from having sexual intercourse, or causing sexual intrusion
20 or sexual contact pursuant to subsections (a) and (b) of
21 section ten of this article.

§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision; penalties.

1 (a) Any person employed by the Division of Corrections,
2 any person working at a correctional facility managed by the
3 Commissioner of Corrections pursuant to contract or as an
4 employee of a state agency, any person working at a
5 correctional facility managed by the Division of Juvenile
6 Services pursuant to contract or as an employee of a state
7 agency, any person employed by a jail or by the Regional Jail
8 and Correctional Facility Authority, any person working at a
9 facility managed by the Regional Jail and Correctional
10 Facility Authority or a jail or any person employed by, or
11 acting pursuant to, the authority of any sheriff, county
12 commission or court to ensure compliance with the
13 provisions of article eleven-b, chapter sixty-two of this code
14 who engages in sexual intercourse, sexual intrusion or sexual
15 contact with a person who is incarcerated in this state is
16 guilty of a felony and, upon conviction thereof, shall be
17 confined in a state correctional facility under the control of
18 the Commissioner of Corrections for not less than one nor
19 more than five years or fined not more than \$5,000.

20 (b) Any person employed by the Division of Corrections
21 as a parole officer or by the West Virginia Supreme Court of
22 Appeals as an adult or juvenile probation officer who engages
23 in sexual intercourse, sexual intrusion or sexual contact with
24 a person said parole officer or probation officer is charged as
25 part of his or her employment with supervising, is guilty of a
26 felony and, upon conviction thereof, shall be confined in a
27 state correctional facility under the control of the
28 Commissioner of Corrections for not less than one nor more
29 than five years or fined not more than \$5,000, or both.

30 (c) The term “incarcerated in this state” for purposes of
31 this section includes in addition to its usual meaning,

32 offenders serving a sentence under the provisions of article
33 eleven-b, chapter sixty-two of this code.

34 (d) Authorized pat-down, strip search or other security
35 related tasks does not constitute sexual contact pursuant to
36 this section.



CHAPTER 45

**(S. B. 596 - By Senators Palumbo,
Jenkins, Beach and Klempa)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-8C-3a, relating
to prohibiting child erotica; creating a misdemeanor offense for
producing, possessing, displaying or distributing child erotica;
providing criminal penalty; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §61-8C-3a, to read as
follows:

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3a. Prohibiting child erotica; penalties.

1 (a) Any person age eighteen or over who knowingly and
2 intentionally produces, possesses, displays or distributes, in

3 any form, any visual portrayals of minors who are partially
4 clothed, where the visual portrayals are: (1) Unrelated to the
5 sale of a commercially available legal product; and (2) used
6 for purely prurient purposes, is guilty of a misdemeanor and,
7 upon conviction thereof, shall be confined in jail for not more
8 than one year or fined not more than \$1,000, or both confined
9 and fined.

10 (b) As used in this section only:

11 (1) “Purely prurient purposes” means for the specific
12 purpose of sexual gratification or sexual arousal from
13 viewing the visual portrayals prohibited by this section; and

14 (2) “Commercially available” means for sale to the
15 general public.

16 (3) A “minor” is a child under the age of sixteen years, or
17 a person who is sixteen years of age or older but less than
18 eighteen years old and who is mentally defective or mentally
19 incapacitated.

CHAPTER 46

**(S. B. 331 - By Senators
Wills and Miller)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-12-23 of said code, all relating to adding persons who reside with crime victims to those who are provided notice

of matters in the prosecutorial process; and the right to be heard at sentencing and parole proceedings.

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-12-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-2. Testimony of crime victim at sentencing hearing.

1 (a) For the purposes of this section, “victim” means a
2 person who is a victim of a felony, or, where a death occurs
3 during the commission of a felony or a misdemeanor, the
4 following persons shall be notified if known by the
5 prosecutor: A member of the deceased victim’s immediate
6 family, the fiduciary of the deceased victim’s estate or an
7 adult household member residing with the victim.

8 (b) Prior to the imposition of sentence upon a defendant
9 who has been found guilty of a felony, or of a misdemeanor
10 if death occurs during the commission of a crime, or has
11 pleaded guilty or nolo contendere to a felony, or to a
12 misdemeanor if death occurs during the commission of a
13 crime, the court shall permit the victim of the crime to appear
14 before the court to make an oral statement for the record if
15 the victim notifies the court of his or her desire to make such
16 a statement after receiving notification provided in subsection
17 (c) of this section. If the victim fails to notify the court, the
18 failure is a waiver of the right to make an oral statement. In
19 lieu of the appearance and oral statement, the victim may
20 submit a written statement to the court or to the probation
21 officer in charge of the case. The probation officer shall

22 forthwith file the statement delivered to his or her office with
23 the sentencing court and the statement must be made a part of
24 the record at the sentencing hearing. The statement, whether
25 oral or written, must relate solely to the facts of the case and
26 the extent of injuries, financial losses and loss of earnings
27 directly resulting from the crime for which the defendant is
28 being sentenced.

29 (c) Within a reasonable time prior to the imposition of
30 sentence upon the defendant, the prosecuting attorney or
31 assistant prosecuting attorney in charge of the case shall
32 make reasonable efforts, in writing, to advise the person who
33 was the victim of the crime, the parent or guardian of a minor
34 who was the victim of a crime, the fiduciary of the victim's
35 estate if the victim is deceased and the immediate family
36 members of the victim if the victim is deceased and if their
37 whereabouts are known to the prosecutor or assistant
38 prosecutor. The writing will provide the date, time and place
39 of the original sentencing hearing and of the victim's right to
40 submit a written or oral statement to the sentencing court.

41 (d) The oral or written statement given or submitted by a
42 victim in accordance with the provisions of this section is in
43 addition to and not in lieu of the victim impact statement
44 required by the provisions of section three of this article.

**§61-11A-6. State guidelines for fair treatment of crime victims
and witnesses in the criminal justice system.**

1 (a) No later than July 1, 1984, the Attorney General shall
2 promulgate rules and regulations in accordance with the
3 provisions of chapter twenty-nine-a of this code, establishing
4 guidelines for law-enforcement agencies and prosecuting
5 attorneys' offices consistent with the purposes of this article.
6 The Attorney General shall seek the advice of the West
7 Virginia State Police and Department of Health and Human
8 Resources in preparing such rules and regulations. In

9 preparing such rules and regulations, the following objectives
10 shall be considered:

11 (1) The arresting law-enforcement agency should ensure
12 that victims routinely receive emergency social and medical
13 services as soon as possible and are given information on the
14 following:

15 (A) Availability of crime victim compensation (where
16 applicable);

17 (B) Community-based victim treatment programs;

18 (C) The role of the victim in the criminal justice process,
19 including what they can expect from the system as well as
20 what the system expects from them; and

21 (D) Stages in the criminal justice process of significance
22 to a crime victim, and the manner in which information about
23 such stages can be obtained.

24 (2) The prosecuting attorney or his or her assistant should
25 ensure that victims and witnesses receive information on
26 steps that law-enforcement officers and prosecuting attorneys
27 can take to protect victims and witnesses from intimidation.

28 (3) All victims and witnesses who have been scheduled
29 to attend criminal justice proceedings should be notified by
30 the prosecuting attorneys' offices as soon as possible of any
31 scheduling changes which will affect their appearances.

32 (4) Victims, witnesses, one member of the immediate family
33 and any adult household member residing with the victim
34 should, if such persons provide the appropriate official with a
35 current address and telephone number, receive prompt advance
36 notification, if possible, of judicial proceedings relating to their
37 case, from the prosecuting attorney's office, including:

- 38 (A) The arrest of an accused;
- 39 (B) The initial appearance of an accused before a judicial
40 officer;
- 41 (C) The release of the accused pending judicial
42 proceedings; and
- 43 (D) Proceedings in the prosecution of the accused
44 including, but not limited to, the entry of a plea of guilty,
45 trial, sentencing and, where a term of imprisonment is
46 imposed, the release of the accused from such imprisonment.
- 47 (5) The victim of a serious crime, or in the case of a
48 minor child or a homicide the family of the victim, shall be
49 consulted by the prosecuting attorney in order to obtain the
50 views of the victim or family about the disposition of any
51 criminal case brought as a result of such crime, including the
52 views of the victim or family about:
- 53 (A) Dismissal;
- 54 (B) Release of the accused pending judicial proceedings;
- 55 (C) Plea negotiations; and
- 56 (D) Pretrial diversion program.
- 57 (6) Victims and other prosecution witnesses should be
58 provided a waiting area that is separate from all other
59 witnesses prior to court appearances, if feasible.
- 60 (7) Law-enforcement agencies should promptly return
61 victims' property held for evidentiary purposes unless there
62 is a compelling law-enforcement reason for retaining it.

63 (8) A victim or witness who so requests should be
64 assisted by law-enforcement agencies and prosecuting
65 attorneys in informing employers that the need for victim and
66 witness cooperation in the prosecution of the case may
67 necessitate absence of that victim or witness from work. A
68 victim or witness who, as a direct result of a crime or of
69 cooperation with law-enforcement agencies or attorneys for
70 the government, is subjected to serious financial strain should
71 be assisted by the appropriate state agencies in dealing with
72 creditors.

73 (b) Nothing in this section shall be construed as creating
74 a cause of action against the State of West Virginia or any of
75 its political subdivisions.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in
3 the first or second degree, kidnapping, child abuse resulting
4 in injury, child neglect resulting in injury, arson or a sexual
5 offense against a minor, the prosecuting attorney who
6 prosecuted the offender shall prepare a Parole Hearing
7 Notification Form. This form shall contain the following
8 information:

9 (1) The name of the county in which the offender was
10 prosecuted and sentenced;

11 (2) The name of the court in which the offender was
12 prosecuted and sentenced;

13 (3) The name of the prosecuting attorney or assistant
14 prosecuting attorney who prosecuted the offender;

15 (4) The name of the judge who presided over the criminal
16 case and who sentenced the offender;

17 (5) The names of the law-enforcement agencies and
18 officers who were primarily involved with the investigation
19 of the crime for which the offender was sentenced; and

20 (6) The names, addresses and telephone numbers of the
21 victims of the crime for which the offender was sentenced or
22 the names, addresses and telephone numbers of the
23 immediate family members of each victim of the crime,
24 including, but not limited to, each victim's spouse, father,
25 mother, brothers, sisters and any adult household member
26 residing with the victim.

27 (b) The prosecuting attorney shall retain the original of
28 the Parole Hearing Notification Form and shall provide
29 copies of it to the circuit court which sentenced the offender,
30 the parole board, the Commissioner of Corrections and to all
31 persons whose names and addresses are listed on the form.

32 (c) At least forty-five days prior to the date of a parole
33 hearing, the parole board shall notify all persons who are
34 listed on the Parole Hearing Notification Form of the date,
35 time and place of the hearing. Such notice shall be sent by
36 certified mail, return receipt requested. The notice shall state
37 that the victims of the crime have the right to submit a written
38 statement to the parole board and to attend the parole hearing
39 to be heard regarding the propriety of granting parole to the
40 prisoner. The notice shall also state that only the victims may
41 submit written statements and speak at the parole hearing
42 unless a victim is deceased, is a minor or is otherwise
43 incapacitated.

44 (d) The panel considering the parole shall inquire during
45 the parole hearing as to whether the victims of the crime or
46 their representatives, as provided in this section, are present.
47 If so, the panel shall permit those persons to speak at the
48 hearing regarding the propriety of granting parole for the
49 prisoner.

50 (e) If the panel grants parole, it shall immediately set a
51 date on which the prisoner will be released. Such date shall
52 be no earlier than thirty days after the date on which parole
53 is granted. On the date on which parole is granted, the parole
54 board shall notify all persons listed on the Parole Hearing
55 Notification Form that parole has been granted and the date
56 of release. A written statement of reasons for releasing the
57 prisoner, prepared pursuant to subdivision (4), subsection (b),
58 section thirteen of this article, shall be provided upon request
59 to all persons listed on the Parole Hearing Notification Form.



CHAPTER 47

**(Com. Sub. for S. B. 517 - By Senators
K. Facemyer and Unger)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §62-11C-5 of the Code of West Virginia, 1931, as amended, relating to creating community beautification and reclamation programs for state highways, municipal, county and state parks and recreation areas and community gardens through the West Virginia Community Corrections Act.

Be it enacted by the Legislature of West Virginia:

That §62-11C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY
CORRECTIONS ACT.**

§62-11C-5. Establishment of programs.

1 (a) Any county or combination of counties or a county or
2 counties and a Class I or II municipality may establish and
3 operate community corrections programs, as provided for in
4 this section, to be used both prior to trial as a condition of
5 bond in circuit and magistrate court, as well as an alternative
6 sentencing option for those offenders sentenced within the
7 jurisdiction of the county or counties which establish and
8 operate the program: *Provided*, That the chief judge must
9 certify that the community corrections facility is available for
10 use in connection with the imposition of pretrial bond
11 conditions.

12 (b) Any county or combination of counties or a county or
13 counties and a Class I or II municipality that seek to establish
14 programs as authorized in this section shall submit plans and
15 specifications for the programs to be established, including
16 proposed budgets, for review and approval by the community
17 corrections subcommittee established in section three of this
18 article.

19 (c) Any county or combination of counties or a county or
20 counties and a Class I or II municipality may establish and
21 operate an approved community corrections program to
22 provide alternative sanctioning options for an offender who
23 is convicted of an offense for which he or she may be
24 sentenced to a period of incarceration in a county or regional
25 jail or a state correctional facility and for which probation or

26 home incarceration may be imposed as an alternative to
27 incarceration.

28 (d) Community corrections programs authorized by
29 subsection (a) of this section may provide, but are not limited
30 to providing, any of the following services:

31 (1) Probation supervision programs;

32 (2) Day fine programs;

33 (3) Community service restitution programs;

34 (4) Home incarceration programs;

35 (5) Substance abuse treatment programs;

36 (6) Sex offender containment programs;

37 (7) Licensed domestic violence offender treatment
38 programs;

39 (8) Day reporting centers;

40 (9) Educational or counseling programs;

41 (10) Drug courts; or

42 (11) Community beautification and reclamation programs
43 for state highways, municipal, county and state parks and
44 recreation areas, and community gardens.

45 (e) A county or combination of counties or a county or
46 counties and a Class I or II municipality which establish and
47 operate community corrections programs as provided for in

48 this section may contract with other counties to provide
49 community corrections services.

50 (f) For purposes of this section, the phrase “may be
51 sentenced to a period of incarceration” means that the statute
52 defining the offense provides for a period of incarceration as
53 a possible penalty.

54 (g) No provision of this article may be construed to allow
55 a person participating in or under the supervision of a
56 community corrections program to earn “good time” or any
57 other reduction in sentence.



CHAPTER 48

**(Com. Sub. for S. B. 369 -
By Senators Unger and Snyder)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §7-14D-12 of the Code of West Virginia, 1931, as amended, relating to modifying the Deputy Sheriff Retirement System to allow a retirant upon divorce, annulment or remarriage to change the retirement benefit options under certain circumstances; and prohibiting causes of action against the board based upon such changes.

Be it enacted by the Legislature of West Virginia:

That §7-14D-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**§7-14D-12. Annuity options.**

1 (a) Prior to the effective date of retirement, but not
2 thereafter, except as provided in subsection (c) of this section,
3 a member may elect to receive retirement income payments
4 in the normal form, or the actuarial equivalent of the normal
5 form from the following options:

6 (1) *Option A -- Joint and Survivor Annuity.* -- A life
7 annuity payable during the joint lifetime of the member and
8 his or her beneficiary who is a natural person with an
9 insurable interest in the member's life. Upon the death of
10 either the member or his or her beneficiary, the benefit shall
11 continue as a life annuity to the survivor in an amount equal
12 to fifty percent, sixty-six and two-thirds percent, seventy-five
13 percent or one hundred percent of the amount paid while both
14 were living as selected by the member. If the retiring
15 member is married, the spouse shall sign a waiver of benefit
16 rights if the beneficiary is to be other than the spouse.

17 (2) *Option B -- Contingent Joint and Survivor Annuity.*
18 -- A life annuity payable during the joint lifetime of the
19 member and his or her beneficiary who must be a natural
20 person with an insurable interest in the member's life. Upon
21 the death of the member, the benefit shall continue as a life
22 annuity to the beneficiary in an amount equal to fifty percent,
23 sixty-six and two-thirds percent, seventy-five percent or one
24 hundred percent of the amount paid while both were living as
25 selected by the member. If the beneficiary dies first, the
26 monthly amount of benefits may not be reduced, but shall be
27 paid at the amount that was in effect before the death of the
28 beneficiary. If the retiring member is married, the spouse
29 shall sign a waiver of benefit rights if the beneficiary is to be
30 other than the spouse.

31 (3) *Option C -- Ten Years Certain and Life Annuity.* -- A
32 life annuity payable during the member's lifetime but in any
33 event for a minimum of ten years. If the member dies before
34 the expiration of ten years, the remaining payments shall be
35 made to a designated beneficiary, if any, or otherwise to the
36 member's estate.

37 (4) *Option D -- Level Income Annuity.* -- A life annuity
38 payable monthly in an increased amount "A" from the time
39 of retirement until the member is Social Security retirement
40 age, and then a lesser amount "B" payable for the member's
41 lifetime thereafter, with these amounts computed actuarially
42 to satisfy the following two conditions:

43 (A) *Actuarial equivalence.* -- The actuarial present value
44 at the date of retirement of the member's annuity if taken in
45 the normal form must equal the actuarial present value of the
46 term life annuity in amount "A" plus the actual present value
47 of the deferred life annuity in amount "B"; and

48 (B) *Level income.* -- The amount "A" equals the amount
49 "B" plus the amount of the member's estimated monthly
50 Social Security primary insurance amount that would
51 commence at the date amount "B" becomes payable. For this
52 calculation, the primary insurance amount is estimated when
53 the member applies for retirement, using Social Security law
54 then in effect, using assumptions established by the board.

55 (b) In the case of a member who has elected the options
56 set forth in subdivisions (a)(1) or (2) of this section, and
57 whose beneficiary dies prior to the member's death, the
58 member may name an alternative beneficiary. If an
59 alternative beneficiary is named within eighteen months
60 following the death of the prior beneficiary, the benefit shall
61 be adjusted to be the actuarial equivalent of the benefit the
62 member is receiving just after the death of the member's
63 named beneficiary. If the election is not made until eighteen

64 months after the death of the prior beneficiary, the amount
65 shall be reduced so that it is only ninety percent of the
66 actuarial equivalent of the benefit the member is receiving
67 just after the death of the member's named beneficiary.

68 (c) (1) In the case of a retired member who has elected an
69 option set forth in subdivision (a)(1) or (2) of this section,
70 and designated his or her spouse as beneficiary, upon divorce
71 or annulment, the retirant may elect to change the retirement
72 benefit options offered by those subdivisions to a life annuity
73 in an amount adjusted on a fair basis to be of equal actuarial
74 value of the annuity prospectively in effect relative to the
75 retirant at the time the option is elected: *Provided*, That the
76 retirant furnishes to the board satisfactory proof of entry of a
77 final decree of divorce or annulment: *Provided, however*,
78 That the retirant certifies under penalty of perjury that no
79 qualified domestic relations order, final decree of divorce or
80 other court order that would restrict the election is in effect:
81 *Provided further*, That no cause of action against the board
82 arises or may be maintained on the basis of having permitted
83 the retirant to change the retirement benefit option pursuant
84 to the provisions of this subdivision.

85 (2) Upon remarriage, a retirant may name the new spouse
86 as an annuitant for any of the retirement benefit options
87 offered by subdivision (a)(1) or (2) of this section: *Provided*,
88 That the retirant shall furnish to the board proof of marriage:
89 *Provided, however*, That the retirant certifies under penalty
90 of perjury that no qualified domestic relations order, final
91 decree of divorce or other court order that would restrict the
92 designation is in effect: *Provided further*, That no cause of
93 action against the board arises or may be maintained on the
94 basis of having permitted the retirant to name a new spouse
95 as annuitant for any of the survivorship retirement benefit
96 options. The value of the new survivorship annuity shall be
97 the actuarial equivalent of the retirant's benefit prospectively
98 in effect at the time the new annuity is elected.



CHAPTER 49

**(Com. Sub. for H. B. 4605 - By Delegates Miley,
Moore, Walker, Ferro, Boggs, J. Miller,
Manypenny, Michael, Pino, O'Neal and Lane)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §48-2-104 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §48-2-701 and §48-2-702; and to amend and reenact §59-1-10 of said code, all relating generally to premarital education; providing a premarital education incentive to applicants for marriage licenses; providing for curriculum requirements for premarital education; identifying instructors for premarital education; increasing the fee for marriage license without completion of a premarital education course; creating a fund for purposes of administering the premarital education; and creating a fund for purposes of administering civil legal services for low income persons.

Be it enacted by the Legislature of West Virginia:

That §48-2-104 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §48-2-701 and §48-2-702; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.**ARTICLE 2. MARRIAGE.****PART I. APPLICATION FOR MARRIAGE LICENSE.****§48-2-104. Contents of the application for a marriage license.**

1 (a) The application for a marriage license must contain a
2 statement of the full names of both the female and the male
3 parties, their social security account numbers, dates of birth,
4 places of birth and residence addresses. The application must
5 state whether or not the persons seeking the license have
6 completed premarital education pursuant to section seven
7 hundred one, article two, chapter forty-eight of this code. If
8 the application states that the applicants seeking issuance of
9 the license have completed premarital education, then the
10 applicants must submit a signed and dated certificate of
11 completion issued by the premarital education provider.

12 (b) If either of the parties is a legal alien in the United
13 States of America and has no social security account number,
14 a tourist or visitor visa number or number equivalent to a
15 United States social security account number must be
16 provided.

17 (c) Every application for a marriage license must contain
18 the following statement: "Marriage is designed to be a loving
19 and lifelong union between a woman and a man.

20 The laws of this state affirm your right to enter into this
21 marriage and to live within the marriage free from violence
22 and abuse. Neither of you is the property of the other.
23 Physical abuse, sexual abuse, battery and assault of a spouse
24 or other family member, and other provisions of the criminal
25 laws of this state are applicable to spouses and other family
26 members, and these violations are punishable by law."

PART VII. PREMARITAL EDUCATION.

§48-2-701. Premarital education encouraged; requirements.

1 (a) Persons applying for a marriage license may attend a
2 premarital education course of at least four hours during the
3 twelve months immediately preceding the date of the
4 application for the license.

5 (b) A premarital education course offers instruction
6 involving marital issues which may include, but not be
7 limited to, the following:

8 (1) Conflict management;

9 (2) Communication skills;

10 (3) Managing finances;

11 (4) Child and parenting responsibilities;

12 (5) Extended family roles; and

13 (6) Key components of a successful marriage.

14 (c) Premarital education course instructors must have
15 training in skills-based and research-based marriage
16 preparation curricula.

17 (d) Premarital education courses may be performed by the
18 following:

19 (1) A professional counselor or marriage and family
20 therapist licensed pursuant to article thirty-one, chapter thirty
21 of this code;

22 (2) A social worker licensed pursuant to article thirty,
23 chapter thirty of this code;

24 (3) A psychiatrist who is licensed as a physician pursuant
25 to article three, chapter thirty of this code;

26 (4) A psychologist who is licensed pursuant to article
27 twenty-one, chapter thirty of this code; or

28 (5) An active member of the clergy or his or her designee,
29 including retired clergy, provided that a designee is trained in
30 skills-based and research-based marriage preparation
31 curricula premarital education.

32 (e) The premarital education course curricula must meet
33 the requirements of this section and provide a skills-based
34 and research-based curricula of the following:

35 (1) The National Healthy Marriage Resource Center;

36 (2) A church, spiritual assembly, or religious
37 organization; or

38 (3) Other substantially similar resource.

39 (f) The Department of Health and Human Resources shall
40 maintain an Internet website on which individuals and
41 organizations described in subsection (c) may electronically
42 register with the department to indicate the skills-based and
43 research-based curriculum in which the registrant is trained.

44 (g) The premarital education provider shall furnish each
45 participant, who completes the premarital education required
46 by this section, a certificate of completion.

§48-2-702. Marriage education fund.

1 (a) There is hereby created a special revenue account
2 within the State Treasury known as the Marriage Education
3 Fund. The account shall be administered by the Secretary of
4 the Department of Health and Human Resources.

5 (b) Any balance in the account at the end of each fiscal
6 year shall not revert to the general revenue fund but shall
7 remain in the account and be expended as provided by in this
8 section.

9 (c) The account shall consist of all fees collected under
10 the provisions of paragraph (C), subdivision (4), subsection
11 (c), of section ten, article one, chapter fifty-nine of this code,
12 legislative appropriations, and all interest or other returned
13 earned from investment of the fund.

14 (d) Expenditures from the account shall be made by the
15 secretary for the purposes set forth in section seven-hundred-
16 one of this article, and are not authorized from collections,
17 but are to be made only in accordance with appropriation by
18 the Legislature and in accordance with the provisions of
19 article three, chapter twelve of this code and upon the
20 fulfillment of the provisions set forth in article two, chapter
21 eleven-b of this code: *Provided*, That for fiscal year ending
22 June 30, 2013, expenditures are authorized from collections
23 rather than pursuant to an appropriation by the Legislature.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word "page" is
2 defined as being a paper or electronic writing of not more
3 than legal size, 8 1/2" x 14".

4 (a) When a writing is admitted to record, for receiving
5 proof of acknowledgment thereof, entering an order in
6 connection therewith, endorsing clerk's certificate of
7 recordation thereon and indexing in a proper index, the clerk

8 of the county commission shall charge and collect the
9 following fees:

10 (1) Fifteen dollars for a deed of conveyance (with or
11 without a plat), trust deed, fixture filing or security agreement
12 concerning real estate lease.

13 (2) Forty dollars for a trustee's report of sale for any
14 property for which additional information and filing
15 requirements are required by section eight-a, article one,
16 chapter thirty-eight of this code. Twenty dollars of each
17 recording fee received pursuant to this subdivision shall be
18 deposited into the county's General Revenue Fund and \$20
19 paid quarterly by the clerk of the county commission to the
20 West Virginia Housing Development Fund established in
21 article eighteen, chapter thirty-one of this code.

22 (3) Ten dollars for a financing, continuation, termination
23 or other statement or writing permitted to be filed under
24 chapter forty-six of this code.

25 (4) Ten dollars for a plat or map (with no deed of
26 conveyance) .

27 (5) No charge for a service discharge record.

28 (6) Ten dollars for any document or writing other than
29 those referenced in subdivisions (1), (2), (3), (4) and (5) of
30 this subsection.

31 (7) One dollar for each additional page for documents or
32 writings containing more than five pages.

33 For any of the documents admitted to record pursuant to
34 this subsection, if the clerk of the county commission has the
35 technology available to receive these documents in electronic
36 form or other media, the clerk shall set a reasonable fee to

37 record these writings not to exceed the cost for filing paper
38 documents.

39 (8) Of the fees collected pursuant to subdivision (1),
40 subsection (a) of this section, \$10 shall be deposited in the
41 county general fund in accordance with section twenty-eight
42 of this article and \$1 shall be deposited in the county general
43 fund and dedicated to the operation of the county clerk's
44 office. Four dollars of the fees collected pursuant to
45 subdivision (1), subsection (a) of this section and \$5 of the
46 fees collected pursuant to subdivision (6), subsection (a) of
47 this section shall be paid by the county clerk into the State
48 Treasury and deposited in equal amounts for deposit into the
49 Farmland Protection Fund created in article twelve, chapter
50 eight-a of this code for the benefit of the West Virginia
51 Agricultural Land Protection Authority and into the Outdoor
52 Heritage Conservation Fund created in article two-g, chapter
53 five-b of this code. The funds deposited in the State Treasury
54 pursuant to this subdivision may only be used for costs,
55 excluding personnel costs, associated with purpose of land
56 conservation, as defined in subsection (f), section seven,
57 article two-g, chapter five-b of this code.

58 (b) Five dollars for administering any oath other than
59 oaths by officers and employees of the state, political
60 subdivisions of the state or a public or quasi-public entity of
61 the state or a political subdivision of the state, taken in his or
62 her official capacity.

63 (c) Fifty-five dollars for issuance of marriage license and
64 other duties pertaining to the marriage license (including
65 preparation of the application, administrating the oath,
66 registering and recording the license, mailing
67 acknowledgment of minister's return to one of the licensees
68 and notification to a licensee after sixty days of the
69 nonreceipt of the minister's return). This fee is reduced to
70 \$35 if the applicants present a premarital education course

71 completion certificate issued pursuant to section seven
72 hundred one, article two, chapter forty-eight of this code, and
73 dated within one year of the application for a marriage
74 license.

75 (1) One dollar of the marriage license fee received
76 pursuant to this subsection shall be paid by the county clerk
77 into the State Treasury as a state registration fee in the same
78 manner that license taxes are paid into the Treasury under
79 article twelve, chapter eleven of this code;

80 (2) Fifteen dollars of the marriage license fee received
81 pursuant to this subsection shall be paid by the county clerk
82 into the State Treasury for the Family Protection Shelter
83 Support Act in the same manner that license taxes are paid
84 into the Treasury under article twelve, chapter eleven of this
85 code;

86 (3) Ten dollars of the marriage license fee received
87 pursuant to this subsection shall be deposited in the
88 Courthouse Facilities Improvement Fund created by section
89 six, article twenty-six, chapter twenty-nine of this code; and

90 (4) If a premarital education course completion certificate
91 is not presented, the county clerk shall, on or before the tenth
92 day of each month, transmit \$20 of the marriage license fee
93 received pursuant to this subsection to the state treasurer for
94 deposit in the state treasury as follows:

95 (A) Five dollars to the credit of the Family Protection
96 Shelter Support Act in the same manner that license taxes are
97 paid into the Treasury under article twelve, chapter eleven of
98 this code;

99 (B) Five dollars to the credit of the special revenue
100 account, hereby created, designated the "Fund for Civil Legal
101 Services for Low Income Persons," which shall consist of all

102 gifts, grants, bequests, transfers, appropriations or other
103 donations or payments which may be received and
104 administered by the Division of Justice and Community
105 Services from any governmental entity or unit or any person,
106 firm, foundation, or corporation for the purposes of this
107 section, and all interest or other return earned from
108 investment of the fund. Expenditures from the fund shall be
109 made by the Director of the Division of Justice and
110 Community Services and shall be limited to grants to
111 nonprofit agencies which provide civil legal services to low
112 income persons made at his or her discretion. Any balance in
113 the fund at the end of each fiscal year shall not revert to the
114 general revenue fund but shall remain in the fund and be
115 expended as provided by this section.

116 (C) Ten dollars to the credit of the Marriage Education
117 Fund created pursuant to section seven hundred two, article
118 two, chapter forty-eight of this code.

119 (d) (1) One dollar and fifty cents for a copy of any
120 writing or document, if it is not otherwise provided for.

121 (2) One dollar for each additional page if the writing or
122 documents contains more than two pages.

123 (3) One dollar for annexing the seal of the commission or
124 clerk to any paper.

125 (4) Five dollars for a certified copy of a birth certificate,
126 death certificate or marriage license.

127 (e) For copies of any record in electronic form or a
128 medium other than paper, a reasonable fee set by the clerk of
129 the county commission not to exceed the costs associated
130 with document search and duplication.



CHAPTER 50

**(Com. Sub. for S. B. 51 - By
Senators Boley and Nohe)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §48-8-103 of the Code of West Virginia, 1931, as amended, relating to modifying or terminating spousal support based upon the results of genetic testing; defining “altered circumstances”; requiring a preliminary determination by the court as to whether genetic testing evidence should be admitted; providing facts which may be considered by the court in making the preliminary determination; and providing guidelines for genetic testing.

Be it enacted by the Legislature of West Virginia:

That §48-8-103 the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.

- 1 (a) Upon ordering a divorce or granting a decree of
- 2 separate maintenance, the court may require either party to
- 3 pay spousal support in the form of periodic installments, or
- 4 a lump sum, or both, for the maintenance of the other party.
- 5 Payments of spousal support are to be ordinarily made from
- 6 a party’s income, but when the income is not sufficient to
- 7 adequately provide for those payments, the court may, upon

8 specific findings set forth in the order, order the party
9 required to make those payments to make them from the
10 corpus of his or her separate estate. An award of spousal
11 support shall not be disproportionate to a party's ability to
12 pay as disclosed by the evidence before the court.

13 (b) At any time after the entry of an order pursuant to the
14 provisions of this article, the court may, upon motion of
15 either party, revise or alter the order concerning the
16 maintenance of the parties, or either of them, and make a new
17 order concerning the same, issuing it forthwith, as the altered
18 circumstances or needs of the parties may render necessary to
19 meet the ends of justice.

20 (c)(1) For the purposes of subsection (b) of this section,
21 "altered circumstances" includes evidence in the form of
22 genetic testing that establishes that a child conceived during
23 the marriage of the parties is not the child of the former
24 husband, or that a child was born to a woman other than the
25 former wife because of the adultery of the former husband.

26 (2) Prior to admitting evidence of genetic testing, the
27 court shall preliminarily determine whether genetic testing
28 evidence should be admitted for the purpose of disproving or
29 establishing paternity. The facts that may be considered by
30 the court at this hearing include the following:

31 (A) The length of time that has elapsed since the party
32 was first placed on notice that a child conceived during the
33 marriage of the parties is not the child of the former husband,
34 or that a child was born to a woman other than the former
35 wife because of the adultery of the former husband;

36 (B) The length of time during which the individual
37 desiring to challenge paternity assumed the role of parent to
38 the child;

39 (C) The facts surrounding the party's discovery of
40 nonpaternity;

41 (D) The nature of the parent/child relationship;

42 (E) The age of the child;

43 (F) The harm which may result to the child if paternity
44 were successfully disproved;

45 (G) The extent to which the passage of time reduced the
46 chances of establishing paternity in favor of the child; and

47 (H) All other factors which may affect the equities
48 involved in the potential disruption of the parent/child
49 relationship or the chances of undeniable harm to the child.

50 (d) For the purposes of subsection (c), genetic testing
51 must be performed pursuant to the following guidelines:

52 (1) The tests show that the inherited characteristics
53 including, but not limited to, blood types, have been
54 determined by appropriate testing procedures at a hospital,
55 independent medical institution or independent medical
56 laboratory duly licensed under the laws of this state, or any
57 other state, and an expert qualified as an examiner of genetic
58 markers has analyzed, interpreted and reported on the results;
59 and

60 (2) The genetic test results exclude the former husband as
61 the father of the child.



CHAPTER 51

**(Com. Sub. for H. B. 4130 - By Delegates
Smith, Lawrence and Hunt)**

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to repeal §48-22-803 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-22-303 of said code; and to amend and reenact said code by adding thereto a new section, designated §61-2-14h, all relating to crimes against the person; increasing criminal penalties relating to the increase the penalty for the criminal offenses involving money in exchange for locating, providing or procuring a minor child in certain circumstances; providing circumstances deemed abuse and neglect; and providing exceptions from thereto for certain acts relating to lawful adoptions.

Be it enacted by the Legislature of West Virginia:

That §48-22-803 of the Code of West Virginia, 1931, as amended, be repealed; that §48-22-303 of the code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-2-14h, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 22. ADOPTION.

§48-22-303. Content of consent or relinquishment.

- 1 (a) A consent or relinquishment as required by the
- 2 provisions of section 22-301 must be written in plain English

3 or, if the person executing the consent or relinquishment does
4 not understand English, in the person's primary language.
5 The form of the consent or relinquishment shall include the
6 following, as appropriate:

7 (1) The date, place and time of the execution of the
8 consent or relinquishment;

9 (2) The name, date of birth and current mailing address
10 of the person executing the consent or relinquishment;

11 (3) The date, place of birth and the name or pseudonym
12 ("Baby Boy _____ or Baby Girl _____") of the minor child;

13 (4) The fact that the document is being executed more
14 than seventy-two hours after the birth of the child;

15 (5) If a consent, that the person executing the document
16 is voluntarily and unequivocally consenting to the transfer of
17 legal and physical custody to, and the adoption of the child
18 by, an adoptive parent or parents whose name or names may,
19 but need not be, specified;

20 (6) If a relinquishment, that the person executing the
21 relinquishment voluntarily consents to the permanent transfer
22 of legal and physical custody of the child to the agency for
23 the purposes of adoption;

24 (7) If a consent, that it authorizes the prospective
25 adoptive parents, or if a relinquishment, that it authorizes the
26 agency, to consent to medical treatment of the child pending
27 any adoption proceeding;

28 (8) That after the consent or relinquishment is signed and
29 acknowledged, it is final and, unless revoked in accordance
30 with the provisions of section 22-305, it may not be revoked
31 or set aside for any other reason;

32 (9) That the adoption will forever terminate all parental
33 rights, including any right to visit or communicate with the
34 child and any right of inheritance;

35 (10) That the adoption will forever terminate all parental
36 obligations of the person executing the consent or
37 relinquishment;

38 (11) That the termination of parental rights and
39 obligations is permanent whether or not any agreement for
40 visitation or communication with the child is subsequently
41 performed;

42 (12) That the person executing the consent or
43 relinquishment does so of his or her own free will and the
44 consent or relinquishment has not been obtained by fraud or
45 duress;

46 (13) That the person executing the consent or
47 relinquishment has:

48 (i) Received a copy of the consent or relinquishment;

49 (ii) Been provided the information and afforded the
50 opportunity to participate in the voluntary adoption registry,
51 pursuant to the provisions of article 23-101, et seq.;

52 (iii) Been advised of the availability of counseling;

53 (iv) Been advised of the consequences of misidentifying
54 the other birth parent; and

55 (v) If a birth mother, been advised of the obligation to
56 provide the information required by the provisions of section
57 seven of this article in the case of an unknown father;

58 (14) That the person executing the consent or
59 relinquishment has not received or been promised any money
60 or anything of value for the consent or relinquishment, other
61 than payments authorized by the provisions of section
62 fourteen-h, article two, chapter sixty-one;

63 (15) Whether the child is an “Indian child” as defined in
64 the Indian Child Welfare Act, 25 U.S.C. §1903;

65 (16) That the person believes the adoption of the child is
66 in the child’s best interest; and

67 (17) That the person who is consenting or relinquishing
68 expressly waives notice of any proceeding for adoption
69 unless the adoption is contested, appealed or denied.

70 (b) A consent or relinquishment may provide explicitly
71 for its conditional revocation if:

72 (1) Another person whose consent or relinquishment is
73 required does not execute the same within a specified period;

74 (2) A court determines not to terminate another person’s
75 parental relationship to the child; or

76 (3) In a direct placement for adoption, a petition for
77 adoption by a prospective adoptive parent, named or
78 described in the consent, is denied or withdrawn.

79 (c) A consent or relinquishment shall also include:

80 (1) If a consent, the name, address, telephone and
81 facsimile numbers of the lawyer representing the prospective
82 adoptive parents; or

83 (2) If a relinquishment, the name, address, telephone and
84 facsimile numbers of the agency to which the child is being
85 relinquished; and

86 (3) Specific instructions on how to revoke the consent or
87 relinquishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives or
2 agrees to give to another person money, property, service or
3 other thing of value in consideration for the recipient's
4 locating, providing or procuring a minor child for any
5 purpose which entails a transfer of the legal or physical
6 custody of said child, including, but not limited to, adoption
7 or placement, is guilty of a felony and subject to fine and
8 imprisonment as provided herein.

9 (b) Any person who knowingly receives, accepts or offers
10 to accept money, property, service or other thing of value to
11 locate, provide or procure a minor child for any purpose
12 which entails a transfer of the legal or physical custody of
13 said child, including, but not limited to, adoption or
14 placement, is guilty of a felony and subject to fine and
15 imprisonment as provided herein.

16 (c) Any person who violates the provisions of this section
17 is guilty of a felony and, upon conviction thereof, may be
18 confined in the state correctional facility for not less than one
19 year nor more than ten years or, in the discretion of the court,
20 be confined in jail not more than one year and fined not less
21 than \$2,000 nor more than \$10,000.

22 (d) A child whose parent, guardian or custodian has sold
23 or attempted to sell said child in violation of the provisions of

24 article twenty-two, chapter forty-eight may be deemed an
25 abused child as defined by section three, article one, chapter
26 forty-nine of this code. The court may place such a child in
27 the custody of the department of health and human resources
28 or with such other responsible person as the best interests of
29 the child dictate.

30 (e) This section does not prohibit the payment or receipt
31 of the following:

32 (1) Fees paid for reasonable and customary services
33 provided by the department of health and human resources or
34 any licensed or duly authorized adoption or child-placing
35 agency.

36 (2) Reasonable and customary legal, medical, hospital or
37 other expenses incurred in connection with the pregnancy,
38 birth and adoption proceedings.

39 (3) Fees and expenses included in any agreement in
40 which a woman agrees to become a surrogate mother.

41 (4) Any fees or charges authorized by law or approved by
42 a court in a proceeding relating to the placement plan,
43 prospective placement or placement of a minor child for
44 adoption.

45 (f) At the final hearing on the adoption as provided in
46 article twenty-two, chapter forty-eight of this code, an
47 affidavit of any fees and expenses paid or promised by the
48 adoptive parents shall be submitted to the court.



CHAPTER 52

**(H. B. 4648 - By Delegates Perry and Sigler)
[By Request of the Supreme Court of Appeals]**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2A-2 of said code, all relating to authorizing the Supreme Court of Appeals to utilize existing judicial officers and resources to establish and implement one domestic violence court pilot project; establishing and clarifying the jurisdiction of the pilot project court; establishing an expiration date for the pilot project and requesting reports to the President of the Senate and Speaker of the House of Delegates prior to the convening of the regular sessions of the Legislature in the years 2015 and 2016.

Be it enacted by the Legislature of West Virginia:

That §48-27-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2A-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

- 1 (a) Circuit courts, family courts and magistrate courts,
- 2 have concurrent jurisdiction over domestic violence
- 3 proceedings as provided in this article.

4 (b) The Supreme Court of Appeals is authorized to assign
5 an appropriate judicial officer for one pilot domestic violence
6 court in any jurisdiction chosen by the Supreme Court of
7 Appeals. The judicial officer assigned has the authority and
8 jurisdiction to preside over criminal misdemeanor crimes of
9 domestic violence involving family or household members as
10 defined in subdivisions one through six and paragraphs (A),
11 (B) and (H), subdivision seven, section two hundred four of
12 this article, relating to offenses under subsections (b) and (c),
13 section nine, article two, chapter sixty-one of this code,
14 misdemeanor violations of section nine-a, article two, chapter
15 sixty-one of this code, misdemeanor violations of section
16 twenty-eight, article two, chapter sixty-one of this code,
17 misdemeanor offenses under article three, chapter sixty-one
18 of this code, where the alleged perpetrator and the victim are
19 said family or household members, subdivisions seven and
20 eight, section seven, article seven, chapter sixty-one of this
21 code and civil and criminal domestic violence protective
22 order proceedings as provided in this article. The judicial
23 officer chosen for any pilot domestic violence court may be
24 a current or senior status circuit judge, family court judge,
25 temporary family court judge or magistrate. The Supreme
26 Court of Appeals is requested to maintain statistical data to
27 determine the feasibility and effectiveness of any pilot
28 domestic violence court established by the provisions of this
29 section. The program shall terminate December 31, 2016,
30 and the Supreme Court is requested to provide a report to the
31 President of the Senate and the Speaker of the House of
32 Delegates regarding the program's efficacy prior to the
33 regular sessions of the Legislature in 2015 and 2016.

34 (c) The assigned judicial officer, in this pilot domestic
35 violence court, does not have jurisdiction to preside over any
36 felony crimes.

CHAPTER 51. COURTS AND THEIR OFFICERS.**ARTICLE 2A. FAMILY COURTS.****§51-2A-2. Family court jurisdiction; exceptions; limitations.**

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate
4 maintenance brought under the provisions of article three,
5 four or five, chapter forty-eight of this code except as
6 provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of articles eleven, twelve and fourteen,
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of this
12 code and any dependent claims related to such actions
13 regarding child support, parenting plans or other allocation of
14 custodial responsibility or decision-making responsibility for
15 a child;

16 (4) All actions for grandparent visitation brought under
17 the provisions of article ten, chapter forty-eight of this code;

18 (5) All actions for the interstate enforcement of family
19 support brought under article sixteen, chapter forty-eight of
20 this code and for the interstate enforcement of child custody
21 brought under the provisions of article twenty of said chapter;

22 (6) All actions for the establishment of a parenting plan
23 or other allocation of custodial responsibility or decision-
24 making responsibility for a child, including actions brought

25 under the Uniform Child Custody Jurisdiction and
26 Enforcement Act, as provided in article twenty, chapter forty-
27 eight of this code;

28 (7) All petitions for writs of habeas corpus wherein the
29 issue contested is custodial responsibility for a child;

30 (8) All motions for temporary relief affecting parenting
31 plans or other allocation of custodial responsibility or
32 decision-making responsibility for a child, child support,
33 spousal support or domestic violence;

34 (9) All motions for modification of an order providing for
35 a parenting plan or other allocation of custodial responsibility
36 or decision-making responsibility for a child or for child
37 support or spousal support;

38 (10) All actions brought, including civil contempt
39 proceedings, to enforce an order of spousal or child support
40 or to enforce an order for a parenting plan or other allocation
41 of custodial responsibility or decision-making responsibility
42 for a child;

43 (11) All actions brought by an obligor to contest the
44 enforcement of an order of support through the withholding
45 from income of amounts payable as support or to contest an
46 affidavit of accrued support, filed with the circuit clerk,
47 which seeks to collect an arrearage;

48 (12) All final hearings in domestic violence proceedings;

49 (13) Petitions for a change of name, exercising concurrent
50 jurisdiction with the circuit court;

51 (14) All proceedings for payment of attorney fees if the
52 family court judge has jurisdiction of the underlying action;

53 (15) All proceedings for property distribution brought
54 under article seven, chapter forty-eight of this code;

55 (16) All proceedings to obtain spousal support brought
56 under article eight, chapter forty-eight of this code;

57 (17) All proceedings relating to the appointment of
58 guardians or curators of minor children brought pursuant to
59 sections three, four and six, article ten, chapter forty-four of
60 this code, exercising concurrent jurisdiction with the circuit
61 court; and

62 (18) All proceedings relating to petitions for sibling
63 visitation.

64 (b) If an action for divorce, annulment or separate
65 maintenance does not require the establishment of a parenting
66 plan or other allocation of custodial responsibility or
67 decision-making responsibility for a child and does not
68 require an award or any payment of child support, the circuit
69 court has concurrent jurisdiction with the family court over
70 the action if, at the time of the filing of the action, the parties
71 also file a written property settlement agreement executed by
72 both parties.

73 (c) If an action for divorce, annulment or separate
74 maintenance is pending and a petition is filed pursuant to the
75 provisions of article six, chapter forty-nine of this code
76 alleging abuse or neglect of a child by either of the parties to
77 the divorce, annulment or separate maintenance action, the
78 orders of the circuit court in which the abuse or neglect
79 petition is filed shall supercede and take precedence over an
80 order of the family court respecting the allocation of custodial
81 and decision-making responsibility for the child between the
82 parents. If no order for the allocation of custodial and
83 decision-making responsibility for the child between the

84 parents has been entered by the family court in the pending
85 action for divorce, annulment or separate maintenance, the
86 family court shall stay any further proceedings concerning
87 the allocation of custodial and decision-making responsibility
88 for the child between the parents and defer to the orders of
89 the circuit court in the abuse or neglect proceedings.

90 (d) If a family court judge is assigned as a judicial officer
91 of a pilot domestic violence court then jurisdiction of all
92 proceedings relating to criminal misdemeanor crimes of
93 domestic violence as referenced in section three hundred one
94 of this article involving a family or household member as
95 referenced in subdivisions one through six and paragraphs
96 (A), (B), and (H), subdivision seven, section two hundred
97 four, article twenty-seven, chapter forty-eight of this code
98 shall be concurrent with the circuit and magistrate courts.

99 (e) A family court is a court of limited jurisdiction. A
100 family court is a court of record only for the purpose of
101 exercising jurisdiction in the matters for which the
102 jurisdiction of the family court is specifically authorized in
103 this section and in chapter forty-eight of this code. A family
104 court may not exercise the powers given courts of record in
105 section one, article five, chapter fifty-one of this code or
106 exercise any other powers provided for courts of record in
107 this code unless specifically authorized by the Legislature. A
108 family court judge is not a “judge of any court of record” or
109 a “judge of a court of record” as the terms are defined and
110 used in article nine of this chapter.



CHAPTER 53

(Com. Sub. for H. B. 2521 -
By Delegate Frazier)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §48-27-311 and §48-27-701 of the Code of West Virginia, 1931, as amended, relating to prevention and treatment of domestic violence generally; eliminating the requirement of serving domestic violence orders by certified mail where personal service fails; authorizing fee to law enforcement for service of process; and clarifying that personal service must be attempted at every address for respondent provided by petitioner.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 and §48-27-701 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-311. Service of process.

1 A protective order may be served on the respondent by
2 means of a Class I legal advertisement published notice, with
3 the publication area being the most current known county in
4 which the respondent resides, published in accordance with
5 the provisions of section two, article three, chapter fifty-nine

6 of this code if personal service by law enforcement has been
7 unsuccessful. Simultaneously with the publication, the
8 respondent shall be served with the protective order and the
9 order of publication by first class mail to the respondent's
10 most current known residential address.

11 Any protective order issued by the court of this state
12 which is served in compliance with the provisions of Rule
13 4(f) of the West Virginia Rules of Civil Procedure served
14 outside the boundaries of this state shall carry the same force
15 and effect as if it had been personally served within this
16 state's boundaries.

§48-27-701. Service of pleadings and orders by law-enforcement officers.

1 Notwithstanding any other provision of this code to the
2 contrary, all law-enforcement officers are hereby authorized
3 to serve all pleadings and orders filed or entered pursuant to
4 this article on Sundays and legal holidays. No law-
5 enforcement officer shall refuse to serve any pleadings or
6 orders entered pursuant to this article. Law enforcement shall
7 attempt to serve all protective orders without delay:
8 *Provided*, That service of process shall be attempted within
9 seventy-two hours of law enforcement's receipt of the order
10 to every address provided by petitioner. Any law-
11 enforcement agency that serves pleadings or orders pursuant
12 to this section may receive the fee authorized therefor by
13 Rule 4 of the Rules of Practice and Procedure for Domestic
14 Violence Civil Proceedings. If service is not made, law
15 enforcement shall continue to attempt service on the
16 respondent until proper service is made.



CHAPTER 54

**(Com Sub. for H. B. 4307 - By Delegates
Miley, Frazier, Longstreth, Barill and Jones)
[By the Request of the Supreme Court of Appeals]**

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and and reenact §48-27-502 and §48-27-1101 of the Code of West Virginia, 1931, as amended, all relating to domestic violence generally; clarifying that the practice and procedure for domestic violence civil proceedings are governed by court rule; providing that a prohibition against possessing firearms and ammunition is a mandatory provision for domestic violence protective orders; and, providing that a domestic violence protective order state that possession of firearms and ammunition while subject to domestic violence protective order is a criminal violation of state and federal law.

Be it enacted by the Legislature of West Virginia:

That §48-27-502 and §48-27-1101 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-502. Mandatory provisions in protective order.

- 1 (a) A protective order must order the respondent to
- 2 refrain from abusing, harassing, stalking, threatening or

3 otherwise intimidating the petitioner or the minor children, or
4 engaging in other conduct that would place the petitioner or
5 the minor children in reasonable fear of bodily injury.

6 (b) The protective order must prohibit the respondent
7 from possessing any firearm or ammunition.

8 (c) The protective order must inform the respondent that
9 he or she is prohibited from possessing any firearm or
10 ammunition and that possession of a firearm or ammunition
11 while subject to the court's protective order is a criminal
12 offense under state and federal law, notwithstanding the fact
13 that the respondent might otherwise have a right to possess a
14 firearm.

15 (d) The protective order must inform the respondent that
16 the order is in full force in every county of this state.

17 (e) The protective order must contain on its face the
18 following statement, printed in bold-faced type or in capital
19 letters:

20 “VIOLATION OF THIS ORDER MAY BE PUNISHED
21 BY CONFINEMENT IN A REGIONAL JAIL FOR AS
22 LONG AS ONE YEAR AND BY A FINE OF AS MUCH
23 AS \$2,000”.

**§48-27-1101. Rules of practice and procedure; forms to be
provided; operative date.**

1 (a) Pleadings, practice and procedure in domestic
2 violence matters before the court are governed by the rules of
3 practice and procedure for domestic violence civil
4 proceedings promulgated by the West Virginia Supreme
5 Court of Appeals.

6 (b) The West Virginia Supreme Court of Appeals shall
7 prescribe forms which are necessary and convenient for
8 proceedings pursuant to this article and the court shall
9 distribute such forms to the clerk of the circuit court, the
10 secretary-clerk of the family court and the clerk of magistrate
11 court of each county within the state.



CHAPTER 55

**(Com. Sub. for H. B. 4330 - By Delegates
Staggers, L. Phillips, Butcher, Varner,
Ferns, Cann, R. Phillips, Paxton, Stowers,
Iaquinta and Longstreth)**

[Passed March 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 12, 2012.]

AN ACT to amend and reenact §17B-2-1 and §17B-2-6 of the Code of West Virginia, 1931, as amended, all relating to issuance of driver's licenses; providing that licenses issued under this section may contain information designating the licensee as a person who is an honorably discharged veteran of any branch of the Armed Forces of the United States; providing that veterans may renew licenses without cost if not expired; and redefining "previously licensed" as an applicant who has held at least a level two or similar driver's licensing level or class.

Be it enacted by the Legislature of West Virginia:

That §17B-2-1 and §17B-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a)(1) No person, except those hereinafter expressly
2 exempted, may drive any motor vehicle upon a street or
3 highway in this state or upon any subdivision street used by
4 the public generally unless the person has a valid driver's
5 license issued pursuant to this code for the type or class of
6 vehicle being driven.

7 (2) Any person licensed to operate a motor vehicle
8 pursuant to this code may exercise the privilege thereby
9 granted in the manner provided in this code and, except as
10 otherwise provided by law, is not required to obtain any other
11 license to exercise the privilege by any county, municipality
12 or local board or body having authority to adopt local police
13 regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicles the licensee may operate in accordance with this
17 code, federal law or rule. Licenses shall be issued in different
18 colors for those drivers under age eighteen, those drivers age
19 eighteen to twenty-one and adult drivers. The commissioner
20 is authorized to select and assign colors to the licenses of the
21 various age groups.

22 (c) The following drivers licenses classifications are
23 hereby established:

24 (1) A Class A, B or C license shall be issued to those
25 persons eighteen years of age or older with two years of
26 driving experience who have qualified for the commercial
27 driver's license established by chapter seventeen-e of this
28 code and the federal Motor Carrier Safety and Improvement

29 Act of 1999 and subsequent rules, and have paid the required
30 fee.

31 (2) A Class D license shall be issued to those persons
32 eighteen years and older with one year of driving experience
33 who operate motor vehicles other than those types of vehicles
34 which require the operator to be licensed under the provisions of
35 chapter seventeen-e of this code and federal law and rule and
36 whose primary function or employment is the transportation of
37 persons or property for compensation or wages and have paid
38 the required fee. For the purpose of regulating the operation of
39 motor vehicles, wherever the term "chauffeur's license" is used
40 in this code, it shall be construed to mean the Class A, B, C or D
41 license described in this section or chapter seventeen-e of this
42 code or federal law or rule: *Provided*, That anyone not required
43 to be licensed under the provisions of chapter seventeen-e of this
44 code and federal law or rule and who operates a motor vehicle
45 registered or required to be registered as a Class A motor
46 vehicle, as that term is defined in section one, article ten, chapter
47 seventeen-a of this code, with a gross vehicle weight rating of
48 less than eight thousand one pounds, is not required to obtain a
49 Class D license.

50 (3) A Class E license shall be issued to those persons who
51 have qualified for a driver's license under the provisions of
52 this chapter and who are not required to obtain a Class A, B,
53 C or D license and who have paid the required fee. The Class
54 E license may be endorsed under the provisions of section
55 seven-b of this article for motorcycle operation. The Class E
56 or (G) license for any person under the age of eighteen may
57 also be endorsed with the appropriate graduated driver
58 license level in accordance with the provisions of section
59 three-a of this article.

60 (4) A Class F license shall be issued to those persons who
61 successfully complete the motorcycle examination procedure

62 provided by this chapter and have paid the required fee, but
63 who do not possess a Class A, B, C, D or E driver's license.

64 (5) A Class G driver's license or instruction permit shall
65 be issued to a person using bioptic telescopic lenses who has
66 successfully completed an approved driver training program
67 and complied with all other requirements of article two-b of
68 this chapter.

69 (d) All licenses issued under this section may contain
70 information designating the licensee as a diabetic, organ
71 donor, as deaf or hard-of-hearing, or as having any other
72 handicap or disability, or that the licensee is an honorably
73 discharged veteran of any branch of the Armed Forces of the
74 United States according to criteria established by the division,
75 if the licensee requests this information on the license. An
76 honorably discharged veteran may be issued a replacement
77 license without charge if the request is made before the
78 expiration date of the current license and the only purpose for
79 receiving the replacement license is to get the veteran's
80 designation placed on the license.

81 (e) No person, except those hereinafter expressly
82 exempted, may drive any motorcycle upon a street or
83 highway in this state or upon any subdivision street used by
84 the public generally unless the person has a valid motorcycle
85 license, a valid license which has been endorsed under
86 section seven-b of this article for motorcycle operation or a
87 valid motorcycle instruction permit.

88 (f)(1) An identification card may be issued to any person who:

89 (A) Is a resident of this state in accordance with the
90 provisions of section one-a, article three, chapter seventeen-a
91 of this code;

92 (B) Has reached the age of two years. The division may
93 also issue an identification card to a person under the age of
94 two years for good cause shown;

95 (C) Has paid the required fee of two dollars and fifty
96 cents per year: *Provided*, That the fee is not required if the
97 applicant is sixty-five years or older or is legally blind; and

98 (D) Presents a birth certificate or other proof of age and
99 identity acceptable to the division with a completed
100 application on a form furnished by the division.

101 (2) The identification card shall contain the same
102 information as a driver's license except that the identification
103 card shall be clearly marked as an identification card. The
104 division may issue an identification card with less
105 information to persons under the age of sixteen. An
106 identification card may be renewed annually on application
107 and payment of the fee required by this section.

108 (A) Every identification card issued to a person who has
109 attained his or her twenty-first birthday expires on the
110 licensee's birthday in those years in which the licensee's age
111 is evenly divisible by five. Except as provided in paragraph
112 (B) of this subdivision, no identification card may be issued
113 for less than three years or for more than seven years and
114 expires on the licensee's birthday in those years in which the
115 licensee's age is evenly divisible by five.

116 (B) Every identification card issued to a person who has
117 not attained his or her twenty-first birthday expires thirty
118 days after the licensee's twenty-first birthday.

119 (C) Every identification card issued to persons under the
120 age of sixteen shall be issued for a period of two years and
121 shall expire on the last day of the month in which the
122 applicant's birthday occurs.

123 (3) The division may issue an identification card to an
124 applicant whose privilege to operate a motor vehicle has been
125 refused, canceled, suspended or revoked under the provisions
126 of this code.

127 (g) Any person violating the provisions of this section is
128 guilty of a misdemeanor and, upon conviction, shall be fined
129 not more than five hundred dollars; and upon a second or
130 subsequent conviction, shall be fined not more than five
131 hundred dollars or confined in jail not more than six months,
132 or both fined and confined.

**§17B-2-6. Application for license or instruction permit; fee to
accompany application.**

1 (a) Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by the
3 division. Every application shall be accompanied by the
4 proper fee and payment of the fee entitles an applicant under
5 the age of eighteen to not more than two attempts at the written
6 test or not more than three attempts to pass the road skills test.
7 An applicant age eighteen years or older is entitled to not more
8 than two attempts at the written test or not more than three
9 attempts to pass the road skills test within a period of ninety
10 days from the date of issuance of the instruction permit. An
11 applicant who fails either the written test or the road skills test
12 may not be tested twice within a period of one week.

13 (b) Any applicant who has not been previously licensed
14 must hold an instruction permit for a minimum of thirty days.
15 For the purposes of this section, the term "previously
16 licensed" means an applicant who has obtained at least a level
17 two graduated license or junior driver's license issued under
18 the provisions of this article or has obtained an equal or
19 greater level of licensure if previously licensed in another
20 state.

21 (c) Every application for an instruction permit shall state
22 the full legal name, date of birth, sex, and residence address
23 of the applicant and briefly describe the applicant. The
24 application shall state whether the applicant has theretofore
25 been a licensed driver and, if so, when, and by what state or
26 country and whether his or her license has ever been
27 suspended or revoked within five years of the date of
28 application, or whether an application has ever been refused
29 and, if so, the date of and reason for the suspension,
30 revocation or refusal. The application will indicate whether
31 the applicant desires a notation on the driver's license
32 indicating that the applicant is an organ donor, in accordance
33 with article one-b of this chapter, is diabetic, deaf, or hard of
34 hearing, has any other handicap or disability, or is an
35 honorably discharged veteran of any branch of the Armed
36 Forces of the United States, and such other pertinent
37 information as the commissioner may require.

CHAPTER 56

(Com. Sub. for S. B. 512 -
By Senators Palumbo and Beach)

[Passed March 8, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §17C-5C-4a and §17C-5C-4b, all relating to updating statutory provisions relating to procedures of the Office of Administrative Hearings; providing written objections to revocation notices may be filed by facsimile or e-mail; providing notices of hearing are sent to the

parties and their legal counsel; providing that the Office of Administrative Hearings has subpoena authority; providing that parties may enforce Office of Administrative Hearings subpoenas in circuit court; providing that the Division of Motor Vehicles may serve subpoenas to law-enforcement officers by electronic mail; deleting language indicating that a notice of hearing sent by certified or registered mail to a law-enforcement officer constitutes a subpoena to appear; authorizing the Office of Administrative Hearings to propose legislative rules to implement the provisions of this article and to carry out the duties prescribed therein; and requiring persons with pending contested matters to provide notice of change of address.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-2 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 §17C-5C-4a and §17C-5C-4b, all to read as follows:

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF
LICENSES FOR DRIVING UNDER THE
INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR
DRUGS.**

§17C-5A-2. Hearing; revocation; review.

- 1 (a) Written objections to an order of revocation or
- 2 suspension under the provisions of section one of this article
- 3 or section seven, article five of this chapter shall be filed with
- 4 the Office of Administrative Hearings. Upon the receipt of
- 5 an objection, the Office of Administrative Hearings shall
- 6 notify the Commissioner of the Division of Motor Vehicles,
- 7 who shall stay the imposition of the period of revocation or

8 suspension and afford the person an opportunity to be heard by
9 the Office of Administrative Hearings. The written objection
10 must be filed with Office of Administrative Hearings in
11 person, by registered or certified mail, return receipt requested,
12 or by facsimile transmission or electronic mail within thirty
13 calendar days after receipt of a copy of the order of revocation
14 or suspension or no hearing will be granted: *Provided*, That
15 a successful transmittal sheet shall be necessary for proof of
16 written objection in the case of filing by fax. The hearing
17 shall be before a hearing examiner employed by the Office
18 of Administrative Hearings who shall rule on evidentiary
19 issues. Upon consideration of the designated record, the hearing
20 examiner shall, based on the determination of the facts of the
21 case and applicable law, render a decision affirming,
22 reversing or modifying the action protested. The decision
23 shall contain findings of fact and conclusions of law and shall
24 be provided to all parties by registered or certified mail, return
25 receipt requested.

26 (b) The hearing shall be held at an office of the Division of
27 Motor Vehicles located in or near the county in which the
28 arrest was made in this state or at some other suitable place in
29 the county in which the arrest was made if an office of the
30 division is not available. The Office of Administrative
31 Hearings shall send a notice of hearing to the person whose
32 driving privileges are at issue and the person's legal counsel if
33 the person is represented by legal counsel, the investigating or
34 arresting law-enforcement officers, the Division of Motor
35 Vehicles, and the Attorney General's Office, if the Attorney
36 General has filed a notice of appearance of counsel on behalf
37 of the Division of Motor Vehicles.

38 (c) (1) Any hearing shall be held within one hundred
39 eighty days after the date upon which the Office of
40 Administrative Hearings received the timely written objection
41 unless there is a postponement or continuance.

42 (2) The Office of Administrative Hearings may postpone
43 or continue any hearing on its own motion or upon application
44 by the party whose license is at issue in that hearing or by the
45 commissioner for good cause shown.

46 (3) The Office of Administrative Hearings may issue
47 subpoenas commanding the appearance of witnesses and
48 subpoenas duces tecum commanding the submission of
49 documents, items or other things. Subpoenas duces tecum
50 shall be returnable on the date of the next scheduled hearing
51 unless otherwise specified. The Office of Administrative
52 hearings shall issue subpoenas and subpoenas duces tecum at
53 the request of a party or the party's legal representative. The
54 party requesting the subpoena shall be responsible for service
55 of the subpoena upon the appropriate individual. Every
56 subpoena or subpoena duces tecum shall be served at least five
57 days before the return date thereof, either by personal service
58 made by a person over eighteen years of age or by registered
59 or certified mail, return receipt requested, and received by the
60 party responsible for serving the subpoena or subpoena duces
61 tecum: *Provided*, That the Division of Motor Vehicles may
62 serve subpoenas to law-enforcement officers through electronic
63 mail to the department of his or her employer. If a person does
64 not obey the subpoena or fails to appear, the party who issued
65 the subpoena to the person may petition the circuit court
66 wherein the action lies for enforcement of the subpoena.

67 (d) Law-enforcement officers shall be compensated for the
68 time expended in their travel and appearance before the Office
69 of Administrative Hearings by the law-enforcement agency by
70 whom they are employed at their regular rate if they are
71 scheduled to be on duty during said time or at their regular
72 overtime rate if they are scheduled to be off duty during said
73 time.

74 (e) The principal question at the hearing shall be whether
75 the person did drive a motor vehicle while under the influence

76 of alcohol, controlled substances or drugs, or did drive a motor
77 vehicle while having an alcohol concentration in the person's
78 blood of eight hundredths of one percent or more, by weight,
79 or did refuse to submit to the designated secondary chemical
80 test, or did drive a motor vehicle while under the age of
81 twenty-one years with an alcohol concentration in his or her
82 blood of two hundredths of one percent or more, by weight,
83 but less than eight hundredths of one percent, by weight.

84 (f) In the case of a hearing in which a person is accused of
85 driving a motor vehicle while under the influence of alcohol,
86 controlled substances or drugs, or accused of driving a motor
87 vehicle while having an alcohol concentration in the person's
88 blood of eight hundredths of one percent or more, by weight,
89 or accused of driving a motor vehicle while under the age of
90 twenty-one years with an alcohol concentration in his or her
91 blood of two hundredths of one percent or more, by weight,
92 but less than eight hundredths of one percent, by weight, the
93 Office of Administrative Hearings shall make specific findings
94 as to: (1) Whether the investigating law-enforcement officer
95 had reasonable grounds to believe the person to have been
96 driving while under the influence of alcohol, controlled
97 substances or drugs, or while having an alcohol concentration
98 in the person's blood of eight hundredths of one percent or
99 more, by weight, or to have been driving a motor vehicle while
100 under the age of twenty-one years with an alcohol
101 concentration in his or her blood of two hundredths of one
102 percent or more, by weight, but less than eight hundredths of
103 one percent, by weight; (2) whether the person was lawfully
104 placed under arrest for an offense involving driving under the
105 influence of alcohol, controlled substances or drugs, or was
106 lawfully taken into custody for the purpose of administering a
107 secondary test: *Provided*, That this element shall be waived in
108 cases where no arrest occurred due to driver incapacitation; (3)
109 whether the person committed an offense involving driving
110 under the influence of alcohol, controlled substances or drugs,
111 or was lawfully taken into custody for the purpose of

112 administering a secondary test; and (4) whether the tests, if
113 any, were administered in accordance with the provisions of
114 this article and article five of this chapter.

115 (g) If, in addition to a finding that the person did drive a
116 motor vehicle while under the influence of alcohol, controlled
117 substances or drugs, or did drive a motor vehicle while having
118 an alcohol concentration in the person's blood of eight
119 hundredths of one percent or more, by weight, or did drive a
120 motor vehicle while under the age of twenty-one years with an
121 alcohol concentration in his or her blood of two hundredths of
122 one percent or more, by weight, but less than eight hundredths
123 of one percent, by weight, the Office of Administrative
124 Hearings also finds by a preponderance of the evidence that the
125 person when driving did an act forbidden by law or failed to
126 perform a duty imposed by law, which act or failure
127 proximately caused the death of a person and was committed
128 in reckless disregard of the safety of others and if the Office of
129 Administrative Hearings further finds that the influence of
130 alcohol, controlled substances or drugs or the alcohol
131 concentration in the blood was a contributing cause to the
132 death, the commissioner shall revoke the person's license for
133 a period of ten years: *Provided*, That if the person's license has
134 previously been suspended or revoked under the provisions of
135 this section or section one of this article within the ten years
136 immediately preceding the date of arrest, the period of
137 revocation shall be for the life of the person.

138 (h) If, in addition to a finding that the person did drive a
139 motor vehicle while under the influence of alcohol, controlled
140 substances or drugs, or did drive a motor vehicle while having
141 an alcohol concentration in the person's blood of eight
142 hundredths of one percent or more, by weight, the Office of
143 Administrative Hearings also finds by a preponderance of the
144 evidence that the person when driving did an act forbidden by
145 law or failed to perform a duty imposed by law, which act or
146 failure proximately caused the death of a person, the

147 commissioner shall revoke the person's license for a period of
148 five years: *Provided*, That if the person's license has
149 previously been suspended or revoked under the provisions of
150 this section or section one of this article within the ten years
151 immediately preceding the date of arrest, the period of
152 revocation shall be for the life of the person.

153 (i) If, in addition to a finding that the person did drive a
154 motor vehicle while under the influence of alcohol, controlled
155 substances or drugs, or did drive a motor vehicle while having
156 an alcohol concentration in the person's blood of eight
157 hundredths of one percent or more, by weight, the Office of
158 Administrative Hearings also finds by a preponderance of the
159 evidence that the person when driving did an act forbidden by
160 law or failed to perform a duty imposed by law, which act or
161 failure proximately caused bodily injury to a person other than
162 himself or herself, the commissioner shall revoke the person's
163 license for a period of two years: *Provided*, That if the license
164 has previously been suspended or revoked under the provisions
165 of this section or section one of this article within the ten years
166 immediately preceding the date of arrest, the period of
167 revocation shall be ten years: *Provided, however*, That if the
168 person's license has previously been suspended or revoked
169 more than once under the provisions of this section or section
170 one of this article within the ten years immediately preceding
171 the date of arrest, the period of revocation shall be for the life
172 of the person.

173 (j) If the Office of Administrative Hearings finds by a
174 preponderance of the evidence that the person did drive a
175 motor vehicle while under the influence of alcohol, controlled
176 substances or drugs, or did drive a motor vehicle while having
177 an alcohol concentration in the person's blood of eight
178 hundredths of one percent or more, by weight, but less than
179 fifteen hundredths of one percent or more, by weight, or finds
180 that the person knowingly permitted the persons vehicle to be
181 driven by another person who was under the influence of

182 alcohol, controlled substances or drugs, or knowingly
183 permitted the person's vehicle to be driven by another person
184 who had an alcohol concentration in his or her blood of eight
185 hundredths of one percent or more, by weight the
186 commissioner shall revoke the person's license for a period of
187 six months or a period of fifteen days with an additional one
188 hundred and twenty days of participation in the Motor Vehicle
189 Alcohol Test and Lock Program in accordance with the
190 provisions of section three-a of this article: *Provided*, That any
191 period of participation in the Motor Vehicle Alcohol Test and
192 Lock Program that has been imposed by a court pursuant to
193 section two-b, article five of this chapter shall be credited
194 against any period of participation imposed by the
195 commissioner: *Provided*, however, That a person whose
196 license is revoked for driving while under the influence of
197 drugs is not eligible to participate in the Motor Vehicle
198 Alcohol Test and Lock Program: *Provided* further, That if the
199 person's license has previously been suspended or revoked
200 under the provisions of this section or section one of this
201 article within the ten years immediately preceding the date of
202 arrest, the period of revocation shall be ten years: *And*
203 *provided further*, That if the person's license has previously
204 been suspended or revoked more than once under the
205 provisions of this section or section one of this article within
206 the ten years immediately preceding the date of arrest, the
207 period of revocation shall be for the life of the person.

208 (k) (1) If in addition to finding by a preponderance of the
209 evidence that the person did drive a motor vehicle while under
210 the influence of alcohol, controlled substance or drugs, the
211 Office of Administrative Hearings also finds by a
212 preponderance of the evidence that the person did drive a
213 motor vehicle while having an alcohol concentration in the
214 person's blood of fifteen hundredths of one percent or more, by
215 weight, the commissioner shall revoke the person's license for
216 a period of forty-five days with an additional two hundred and
217 seventy days of participation in the Motor Vehicle Alcohol

218 Test and Lock Program in accordance with the provisions of
219 section three-a, article five-a, chapter seventeen-c of this code:
220 *Provided*, That if the person's license has previously been
221 suspended or revoked under the provisions of this section or
222 section one of this article within the ten years immediately
223 preceding the date of arrest, the period of revocation shall be
224 ten years: *Provided, however*, That if the person's license has
225 previously been suspended or revoked the person's license
226 more than once under the provisions of this section or section
227 one of this article within the ten years immediately preceding
228 the date of arrest, the period of revocation shall be for the life
229 of the person.

230 (2) If a person whose license is revoked pursuant to
231 subdivision (1) of this subsection proves by clear and
232 convincing evidence that they do not own a motor vehicle
233 upon which the alcohol test and lock device may be installed
234 or is otherwise incapable of participating in the Motor Vehicle
235 Alcohol Test and Lock Program, the period of revocation shall
236 be one hundred eighty days: *Provided*, That if the person's
237 license has previously been suspended or revoked under the
238 provisions of this section or section one of this article within
239 the ten years immediately preceding the date of arrest, the
240 period of revocation shall be ten years: *Provided, however*,
241 That if the person's license has previously been suspended or
242 revoked more than once under the provisions of this section or
243 section one of this article within the ten years immediately
244 preceding the date of arrest, the period of revocation shall be
245 for the life of the person.

246 (1) If, in addition to a finding that the person did drive a
247 motor vehicle while under the age of twenty-one years with an
248 alcohol concentration in his or her blood of two hundredths of
249 one percent or more, by weight, but less than eight hundredths
250 of one percent, by weight, the Office of Administrative
251 Hearings also finds by a preponderance of the evidence that the
252 person when driving did an act forbidden by law or failed to

253 perform a duty imposed by law, which act or failure
254 proximately caused the death of a person, and if the Office of
255 Administrative Hearings further finds that the alcohol
256 concentration in the blood was a contributing cause to the
257 death, the commissioner shall revoke the person's license for
258 a period of five years: *Provided*, That if the person's license
259 has previously been suspended or revoked under the provisions
260 of this section or section one of this article within the ten years
261 immediately preceding the date of arrest, the period of
262 revocation shall be for the life of the person.

263 (m) If, in addition to a finding that the person did drive a
264 motor vehicle while under the age of twenty-one years with an
265 alcohol concentration in his or her blood of two hundredths of
266 one percent or more, by weight, but less than eight hundredths
267 of one percent, by weight, the Office of Administrative
268 Hearings also finds by a preponderance of the evidence that the
269 person when driving did an act forbidden by law or failed to
270 perform a duty imposed by law, which act or failure
271 proximately caused bodily injury to a person other than himself
272 or herself, and if the Office of Administrative Hearings further
273 finds that the alcohol concentration in the blood was a
274 contributing cause to the bodily injury, the commissioner shall
275 revoke the person's license for a period of two years: *Provided*,
276 That if the person's license has previously been suspended or
277 revoked under the provisions of this section or section one of
278 this article within the ten years immediately preceding the date
279 of arrest, the period of revocation shall be ten years: *Provided*,
280 *however*, That if the person's license has previously been
281 suspended or revoked more than once under the provisions of
282 this section or section one of this article within the ten years
283 immediately preceding the date of arrest, the period of
284 revocation shall be for the life of the person.

285 (n) If the Office of Administrative Hearings finds by a
286 preponderance of the evidence that the person did drive a
287 motor vehicle while under the age of twenty-one years with an

288 alcohol concentration in his or her blood of two hundredths of
289 one percent or more, by weight, but less than eight hundredths
290 of one percent, by weight, the commissioner shall suspend the
291 person's license for a period of sixty days: *Provided*, That if
292 the person's license has previously been suspended or revoked
293 under the provisions of this section or section one of this
294 article, the period of revocation shall be for one year, or until
295 the person's twenty-first birthday, whichever period is longer.

296 (o) If, in addition to a finding that the person did drive a
297 motor vehicle while under the influence of alcohol, controlled
298 substances or drugs, or did drive a motor vehicle while having
299 an alcohol concentration in the person's blood of eight
300 hundredths of one percent or more, by weight, the Office of
301 Administrative Hearings also finds by a preponderance of the
302 evidence that the person when driving did have on or within
303 the Motor vehicle another person who has not reached his or
304 her sixteenth birthday, the commissioner shall revoke the
305 person's license for a period of one year: *Provided*, That if the
306 person's license has previously been suspended or revoked
307 under the provisions of this section or section one of this article
308 within the ten years immediately preceding the date of arrest,
309 the period of revocation shall be ten years: *Provided, however*,
310 That if the person's license has previously been suspended or
311 revoked more than once under the provisions of this section or
312 section one of this article within the ten years immediately
313 preceding the date of arrest, the period of revocation shall be
314 for the life of the person.

315 (p) For purposes of this section, where reference is made
316 to previous suspensions or revocations under this section, the
317 following types of criminal convictions or administrative
318 suspensions or revocations shall also be regarded as
319 suspensions or revocations under this section or section one of
320 this article:

321 (1) Any administrative revocation under the provisions of
322 the prior enactment of this section for conduct which occurred
323 within the ten years immediately preceding the date of arrest;

324 (2) Any suspension or revocation on the basis of a
325 conviction under a municipal ordinance of another state or a
326 statute of the United States or of any other state of an offense
327 which has the same elements as an offense described in section
328 two, article five of this chapter for conduct which occurred
329 within the ten years immediately preceding the date of arrest; or

330 (3) Any revocation under the provisions of section seven,
331 article five of this chapter for conduct which occurred within
332 the ten years immediately preceding the date of arrest.

333 (q) In the case of a hearing in which a person is accused of
334 refusing to submit to a designated secondary test, the Office of
335 Administrative Hearings shall make specific findings as to: (1)
336 Whether the arresting law-enforcement officer had reasonable
337 grounds to believe the person had been driving a motor vehicle
338 in this state while under the influence of alcohol, controlled
339 substances or drugs; (2) whether the person was lawfully
340 placed under arrest for an offense involving driving under the
341 influence of alcohol, controlled substances or drugs, or was
342 lawfully taken into custody for the purpose of administering a
343 secondary test: *Provided*, That this element shall be waived in
344 cases where no arrest occurred due to driver incapacitation; (3)
345 whether the person committed an offense relating to driving a
346 motor vehicle in this state while under the influence of alcohol,
347 controlled substances or drugs; (4) whether the person refused
348 to submit to the secondary test finally designated in the manner
349 provided in section four, article five of this chapter; and (5)
350 whether the person had been given a written statement advising
351 the person that the person's license to operate a motor vehicle
352 in this state would be revoked for at least forty-five days and
353 up to life if the person refused to submit to the test finally
354 designated in the manner provided in said section.

355 (r) If the Office of Administrative Hearings finds by a
356 preponderance of the evidence that: (1) The investigating
357 officer had reasonable grounds to believe the person had been
358 driving a motor vehicle in this state while under the influence
359 of alcohol, controlled substances or drugs; (2) whether the
360 person was lawfully placed under arrest for an offense
361 involving driving under the influence of alcohol, controlled
362 substances or drugs, or was lawfully taken into custody for the
363 purpose of administering a secondary test: *Provided*, That this
364 element shall be waived in cases where no arrest occurred due
365 to driver incapacitation; (3) the person committed an offense
366 relating to driving a motor vehicle in this state while under the
367 influence of alcohol, controlled substances or drugs; (4) the
368 person refused to submit to the secondary test finally
369 designated in the manner provided in section four, article five
370 of this chapter; and (5) the person had been given a written
371 statement advising the person that the person's license to
372 operate a motor vehicle in this state would be revoked for at
373 least forty-five days and up to life if the person refused to
374 submit to the test finally designated, the commissioner shall
375 revoke the person's license to operate a motor vehicle in this
376 state for the periods specified in section seven, article five of
377 this chapter. The revocation period prescribed in this
378 subsection shall run concurrently with any other revocation
379 period ordered under this section or section one of this article
380 arising out of the same occurrence. The revocation period
381 prescribed in this subsection shall run concurrently with any
382 other revocation period ordered under this section or section
383 one of this article arising out of the same occurrence.

384 (s) If the Office of Administrative Hearings finds to the
385 contrary with respect to the above issues the commissioner
386 shall rescind his or her earlier order of revocation or shall
387 reduce the order of revocation to the appropriate period of
388 revocation under this section or section seven, article five of
389 this chapter. A copy of the Office of Administrative Hearings'
390 final order containing its findings of fact and conclusions of
391 law made and entered following the hearing shall be served

392 upon the person whose license is at issue or upon the person's
393 legal counsel if the person is represented by legal counsel by
394 registered or certified mail, return receipt requested or by
395 electronic mail if available. The final order shall be served
396 upon the commissioner by electronic mail. During the
397 pendency of any hearing, the revocation of the person's license
398 to operate a motor vehicle in this state shall be stayed.

399 A person whose license is at issue and the commissioner
400 shall be entitled to judicial review as set forth in chapter
401 twenty-nine-a of this code. Neither the Commissioner nor the
402 Office of Administrative Hearings may stay enforcement of the
403 order. The court may grant a stay or supersede as of the order
404 only upon motion and hearing, and a finding by the court upon
405 the evidence presented, that there is a substantial probability
406 that the appellant shall prevail upon the merits and the
407 appellant will suffer irreparable harm if the order is not stayed:
408 *Provided*, That in no event shall the stay or supersede as of the
409 order exceed one hundred fifty days. Notwithstanding the
410 provisions of section four, article five of said chapter, the
411 Office of Administrative Hearings may not be compelled to
412 transmit a certified copy of the file or the transcript of the
413 hearing to the circuit court in less than sixty days.

414 (t) In any revocation or suspension pursuant to this section,
415 if the driver whose license is revoked or suspended had not
416 reached the driver's eighteenth birthday at the time of the
417 conduct for which the license is revoked or suspended, the
418 driver's license shall be revoked or suspended until the driver's
419 eighteenth birthday or the applicable statutory period of
420 revocation or suspension prescribed by this section, whichever
421 is longer.

422 (u) Funds for this section's hearing and appeal process may
423 be provided from the Drunk Driving Prevention Fund, as
424 created by section forty-one, article two, chapter fifteen of this
425 code, upon application for the funds to the Commission on
426 Drunk Driving Prevention.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.**§17C-5C-4a. Rule-making authority.**

1 The Office of Administrative Hearings may propose
2 legislative and procedural rules in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code
4 in order to implement the provisions of this article and to carry
5 out the duties prescribed therein.

§17C-5C-4b. Duty to provide notice of change of address.

1 Any person who has any pending contested matter before
2 the Office of Administrative Hearings is required to provide
3 written notice of a change in address by written notice at least
4 ten days prior to any scheduled hearing in which they are a
5 party. If the person's final hearing is held prior to the person's
6 change in address, then the person is required to provide the
7 written notice prior to the issuance of the final order in their
8 case. Written notice must be provided by certified mail, return
9 receipt requested, facsimile, or by electronic mail, to the Office
10 of Administrative Hearings.

**CHAPTER 57****(H. B. 4119 - By Delegates Perry and Lawrence)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2012.]

***CLERK'S NOTE:** It has been determined that H. B. 4119, originally styled as Chapter 57 was enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 4119 did not become law.



CHAPTER 58

**(S. B. 646 - By Senators Laird,
Plymale, Foster, Miller and Stollings)**

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-6b, relating to the General Educational Development Diploma (GED); making legislative findings; setting forth legislative intent; and requiring the State Board of Education to study GED issues and make a report with recommendations by a certain 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 §18-2-6b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6b. General Educational Development (GED) diploma; legislative findings and intent; examination costs; testing materials and procedures; report required.

- 1 (a) The Legislature makes the following findings related to
- 2 the General Educational Development (GED) examination:

- 3 (1) The GED examination is an instrument for success that
- 4 can keep a student from dropping out of school and can
- 5 transform the future for both school age and adult individuals

6 who attain a GED diploma. One in every seven Americans
7 with a high school credential has received the GED, as well as
8 one in every twenty college students. For those who have not
9 graduated from high school, attaining a GED diploma greatly
10 increases their employment opportunities and earning
11 potential.

12 (2) While West Virginia's average per-capita income has
13 increased over the past ten years as the state's economy has
14 held steady or grown slightly, most other states have shown
15 declines. Despite these positive changes, West Virginia still
16 ranks as one of the five poorest states in the nation.
17 Additionally, many counties within the state fall far below the
18 state average; therefore, the current cost of the GED
19 examination is difficult for many citizens to afford without
20 help, and significant cost increases will make the GED
21 examination cost prohibitive.

22 (3) In addition to the cost factor, large areas of West
23 Virginia are without broadband Internet access or without
24 adequate broadband Internet access speeds, which results in
25 diminished opportunities for rural residents to participate in the
26 rapidly unfolding digital revolution compared to their nonrural
27 neighbors. Citizens living in these areas have few
28 opportunities to become adept in computer technology.
29 Therefore, most such citizens, especially adults seeking to earn
30 a GED years after leaving the public school system, are not
31 proficient or even comfortable using the Internet.

32 (4) Individuals who may benefit most from earning a GED
33 diploma are those who lack many of the skills needed to secure
34 employment or to function successfully in an age dependent
35 upon technology. Because such individuals also lack the
36 financial resources to obtain those needed skills, if the GED is
37 unattainable they are likely to remain in a state of poverty.

38 (b) It is the intent of the Legislature to make the GED
39 diploma available to the widest possible range of state residents
40 who have not achieved a high school diploma. To that end, an
41 examination of the following issues is required:

42 (1) The impact on prospective GED test takers of the
43 proposed changes in the design and delivery of the qualifying
44 examination made by the American Council on Education
45 (ACE) in 2011;

46 (2) The impact of the increase in costs per individual
47 tested; and

48 (3) The alternatives available to reduce costs and to retain
49 the option of pen and paper testing for those who desire it.

50 (c) The State Board shall perform an exhaustive study of
51 the issues surrounding administration of the GED examination
52 in the state including, but not limited to, the following:

53 (1) Analysis of research, pilot testing, or both, that was
54 done in West Virginia by the American Council on Education
55 prior to its decision to eliminate pen and paper examinations,
56 along with the justifications offered for eliminating this type of
57 examination as a possible option;

58 (2) Determination of the current and future costs to the
59 state to provide GED examinations free of charge to eligible
60 individuals; and

61 (3) Recommendations for statutory or rule changes to
62 achieve the following goals:

63 (A) Reducing or controlling escalating costs of
64 administering the GED examinations; and

65 (B) Retaining paper and pen testing for those individuals
66 who request or require it; or

67 (C) Eliminating or reducing significantly the difficulty for
68 individuals who are not comfortable or proficient in taking
69 online examinations.

70 (d) The State Board shall complete its work and report its
71 findings, conclusions and recommendations, together with
72 drafts of any legislation or rule changes necessary to effectuate
73 the recommendations, to the Legislative Oversight
74 Commission on Education Accountability no later than July 1,
75 2012.



CHAPTER 59

**(S. B. 436 - By Senators Plymale,
Browning, Unger, Kessler (Mr. President),
Prezioso, Klempa, Beach and Jenkins)**

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to repeal §18-27-1, §18-27-2, §18-27-3, §18-27-4, §18-27-5, §18-27-6, §18-27-7, §18-27-8, §18-27-9, §18-27-10, §18-27-11, §18-27-12, §18-27-13, §18-27-14, §18-27-15, §18-27-16, §18-27-17, §18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2-10 of said code; to amend and reenact §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4 and §18-2B-7 of said code; to amend said code by adding thereto a new article, designated §18-13-1, §18-13-2, §18-13-3, §18-13-4 and §18-13-5; to amend said code by adding thereto a new article, designated §18B-3B-1, §18B-3B-2 and §18B-3B-3; to amend and reenact §18B-3C-1, §18B-3C-2 and §18B-3C-4 of said code; and to amend said code by adding thereto a new

section, designated §18B-14-1, all relating to public education generally; state institutions of higher education; career and technical education; seamless curricula; programs of study; requiring state board to provide adult basic education programs on certain college campuses; creating West Virginia EDGE initiative; establishing initiative goals; providing for administration and accountability; requiring certain joint rule; clarifying that no specific level of appropriation is required; creating collaborative degree completion program; setting forth legislative findings, intent and program objectives; specifying program applicability; setting forth powers and duties of participating agencies; requiring certain agreements and specifying approval procedures; clarifying legislative findings and intent regarding community and technical college system; renaming certain consortia planning districts and clarifying duties; specifying certain accountability procedures; providing for consortia cochairs; assigning responsibility for developing collaborative degree completion programming; defining programs of study and directing consortia to focus on identifying and providing student programs of study leading to placement in high-demand, high-wage occupations; requiring initial consortia compacts and annual updates by certain date and specifying approval process; specifying facilitating institutions for certain consortia; providing for select committee to examine higher education outcomes-based funding models; specifying membership; requiring report of findings with recommendations to Legislative Oversight Commission on Education Accountability and Joint Committee on Government and Finance by certain date; updating names of agencies and institutions; making technical corrections; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-27-1, §18-27-2, §18-27-3, §18-27-4, §18-27-5, §18-27-6, §18-27-7, §18-27-8, §18-27-9, §18-27-10, §18-27-11, §18-27-12, §18-27-13, §18-27-14, §18-27-15, §18-27-16, §18-27-17,

§18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22 of the Code of West Virginia, 1931, as amended, be repealed; that §18-2-10 of said code be amended and reenacted; that §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4 and §18-2B-7 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-13-1, §18-13-2, §18-13-3, §18-13-4 and §18-13-5; that said code be amended by adding thereto a new article, designated §18B-3B-1, §18B-3B-2 and §18B-3B-3; that §18B-3C-1, §18B-3C-2 and §18B-3C-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-14-1, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-10. Certificates and awards.

1 The State Board shall promulgate rules and shall determine
2 the minimum standards for the granting of certificates and
3 awards for secondary vocational education, adult basic
4 education, adult occupational education and adult technical
5 preparatory education, subject to the provisions of section two,
6 article two-b of this chapter and article three-a of chapter
7 eighteen-b of this code.

8 The State Board shall provide a program of adult basic
9 education at each state community and technical college
10 campus where developmental education services are provided
11 in cooperation with the West Virginia Council for Community
12 and Technical College Education and the institutional board of
13 governors of each college. This approach to providing adult
14 basic education links these programs with developmental
15 education and creates a simpler, clearer pathway for adults to
16 enter college.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.**§18-2B-1. Aims and purposes of program; areas where available.**

1 The aims and purposes of the area vocational educational
2 program are to provide vocational training or retraining on an
3 organized basis designed to prepare individuals for useful
4 employment in recognized occupations. The program shall be
5 made available to residents of West Virginia in an area or areas
6 designated and approved by the State Board.

§18-2B-2. Authority to establish programs, etc.; Division of Vocational Education established; rules; director.

1 (a) The State Board may establish, operate and maintain
2 area vocational educational programs including the acquisition
3 by purchase, lease, gift or otherwise of necessary lands and the
4 construction, expansion, remodeling, alteration and equipping
5 of necessary buildings for the purpose of operating and
6 conducting educational training centers.

7 (b) The State Board may delegate its operational authority
8 for multicounty vocational centers to an administrative council
9 composed of equal representation from each of the
10 participating county boards of education, the superintendent of
11 schools from each participating county, and the state director
12 of vocational education or his or her representative. To this
13 end, there is hereby expressly established in the State Board a
14 division of vocational education which shall determine the area
15 or areas in which the programs are to be conducted and is
16 authorized to promulgate rules necessary to carry out the
17 provisions of this article, pursuant to article three-b, chapter
18 twenty-nine-a of this code. The director of the division of
19 vocational education administers and supervises the area
20 vocational educational programs.

§18-2B-3. Area vocational education program funds.

1 There is hereby established a fund to be known as the Area
2 Vocational Education Program Fund for Secondary Education.
3 There is hereby established a separate fund to be known as the
4 Area Vocational Education Program Fund for Post-Secondary
5 Vocational Education. All moneys appropriated for such
6 purpose by the Legislature as well as any gifts or grants made
7 to the appropriate fund by any governmental subdivision of the
8 state or by the United States government or by any individual,
9 firm or corporation, to carry out the provisions of this article
10 shall be expended by the State Board.

§18-2B-4. Expenditure of funds; title to property.

1 The State Board may expend the area vocational education
2 program funds for salaries; teachers' retirement contributions
3 and necessary traveling expenses of teachers and other
4 necessary employees, including, but not limited to, vocational
5 guidance counselors; for purchase, rental, maintenance and
6 repair of instructional equipment, buildings and supplies; and
7 for the necessary costs of transportation of certified students.

§18-2B-7. Transportation of students.

1 The State Board may pay for the transportation of any
2 certified unemployed person participating in any area
3 vocational educational program during the period of time that
4 he or she is engaged in the training program at any of the
5 instructional centers.

ARTICLE 13. WEST VIRGINIA EDGE.**§18-13-1. Earn a Degree - Graduate Early (EDGE) initiative established; purposes.**

1 The Earn a Degree - Graduate Early initiative herein
2 established is known and may be cited as "West Virginia

3 EDGE”. This program is part of the programs of study and
4 seamless curriculum initiative that focuses on aligning
5 curriculum between education levels. Specifically, West
6 Virginia EDGE is established to connect public schools with
7 higher education for the following purposes:

8 (a) To prepare public high school students for success in
9 the workplace or postsecondary education; and

10 (b) To provide the opportunity for these students to earn
11 community and technical college credit free-of-charge for the
12 duplicated secondary and postsecondary courses identified
13 during the curriculum alignment process.

§18-13-2. Goals for West Virginia EDGE.

1 In order to serve the citizens of the state by promoting a
2 higher college-going rate, reducing the time and cost for
3 students to obtain college credentials and expanding
4 opportunities for economic development, the West Virginia
5 EDGE initiative shall meet the following goals:

6 (1) Create incentives for more students to continue their
7 education beyond high school by providing all students with
8 information about and access to courses that will prepare them
9 to meet college-level standards;

10 (2) Expand successful concurrent enrollment programs that
11 include all students, not just those who are designated as
12 college bound. The goal here is to prepare all students for both
13 work and postsecondary education with the same rigorous
14 curriculum;

15 (3) Align junior and senior year secondary courses with
16 community and technical college certificate and associate
17 degree programs. This alignment provides access to early
18 entrance college courses which offer all students the

19 opportunity to establish a college transcript while still in high
20 school;

21 (4) Increase the number of students attending public
22 community and technical colleges by participating in a
23 collaborative partnership between the public schools and the
24 state community and technical colleges; and

25 (5) Establish programs of study pathways in combination
26 with early entrance college courses which together allow a
27 student to obtain an associate degree one year after high school
28 graduation or to receive an associate degree along with the
29 high school diploma.

§18-13-3. Program administration and accountability.

1 (a) West Virginia EDGE is administered by the Assistant
2 State Superintendent of the Division of Technical, Adult and
3 Institutional Education who serves as State Tech-Prep
4 Coordinator. The community and technical college/career and
5 technical education consortia planning districts created by
6 section four, article three-c, chapter eighteen-b of this code
7 serve as regional consortia to implement the program.

8 (b) The duties of State Tech-Prep Coordinator include, but
9 are not limited to, the following:

10 (1) Developing a collaborative agreement with the
11 facilitating state community and technical college or colleges
12 in each consortium district and with the Council for
13 Community and Technical College Education to meet the goals
14 and objectives of this article.

15 (2) Meeting the record-keeping requirements of section
16 nine, article eight, chapter five of this code:

17 (A) By developing or adapting an existing comprehensive
18 relational data base and data analysis system for student

19 tracking to assure that consistent, reliable data relevant to the
20 goals of the program are available; and

21 (B) By tracking and evaluating EDGE outcomes across all
22 eight consortia districts and by creating a standardized
23 reporting procedure for collecting consistent EDGE data at the
24 state level;

25 (3) Assuring that coordinators in the district consortia
26 prepare and retain reliable supporting source documents
27 necessary to validate the data included with the state electronic
28 database;

29 (4) Providing documentation to substantiate program
30 outcomes, including, but not limited to, the number of students
31 who enroll in the program, specific courses taken, student
32 course and final exam grades, the number who earn EDGE
33 credits and, of these, the number who apply the credits in
34 pursuit of degrees or certifications at state community and
35 technical colleges; and

36 (5) Collecting data relevant to the goals and objectives
37 established for this initiative, analyzing the data, and preparing
38 a report for the Legislative Oversight Commission on
39 Education Accountability by December 1, 2012, and annually
40 thereafter. The specific focus of the report is the analysis of
41 data on program outcomes to demonstrate to what degree the
42 initiative has met the goals and objectives of this article.

§18-13-4. Joint rule required.

1 The State Board and the West Virginia Council for
2 Community and Technical College Education, created in
3 section three, article two-b, chapter eighteen-b of this code,
4 shall promulgate a joint legislative rule in accordance with
5 article three-b, chapter twenty-nine-a of this code, for the
6 administration of West Virginia EDGE. This rule shall
7 incorporate strategies designed to achieve the overall goals of

8 the program, methods of operation, and step-by-step
9 procedures for achieving the objectives outlined in section two
10 and for implementing the reporting and accountability
11 measures set forth in section three of this article.

§18-13-5. No specific level of appropriation required.

1 The Legislature recognizes the importance of the West
2 Virginia Edge Program and will endeavor to provide sufficient
3 funds to meet program goals and objectives. However,
4 funding is subject to appropriation by the Legislature and
5 nothing in this article requires any specific level of
6 appropriation.

CHAPTER 18B. HIGHER EDUCATION.

**ARTICLE 3B. COLLABORATIVE DEGREE COMPLETION
PROGRAM.**

§18B-3B-1. Legislative findings and intent.

1 (a) The Legislature makes the following findings:

2 (1) Evidence from national studies shows clearly that the
3 need to increase the number of Americans who hold
4 post-secondary credentials has reached a critical point.
5 According to *Complete College America*, the United States has
6 fallen from its long-held position as first among the nations and
7 now ranks tenth in the percentage of young adults with a
8 college degree. Even more discouraging is the statistic which
9 shows that, for the first time in national history, the current
10 generation of college-age Americans will be less educated than
11 their parents' generation.

12 (2) In West Virginia, the large numbers of high school
13 students who are uninterested and/or unprepared for college
14 can be attributed to three primary factors:

15 (A) Lack of alignment in courses between public
16 education and public colleges and universities;

17 (B) Lack of clear career pathways presented to students
18 early enough to help them choose and follow an articulated
19 path from high school through postsecondary education; and

20 (C) Lack of knowledge among students and parents about
21 financial aid opportunities that can help them and their families
22 defray the cost of attending college.

23 (3) Sixty-three percent of jobs now available or to become
24 available in the near future require postsecondary education.
25 This statistic is particularly relevant for community and
26 technical college students, but even for students who choose to
27 pursue a four-year degree, it is critical that they be clearly
28 focused on career goals in order to succeed.

29 (4) Currently, a severe gap exists between the demands for
30 technically skilled workers in West Virginia and the
31 aspirations and programmatic focus of many of our students.
32 Nearly thirty percent of the state's high school students have
33 failed to enroll in either the pre-baccalaureate professional
34 pathway or the career and technical education skilled pathway.
35 Most of these individuals could be better served in a focused
36 program of study that begins in the public schools and makes
37 a seamless transition to the postsecondary level in the state
38 community and technical colleges.

39 (5) The best way to promote this focus on career goals
40 among our students is through implementation of career
41 pathways. This is an integrated collection of programs and
42 services intended to develop students' core academic, technical
43 and employability skills; provide them with continuous
44 education and training; and place them in high-demand,
45 high-opportunity jobs.

46 (6) In West Virginia, preparing students to achieve higher
47 levels of education is a responsibility shared among the state
48 agencies responsible for providing education and workforce
49 development training. Since increasing the education level of
50 state citizens enhances West Virginia's economic future and
51 the general well-being of its citizens, providing additional
52 opportunities to earn a college credential is the responsibility
53 of all public secondary education and state institutions of
54 higher education.

55 (b) It is the intent of the Legislature to encompass the
56 entire public higher education system to remove those
57 obstacles that block these pathways to college completion and
58 to direct agencies and institutions to collaborate and cooperate
59 to deliver needed services. Therefore, the object of this article
60 is two-fold:

61 (1) To set forth a viable collaborative model that public
62 community and technical colleges and public school career
63 centers shall adopt to increase the number of West Virginians
64 with a college credential; and

65 (2) To maximize existing resources and capacity to train
66 the work force in West Virginia by encouraging the most
67 efficient expenditure of available dollars.

**§18B-3B-2. Collaborative degree completion program
established; program applicability and
objectives.**

1 (a) The Collaborative Degree Completion Program is
2 hereby established as a collaborative partnership which
3 includes the following:

4 (1) The public school career and technical centers which
5 includes state technology centers, technical centers, career
6 centers and career/technical centers; and

7 (2) The state community and technical colleges.

8 (b) The program shall meet the following objectives:

9 (1) Increasing the number of West Virginians who hold a
10 college credential and providing opportunities for a larger
11 number of adults to earn that credential;

12 (2) Increasing the education and technical skill levels of
13 the state's work force; and

14 (3) Delivering post-secondary technical education in the
15 most effective and cost efficient manner by maximizing the
16 available resources of career centers and community and
17 technical colleges.

18 (c) The program shall be adopted by each community and
19 technical college/career and technical education consortia
20 planning district. Each district shall assess the needs of its
21 employers, institutions and centers and may adapt the basic
22 model to fit the needs of the area to be served; however, each
23 model shall include the following basic strategies to meet the
24 objectives established in this article:

25 (1) Identify postsecondary adult career-technical education
26 programs offered by the public school career centers that are
27 to be evaluated for delivery as a Certificate of Applied Science
28 or an Associate of Applied Science Degree;

29 (2) Ensure that all collaborative programs meet the
30 conditions of the Higher Learning Commission of the North
31 Central Association of Schools and Colleges which is the
32 accrediting body for state community and technical colleges;

33 (3) Ensure that all collaborative programs meet the
34 academic standards of the participating college; and

35 (4) Provide for the collaborative program to remain onsite
36 at the career and technical center if participating agencies
37 determine that site to be the best location for achieving
38 program objectives.

§18B-3B-3. Powers and duties of agencies participating in collaborative degree completion program.

1 Members of each community and technical college/career
2 and technical education consortia planning district shall enter
3 into an agreement that delineates the division of
4 responsibilities among the facilitating community and technical
5 college pursuant to section four, article three-c of this chapter
6 and the career and technical centers, including activities for
7 which these entities are jointly responsible.

8 (a) The following activities are the responsibility of the
9 facilitating community and technical college in each consortia
10 planning district:

11 (1) Approve all curricula course and/or programs through
12 the college's approval process;

13 (2) Maintain authority over the curriculum as required by
14 the college's accrediting agency;

15 (3) Deliver all program general education courses;

16 (4) Award the appropriate degree;

17 (5) Employ all general education faculty and approve the
18 employment of all technical program faculty;

19 (6) Enroll students through the college's admission and
20 registration process and administer student financial aid,
21 including coordinating and administering veterans' education
22 benefits;

23 (7) Charge and collect the college's tuition and fees; and

24 (8) Pay the career and technical center for technical faculty
25 time.

26 (b) The following activities are the responsibility of each
27 career and technical center within the consortium planning
28 district:

29 (1) Deliver the majority of the technical content courses;

30 (2) Maintain equipment and laboratories and provide
31 adequate instructional space if the program is delivered onsite
32 at the career and technical center; and

33 (3) Employ technical content faculty, if needed. If
34 participants choose, these faculty members may be provided by
35 the facilitating community and technical college.

36 (c) The following activities are the joint responsibility of
37 the facilitating community and technical college and each
38 career and technical center in the consortium planning district:

39 (1) Maintain programmatic accreditation, if required;

40 (2) Maintain student transcripts at both the community and
41 technical college and the career and technical center. The
42 college transcript is the official transcript of record;

43 (3) Determine admission standards and student acceptance
44 into the programs;

45 (4) Market the program and share the cost of marketing as
46 determined in the consortia agreement;

47 (5) Develop and implement a program of cross counseling
48 in which counselors from secondary and postsecondary career

49 and technical centers and state community and technical
50 colleges meet with students and their parents, beginning in the
51 eighth grade to answer their education and career-related
52 questions, to serve as a source of support through high school
53 graduation and to provide specific, targeted information on
54 career pathways and financial aid opportunities; and

55 (6) Determine the feasibility of collaboratively developing
56 and implementing postsecondary-level programs to extend
57 high school programs that currently are terminal.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-1. Legislative findings.

1 (a) The Legislature makes the following findings related to
2 state community and technical colleges:

3 (1) Community and technical colleges are a distinctively
4 American invention. They fill a critical gap between public
5 secondary education and the baccalaureate institutions and
6 universities and they provide a connection between adult basic
7 education and higher education. Their overriding mission is to
8 provide affordable access to postsecondary education and to
9 provide this education and related services to people who
10 otherwise might not have enrolled in a college or university.
11 They provide access to students who live in geographic
12 proximity and who seek low-cost postsecondary education.

13 (2) As the state's primary provider of workforce education
14 and training, community and technical colleges located in
15 every region of West Virginia are essential to a statewide
16 strategy to prepare students for high-demand, high-wage jobs,
17 workforce development necessary to diversify and grow the
18 state's economy, and further postsecondary education and life
19 long learning.

20 (3) The mission of state community and technical colleges
21 is to provide comprehensive education services that combine
22 the critical functions of career-technical education and work
23 force development, non-credit industry training, transfer
24 education, developmental education and continuing education.

25 (4) While the student population of state community and
26 technical colleges is now evenly divided between those who
27 are under age twenty-five and adults who are twenty-five and
28 older, the number in both categories who earn a degree or
29 industry-recognized certificate within six years remains low.
30 The declining numbers of high school graduates in the state
31 makes it imperative for the community and technical college
32 system to focus on increasing the numbers of adults who enroll
33 and who complete programs to earn a degree or
34 industry-recognized certificate within six years.

35 (b) In carrying out their mission, the governing boards of
36 the community and technical colleges shall collaborate with
37 public high schools and career and technical centers to deliver
38 services effectively and efficiently in the locations where they
39 are needed most.

§18B-3C-2. Legislative intent.

1 The following comprise the intent of the Legislature in
2 enacting this article:

3 (a) To establish community and technical college
4 education that is well articulated with the public schools, the
5 career and technical education centers and other state
6 institutions of higher education; that encourages traditional and
7 nontraditional students and adult learners to pursue a lifetime
8 of learning; that serves as an instrument of economic
9 development; and that has the independence and flexibility to
10 respond quickly to changing needs of citizens and employers
11 in the state;

12 (b) To establish community and technical college/career
13 and technical education consortia districts for each of the
14 community and technical colleges in order to ensure that the
15 full range of community and technical college education
16 programs and services is provided in all areas of the state,
17 including the implementation of seamless programs of study as
18 exemplified by West Virginia EDGE, established in article
19 thirteen, chapter eighteen of this code and the Collaborative
20 Degree Completion Program, established in article three-b of
21 this chapter;

22 (c) To define the full range of programs and services that
23 each community and technical college has the responsibility to
24 provide; and

25 (d) To establish other policies and procedures necessary to
26 ensure that the needs of West Virginia, its people and its
27 businesses are met for the programs and services that can be
28 provided through a comprehensive system of community and
29 technical colleges.

**§18B-3C-4. Community and technical college/career and
technical education consortia planning
districts.**

1 (a) Unless otherwise designated, the presidents of the
2 community and technical colleges facilitate the formation of
3 community and technical college/career and technical
4 education consortia in the state. Each consortium includes
5 representatives of community and technical colleges, public
6 career and technical education centers and state baccalaureate
7 institutions offering associate degrees. The consortium is
8 responsible for carrying out the following actions:

9 (1) Completing a comprehensive assessment of the district
10 to determine what education and training programs are
11 necessary to meet the short- and long-term workforce
12 development needs of the district;

13 (2) Coordinating efforts with regional labor market
14 information systems to identify the ongoing needs of business
15 and industry, both current and projected, and to provide
16 information to assist in an informed program of planning and
17 decision-making;

18 (3) Planning and developing a unified effort between the
19 community and technical colleges and public career and
20 technical education to meet the documented workforce
21 development needs of the district through individual and
22 cooperative programs; shared facilities, faculty, staff,
23 equipment and other resources; and the development and use
24 of distance learning and other education technologies;

25 (4) Collaborating and developing jointly the collaborative
26 programming for adults between the community and technical
27 colleges and the public career and technical centers. The focus
28 of these collaborative efforts is the development of advanced
29 skill programming that builds on the secondary curriculum and
30 allows career and technical education graduates to acquire
31 more in-depth preparation in their occupational area of interest;

32 (5) As a consortium, regularly reviewing and revising
33 curricula to ensure that the work force needs are met;
34 developing new programs and phasing out or modifying
35 existing programs, as appropriate, to meet such needs; and
36 streamlining procedures for designing and implementing
37 customized training programs;

38 (6) Increasing the integration of secondary and
39 post-secondary curriculum and programs that are targeted to
40 meet regional labor market needs, including implementing
41 seamless programs of study, including West Virginia EDGE,
42 and the Collaborative Degree Completion Program:

43 (A) Research shows that well-planned, well-coordinated
44 programs of study have a positive impact on school attendance,

45 student grades, achievement scores, retention rates and career
46 planning. To be successful, programs of study must include
47 coherent and rigorous content aligned with challenging
48 academic standards and relevant career and technical education
49 content. They must provide for student movement through a
50 coordinated, nonduplicative progression of courses that align
51 secondary education with community and technical college
52 education to prepare students to succeed at the community and
53 technical college level and in high-wage, high-demand
54 occupations;

55 (B) Therefore, the focus of each consortium is to identify
56 the high-demand, high-wage occupations within the service
57 district and develop programs of study, based on the findings,
58 that lead to an industry-recognized credential, a certificate of
59 applied science degree or an associate degree;

60 (C) The initial consortium compact and each annual update
61 required in subsection (d) of this section shall identify the
62 programs of study that are to be implemented in the district
63 service area;

64 (7) Planning and implementing integrated professional
65 development activities for secondary and post-secondary
66 faculty, staff and administrators;

67 (8) Ensuring that program graduates have attained the
68 competencies required for successful employment through the
69 involvement of business, industry and labor in establishing
70 student credentialing;

71 (9) Assessing student knowledge and skills which may be
72 gained from multiple sources so that students gain credit
73 toward program completion and advance more rapidly without
74 repeating course work in which they already possess
75 competency;

76 (10) Cooperating with workforce investment boards to
77 establish one-stop-shop career centers with integrated
78 employment and training and labor market information systems
79 that enable job seekers to assess their skills, identify and secure
80 needed education training, and secure employment, and that
81 allow employers to locate available workers;

82 (11) Increasing the integration of adult literacy, adult basic
83 education, federal Work Force Investment Act and community
84 and technical college programs and services to expedite the
85 transition of adults from welfare to gainful employment,
86 including cooperating with the State Department of Education
87 to provide adult basic education programs on each community
88 and technical college campus in the state where developmental
89 education services are provided; and

90 (12) Establishing a single point of contact for employers
91 and potential employers to access education and training
92 programs throughout the district.

93 (b) The community and technical college education
94 consortium shall cooperate with the regional workforce
95 investment board in the district and shall participate in any
96 development or amendment to the regional workforce
97 investment plan.

98 (c) To carry out the provisions of this section, community
99 and technical college/career and technical education consortia
100 planning districts are established and defined as follows:

101 (1) Northern Panhandle District includes Hancock,
102 Brooke, Ohio, Marshall and Wetzel counties.

103 (A) The facilitating institution is West Virginia Northern
104 Community and Technical College.

105 (B) Participating institutions include West Virginia
106 Northern Community and Technical College; John Marshall

107 High School; Cameron High School; John D. Rockefeller IV
108 Career Center; and other public career and technical centers
109 offering post-secondary programs.

110 (2) North Central West Virginia District includes
111 Monongalia, Marion, Preston, Taylor, Barbour, Randolph,
112 Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and
113 Upshur counties.

114 (A) The facilitating institution is Pierpont Community and
115 Technical College.

116 (B) Participating institutions include Pierpont Community
117 and Technical College; Glenville State College; Randolph
118 County Technical Center; Monongalia County Technical
119 Education Center; United Technical Center; Marion County
120 Technical Center; Fred W. Eberle Technical Center; Calhoun
121 Gilmer Career Center; Taylor County Technical Center; and
122 other public career and technical centers offering
123 post-secondary programs.

124 (3) Mid-Ohio Valley District includes Tyler, Pleasants,
125 Ritchie, Wood, Wirt, Jackson and Roane counties.

126 (A) The facilitating institution is West Virginia University
127 at Parkersburg.

128 (B) Participating institutions include West Virginia
129 University at Parkersburg; Roane-Jackson Technical Center;
130 Wood County Technical Center; Mid Ohio Valley Technical
131 Institute and other public career and technical centers offering
132 post-secondary programs.

133 (4) Potomac Highlands District includes Tucker,
134 Pendleton, Grant, Hardy, Mineral and Hampshire counties.

135 (A) The facilitating institution is Eastern West Virginia
136 Community and Technical College.

137 (B) Participating institutions include Eastern West Virginia
138 Community and Technical College; South Branch Career and
139 Technical Center; Mineral County Technical Center; and other
140 public career and technical centers offering post-secondary
141 programs.

142 (5) Shenandoah Valley District includes Berkeley,
143 Jefferson and Morgan counties.

144 (A) The facilitating institution is Blue Ridge Community
145 and Technical College.

146 (B) Participating institutions include Blue Ridge
147 Community and Technical College; James Rumsey Technical
148 Institute; and other public career and technical centers offering
149 post-secondary programs.

150 (6) Advantage Valley District includes Fayette, Kanawha,
151 Clay, Putnam, Cabell, Mason and Wayne counties.

152 (A) The facilitating institution for Cabell, Mason and
153 Wayne counties is Mountwest Community and Technical
154 College. The facilitating institutions for Clay, Fayette,
155 Kanawha and Putnam counties are Bridgemont Community
156 and Technical College and Kanawha Valley Community and
157 Technical College.

158 (B) Participating institutions include Mountwest
159 Community and Technical College; Bridgemont Community
160 and Technical College; Kanawha Valley Community and
161 Technical College; Carver Career and Technical Education
162 Center; Garnet Career Center; Ben Franklin Career and
163 Technical Center; Putnam Career and Technical Center; Cabell
164 County Career-Technology Center; Mason County Career
165 Center; and other public career and technical centers offering
166 post-secondary programs.

167 (7) Southern Mountains District includes Lincoln, Boone,
168 Logan, Mingo, Wyoming and McDowell counties.

169 (A) The facilitating institution is Southern West Virginia
170 Community and Technical College.

171 (B) Participating institutions include Southern West
172 Virginia Community and Technical College; Boone County
173 Career and Technical Center; Wyoming County Career and
174 Technical Center; Ralph R. Willis Career and Technical
175 Center; McDowell County Career and Technology Center;
176 Mingo Extended Learning Center; and other public career and
177 technical centers offering post-secondary programs.

178 (8) Southeastern District includes Raleigh, Summers,
179 Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe
180 and Mercer counties.

181 (A) The facilitating institution is New River Community
182 and Technical College.

183 (B) Participating institutions include New River
184 Community and Technical College; Bridgemont Community
185 and Technical College; Bluefield State College; Academy of
186 Careers and Technology; Fayette Institute of Technology;
187 Summers County High School; Monroe County Technical
188 Center; Mercer County Technical Education Center; Nicholas
189 County Career and Technical Center; and other public career
190 and technical centers offering post-secondary programs.

191 (9) Cochairs preside over each consortium as follows:

192 (A) The president of the facilitating community and
193 technical college, or his or her designee; and

194 (B) A career and technical education center administrator,
195 or his or her designee, representing one of the participating
196 institutions and selected by the consortium administrative
197 leaders.

198 (d) In the role of the facilitating institution of the
199 consortium, the college:

200 (1) Communicates to the Council and State Board;

201 (2) Facilitates the delivery of comprehensive community
202 and technical college education in the region, which includes
203 the seven areas of comprehensive community and technical
204 college education delivery as required by section six of this
205 article;

206 (3) Facilitates development of a statement of commitment
207 signed by all participating institutions in the region setting
208 forth how community and technical college education will be
209 delivered; and

210 (4) Facilitates the development of a consortium compact to
211 be submitted to the Council and State Board before July 1,
212 2012, and annually thereafter.

213 (e) Participating institutions are not subordinate to the
214 facilitating institution but shall sign the statement of
215 commitment to participate.

216 (f) The Council is responsible for carrying out the
217 following activities:

218 (1) Annually evaluating the progress made in meeting the
219 compact goals for each consortium through the development
220 and collection of performance indicator data; and

221 (2) Providing each consortium with a model format for
222 developing and revising a consortium compact outlining
223 strategies and procedures for achieving stated goals. The
224 compact shall be submitted to the Council and State Board for
225 their respective approvals before July 1, 2012, and annually
226 thereafter. The Council is responsible for approving the
227 compact components related to community and technical
228 college education. The State Board is responsible for

229 approving the compact components related to career and
230 technical education. Each compact shall include
231 implementation of seamless programs of study, the
232 Collaborative Degree Completion Program and the West
233 Virginia EDGE Program.

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Select committee on outcomes-based funding models in higher education.

1 (a) The Legislature makes the following findings regarding
2 public higher education:

3 (1) It is in the best interest of the citizens to have an
4 effective and comprehensive system for the delivery of public
5 higher education services. In order to achieve desired goals of
6 economic growth and societal well being, it is critical that more
7 citizens have some level of education beyond high school.

8 (2) In Senate Bill 595 (*Vision 2020*), enacted in 2008
9 regular session, state policymakers established detailed goals
10 and objectives that state institutions are expected to work
11 toward achieving by the year 2020. *Vision 2020* also provides
12 mechanisms for measuring success and for holding the state
13 systems of higher education accountable. It establishes
14 clear-cut connections between the budget cycle, the goals and
15 objectives and both positive and negative consequences.

16 (3) A variety of policy tools are available to influence and
17 direct public higher education behavior, including organizing
18 institutions into functional systems, creating governance
19 structures and mechanisms designed to ensure that these
20 systems and individual institutions focus on the public policy
21 agenda and establishing outcomes-based goals, accountability
22 measures and regulatory devices.

23 (4) While these policy tools are useful, they are not
24 sufficient to influence institutions, students and employers to

25 behave in ways consistent with achieving the goals and
26 objectives of *Vision 2020* the public policy agenda. Resources
27 appropriated to public higher education are used most
28 effectively and efficiently when the attention of state colleges
29 and universities is focused on meeting established priorities.
30 This focus is developed and sustained only when the state
31 financing policy contains a direct connection between the
32 Legislature's power to appropriate money and desired
33 institutional outcomes. Unlike rules which can be bent; law
34 can be creatively interpreted; accountability requirements
35 which can lose their effectiveness as they are filtered through
36 layers of bureaucracy; and responsibility for implementation
37 which is divided among agencies and, ultimately, is totally
38 dependent upon institutional discretion, a financing policy that
39 ties the flow of funds directly to progress on achieving
40 established state goals and objectives commands immediate
41 attention.

42 (b) It is the constitutional responsibility of the Legislature
43 to determine how to make the best use of available resources
44 to meet state needs and established goals; therefore, the Joint
45 Committee on Government and Finance shall create a select
46 committee for the two-fold purpose of making a specific and
47 detailed analysis of outcomes-based funding models used in
48 higher education and providing recommendations to the
49 Legislature on incorporating one or more of these models as an
50 effective piece of the state's financing policy.

51 (c) The select committee consists of the following
52 members:

53 (1) The President of the Senate or designee;

54 (2) The Speaker of the House of Delegates or designee;

55 (3) The chairs of the Senate and House of Delegates
56 Committees on Education, who shall cochair the committee;

57 (4) The vice chairs of the Senate and House of Delegates
58 Committees on Education;

59 (5) The chairs of the Senate and House of Delegates
60 Committees on Finance or their designees;

61 (6) The cochairs of the Joint Commission on Economic
62 Development or their designees;

63 (7) Two members each from the Senate Committees on
64 Finance and Education appointed by the President of the
65 Senate; and

66 (8) Two members each from the House Committees on
67 Finance and Education appointed by the Speaker of the House.

68 (d) The select committee shall develop a report with
69 recommendations on implementing a state-level financing plan
70 which includes, but is not limited to, the following items:

71 (1) A review of existing outcomes-based funding models
72 for institutions and systems of higher education;

73 (2) Identification of the top three to five public policy
74 objectives that are to be the focus of the financing policy;

75 (3) A review of outcomes-based funding models
76 implemented in other states, including an evaluation of the
77 degree to which these policies have succeeded in influencing
78 institutional and system behavior;

79 (4) Recommendations on methods to balance the inherent
80 need of institutions for stability with the demands of the state
81 for services as identified in *Vision 2020* and the public policy
82 agenda;

83 (5) Recommendations on methods to develop a workable
84 balance between addressing the well-being of institutions and
85 the success of students; and

86 (6) An analysis of the impact of different models on
87 institutions with widely-differing missions, including
88 recommendations on selecting and implementing the
89 appropriate model for each type of institution specifically
90 noting the impact of selected models on community and
91 technical colleges, baccalaureate colleges and regional
92 universities, and research universities.

93 (e) The committee shall commence its work before May
94 15, 2012, and shall deliver its report and recommendations,
95 together with draft legislation to implement the
96 recommendations, to the Legislative Oversight Commission on
97 Education Accountability and the Joint Committee on
98 Government and Finance by December 1, 2012.

CHAPTER 60

**(Com. Sub. for H. B. 4433 - By Delegates
Williams, Ashley, Cann, Ferns, Iaquina,
Perry, R. Phillips, Pino, Shaver and Varner)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2012.]

AN ACT to and reenact §18-2-34 of the Code of West Virginia, 1931,
as amended, relating to modifying the criteria for awarding high
school diplomas to certain veterans.

Be it enacted by the Legislature of West Virginia:

That §18-2-34 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-34. High school diplomas for surviving veterans of World War II, the Korean War, and the Vietnam Conflict.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the state board shall provide for the awarding of a
3 high school diploma to any surviving veteran of World War II,
4 the Korean War, or the Vietnam Conflict, who:

5 (1) Left school prior to graduation and served in the Armed
6 Forces of the United States;

7 (2) Did not receive a high school diploma;

8 (3) Was discharged from the armed forces under honorable
9 conditions; and

10 (4) Completes the application process as provided by the
11 joint rules of the state board and the veterans' council.

12 (b) The state board and the veterans' council, created in
13 article one, chapter nine-a of this code, shall jointly propose
14 rules for the identification of eligible veterans and for
15 awarding high school diplomas. The rules shall provide for an
16 application process and the credentials required to receive a
17 high school diploma.

18 (c) A diploma shall be awarded by the county board in the
19 county in which the veteran resides or in the county in which
20 the veteran would have received his or her diploma, whichever
21 location the veteran chooses.

22 (d) For purposes of this section:

23 (1) "World War II veteran" means any veteran who
24 performed wartime service between September 16, 1940, and
25 December 31, 1946;

26 (2) “Korean War veteran” means any veteran who
27 performed military service between June 27, 1950, and
28 January 31, 1955;

29 (3) “Vietnam Conflict veteran” means any veteran who
30 performed military service between February 28, 1961, and
31 May 7, 1975.



CHAPTER 61

**(H. B. 4072 - By Delegates
M. Poling and Paxton)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to and amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended, relating to eliminating requirement for county boards of education to meet on the first Monday of July in years in which there is not a biennial primary election.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 (a) The county board shall meet upon the dates provided
2 by law, and at any other times the county board fixes upon its

3 records. Subject to adequate public notice, nothing in this
4 section prohibits the county board from conducting regular
5 meetings in facilities within the county other than the county
6 board office. At any meeting as authorized in this section and
7 in compliance with the provisions of chapter eighteen-a of this
8 code, the county board may employ qualified teachers, or those
9 who will qualify by the time they enter upon their duties,
10 necessary to fill existing or anticipated vacancies for the
11 current or next ensuing school year. Meetings of the county
12 board shall be held in compliance with the provisions of
13 chapter eighteen-a of this code for purposes relating to the
14 assignment, transfer, termination and dismissal of teachers and
15 other school employees.

16 (b) Special meetings may be called by the president or any
17 three members, but no business may be transacted other than
18 that designated in the call.

19 (c) In addition, a public hearing shall be held concerning
20 the preliminary operating budget for the next fiscal year not
21 fewer than ten days after the budget has been made available
22 to the public for inspection and within a reasonable time prior
23 to the submission of the budget to the state board for approval.
24 Reasonable time shall be granted at the hearing to any person
25 who wishes to speak regarding any part of the budget. Notice
26 of the hearing shall be published as a Class I legal
27 advertisement in compliance with the provisions of article
28 three, chapter fifty-nine of this code.

29 (d) A majority of the members of the county board is the
30 quorum necessary for the transaction of official business.

31 (e) Board members may receive compensation at a rate not
32 to exceed \$160 per meeting attended, but they may not receive
33 pay for more than fifty meetings in any one fiscal year. Board
34 members who serve on an administrative council of a
35 multicounty vocational center also may receive compensation
36 for attending up to twelve meetings of the council at the same

37 rate as for meetings of the county board. Meetings of the council
38 are not counted as board meetings for purposes of determining
39 the limit on compensable board meetings.

40 (f) Members also shall be paid, upon the presentation of an
41 itemized sworn statement, for all necessary traveling expenses,
42 including all authorized meetings, incurred on official business,
43 at the order of the county board.

44 (g) When, by a majority vote of its members, a county board
45 considers it a matter of public interest, the county board may join
46 the West Virginia School Board Association and the National
47 School Board Association and may pay the dues prescribed by
48 the associations and approved by action of the respective county
49 boards. Membership dues and actual traveling expenses
50 incurred by board members for attending meetings of the West
51 Virginia School Board Association may be paid by their
52 respective county boards out of funds available to meet actual
53 expenses of the members, but no allowance may be made except
54 upon sworn itemized statements.



CHAPTER 62

**(H. B. 4299 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 6, 2012; in effect from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended, relating to authorizing a county board of education to use the services of a bus operator from another county in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 Subject to the provisions of this chapter and the rules of the
2 state board, each county board may:

3 (a) Control and manage all of the schools and school
4 interests for all school activities and upon all school property
5 owned or leased by the county, including:

6 (1) Requiring schools to keep records regarding funds
7 connected with the school or school interests, including all
8 receipts and disbursements of all funds collected or received
9 by:

10 (A) Any principal, teacher, student or other person in
11 connection with the schools and school interests;

12 (B) Any program, activity or other endeavor of any nature
13 operated or conducted by or in the name of the school; and

14 (C) Any organization or body directly connected with the
15 school;

16 (2) Allowing schools to expend funds for student, parent,
17 teacher and community recognition programs. A school may
18 use only funds it generates through a fund-raising or
19 donation-soliciting activity. Prior to commencing the activity,
20 the school shall:

21 (A) Publicize the activity as intended for this purpose; and

22 (B) Designate for this purpose the funds generated;

23 (3) Auditing the records and conserving the funds,
24 including securing surety bonds by expending board moneys.
25 The funds described in this subsection are quasipublic funds,
26 which means the moneys were received for the benefit of the
27 school system as a result of curricular or noncurricular
28 activities;

29 (b) Establish:

30 (1) Schools, from preschool through high school;

31 (2) Vocational schools; and

32 (3) Schools and programs for post-high school instruction,
33 subject to approval of the state board;

34 (c) Close any school:

35 (1) Which is unnecessary and assign the students to other
36 schools. The closing shall occur pursuant to official action of
37 the county board. Except in emergency situations when the
38 timing and manner of notification are subject to approval by
39 the state superintendent, the county board shall notify the
40 affected teachers and service personnel of the county board
41 action not later than the first Monday in April. The board shall
42 provide notice in the same manner as set forth in section four
43 of this article; or

44 (2) Pursuant to the provisions of subsection (e) of this
45 section;

46 (d) Consolidate schools;

47 (e) Close any elementary school whose average daily
48 attendance falls below twenty students for two consecutive
49 months. The county board may assign the students to other
50 schools in the district or to schools in adjoining districts. If the
51 teachers in the closed school are not transferred or reassigned
52 to other schools, they shall receive one month's salary;

53 (f) Provide transportation according to rules established by
54 the county board, as follows:

55 (1) To provide at public expense adequate means of
56 transportation:

57 (A) For all children of school age who live more than two
58 miles distance from school by the nearest available road;

59 (B) For school children participating in county
60 board-approved curricular and extracurricular activities;

61 (C) Across county lines for students transferred from one
62 district to another by mutual agreement of both county boards.
63 The agreement shall be recorded in the meeting minutes of
64 each participating county board and is subject to the provisions
65 of subsection (h) of this section; and

66 (D) Within available revenues, for students within two
67 miles distance of the school; and

68 (2) To provide transportation for participants in projects
69 operated, financed, sponsored or approved by the Bureau of
70 Senior Services. This transportation shall be provided at no
71 cost to the county board. All costs and expenses incident in
72 any way to this transportation shall be borne by the bureau or
73 the local or county affiliate of the bureau;

74 (3) Any school bus owned by the county board may be
75 operated only by a bus operator regularly employed by the

76 county board, except as provided in subsection (g) of this
77 section;

78 (4) Pursuant to rules established by the state board, the
79 county board may provide for professional employees to be
80 certified to drive county board-owned vehicles that have a
81 seating capacity of fewer than ten passengers. These
82 employees may use the vehicles to transport students for
83 school-sponsored activities, but may not use the vehicles to
84 transport students between school and home. Not more than
85 one of these vehicles may be used for any school-sponsored
86 activity;

87 (5) Students may not be transported to a school- sponsored
88 activity in any county-owned or leased vehicle that does not
89 meet school bus or public transit ratings. This section does not
90 prohibit a parent from transporting ten or fewer students in a
91 privately-owned vehicle;

92 (6) Students may be transported to a school-sponsored
93 activity in a vehicle that has a seating capacity of sixteen or
94 more passengers which is not owned and operated by the
95 county board only as follows:

96 (A) The state board shall promulgate a rule to establish
97 requirements for:

98 (i) Automobile insurance coverage;

99 (ii) Vehicle safety specifications;

100 (iii) School bus or public transit ratings; and

101 (iv) Driver training, certification and criminal history
102 record check; and

103 (B) The vehicle owner shall provide to the county board
104 proof that the vehicle and driver satisfy the requirements of the
105 state board rule; and

106 (7) Buses shall be used for extracurricular activities as
107 provided in this section only when the insurance coverage
108 required by this section is in effect;

109 (g) Lease school buses pursuant to rules established by the
110 county board.

111 (1) Leased buses may be operated only by bus operators
112 regularly employed by the county board, except that these
113 buses may be operated by bus operators regularly employed by
114 another county board in this state if bus operators from the
115 owning county are unavailable.

116 (2) The lessee shall bear all costs and expenses incurred
117 by, or incidental to the use of, the bus.

118 (3) The county board may lease buses to:

119 (A) Public and private nonprofit organizations and private
120 corporations to transport school-age children for camps or
121 educational activities;

122 (B) Any college, university or officially recognized
123 campus organization for transporting students, faculty and
124 staff to and from the college or university. Only college and
125 university students, faculty and staff may be transported
126 pursuant to this paragraph. The lease shall include provisions
127 for:

128 (i) Compensation for bus operators;

129 (ii) Consideration for insurance coverage, repairs and other
130 costs of service; and

131 (iii) Any rules concerning student behavior;

132 (C) Public and private nonprofit organizations, including
133 education employee organizations, for transportation
134 associated with fairs, festivals and other educational and
135 cultural events. The county board may charge fees in addition
136 to those charges otherwise required by this subsection;

137 (h) To provide at public expense for insurance coverage
138 against negligence of the drivers of school buses, trucks or
139 other vehicles operated by the county board. Any contractual
140 agreement for transportation of students shall require the
141 vehicle owner to maintain insurance coverage against
142 negligence in an amount specified by the county board;

143 (i) Provide for the full cost or any portion thereof for group
144 plan insurance benefits not provided or available under the
145 West Virginia Public Employees Insurance Act. Any of these
146 benefits shall be provided:

147 (1) Solely from county board funds; and

148 (2) For all regular full-time employees of the county board;

149 (j) Employ teacher aides; to provide in-service training for
150 the aides pursuant to rules established by the state board; and,
151 prior to assignment, to provide a four-clock-hour program of
152 training for a service person assigned duties as a teacher aide
153 in an exceptional children program. The four-clock-hour
154 program shall consist of training in areas specifically related to
155 the education of exceptional children;

156 (k) Establish and operate a self-supporting dormitory for:

157 (1) Students attending a high school or participating in a
158 post high school program; and

159 (2) Persons employed to teach in the high school or post
160 high school program;

161 (1) At the county board's discretion, employ, contract with
162 or otherwise engage legal counsel in lieu of using the services
163 of the prosecuting attorney to advise, attend to, bring,
164 prosecute or defend, as the case may be, any matters, actions,
165 suits and proceedings in which the county board is interested;

166 (m) Provide appropriate uniforms for school service
167 personnel;

168 (n) Provide at public expense for payment of traveling
169 expenses incurred by any person invited to appear to be
170 interviewed concerning possible employment by the county
171 board, subject to rules established by the county board;

172 (o) Allow designated employees to use publicly provided
173 carriage to travel from their residences to their workplace and
174 return. The use:

175 (1) Is subject to the supervision of the county board; and

176 (2) Shall be directly connected with, required by and
177 essential to the performance of the employee's duties and
178 responsibilities;

179 (p) Provide at public expense adequate public liability
180 insurance, including professional liability insurance, for county
181 board employees;

182 (q) Enter into cooperative agreements with other county
183 boards to provide improvements to the instructional needs of
184 each district. The cooperative agreements may be used to
185 employ specialists in a field of academic study or for support
186 functions or services for the field. The agreements are subject
187 to approval by the state board;

188 (r) Provide information about vocational and higher
189 education opportunities to exceptional students. The county
190 board shall provide in writing to the students and their parents
191 or guardians information relating to programs of vocational
192 education and to programs available at state institutions of
193 higher education. The information may include sources of
194 available funding, including grants, mentorships and loans for
195 students who wish to attend classes at institutions of higher
196 education;

197 (s) Enter into agreements with other county boards for the
198 transfer and receipt of any funds determined to be fair when
199 students are permitted or required to attend school in a district
200 other than the district of their residence. These agreements are
201 subject to the approval of the state board; and

202 (t) Enter into job-sharing arrangements, as defined in
203 section one, article one, chapter eighteen-a of this code, with
204 its employees, subject to the following provisions:

205 (1) A job-sharing arrangement shall meet all the
206 requirements relating to posting, qualifications and seniority,
207 as provided in article four, chapter eighteen-a of this code;

208 (2) Notwithstanding any contrary provision of this code or
209 legislative rule and specifically the provisions of article
210 sixteen, chapter five of this code, a county board that enters
211 into a job-sharing arrangement:

212 (A) Shall provide insurance coverage to the one employee
213 mutually agreed upon by the employees participating in that
214 arrangement; and

215 (B) May not provide insurance benefits of any type to
216 more than one of the job-sharing employees, including any

217 group plan available under the State Public Employees
218 Insurance Act;

219 (3) Each job-sharing agreement shall be in writing on a
220 form prescribed and furnished by the county board. The
221 agreement shall designate specifically one employee only who
222 is entitled to the insurance coverage. Any employee who is not
223 designated is not eligible for state public employees insurance
224 coverage regardless of the number of hours he or she works;

225 (4) All employees involved in the job-sharing agreement
226 shall meet the requirements of subdivision (3), section two,
227 article sixteen, chapter five of this code; and

228 (5) When entering into a job-sharing agreement, the county
229 board and the participating employees shall consider issues
230 such as retirement benefits, termination of the job-sharing
231 agreement and any other issue the parties consider appropriate.
232 Any provision in the agreement relating to retirement benefits
233 may not cause any cost to be incurred by the retirement system
234 that is more than the cost that would be incurred if a single
235 employee were filling the position; and

236 (u) Under rules it establishes for each child, expend an
237 amount not to exceed the proportion of all school funds of the
238 district that each child would be entitled to receive if all the
239 funds were distributed equally among all the children of school
240 age in the district upon a per capita basis.



CHAPTER 63

**(Com. Sub. for S. B. 371 - By Senators Kessler,
Mr. President, and Hall)
[By Request of the Executive]**

[Passed March 16, 2012; in effect from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-12, relating to allowing flexibility within county school systems; authorizing the State Board of Education to select a county school system to serve as a school system collaborative innovation zone; giving McDowell County first opportunity to submit application; specifying effect of change in school system approval status; requiring the State Board of Education to promulgate rules and emergency rules; providing the procedure and criteria for application and selection as a school system collaborative innovation zone; requiring development of school system collaborative innovation zone plan; setting forth potential innovations; requiring public town hall meetings; requiring meeting to review input from town hall meetings and develop plan; requiring meeting to educate employees about the plan and to allow examination and discussion of plan; requiring vote to determine level of school employee support; authorizing a designated school system to submit requests for exceptions from county and state board rules, policies and interpretations; permitting exceptions from statutes subject to legislative approval; prohibiting certain exceptions; allowing revision and resubmission of approved plan; setting forth duration of designation; requiring annual performance reviews and reports; permitting the posting of certain teaching vacancies in

accordance with certain procedures and approval; and for a school system collaborative innovation zone and to the extent applicable, including any land and infrastructure needs in the land use master plan, authorizing an area health association to work with county board in addressing health, wellness and fitness needs and authorizing an area institution of higher education to work with the county board to address certain challenges.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-12, to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-12. School system collaborative innovation zone; requirements to qualify; application for designation; required plans for innovation zones; plan approval; waiver of statutes, policies, rules or interpretations; progress reviews and annual reports; teacher vacancies, job postings and approval.

1 (a) The Legislature makes the following findings and
2 expressions of legislative intent:

3 (1) The Legislature created a performance-based
4 accreditation system in 1988 and has amended these provisions
5 several times, significantly in 1998 to set forth a process for
6 improving education consisting of four elements: (i) High
7 quality education standards; (ii) an assessment of the
8 performance and progress of schools and school systems in
9 achieving these standards with a primary focus on student
10 learning; (iii) holding schools and school systems accountable
11 for performance and progress to provide assurances that a

12 thorough and efficient education is being provided; and (iv) a
13 process for targeting resources strategically to improve
14 teaching and learning. These provisions include a process for
15 the state board to declare a state of emergency and intervene in
16 the operation of a school system when its educational program
17 does not meet the standards and it fails to implement an
18 improvement plan or meet the plan's deadlines and improve
19 within a reasonable time. Since the inception of these
20 provisions, the state board has declared a state of emergency in
21 nine county school systems and intervened, including
22 delegating decision-making authority to the state
23 superintendent or his or her designee for system operations. Of
24 these nine school systems, three improved sufficiently over a
25 period of time for the state of emergency to be rescinded, the
26 longest of which took ten years and six months. Of the six
27 systems remaining under state board intervention, although
28 most are fairly recent, one school system has been under state
29 intervention for more than ten years and its improvement is
30 progressing slowly;

31 (2) School systems do not exist in a vacuum and external
32 circumstances and events can have a significant impact on
33 them and the students they serve, as well as on the system's
34 capacity to deliver the thorough and efficient education to
35 which those students are entitled. For example, the McDowell
36 County school system which in the 1950's at its height of
37 employment in coal production had a total population of about
38 100,000 residents, faced much different challenges than it does
39 today with that county's total population now at 22,113 based
40 on the 2010 census. This school system has lost nearly 70
41 percent of its enrollment in the past 30 years, declining from
42 11,715 students in 1981-82 to 3,535 in 2011-12. Along with
43 the steep decline in the historical bedrock of employment in the
44 county in the coal industry and the large number of middle
45 class workers and services it supported, including housing,
46 utilities and medical care, the county's rugged mountainous
47 topography contributes to its vulnerability to natural disasters

48 such as the devastating floods in 2001 and 2002 that swept
49 away many homes and much of the infrastructure along the
50 creek beds throughout the county. This topography also
51 significantly limits the amount of land suitable for
52 development and transportation networks, and makes planning
53 for future economic development alternatives difficult. The
54 social and economic byproducts of these external
55 circumstances and events leave a school system with many
56 atypical challenges for addressing the needs of its students and
57 making the improvements in performance and progress needed
58 to assure a thorough and efficient education;

59 (3) Among the findings, intent and purposes of this article
60 are that: (i) Allowing exceptions from certain statutes, policies,
61 rules and interpretations through the creation of innovation
62 zones will enable greater local control over the important
63 educational factors that impact student achievement and the
64 delivery of educational services to improve student learning;
65 and (ii) innovation zones will provide greater flexibility and
66 local control to meet the needs of a diverse population of
67 students. In addition, among the findings of the Local Solution
68 Dropout Prevention and Recovery Innovation Zone Act as set
69 forth in section eleven of this article are findings that when
70 educators, parents, elected officials, business leaders, faith-
71 based leaders, human service personnel, judicial personnel and
72 civic leaders collectively work together they are often able to
73 find innovative solutions to address school and community
74 problems. Since the creation of this article, forty-five
75 innovation zone projects have been approved by the state
76 board, nine of which were Dropout Prevention and Recovery
77 Innovation Zone projects. Twenty-seven policy waivers and
78 five statutory waivers have been granted to enable
79 implementation of these projects. In one county, an innovation
80 zone project was expanded to all of the remaining schools in
81 the county when the schools used the Local School
82 Improvement Council waiver process to request and receive a
83 statutory waiver to implement a comprehensive new teacher

84 induction process countywide. Collectively, these projects
85 illustrate how local schools, and in some cases school systems,
86 have increased their capacity by using the innovation zone
87 process to collaboratively plan and implement a variety of
88 changes to increase student engagement, develop more flexible
89 schedules, enhance student and teacher ownership of the
90 learning process and increase student achievement;

91 (4) Choosing one county school system under a declared
92 state of emergency due to nonapproval status to designate as an
93 innovation zone would allow the testing of innovations that
94 could be replicated in other school systems facing similar
95 circumstances across the state, nation and world;

96 (5) Numerous studies have shown an association between
97 a young person's health status and his or her ability to succeed
98 in educational settings;

99 (6) McDowell County is unique and should be given the
100 first opportunity to use innovative solutions to improve its
101 education system when the totality of the circumstances set
102 forth in this subsection are considered. Other facts specifically
103 applicable to McDowell County include the following:

104 (A) The McDowell County school system has been under
105 a continuous declared state of emergency by the state board
106 due to nonapproval status longer than any other county that is
107 currently under a declared state of emergency;

108 (B) The McDowell County school system is engaged in a
109 public-private partnership to begin addressing challenges both
110 within the school system and in the community at large; and

111 (C) McDowell County has a chronic shortage of good
112 roads, public transportation, housing, Internet bandwidth,
113 recreation centers and health clinics;

114 (7) This section is intended as an additional tool for an
115 eligible school system in collaboration with community and
116 business partners to plan and implement new approaches to
117 improve the performance and progress of the students, schools
118 and system to achieve full approval at the earliest possible date.
119 It is further the intent of the Legislature that the process for an
120 eligible school system to apply for exceptions under this
121 section should allow multiple opportunities to apply for
122 additional exceptions as the system moves forward with its
123 partners toward fulfillment of its improvement goals; and

124 (8) In accordance with the intent of this section as an
125 additional tool for planning and implementing new approaches
126 to improve the performance and progress of the students,
127 schools and school system to achieve full approval at the
128 earliest possible date, the state board shall rescind the state of
129 emergency and nonapproval status of a school system
130 designated as a school system collaborative innovation zone as
131 soon as the requisite conditions are met as provided in section
132 five, article two-e of this chapter, notwithstanding the
133 designation. If a school system that has been designated as a
134 school system collaborative innovation zone is subsequently
135 issued a school system approval status that would make it
136 ineligible for the designation, the designation shall remain in
137 effect as provided in this section.

138 (b) The state board is authorized to choose one county
139 school system currently under a declared state of emergency by
140 the state board due to nonapproval status to participate in a
141 program to test the effectiveness of allowing such county
142 school systems to be considered school system collaborative
143 innovation zones. Due to the reasons set forth in subsection (a)
144 of this section, the McDowell County Board of Education shall
145 be provided the first opportunity to submit a school system
146 collaborative innovation zone application under this article. If
147 the McDowell County Board of Education has not submitted
148 an application by April 1, 2013 or less than fifty percent cast

149 ballots in an election to approve a school system collaborative
150 innovation zone plan, the state board may accept applications
151 from other county boards under a declared state of emergency
152 by the state board due to nonapproval status.

153 (c) The Legislature finds that an emergency exists and,
154 therefore, no later than April 16, 2012, the state board shall
155 promulgate an emergency rule in accordance with section ten,
156 article three-b, chapter twenty-nine-a of this code, to
157 implement the provisions of this section. The state board also
158 shall promulgate a legislative rule, in accordance with article
159 three-b, chapter twenty-nine-a of this code, to implement this
160 section. Both rules shall include, but not be limited to, the
161 following provisions:

162 (1) The manner, time and process for the submission of a
163 school system collaborative innovation zone application;

164 (2) The contents of the application, which must include a
165 general description of the innovations the county school
166 district seeks to institute;

167 (3) Factors to be considered by the state board when
168 evaluating an application, which shall include, but are not
169 limited to, the following factors:

170 (A) Support from teachers, staff, parents, students, the
171 county board of education, the local school improvement
172 council and school business partners; and

173 (B) The potential for an applicant to be successful in
174 raising student achievement as a school system collaborative
175 innovation zone; and

176 (4) Standards for the state board to review applications for
177 designation as a school system collaborative innovation zone
178 and to make determinations on the designation of a school
179 system collaborative innovation zone.

180 (d) The state board shall review school system
181 collaborative innovation zone applications in accordance with
182 the standards adopted by the board and shall determine
183 whether to designate the applicant as a school system
184 collaborative innovation zone. The state board shall notify an
185 applicant of the board's determination within thirty days of
186 receipt of the application.

187 (e) Prior to designation by the state board as a school
188 system collaborative innovation zone, county school systems
189 submitting applications shall develop school system
190 collaborative innovation zone plans. The school system
191 collaborative innovation zone plan may include, but is not
192 limited to, the following proposals:

193 (1) Allowing increased collaborative site-based
194 decision-making powers over the budgeting for and spending
195 on programs and services for students;

196 (2) Allowing increased collaborative site-based
197 decision-making powers over teacher recruitment;

198 (3) Allowing a collaborative process which ensures
199 accountability and transparency to all stakeholders;

200 (4) Allowing a collaborative process which provides input
201 and demonstrative buy-in from education personnel regarding
202 appropriate professional development, supports, resources and
203 working conditions.

204 (5) Allowing a collaborative site-based process to reduce
205 certain requirements to allow staff to meet the school's
206 mission;

207 (6) Allowing, through a collaborative site-based process,
208 flexibility to the alternative teacher certification provided in
209 section one-a, article three, chapter eighteen-a of this code;

210 (7) Utilizing virtual school courses aligned with the
211 Southern Regional Education Board's Standards for Quality
212 Online Courses; and

213 (8) Other innovation zone plans approved under the
214 provisions of this article and being implemented in other
215 schools and school systems throughout the state.

216 (f) Prior to submitting a school system collaborative
217 innovation zone plan to the state board:

218 (1) The school system in collaboration with its public-
219 private partnership shall conduct public town hall meetings in
220 at least two schools in the county for the purpose of soliciting
221 input from those in attendance on the challenges affecting the
222 quality of education in the county and the potential strategies
223 and priorities for addressing them. The two meetings shall
224 occur within ten days of each other;

225 (2) Within fifteen days after the last town hall meeting, the
226 county superintendent shall hold a meeting for the purpose of
227 reviewing the input gathered at the public town hall meetings
228 and developing the school system collaborative innovation
229 zone plan. The meeting shall include the principals employed
230 within the county, the chairs of the faculty senates of each
231 school in the county, employee organization representatives, a
232 school service person from each work site, parents and other
233 stakeholders;

234 (3) Within fifteen days after the meeting to develop the
235 school system collaborative innovation zone plan, the county
236 superintendent shall hold a meeting of all regularly employed
237 school employees for the purpose of educating those
238 employees about the plan and for the purpose of providing the
239 employees an opportunity to examine and discuss the school
240 system collaborative innovation zone plan; and

241 (4) At the meeting required by subdivision (3) of this
242 subsection, the county superintendent shall direct that a vote of
243 all regularly employed school employees in the county be
244 conducted to determine the level of school employee support
245 for the school system collaborative innovation zone plan. The
246 vote shall be completed within fifteen days after the meeting
247 required by subdivision (3) of this subsection. The vote shall
248 be by secret ballot administered by the panels created in
249 subsection (c), section six of this article for each school and
250 shall be administered in accordance with that subsection. For
251 the vote to be valid, ballots must be cast by at least fifty
252 percent of all regularly employed school employees in the
253 county. The plan may not be submitted to the state board and
254 the state board may not designate the school system as a school
255 system collaborative innovation zone unless at least two-thirds
256 of the employees voting vote to submit the plan.

257 (g) Approval of a school system collaborative innovation
258 zone plan pursuant to this section is at the sole discretion of the
259 state board. Any approval requirement not contained within
260 this section does not apply.

261 (h) The plan is intended to serve as the basis for the
262 innovation zone activities of the school system and to provide
263 a vision for the school improvement goals it will work to
264 accomplish in collaboration with its school and community
265 partners. The plan is not intended as a limit on the normal
266 school improvement activities that all school systems are
267 expected to pursue, nor is the plan intended as a restriction on
268 the ability of the school system or its schools to pursue other
269 innovative strategies in accordance with the other provisions
270 of this article, specifically the designation as a Local Solution
271 Dropout Prevention and Recovery Innovation Zone in
272 accordance with section eleven of this article.

273 (i) The designation as a school system collaborative
274 innovation zone authorizes the school system to submit

275 requests as provided in subsection (j) of this section to the state
276 board for exceptions to statutes, policies, rules and
277 interpretations that are required to permit implementation by
278 the school system of the innovative strategies contemplated in
279 its school system collaborative innovation zone plan. The
280 designation shall be for a period of five years, during which the
281 school system may submit multiple individual requests for
282 exceptions to permit implementation of different strategies
283 contemplated in the plan as the strategies are developed. Each
284 request for an exception shall be submitted and may be
285 approved by the state board in accordance with subsection (j)
286 of this section.

287 (j) (1) A school system designated as a school system
288 collaborative innovation zone may request an exception to a
289 statute, policy, rule or interpretation by submitting an
290 application to the state board that contains the following
291 information:

292 (A) A description of the program or initiative the school
293 system intends to implement as an innovative strategy to
294 improve student achievement if the request is approved by the
295 state board;

296 (B) An explanation of the specific exception to a statute,
297 policy, rule or interpretation, in the singular or plural, that the
298 school system has identified as prohibiting or constraining the
299 implementation of the program or initiative and why the
300 exception is necessary;

301 (C) An explanation of how the program or initiative
302 furthers the activities contemplated in the school system
303 collaborative innovation zone plan;

304 (D) A certification by the county superintendent that the
305 request for an exception was approved by a vote of the eligible
306 employees in accordance with the process for voting as set
307 forth in section six of this article, except that notwithstanding

308 subsection (d) of said section six, at least two-thirds of the
309 eligible employees voting must vote to request the exception
310 for it to be approved for submission to the state board:
311 *Provided*, That for the vote to be valid, ballots must be cast by
312 at least fifty percent of the eligible employees; and

313 (E) Any other information the state board requires as set
314 forth in its rule pursuant to subsection (c) of this section.

315 (2) The state board shall review the request in accordance
316 with the standards adopted by the board in its rule and shall
317 determine whether to approve or disapprove the request. The
318 approval or disapproval of a request is at the sole discretion of
319 the state board. Any approval requirement not contained
320 within this section does not apply.

321 (3) Except as provided in subdivision (5) of this
322 subsection, the state board shall approve or disapprove the
323 request within thirty days of receipt, subject to the following:

324 (A) No exceptions to state board policies, rules or
325 interpretations are granted unless the state board approves the
326 request at least conditionally pursuant to subdivisions (2) and
327 (5) of this subsection; and

328 (B) If the request is disapproved, the state board shall
329 communicate its reasons for the disapproval to the school
330 system and shall make recommendations for improving the
331 request. The school system may amend and resubmit the
332 request.

333 (4) Upon approval of the request by the state board, all of
334 the exceptions to state board policies, rules and interpretations
335 that were requested are granted; and

336 (5) If a request, or a part thereof, may not be implemented
337 unless an exception to a statute is granted by an Act of the
338 Legislature, the state board may approve the request, or the

339 part thereof, only upon the condition that the Legislature acts
340 to grant the exception. If the state board approves a request on
341 that condition, the state board shall submit the request for an
342 exception to a statute, along with supporting reasons, to the
343 Legislative Oversight Commission of Education
344 Accountability. The commission shall review the request and
345 make a recommendation to the Legislature regarding the
346 exception requested.

347 (k) A school system collaborative innovation zone may not
348 request an exception nor may an exception be granted from
349 any of the following:

350 (A) A required statewide assessment program administered
351 by the West Virginia Department of Education;

352 (B) Any provision of law or policy required by the No
353 Child Left Behind Act of 2001, Public Law No. 107-110 or
354 other federal law; and

355 (C) Sections two and seven, article two, chapter eighteen-a
356 of this code and sections seven-a, seven-b, eight and eight-b,
357 article four, chapter eighteen-a of this code, except that a
358 school system collaborative innovation zone may make a job
359 posting for a teacher vacancy in accordance with the
360 procedures and the approval by a vote of the teachers as
361 provided in section eight of this article.

362 (l) A county board designated as a school system
363 collaborative innovation zone pursuant to this section that has
364 an approved innovation zone plan may revise its plan and
365 resubmit its plan to the state board for approval after
366 conducting the vote pursuant to subdivision (4), subsection (f)
367 of this section and complying with all other applicable plan
368 requirements set forth in this section except for holding the
369 public town hall meetings required by subdivision (1),
370 subsection (f) of this section.

371 (m) The designation of a county school system as a school
372 system collaborative innovation zone shall be for a period of
373 five years. The state board, upon request of the school system,
374 may extend the designation for an additional two years if the
375 school system has outstanding items in its school system
376 collaborative innovation zone plan that it still wants to pursue
377 and only for the purpose of pursuing those outstanding items.
378 The expiration of the designation does not negate any
379 exceptions to statutes, policies, rules or interpretations granted
380 to the school system, unless and until specifically revoked,
381 repealed or modified by the state board or by the Legislature,
382 as applicable.

383 (n) The state board or its designated committee shall
384 perform annual performance reviews and provide annual
385 reports in accordance with section seven of this article.

386 (o) A county school system whose plan has been approved
387 may make a job posting for a teacher vacancy in accordance
388 with the procedures and approval provided by section eight of
389 this article.

390 (p) For any county that is designated as a school system
391 collaborative innovation zone under the provisions of this
392 section and to the extent the following provisions are
393 applicable:

394 (1) The county commission of the designated county shall
395 collaborate with the Office of Coalfield Community
396 Development in including any land and infrastructure needs in
397 the land use master plan provided for in section nine, article
398 two-a, chapter five-b of this code. These needs may include,
399 but are not limited to, advancement of public education,
400 economic development, highway development, recreational
401 amenities and housing development;

402 (2) An area health organization, such as Tug River Health
403 Association, Inc., is authorized to work with the county board

404 to address the health, wellness and fitness needs of students,
405 parents, school personnel and all others in the county. Tug
406 River Health Association may partner with the Robert C. Byrd
407 Center for Rural Health and the Marshall University Medical
408 School in addressing these needs. In addressing the health,
409 wellness and fitness needs, the following should be
410 considered:

411 (A) New evaluations of school-aged children are needed to
412 reassess their health status and direct further interventions;

413 (B) Prior to developing new assessment tools and initiating
414 programs, a comprehensive inventory of prior assessment tools
415 and programs is needed to determine their strengths and
416 weaknesses. This can direct further studies and interventions;

417 (C) New assessment tools should include objective
418 markers of disease as well as subjective opinions of individual
419 health status and barriers to health;

420 (D) Objective and subjective data should be linked at
421 individual and disease-specific levels;

422 (E) Disease-specific data may be used to address common
423 barriers to health as perceived by a specific population and
424 tailor interventions to these specific populations;

425 (F) The effectiveness of interventions should be assessed
426 using the same health status markers used to develop the
427 intervention;

428 (G) Interventions should use available technology that
429 allows individuals to track measures of health and provide
430 assistance in making informed decisions about their health;

431 (H) Assessments and interventions should be developed
432 and implemented using community-based participatory
433 research models; and

434 (I) Assessments and interventions should be
435 multidisciplinary, collaborative efforts with existing
436 organizations and programs; and

437 (3) Area institutions of higher education, such as Concord
438 University and the June Harless Center at Marshall University,
439 are authorized to work with the county board on innovative
440 strategies to address challenges facing the school system and
441 community, including, but not limited to, the areas of critical
442 need and shortage in the teaching force, educator professional
443 development and improving the college going rate. In
444 addressing the areas of critical need shortage in the teaching
445 force, consideration should be given to the implementation of
446 an intensively supervised and mentored teacher-in-residence
447 program for prospective teachers during their senior year in
448 lieu of student teaching.



CHAPTER 64

**(Com. Sub. for H. B. 4125 - By Delegates
M. Poling, Paxton, Perry, Moye and Fragale)**

[Passed March 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §18-9F-9 of the Code of West Virginia, 1931, as amended, relating to modifying when the requirement for schools to annually send notices to parents and guardians about the school's crisis response plan and their ability to review a redacted copy becomes effective.

Be it enacted by the Legislature of West Virginia:

That §18-9F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-9. Crisis Response Plan.

1 (a) The state board in conjunction with the Division of
2 Homeland Security and Emergency Management shall
3 promulgate by December 31, 2011, a legislative rule in
4 accordance with article three-b, chapter twenty-nine-a of this
5 code, and if necessary may promulgate an emergency rule in
6 accordance with said article, for the establishment of an up-to-
7 date, school specific crisis response plan at every school in the
8 state. In developing the rule, the state board shall consider
9 plans currently being developed as part of the safe schools
10 initiative currently underway by the School Building Authority
11 and the Division of Homeland Security and Emergency
12 Management. In addition, those portions of a school's access
13 safety plan created pursuant to section three of this article may
14 be used as a portion of the school's specific crisis response
15 plan if there are any overlapping requirements. The rule shall
16 provide for at least the following:

17 (1) A model school crisis response plan for use by each
18 school in the state, including a uniform template which shall be
19 used by each school to file the plan, including at least the
20 following information, in a secure electronic system identified
21 by the Division of Homeland Security and Emergency
22 Management:

23 (A) The school employee in charge during a crisis and a
24 designated substitute;

25 (B) A communication plan to be used during a crisis;

26 (C) Protocols for responding to immediate physical harm
27 of students, faculty or staff and to traumatic events, including
28 the period after the events have concluded;

29 (D) Disaster and emergency procedures to respond to
30 earthquakes, fire, flood, other natural disasters, explosions or
31 other events or conditions in which death or serious injury is
32 likely;

33 (E) Crisis procedures for safe entrance to and exit from the
34 school by students, parents, and employees, including an
35 evacuation and lock down plan; and

36 (F) Policies and procedures for enforcing school discipline
37 and maintaining a safe and orderly environment during the
38 crisis.

39 (2) A requirement that each school's school specific crisis
40 response plan shall be in place and filed with that school's
41 county board, and included in a secure electronic system
42 identified by the Division of Homeland Security and
43 Emergency Management, no later than August 1, 2013, or soon
44 after completion by the school, whichever occurs first;

45 (3) The necessary safeguards to protect information
46 contained in each school specific crisis response plan that may
47 be considered protected critical infrastructure information, law
48 enforcement sensitive information or for official use only.
49 These safeguards must have the approval the Division of
50 Homeland Security and Emergency Management. County
51 boards shall provide the same necessary safeguards for the
52 information in the plan;

53 (4) The annual review and necessary update of the model
54 plan and uniform template by state board in conjunction with
55 the Division of Homeland Security and Emergency
56 Management by December 31 of each year after 2011;

57 (5) The development by each school of a school specific
58 crisis response plan by using the state board's model plan as an
59 example and with consultation from local social services

60 agencies, local first response agencies including police, fire,
61 emergency medical services (EMS), emergency management
62 and any other local entities that the school's crisis response
63 planning team determines should be consulted;

64 (6) Procedures for the annual review and update if
65 necessary by each school of its school specific crisis response
66 planning plan. Each school shall file either an updated crisis
67 response plan or a memorandum stating that no update to the
68 crisis response plan was necessary with its county board and
69 the Division of Homeland Security and Emergency
70 Management no later than August 1 of each year after 2013.

71 (7) Procedures for each school within the state to form a
72 crisis response planning team, which team may consist of the
73 school's Local School Improvement Council or a separate
74 team consisting of the principal, two teachers, one service
75 person and two parents of children attending the school. In
76 addition the school may include on the team one member of
77 the county board, a school counselor, a member from local
78 law-enforcement authorities, the local county emergency
79 services director and one student in grade ten or higher if the
80 school has those grades;

81 (8) Procedures for informing and training school personnel
82 on any actions required of them to effectuate the school's
83 specific crisis response plan;

84 (9) A model template for redacted copies of the school
85 crisis response plan for the public inspection and for the release
86 and notice to parents of information related to the plan; and

87 (10) Procedures for non public schools to establish, file and
88 update school crisis response plans consistent with subdivision
89 (1) subsection (a) of this section.

90 (b) The county board shall keep the current crisis response
91 plan of each school in the county on file and, unless otherwise
92 provided for, provide a copy of each school's crisis response
93 plan to each local emergency response agency that has a role
94 in the plan. Local emergency response agencies that maintain
95 a copy of the plan shall provide the necessary safeguards for
96 the information in the plan established pursuant to the state
97 board rule promulgated pursuant to subsection (a) of this
98 section. Upon request, a redacted copy of a school crisis
99 response plan shall be made available for inspection by the
100 public with any information removed that is necessary for
101 compliance with the necessary safeguards. Following the filing
102 of its school specific crisis response plan with the county board
103 pursuant to subdivision (2), subsection (a) of this section, each
104 school shall annually send notice home to all parents and
105 guardians of students at the school alerting the parents and
106 guardians to the existence of the plan and the ability to review
107 a redacted copy at the offices of the county board.



CHAPTER 65

**(Com. Sub. for H. B. 4070 - By Delegates
M. Poling and Guthrie)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §18-10A-2a of the Code of West Virginia, 1931, as amended, relating to changing the basis for the county salary supplement equivalent pay rate for division of rehabilitation teachers from the amount paid to teachers by the board of education of the county in which facility in which the teacher works is located to the amount paid to teachers by the

board of education of the county in which the division of rehabilitation administrative headquarters are located.

Be it enacted by the Legislature of West Virginia:

That §18-10A-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-2a. Rehabilitation teachers.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, beginning July 1, 2012, rehabilitation teachers shall
3 be paid at the equivalent rate of pay of teachers, pursuant to
4 section two, article four, chapter eighteen-a of this code.
5 Rehabilitation teachers shall be paid outside the public school
6 support plan, defined in section one, article nine-a of this
7 chapter, and shall receive the equivalent of the salary
8 supplement paid to teachers employed by the county board
9 within the county where the administrative headquarters of the
10 division are located, pursuant to section five-a, article four,
11 chapter eighteen-a of this code.

12 (b) For purposes of this section, the following words shall
13 be construed as follows:

14 (1) “Rehabilitation teacher” means any person employed by
15 the division and who meets the certification requirements of
16 section two-a, article three, chapter eighteen-a of this code, or
17 who has been certified to teach by a state or nationally
18 recognized organization, as approved by the office of the
19 secretary of education and the arts. The teachers shall maintain
20 current certification in their teaching areas in order to remain
21 employed and may teach only in the areas in which they are
22 certified: *Provided*, That teachers who were employed on or before
23 April 1, 1995, are exempt from the following requirements:

24 (A) Certification pursuant to section two-a, article three,
25 chapter eighteen-a of this code;

26 (B) Maintenance of current certification in their teaching
27 areas in order to remain employed; and

28 (C) Teaching only in the areas in which they are certified.

29 (2) “Equivalent rate of pay” means an annualized rate
30 based on a two hundred forty-day teaching schedule and
31 includes pay for vacation and legal state holidays.

CHAPTER 66

**(Com. Sub. for S. B. 611 - By Senators
Kessler, Mr. President, Minard, Browning
Stollings, Klempa, Foster and Unger)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all relating to developing a special community-based pilot demonstration project to help at-risk youth in West Virginia; defining “at risk”; creating a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in West Virginia; permitting the Secretary of the West Virginia Department of Health and Human Resources to select a community-based organization to establish a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth if funds are available; setting forth duties and goals of the community-based organization; requiring

the secretary and the director of the community-based organization to make status reports to the Legislature; and setting forth other duties of the Department of Health and Human Resources.

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 §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all to read as follows:

ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.

§18-21-1. Definition of “at-risk youth”.

1 As used in this article "at-risk youth" means all children
2 between birth and seventeen and young adults between the
3 ages of eighteen and twenty-one who are low income,
4 receiving benefits from the West Virginia Department of
5 Health and Human Resources, legally under the jurisdiction of
6 the Department of Health and Human Resources or in custody
7 of the West Virginia Division of Juvenile Services, the
8 selected county’s juvenile court/probation department or the
9 selected county’s alternative school system program.

§18-21-2. Creation of a Special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

1 Effective July 1, 2012, and if funds are available, the
2 Secretary of the West Virginia Department of Health and
3 Human Resources shall select a community-based organization
4 to establish a special Community-Based Pilot Demonstration
5 Project to Improve Outcomes for At-Risk Youth in a specified

6 community for a duration of four years. The project will
7 identify, implement and document best practices that can be
8 replicated in other communities. The designated community-
9 based organization shall operate the special pilot project under
10 the direction of the Secretary of the Department of Health and
11 Human Resources and shall work in collaboration with the
12 State School Superintendent, local county school
13 superintendent, Executive Director of the President of the
14 Community and Technical College System, the closest
15 community and technical college and four-year college or
16 university, State Workforce Investment Division, Executive
17 Director of the West Virginia Vocational Rehabilitation
18 Services, the local juvenile court system, the local workforce
19 investment board, the Chancellor of the Higher Education
20 Policy Commission, the Director of West Virginia Division of
21 Juvenile Services, the local mental/behavior health
22 organizations and other governmental and community-based
23 organizations.

**§18-21-3. Secretary of Department of Health and Human
Resources responsibilities.**

1 The Secretary of the West Virginia Department of Health
2 and Human Resources shall:

3 (1) Identify a county with the most at-risk youth, that also
4 has adequate facilities and community leadership, to run a
5 community-based pilot program that brings together both state
6 and local organizations, to work collaboratively to provide
7 comprehensive, intense wrap-around services to at-risk youth
8 and their families in a seamless coordinated system; and

9 (2) Identify the challenges confronting the most at-risk
10 youth and their families and make specific recommendations
11 to the pilot program administrators to improve the outcomes
12 for these youths; specifically, to reduce the number of abuse
13 and neglect cases to reduce the number of youth in out-of-

14 home and out-of-state placements; to reduce high school drop-
15 out rates, to reduce substance abuse among youth including
16 smoking, reduce teen pregnancies, to reduce juvenile
17 delinquency and to reduce the number of juvenile delinquents
18 and youth aging out of foster care that eventually enter into the
19 adult criminal justice system.

20 (3) Document best practices which can be replicated in
21 other counties.

22 (4) Establish base line and goals for each performance
23 measure in conjunction with the director of the community-
24 based organization operating the pilot project.

25 (5) Beginning in January 2013, on or before the first day
26 of the regular session of the Legislature, and each year
27 thereafter, the Secretary of Department of Health and Human
28 Resources along with the director of the community-based
29 organization operating the pilot program shall make a status
30 report to the Legislative Oversight Committee on Health and
31 Human Resources Accountability.

**§18-21-4. Organization and goals of the Community-Based Pilot
Demonstration Program.**

1 (a) The pilot program shall be operated by a local
2 community-based organization under the direction the
3 Secretary of the West Virginia Department of Health and
4 Human Resources, and in collaboration with the State School
5 Superintendent, county school superintendent, Executive
6 Director of the State Workforce Investment Division,
7 Executive Director of WV Vocational Rehabilitation Services,
8 the local juvenile court system, the Chancellor of the Higher
9 Education Policy Commission, President of the Community
10 and Technical College System, president of the local
11 community and technical college and four-year college or
12 university, the Director of the West Virginia Division of

13 Juvenile Services, the local mental/behavior health
14 organizations and other governmental and community-based
15 organizations and partner agencies to serve as a clearinghouse
16 to coordinate comprehensive youth and family services. The
17 pilot project shall be housed within the community and will be
18 directed by a local community-based nonprofit organization.

19 (b) The pilot project shall operate out of a centrally located
20 building to coordinate services to youth and their families in
21 the selected county from birth to seventeen years of age who
22 are referred by the Department of Health and Human
23 Resources.

24 (c) The goal of the pilot program is to improve outcomes
25 for at-risk youth as measured by the following metrics:

26 (1) Early childhood development:

27 (A) Increase in the number of mothers receiving early
28 prenatal care;

29 (B) Increase in number of mothers participating in the
30 Right From the Start Program;

31 (C) Increase in the number of children screened by birth to
32 three year-old program for early development delays;

33 (D) Increase in the number of three year-olds enrolled in
34 Head Start;

35 (E) Increase in the number of four year-olds enrolled in:

36 (2) Preschool youth and teen measures:

37 (A) Decrease in school truancy;

38 (B) Decrease in truancy hearings;

- 39 (C) Decrease in school suspensions;
- 40 (D) Decrease in school expulsions;
- 41 (E) Decrease in high school dropouts at a select school;
- 42 (F) Increase in the number of youth participating in a
43 mentoring program;
- 44 (G) Increase in academic performance for select students;
- 45 (H) Increase in number of youth participating in summer
46 employment;
- 47 (I) Increase in number of youth entering postsecondary
48 education or job.
- 49 (3) Parent Measures:
- 50 (A) Increase in the number of individuals registered at the
51 WorkForce West Virginia Center;
- 52 (B) Increase in the number of individuals enrolled in job
53 training;
- 54 (C) Increase in the number of individuals completing job
55 training with a certification or credential;
- 56 (D) Increase in the number of individuals placed in
57 employment; and
- 58 (E) Increase in number of children enrolled in the CHIP
59 program.



CHAPTER 67

**(Com. Sub. for H. B. 4451 - By Delegates
Overington, Wells, Doyle, Frazier, Hunt,
Ellem, Lane, Fragle and Fleischauer)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §3-1-19 of the Code of West Virginia, 1931, as amended, relating to appointment of ballot commissioners; and authorizing county executive committees of the two largest political parties to make appointments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

1 (a) In each county in the state, the Board of Ballot
2 Commissioners shall be comprised of:

3 (1) The clerk of the county commission while holding
4 office; and

5 (2) Two other persons as follows:

6 (A) One person appointed by the county executive
7 committee of the political party that cast the largest number of
8 votes in the state at the last preceding general election; and

9 (B) One person appointed by the county executive
10 committee of the political party that cast the second largest
11 number of votes in the state at the last preceding general
12 election.

13 (b) If the county executive committees do not make the
14 appointments in a timely manner, then the county clerk shall
15 make the appointments.

16 (c) The county clerk shall serve as chairman.

17 (d) It shall be the duty of the county clerk to notify the
18 chairman of the respective county executive committees of the
19 two parties, at least five days before the time of the making of
20 the appointments.

21 (e) If at any time after notice is given, and before or on the
22 day so fixed for making appointments, the chairman of each of
23 the committees shall designate, in writing, a member of his or
24 her party as ballot commissioner. Each designee shall be
25 appointed if he or she meets the qualifications of a voter:
26 *Provided*, That a ballot commissioner cannot be a candidate for
27 any office in any election held during the time he or she is
28 serving as ballot commissioner.

29 (f) Ballot commissioners shall be appointed between the
30 15th and 30th days of January, in each year in which a general
31 election is to be held, for a term of two years beginning on
32 February 1 next ensuing.

33 (g) The ballot commissioners shall perform their duties at
34 all general, special and primary elections held in the county or
35 any magisterial district thereof during their term of office.

36 (h) A vacancy shall be filled in the same manner as an
37 original appointment, but immediate notice of a vacancy shall,
38 where necessary, be deemed compliance with the five-day
39 notice provision.

CHAPTER 68

**(Com. Sub. for H. B. 4257 - By Delegates
Iaquinta, Poore, Marshall, Crosier,
Fleischauer and Duke)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-2-6a, relating to permitting voter registration in person up to, but not including, the day of the election for any member of a uniformed service of the United States, as defined in 42 U. S. C. §1973ff-6, any member of the Merchant Marine of the United States, any person who resides outside the United States by virtue of his or her employment in support of national security functions or purpose; any spouse or dependent residing with a person who meets the aforesaid criteria; providing for applicability of section; providing that any person who registers pursuant to this section shall vote a provisional ballot; and requiring the Secretary of State to prescribe procedures to implement the section.

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 §3-2-6a, to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.**§3-2-6a. Extended time for certain persons to register in person.**

1 (a) Notwithstanding the provisions of section six of this
2 article, the following persons are entitled to register to vote, in
3 person, at the office of the clerk of the county commission up
4 to, but not including, the day of the election:

5 (1) Any member of a uniformed service of the United
6 States, as defined in 42 U. S. C. § 1973ff-6 (7), who is on
7 active duty;

8 (2) Any member of a uniformed service of the United
9 States, as defined in 42 U. S. C. § 1973ff-6 (7), who is
10 discharged from active duty during the sixty days immediately
11 preceding the election;

12 (3) Any member of the Merchant Marine of the United
13 States;

14 (4) Any person residing outside the country by virtue of his
15 or her employment in support of national security functions or
16 purposes and presents appropriate documentation of such
17 employment as prescribed by the Secretary of State; and

18 (5) Any spouse or dependent residing with a person listed
19 in subdivisions (1), (2), (3) or (4) of this subsection.

20 (b) The provisions of subsection (a) apply only to those
21 persons who are otherwise qualified to register and who, by
22 reason of such active duty or temporary overseas residency:

23 (1) Are normally absent from the county in which they
24 reside; or

25 (2) Have been absent from such county and returned to
26 reside there during the twenty-one days immediately preceding
27 the election.

28 (c) A person qualifying and registering to vote pursuant to
29 this section, after the close of voter registration set forth in
30 section six, article two of this chapter, shall be required to cast
31 a provisional ballot and that provisional ballot shall be counted
32 during the canvass of the election, unless the voter is
33 determined by the Clerk of the County Commission to
34 otherwise fail to meet the eligibility requirements for voter
35 registration.

36 (d) The Secretary of State shall prescribe procedures for
37 the addition of persons registered under this section to the lists
38 of registered voters.



CHAPTER 69

**(Com. Sub. for H. B. 4238 - By Delegates
Poore, Marshall, Fleishcauer and Boggs)
[By Request of the Secretary of State]**

[Passed March 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, relating to providing absentee ballots to participants of the Address Confidentiality Program; authorizing program participants to vote an absentee ballot by mail; authorizing the placement of program participants on special absentee voting list; describing duties of the office of the Secretary of State and county officials designated to

supervise and conduct absentee voting; and providing for the removal of program participants from the special absentee voting list.

Be it enacted by the Legislature of West Virginia:

That §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) All registered and other qualified voters of the county may
2 vote an absentee ballot during the period of early voting in person.

3 (b) Registered voters and other qualified voters in the
4 county are authorized to vote an absentee ballot by mail in the
5 following circumstances:

6 (1) Any voter who is confined to a specific location and
7 prevented from voting in person throughout the period of
8 voting in person because of:

9 (A) Illness, injury or other medical reason;

10 (B) Physical disability or immobility due to extreme
11 advanced age; or

12 (C) Incarceration or home detention: *Provided*, That the
13 underlying conviction is not for a crime which is a felony or a
14 violation of section twelve, thirteen or sixteen, article nine of
15 this chapter involving bribery in an election;

16 (2) Any voter who is absent from the county throughout the
17 period and available hours for voting in person because of:

18 (A) Personal or business travel;

19 (B) Attendance at a college, university or other place of
20 education or training; or

21 (C) Employment which because of hours worked and
22 distance from the county seat make voting in person
23 impossible;

24 (3) Any voter absent from the county throughout the
25 period and available hours for voting in person and who is an
26 absent uniformed services voter or overseas voter, as defined
27 by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas
28 Citizens Absentee Voting Act of 1986, including members of
29 the uniformed services on active duty, members of the
30 merchant marine, spouses and dependents of those members on
31 active duty and persons who reside outside the United States
32 and are qualified to vote in the last place in which the person
33 was domiciled before leaving the United States;

34 (4) Any voter who is required to dwell temporarily outside
35 the county and is absent from the county throughout the time
36 for voting in person because of:

37 (A) Serving as an elected or appointed federal or state
38 officer; or

39 (B) Serving in any other documented employment
40 assignment of specific duration of four years or less;

41 (5) Any voter for whom the designated area for absentee
42 voting within the county courthouse or annex of the
43 courthouse and the voter's assigned polling place are
44 inaccessible because of his or her physical disability; and

45 (6) Any voter who is participating in the Address
46 Confidentiality Program as established by section one hundred
47 three, article twenty-eight-a, chapter forty-eight of this code.

48 (c) Registered voters and other qualified voters in the
49 county may, in the following circumstances, vote an
50 emergency absentee ballot, subject to the availability of the
51 services as provided in this article:

52 (1) Any voter who is confined or expects to be confined in
53 a hospital or other duly licensed health care facility within the
54 county of residence or other authorized area, as provided in
55 this article, on the day of the election;

56 (2) Any voter who resides in a nursing home within the
57 county of residence and would be otherwise unable to vote in
58 person, providing the county commission has authorized the
59 services if the voter has resided in the nursing home for a
60 period of less than thirty days; and

61 (3) Any voter who is working as a replacement poll worker
62 and is assigned to a precinct out of his or her voting district, if
63 the assignment was made after the period for voting an
64 absentee ballot in person has expired.

**§3-3-2. Authority to conduct absentee voting; absentee voting
application; form.**

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the
3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is
8 conducted in conjunction with a county election, the clerk of
9 the county commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee voting, for

12 any election held entirely within the municipality, or in the
13 case of annexation elections, within the area affected. The
14 terms “clerk” or “clerk of the county commission” or “official
15 designated to supervise and conduct absentee voting” used
16 elsewhere in this article means municipal recorder or other
17 officer in the case of municipal elections.

18 (b) A person authorized and desiring to vote a mail-in
19 absentee ballot in any primary, general or special election is to
20 make application in writing in the proper form to the proper
21 official as follows:

22 (1) The completed application is to be on a form
23 prescribed by the Secretary of State and is to contain the
24 name, date of birth and political affiliation of the voter,
25 residence address within the county, the address to which the
26 ballot is to be mailed, the authorized reason, if any, for which
27 the absentee ballot is requested and, if the reason is illness or
28 hospitalization, the name and telephone number of the
29 attending physician, the signature of the voter to a declaration
30 made under the penalties for false swearing as provided in
31 section three, article nine of this chapter that the statements
32 and declarations contained in the application are true, any
33 additional information which the voter is required to supply,
34 any affidavit which may be required and an indication as to
35 whether it is an application for voting in person or by mail; or

36 (2) For any person authorized to vote an absentee ballot
37 under the provisions of 42 U.S.C. §1973, *et seq.*, the
38 Uniformed and Overseas Citizens Absentee Voting Act of
39 1986, the completed application may be on the federal
40 postcard application for absentee ballot form issued under
41 authority of that act, submitted by mail or electronically;

42 (3) For any person unable to obtain the official form for
43 absentee balloting at a reasonable time before the deadline for

44 an application for an absentee ballot by mail is to be received
45 by the proper official, the completed application may be in a
46 form set out by the voter, provided all information required to
47 meet the provisions of this article is set forth and the
48 application is signed by the voter requesting the ballot; or

49 (4) A person authorized to vote an absentee ballot who is
50 participating in the Address Confidentiality Program as
51 established by section one hundred three, article twenty-eight-
52 a, chapter forty-eight of this code, may apply to the program
53 manager within the office of the Secretary of State to vote a
54 mail-in absentee ballot. The program manager will notify the
55 designated county contact to coordinate the application and the
56 provision of an absentee ballot to the program participant.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise qualified
2 to vote and who is permanently and totally physically disabled
3 and who is unable to vote in person at the polls in an election
4 may apply to the official designated to supervise and conduct
5 absentee voting for placement on the special absentee voting
6 list.

7 (b) Any person who is registered and otherwise qualified
8 to vote and who is participating in the Address Confidentiality
9 Program as established by section one hundred three, article
10 twenty-eight-a, chapter forty-eight of this code, may apply to
11 the program manager within the office of the Secretary of State
12 for placement on the special absentee voting list. The program
13 manager will notify the designated county contact to
14 coordinate the provision of an absentee ballot to the program
15 participant.

16 (c) The application is to be on a form prescribed by the
17 Secretary of State which is to include:

18 (1) The voter's name and signature;

19 (2) Residence address unless the applicant is a participant
20 in the Address Confidentiality Program as established by
21 section one hundred three, article twenty-eight-a, chapter forty-
22 eight of this code; and

23 (3) A statement that the voter is permanently and totally
24 physically disabled and would be unable to vote in person at the
25 polls in any election, a description of the nature of that disability,
26 and a statement signed by a physician to that effect; or

27 (B) A statement that the voter is a program participant in
28 the Address Confidentiality Program.

29 (d) Upon receipt of a properly completed application, the
30 official designated to supervise and conduct absentee voting
31 shall enter the name on the special absentee voting list, which
32 is to be maintained in a secure and permanent record. The
33 person's name will remain active on the list until: (1) The
34 person requests in writing that his or her name be removed; (2)
35 the person removes his or her residence from the county, is
36 purged from the voter registration books or otherwise becomes
37 ineligible to vote; (3) a ballot mailed to the address provided
38 on the application is returned undeliverable by the United
39 States postal service; (4) the death of the person; or (5) in the
40 case of a Address Confidentiality Program participant,
41 withdrawal or removal from that program.

42 (e) The official designated to supervise and conduct
43 absentee voting shall mail an absentee ballot by mail to each
44 person active on the special absentee voting list due to
45 disability not later than forty-six days before each election. The
46 Address Confidentiality Program manager shall, in
47 coordination with the designated county contact, mail to each
48 person on the special absentee voting list due to participation
49 in the Address Confidentiality Program an absentee ballot by
50 mail not later than forty-six days before each election.

CHAPTER 70

**(H. B. 4403 - By Delegates Miley,
Manchin, Lawrence, and Fleischauer)
[By Request of the Secretary of State]**

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §3-6-4a of the Code of West Virginia, 1931, as amended, relating to changing the filing deadline for certified write-in candidates; and removing language that conflicts with other sections of the code relating to the filling of vacancies.

Be it enacted by the Legislature of West Virginia:

That §3-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. CONDUCT AND ADMINISTRATION OF
ELECTIONS.**

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in
2 votes to an office, except delegate to national convention,
3 which is to be filled in a primary, general or special election
4 held under the provisions of this chapter, shall file a write-in
5 candidate's certificate of announcement as provided in this
6 section. No certificate of announcement may be accepted and
7 no person may be certified as a write-in candidate for a

8 political party nomination for any office or for election as
9 delegate to national convention.

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the Secretary of State on
12 which the candidate shall make a sworn statement before a
13 notary public or other officer authorized to give oaths
14 containing the following information:

15 (1) The name of the office sought and the district and
16 division, if any;

17 (2) The legal name of the candidate and the first and last
18 name by which the candidate may be identified in seeking the
19 office;

20 (3) The specific address designating the location at which
21 the candidate resides at the time of filing, including number
22 and street or rural route and box number and city, state and
23 zip code;

24 (4) A statement that the person filing the certificate of
25 announcement is a candidate for the office in good faith; and

26 (5) The words "subscribed and sworn to before me this
27 _____ day of _____, ____" and a space for the
28 signature of the officer giving the oath.

29 (b) The certificate of announcement shall be filed with
30 the filing officer for the political division of the office as
31 prescribed in section seven, article five of this chapter.

32 (c) The certificate of announcement shall be filed with
33 and received by the proper filing officer as follows:

34 (1) Except as provided in subdivision (2) of this subsection,
35 the certificate of announcement for any office shall be received

36 no later than the close of business on the forty-ninth day before
37 the election at which the office is to be filled;

38 (2) When a vacancy occurs in the nomination of
39 candidates for an office on the ballot resulting from the death
40 of the nominee or from the disqualification or removal of a
41 nominee from the ballot by a court of competent jurisdiction
42 not earlier than the forty-eighth day nor later than the fifth
43 day before the general election, the certificate shall be
44 received no later than the close of business on the fifth day
45 before the election or the close of business on the day
46 following the occurrence of the vacancy, whichever is later.

47 (d) Any eligible person who files a completed write-in
48 candidate's certificate of announcement with the proper filing
49 officer within the required time shall be certified by that
50 filing officer as an official write-in candidate:

51 (1) The Secretary of State shall, immediately following
52 the filing deadline, post the names of all official write-in
53 candidates for offices on the ballot in more than one county
54 and certify the name of each official write-in candidate to the
55 clerks of the county commissions of the appropriate counties.

56 (2) The clerk of the county commission shall,
57 immediately following the filing deadline, post the names of
58 all official write-in candidates for offices on the ballot in one
59 county and certify and deliver to the election officials of the
60 appropriate precincts, the names of all official write-in
61 candidates and the office sought by each for statewide,
62 district and county offices on the ballot in the precinct for
63 which valid write-in votes will be counted and the names
64 shall be posted at the office where absentee voting is
65 conducted and at the precincts in accordance with section
66 twenty, article one of this chapter.



CHAPTER 71

**(Com. Sub. for S. B. 628 - By Senators
Unger, Snyder, Hall, Browning,
Kessler, Mr. President, and Kelmpa)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-2c, relating to funding for state executive party headquarters; defining terms; allowing funds to be raised; providing for allowable uses of the funds and prohibitions; setting certain fundraising limits; requiring reports; and requiring legislative 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 §3-8-2c, to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2c. Party headquarters committee; detailed accounts and verified financial statements; funding for headquarters; limitations; reporting requirements.

1 (a) Notwithstanding the definitions contained in section
2 one-a of this article, for purposes of this section:

3 (1) “Contribution” means a gift, subscription, loan,
4 assessment, payment for services, dues, advance, donation,

5 pledge, contract, agreement, forbearance or promise of
6 money or other tangible thing of value, whether conditional
7 or legally enforceable, or a transfer of money or other
8 tangible thing of value to a person, made for the purpose of
9 funding the rental, purchase, construction or financing of the
10 lease, purchase or construction of a party headquarters, and
11 for the utilities, maintenance, furniture, fixtures and
12 equipment for the party headquarters. An offer or tender of
13 a contribution is not a contribution if expressly and
14 unconditionally rejected or returned. A contribution does not
15 include volunteer personal services provided without
16 compensation: *Provided*, That a nonmonetary contribution is
17 to be considered at fair market value for reporting
18 requirements and contribution limitations.

19 (2) “Party headquarters” means a physical structure or
20 structures that is the physical location of the office of a state
21 executive committee of a political party.

22 (3) “Party headquarters committee” includes any person,
23 organization or group of persons soliciting or receiving
24 contributions for the purpose of funding the lease, purchase,
25 construction or financing of the lease, purchase or
26 construction of a party headquarters, including utilities,
27 maintenance, furniture, fixtures and equipment for the party
28 headquarters.

29 (b) A political party may establish a party headquarters
30 committee to solicit and receive contributions for the
31 exclusive purpose of the purchase, construction or lease of an
32 office building or financing of the lease, purchase or
33 construction of a party headquarters, including utilities,
34 maintenance, furniture, fixtures and equipment, to be used as
35 a state political party’s headquarters.

36 (c) Contributions received pursuant to this section may
37 not be expended for:

38 (1) The purchase, construction or lease of satellite offices
39 or other facilities;

40 (2) Utilities, maintenance, furniture, fixtures, equipment
41 or signage for satellite offices or other facilities; or

42 (3) Political purposes.

43 (d) A party headquarters committee may not accept
44 contributions in excess \$10,000, in the aggregate, from any
45 person for the purposes of this section.

46 (e) A party headquarters committee may not receive
47 contributions or make expenditures for the purpose of
48 funding the rental, purchase, construction or financing of a
49 state executive committee headquarters in excess of \$1
50 million.

51 (f) (1) A party headquarters committee, financial agent or
52 any person or officer acting on behalf of the committee that
53 is subject to the provisions of this section, shall file a verified
54 financial statement with the Secretary of State, on a form
55 prescribed by the secretary, within ninety days of any
56 contribution or expenditure in excess of \$250.

57 (2) Each financial statement shall contain, but is not
58 limited to, the following information:

59 (A) The name, residence and mailing address and
60 telephone number of the party headquarters committee,
61 financial agent or any person or officer acting on behalf of
62 the committee, filing the financial statement.

63 (B) The balance of cash and any other sum of money on
64 hand at the beginning and the end of the period covered by
65 the financial statement.

66 (C) The name of any person making a contribution, the
67 amount of the contribution, and the residence and mailing
68 address of the contributor.

69 (D) The total amount of contributions received during the
70 period covered by the financial statement.

71 (E) The name, residence and mailing address of any
72 individual or the name and mailing address of each lending
73 institution making a loan, the amount of any loan received,
74 the date and terms of the loan, including the interest and
75 repayment schedule, and a copy of the loan agreement.

76 (F) The name, residence and mailing address of any
77 individual or the name and mailing address of each
78 partnership, firm, association, committee, organization or
79 group having previously made or cosigned a loan for which
80 payment is made or a balance is outstanding at the end of the
81 period, together with the amount of repayment on the loan
82 made during the period and the balance at the end of the
83 period.

84 (G) The total outstanding balance of all loans at the end
85 of the period.

86 (H) The name, residence and mailing address of any
87 person to whom each expenditure was made or liability
88 incurred, together with the amount and purpose of each
89 expenditure or liability incurred and the date of each
90 transaction.

91 (I) The total amount of expenditures made during the
92 period covered by the financial statement.

93 (3) The Secretary of State shall file and retain the
94 statements as public records for not less than six years.

95 (g) Contributions received by a party headquarters
96 committee may be contributed to any educational, cultural or
97 charitable organization.

98 (h) The Secretary of State shall propose rules for
99 legislative approval in accordance with the provisions of
100 article three, chapter twenty-nine-a of this code to effectuate
101 the provisions of this section.



CHAPTER 72

**(Com. Sub. for H. B. 4006 -
By Delegate Manchin)**

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact §21-3C-1, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10b, all relating to elevators; defining certain terms; requiring licensure; providing licensure requirements for elevator mechanics, accessibility technicians and limited technicians; providing requirements to obtain a limited use/limited application endorsement; providing requirements for issuance and renewal of licenses; modifying rule-making authority of Commissioner of Labor; and removing reciprocity provisions.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-10a and §21-3C-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 §21-3C-10b, all to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.

1 (1) “Accessibility equipment” means lifting devices
2 designated to remove access barriers in public buildings and
3 private residences for persons with physical challenges,
4 including residential elevators, limited use/limited application
5 elevators, vertical platforms, inclined platform lifts and
6 stairway chairlifts.

7 (2) “Certificate of acceptance” means a certificate issued
8 by the Division of Labor certifying that a newly installed
9 elevator has been inspected and was found to be installed in
10 compliance with the safety standards set forth in the
11 American Society of Mechanical Engineers Safety Code for
12 Elevators and Escalators (ASME) A17.1-3, “Safety Code for
13 Elevators” and ASME A18.1, “Safety Code for Platform Lifts
14 and Stairway Chairlifts.”

15 (3) “Certificate of competency” means a certificate issued
16 by the Division of Labor certifying that an individual is
17 qualified to inspect elevators.

18 (4) “Certificate of operation” means a certificate issued
19 by the Division of Labor certifying that an elevator has been
20 inspected and is safe for operation.

21 (5) “Commissioner” means the Commissioner of the
22 Division of Labor.

23 (6) “Division” means the Division of Labor.

24 (7) “Division inspector” means an employee or contractor
25 of the division who has been examined and issued a

26 certificate of competency and who only inspects elevators in
27 state owned buildings.

28 (8) "Elevator" means all the machinery, construction,
29 apparatus and equipment used in raising and lowering a car,
30 cage or platform vertically between permanent rails or guides
31 and includes all elevators, power dumbwaiters, escalators,
32 gravity elevators and other lifting or lowering apparatus
33 permanently installed between rails or guides, but does not
34 include hand operated dumbwaiters, platform lifts for loading
35 docks, manlifts of the platform type with a platform area not
36 exceeding nine hundred square inches, construction hoists or
37 other similar temporary lifting or lowering apparatus.

38 (9) "Elevator apprentice" means a person who meets the
39 requirements set forth in legislative rule promulgated
40 pursuant to this article.

41 (10) "Elevator mechanic" means a person who possesses
42 an elevator mechanic's license in accordance with the
43 provisions of this article and who is engaged in the business
44 of erecting, constructing, installing, altering, servicing,
45 repairing or maintaining elevators or related conveyances
46 covered by this article.

47 (11) "Freight elevator" means an elevator used for
48 carrying freight and on which only the operator, by the
49 permission of the employer, is allowed to ride.

50 (12) "Inspector" means both a division inspector and a
51 private inspector.

52 (13) "License" means a license issued to an elevator
53 mechanic, accessibility technician or limited technician
54 pursuant to this article.

55 (14) "Private residence elevator" means a passenger
56 elevator of which use is limited by size, capacity, rise and

57 speed, and access is limited by its location, by the
58 requirement of a key for its operation or by other restriction.

59 (15) "Passenger elevator" means an elevator that is
60 designed to carry persons to its contract capacity.

61 (16) "Limited Use/Limited Application elevator" means
62 a power elevator in which the use and application is limited
63 by size, capacity, speed and rise.

64 (17) "Private inspector" means a person who has been
65 examined and issued a certificate of competency to inspect
66 elevators within this state.

**§21-3C-10a. License requirements for elevator mechanics,
accessibility technicians, limited technicians;
contractors license requirements; supervision of
elevator apprentices requirements.**

1 (a) A person may not engage or offer to engage in the
2 business of erecting, constructing, installing, altering,
3 servicing, repairing or maintaining elevators or related
4 conveyances covered by this article in this state, unless he or
5 she has a license issued by the commissioner in accordance
6 with this article.

7 (b) A person licensed under this article shall:

8 (1) Have in his or her possession a copy of the license
9 issued pursuant to this article on any job on which he or she
10 is performing elevator mechanic work; and

11 (2) Be, or be employed by, a contractor licensed pursuant
12 to the provisions of article eleven, chapter twenty-one of this
13 code unless the work is performed by a historic resort hotel's
14 regular employees, for which the employees are paid regular
15 wages and not a contract price, on property owned or leased

16 by the historic resort hotel which is not intended for
17 speculative sale or lease;

18 (c) *Elevator mechanic license.* --

19 (1) To obtain an elevator mechanic's license, a person shall:

20 (A) Successfully complete educational programs that are
21 registered with the Bureau of Apprenticeship and Training of
22 the United States Department of Labor, including all required
23 examinations and work experience: *Provided*, That if an
24 applicant successfully completes such educational program
25 prior to being registered with the Bureau of Apprenticeship
26 and Training of the United States Department of Labor, the
27 division may grant a license to the applicant after he or she
28 demonstrates to the commissioner that he or she has
29 successfully completed all the test and work experience
30 requirements; or

31 (B) (i) Provide to the commissioner an acceptable
32 combination of documented experience and educational
33 credits of not less than four years of recent and active
34 experience in the elevator industry in construction,
35 maintenance, or service/repair or any combination thereof, as
36 verified by current and previous employers listed to do
37 business in this state, on a sworn affidavit; and

38 (ii) Obtain a score of 70% or better on a written
39 competency examination approved or provided by the
40 division.

41 (2) A licensed elevator mechanic may work on all
42 elevators covered by this article.

43 (d) *Accessibility technician license.* --

44 (1) To obtain an accessibility technician's license a
45 person shall:

46 (A) Provide to the commissioner a certificate of
47 completion of an accessibility training program for the
48 elevator industry such as the Certified Accessibility Training
49 (CAT) program by the National Association of Elevator
50 Contractors, or an equivalent nationally recognized training
51 program; or

52 (B) (i) Have at least eighteen months experience in the
53 construction, maintenance, service and repair, or any
54 combination thereof, as verified by current and previous
55 employers, licensed to do business in this state, on a sworn
56 affidavit, of accessibility lifts;

57 (ii) Have at least one year of documented vocational
58 training and/or an associate degree in a related field; and

59 (iii) Obtain a score of 70% or better on a written competency
60 examination approved or provided by the commissioner.

61 (2) A person holding an accessibility technician license
62 may only perform work on accessibility equipment.

63 (3) A person holding an accessibility technician license
64 may obtain a limited use/limited application (LULA) elevator
65 endorsement. To obtain the LULA elevator endorsement,
66 such person shall:

67 (A) (i) Hold a current accessibility technician license;

68 (ii) Provide the commissioner with a certificate of LULA
69 manufacturer's training; and

70 (iii) Provide at least one year of documented work
71 experience to the commissioner, on a sworn affidavit, in the
72 construction, maintenance, service and repair of LULA elevators
73 and comparable equipment, which was completed under the
74 supervision of a licensed accessibility technician; or

75 (B) As of July 1, 2012, have at least eighteen months of
76 accessibility technician's experience in construction,
77 maintenance, service and repair, or any combination thereof,
78 as verified by current and previous employers, licensed to do
79 business in this state, on a sworn affidavit: *Provided*, That an
80 additional one year of documented work as an accessibility
81 technician with certification of manufacturer's factory training,
82 is required before a LULA endorsement may be obtained.

83 (4) Any person carrying an accessibility license as of July
84 1, 2012, shall receive the required endorsement to continue
85 to work on this type of equipment, and will be qualified to
86 supervise future applicants as described in this section.

87 (e) *Limited technician license.* --

88 (1) To obtain a limited technician's license an applicant
89 shall:

90 (A) Complete a certified apprenticeship program,
91 registered by the United States Department of Labor
92 established at a historic resort hotel, qualifying for a limited
93 technician license; or

94 (B) Provide an acceptable combination of documented
95 experience, and educational credits of not less than three
96 years of recent and active experience in the elevator industry,
97 in maintenance, or service/repair or any combination thereof,
98 as verified by current and previous employers authorized to
99 do business in this state, on a sworn affidavit; and obtain a
100 score of 70% or better on a written competency examination
101 approved or provided by the division.

102 (2) A person holding a limited technician license may
103 only perform work at a historic resort hotel: *Provided*, That
104 for purposes of this section, "historic resort hotel" has the
105 same meaning ascribed to it in section two, article
106 twenty-five, chapter twenty-nine of this code.

107 (f) *Elevator apprentice.* --

108 (1) An elevator apprentice who is enrolled in an
109 apprenticeship program approved by the commissioner, and
110 who is in good standing in the program, may work under the
111 supervision of a licensed elevator mechanic, as follows:

112 (A) An apprentice who has not successfully completed
113 the equivalent of at least one year of the program may work
114 only under the direct supervision of a licensed elevator
115 mechanic who is present on the premises and available to the
116 apprentice at all times.

117 (B) An apprentice who has successfully completed the
118 equivalent of at least one year of the program may:

119 (i) Work under the direct supervision of a licensed
120 elevator mechanic as set forth in subdivision (1) of this
121 subsection; and

122 (ii) Perform the tasks set forth in this paragraph, only if
123 delegated by and performed under the general supervision of
124 a licensed elevator mechanic, who must, at a minimum, meet
125 the apprentice on the job at the beginning of each day to
126 delegate the specific tasks, and who remains responsible for
127 the delegated tasks:

128 (I) Oiling, cleaning, greasing and painting;

129 (II) Replacing of combplate teeth;

130 (III) Relamping and fixture maintenance;

131 (IV) Inspection, cleaning and lubricating of hoistway
132 doors, car tops, bottoms and pits; and

133 (V) Observing operation of equipment.

§21-3C-10b. Issuance and renewal of licenses.

1 (a) Upon approval of a properly completed application
2 for licensure, the commissioner may issue a person a license
3 under the provisions of this article.

4 (b) The licenses issued under the provisions of this article
5 shall be renewed biennially upon application for renewal on
6 a form prescribed by the commissioner and payment of a fee
7 established by legislative rule.

8 (c) Upon a proper application for renewal, the
9 commissioner shall renew a license, even if the license holder is
10 unemployed or not working in the industry at the time of
11 renewal: *Provided*, That before the license holder may engage or
12 offer to engage in the business of erecting, constructing,
13 installing, altering, servicing, repairing, or maintaining an
14 elevator or related conveyance covered by this article, the license
15 holder shall be a contractor, or be employed by a contractor
16 licensed pursuant to the provisions of section ten(a), article
17 eleven, chapter twenty-one of the code.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The division 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, qualifications and procedures for
7 submitting applications, taking examinations, and issuing and
8 renewing licenses, certificates of competency and certificates
9 of operation of the three licensure classifications set forth in
10 section ten-a of this article;

11 (2) For the renewal of a license, even if the licensee is
12 unemployed or not working in the industry: *Provided*, That

13 to engage or offer to engage in the business of erecting,
14 constructing, installing, altering, servicing, repairing, or
15 maintaining an elevator or related conveyance covered by
16 this article, the licensee shall be a contractor, or be employed
17 by a contractor licensed pursuant to the provisions of section
18 ten (a), article eleven, chapter twenty-one of the code;

19 (3) Qualifications and supervision requirements for
20 elevator apprentices;

21 (4) Provisions for the granting of licenses without
22 examination, to applicants who present satisfactory evidence
23 of having the expertise required to perform work as defined
24 in this article and who apply for licensure on or before July
25 1, 2010: *Provided*, That if a license issued under the
26 authority of this subsection subsequently lapses, the applicant
27 may, at the discretion of the commissioner, be subject to all
28 licensure requirements, including the examination;

29 (5) Provisions for the granting of emergency licenses in
30 the event of an emergency due to disaster, act of God or work
31 stoppage when the number of persons in the state holding
32 licenses issued pursuant to this article is insufficient to cope
33 with the emergency;

34 (6) Provisions for the granting of temporary licenses in
35 the event that there are no elevator mechanics available to
36 engage in the work of an elevator mechanic as defined by this
37 article;

38 (7) Continuing education requirements;

39 (8) Procedures for investigating complaints and revoking
40 or suspending licenses, certificates of competency and
41 certificates of operation, including appeal procedures;

42 (9) Fees for testing, issuance and renewal of licenses,
43 certificates of competency and certificates of operation, and

44 other costs necessary to administer the provisions of this
45 article;

46 (10) Enforcement procedures; and

47 (11) Any other rules necessary to effectuate the purposes
48 of this article.

49 (b) The rules proposed for promulgation pursuant to
50 subsection (a) of this section shall establish the amount of any
51 fee authorized pursuant to the provisions of this article:
52 *Provided*, That in no event may the fees established for the
53 issuance of certificates of operation exceed \$50.

54 (c) All fees collected pursuant to the provisions of this
55 article shall be deposited in an appropriated special revenue
56 account hereby created in the State Treasury known as the
57 “Elevator Safety Fund” and expended for the implementation
58 and enforcement of this article: *Provided*, That amounts
59 collected which are found from time to time to exceed funds
60 needed for the purposes set forth in this article may be
61 transferred to other accounts or funds and redesignated for
62 other purposes by appropriation of the Legislature.

63 (d) The division may enter into agreements with counties
64 and municipalities whereby such counties and municipalities
65 be permitted to retain the inspection fees collected to support
66 the enforcement activities at the local level.

67 (e) The commissioner and his or her deputy
68 commissioner or any compliance officer of the division as
69 authorized by the commissioner may consult with
70 engineering authorities and organizations concerned with
71 standard safety codes, rules and regulations governing the
72 operation, maintenance, servicing, construction, alteration,
73 installation and the qualifications which are adequate,
74 reasonable and necessary for the elevator mechanic and
75 inspector.



CHAPTER 73

**(Com. Sub. for H. B. 4028 - By Delegates
Staggers, Butcher, Mahan, More and Perry)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931, as amended, all relating to emergency medical services; authorizing the commissioner of the Bureau of Public Health to promulgate rules relating to the temporary suspension of a certification of an individual emergency medical service provider; providing that the commissioner may temporarily suspend the certification of an individual emergency medical service provider in certain circumstances prior to a hearing or notice; permitting the commissioner to rely on information supplied by a physician that serves as a medical director when temporarily suspending the certification of an individual emergency medical service provider; and requiring commissioner institute proceedings for a hearing if an individual emergency medical provider's certification is temporarily suspended.

Be it enacted by the Legislature of West Virginia:

That §16-4C-6 and §16-4C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner has the following powers and duties:

2 (a) To propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code: *Provided*, That the rules have
5 been submitted at least thirty days in advance for review by
6 the Emergency Medical Services Advisory Council, who may
7 act only in the presence of a quorum. The rules may include:

8 (1) Standards and requirements for certification and
9 recertification of emergency medical service personnel,
10 including, but not limited to:

11 (A) Age, training, testing and continuing education;

12 (B) Procedures for certification and recertification, and
13 for denying, suspending, revoking, reinstating and limiting a
14 certification or recertification;

15 (C) Levels of certification and the scopes of practice for
16 each level;

17 (D) Standards of conduct; and

18 (E) Causes for disciplinary action and sanctions which
19 may be imposed.

20 (2) Standards and requirements for licensure and
21 licensure renewals of emergency medical service agencies,
22 including:

23 (A) Operational standards, levels of service, personnel
24 qualifications and training, communications, public access,
25 records management, reporting requirements, medical
26 direction, quality assurance and review, and other
27 requirements necessary for safe and efficient operation;

28 (B) Inspection standards and establishment of
29 improvement periods to ensure maintenance of the standards;

30 (C) Fee schedules for licensure, renewal of licensure and
31 other necessary costs;

32 (D) Procedures for denying, suspending, revoking,
33 reinstating or limiting an agency licensure;

34 (E) Causes for disciplinary action against agencies; and

35 (F) Administrative penalties, fines and other disciplinary
36 sanctions which may be imposed on agencies;

37 (3) Standards and requirements for emergency medical
38 service vehicles, including classifications and specifications;

39 (4) Standards and requirements for training institutions,
40 including approval or accreditation of sponsors of continuing
41 education, course curricula and personnel;

42 (5) Standards and requirements for a State Medical
43 Direction System, including qualifications for a state
44 emergency medical services medical director and regional
45 medical directors, the establishment of a State Medical Policy
46 and Care Committee and the designation of regional medical
47 command centers;

48 (6) Provision of services by emergency medical services
49 personnel in hospital emergency rooms;

50 (7) Authorization to temporarily suspend the certification
51 of an individual emergency medical service provider prior to
52 a hearing or notice if the commissioner finds there is probable
53 cause that the conduct or continued service or practice of any
54 individual certificate holder has or may create a danger to
55 public health or safety: *Provided*, That the commissioner may
56 rely on information received from a physician that serves as
57 a medical director in finding that probable cause exists to
58 temporarily suspend the certification; and

59 (8) Any other rules necessary to carry out the provisions
60 of this article.

61 (b) To apply for, receive and expend advances, grants,
62 contributions and other forms of assistance from the state or
63 federal government or from any private or public agencies or
64 foundations to carry out the provisions of this article.

65 (c) To design, develop and review a Statewide
66 Emergency Medical Services Implementation Plan. The plan
67 shall recommend aid and assistance and all other acts
68 necessary to carry out the purposes of this article:

69 (1) To encourage local participation by area, county and
70 community officials and regional emergency medical services
71 boards of directors; and

72 (2) To develop a system for monitoring and evaluating
73 emergency medical services programs throughout the state.

74 (d) To provide professional and technical assistance and
75 to make information available to regional emergency medical
76 services boards of directors and other potential applicants or
77 program sponsors of emergency medical services for
78 purposes of developing and maintaining a statewide system
79 of services.

80 (e) To assist local government agencies, regional
81 emergency medical services boards of directors and other
82 public or private entities in obtaining federal, state or other
83 available funds and services.

84 (f) To cooperate and work with federal, state and local
85 governmental agencies, private organizations and other
86 entities as may be necessary to carry out the purposes of this
87 article.

88 (g) To acquire in the name of the state by grant, purchase,
89 gift, devise or any other methods appropriate real and
90 personal property as may be reasonable and necessary to
91 carry out the purposes of this article.

92 (h) To make grants and allocations of funds and property
93 so acquired or which may have been appropriated to the
94 agency to other agencies of state and local government as
95 may be appropriate to carry out the purposes of this article.

96 (i) To expend and distribute by grant or bailment funds
97 and property to all state and local agencies for the purpose of
98 performing the duties and responsibilities of the agency all
99 funds which it may have so acquired or which may have been
100 appropriated by the Legislature of this state.

101 (j) To develop a program to inform the public concerning
102 emergency medical services.

103 (k) To review and disseminate information regarding
104 federal grant assistance relating to emergency medical
105 services.

106 (l) To prepare and submit to the Governor and Legislature
107 recommendations for legislation in the area of emergency
108 medical services.

109 (m) To review, make recommendations for and assist in
110 all projects and programs that provide for emergency medical
111 services whether or not the projects or programs are funded
112 through the Office of Emergency Medical Services. A
113 review and approval shall be required for all emergency
114 medical services projects, programs or services for which
115 application is made to receive state or federal funds for their
116 operation after the effective date of this act; and

117 (n) To take all necessary and appropriate action to
118 encourage and foster the cooperation of all emergency
119 medical service providers and facilities within this state.

§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The commissioner may at any time upon his or her
2 own motion, and shall, upon the written complaint of any
3 person, cause an investigation to be conducted to determine
4 whether grounds exist for disciplinary action under this
5 article or legislative rules promulgated pursuant to this
6 article.

7 (b) An investigator or other person who, under the
8 direction of the commissioner or the director, gathers or
9 reports information in good faith to the commissioner or the
10 director, is immune from civil liability.

11 (c) After reviewing any information obtained through an
12 investigation, the commissioner or director shall determine if
13 probable cause exists that the licensee or certificate holder
14 has violated any provision of this article or rules promulgated
15 pursuant to this article.

16 (d) Upon a finding that probable cause exists that the
17 licensee or certificate holder has violated any provision of
18 this article or rules promulgated pursuant to this article, the
19 commissioner or director shall provide a copy of the
20 complaint and notice of hearing to the licensee or certificate
21 holder. Upon a finding of probable cause that the conduct or
22 continued service or practice of any individual certificate
23 holder may create a danger to public health or safety, the
24 commissioner may temporarily suspend the certification prior
25 to a hearing or notice: *Provided*, That the commissioner may
26 rely on information received from a physician that serves as
27 a medical director in finding that probable cause exists to
28 temporarily suspend the certification: *Provided, however*,
29 That the commissioner shall simultaneously institute
30 proceedings for a hearing in accordance with section ten of
31 this article.

32 (e) The commissioner or the director may enter into a
33 consent decree or hold a hearing for the suspension or
34 revocation of the license or certification or the imposition of
35 sanctions against the licensee or certificate holder.

36 (f) The commissioner or the director issue subpoenas and
37 subpoenas duces tecum to obtain testimony and documents to
38 aid in the investigation of allegations against any person or
39 agency regulated by the article.

40 (g) The commissioner or the director may sign a consent
41 decree or other legal document related to the complaint.

42 (h) The commissioner shall suspend or revoke any
43 certificate, temporary certificate or license when he or she
44 finds the holder has:

45 (1) Obtained a certificate, temporary certificate or license
46 by means of fraud or deceit; or

47 (2) Been grossly incompetent, and/or grossly negligent as
48 defined by the commissioner in accordance with rules or by
49 prevailing standards of emergency medical services care; or

50 (3) Failed or refused to comply with the provisions of this
51 article or any legislative rule promulgated by the
52 commissioner or any order or final decision of the
53 commissioner; or

54 (4) Engaged in any act during the course of duty which
55 has endangered or is likely to endanger the health, welfare or
56 safety of the public.

57 (i) The commissioner or the director may, after notice and
58 opportunity for hearing, deny or refuse to renew, suspend or
59 revoke the license or certification of, impose probationary
60 conditions upon or take disciplinary action against, any

61 licensee or certificate holder for any violation of this article
62 or any rule promulgated pursuant to this article, once a
63 violation has been proven by a preponderance of the
64 evidence.

65 (j) Disciplinary action may include:

66 (1) Reprimand;

67 (2) Probation;

68 (3) Administrative penalties and fines;

69 (4) Mandatory attendance at continuing education
70 seminars or other training;

71 (5) Practicing under supervision or other restriction;

72 (6) Requiring the licensee or holder of a certificate to
73 report to the commissioner or director for periodic interviews
74 for a specified period of time;

75 (7) Other disciplinary action considered by the
76 commissioner or director to be necessary to protect the
77 public, including advising other parties whose legitimate
78 interests may be at risk; or

79 (8) Other sanctions as set forth by legislative rule
80 promulgated pursuant to this article.

81 (k) The commissioner shall suspend or revoke any
82 certificate, temporary certificate or license if he or she finds
83 the existence of any grounds which would justify the denial
84 of an application for the certificate, temporary certificate or
85 license if application were then being made for it.



CHAPTER 74

**(S. B. 496 - By Senators Beach,
D. Facemire, Kirkendoll and Miller)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §22-5-19 of the Code of West Virginia, 1931, as amended, relating to the Department of Environmental Protection's requirements to inventory emissions of greenhouse gases; eliminating unneeded provisions; and allowing reporting of greenhouse gases under the United States Environmental Protection Agency's Mandatory Reporting of Greenhouse Gases Rule to satisfy greenhouse gas reporting requirements in West Virginia.

Be it enacted by the Legislature of West Virginia:

That §22-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-19. Inventory of greenhouse gases.

- 1 (a) The secretary shall establish a program to inventory
- 2 greenhouse gas emissions from major sources that are subject
- 3 to mandatory federal greenhouse gases reporting
- 4 requirements. The secretary shall obtain available emissions
- 5 data directly from the appropriate federal entity, including the
- 6 United States Environmental Protection Agency.

- 7 (b) As used in this section, “greenhouse gas” means
8 carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
9 perfluorocarbons and sulfur hexafluoride.



CHAPTER 75

(S. B. 75 - By Senator Unger)

[Passed March 10, 2012; in effect July 1, 2012.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-33-1, §19-33-2, §19-33-3, §19-33-4 and §19-33-5, all relating to creating the Equine Rescue Facilities Act; providing definitions; licensing of equine facilities; providing for inspections; authorizing legislative rules; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-33-1, §19-33-2, §19-33-3, §19-33-4 and §19-33-5, all to read as follows:

ARTICLE 33. EQUINE RESCUE FACILITIES ACT.

§19-33-1. Definitions.

- 1 For purposes of this article:
- 2 (a) “Commissioner” means the Commissioner of
3 Agriculture.

4 (b) “Equine rescue facility” means a facility that is listed
5 as a nonprofit organization having a legitimate and current
6 status under Title 26 U. S. C. 501(c)(3), as amended, that
7 fosters care to unwanted equines due to age, health or other
8 circumstances that deem the equines homeless.

§19-33-2. Licensing of equine rescue facilities.

1 No person may operate an equine rescue facility as
2 defined in this section without an equine rescue facility
3 license issued by the Department of Agriculture. The annual
4 fee for an equine rescue facility license is \$100, which shall
5 be remitted by the commissioner to the humane officer or
6 animal control officer in the county where the facility is
7 located to offset the expense of inspecting that facility. If the
8 county does not have a humane officer or animal control
9 officer, the commissioner shall remit the license fee to the
10 sheriff of the county where the facility is located.

§19-33-3. Inspections of equine rescue facilities.

1 Upon application for an equine rescue facility license, the
2 commissioner shall notify the county humane officer or
3 animal control officer in the county where the equine rescue
4 facility is located, who shall inspect the facility prior to
5 issuance of an equine rescue facility license and, thereafter,
6 not less than twice annually. If the county does not have a
7 humane officer or animal control officer, the sheriff of that
8 county is responsible for inspections of equine rescue
9 facilities in the county as set forth in this section.

§19-33-4. Legislative rules.

1 The commissioner shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to provide for the following:

4 (a) The issuance of equine rescue facility licenses and
5 revocation of the licenses for violations of the provisions of
6 this article or rules adopted hereunder;

7 (b) Notification of the application and issuance of an
8 equine rescue facility license to the humane officer, animal
9 control officer or county sheriff in the county where the
10 facility is located and providing remittance of the annual
11 equine rescue facility license fee;

12 (c) Standards for maintenance of the premises, the care
13 and health of the horses kept at equine rescue facilities and
14 standards for inspection of those facilities and horses, using
15 guidelines developed by the West Virginia Livestock Care
16 Standards Board; and

17 (d) Standards for closure of an equine rescue facility and
18 seizure of horses at the facility where the health and welfare
19 of the horses are endangered.

§19-33-5. Penalties.

1 Any person who violates any provision of this article or
2 rules adopted hereunder is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not less than \$100 nor more
4 than \$500 for the first offense, and for a second or subsequent
5 offense shall be fined not less than \$500 nor more than \$2,500.



CHAPTER 76

**(Com. Sub. for H. B. 3128 -
By Delegate Frazier)**

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §61-11-25 of the Code of West Virginia, 1931, as amended, relating to filing a civil petition for expungement of records relating to an arrest or charges relating

to the arrest when found not guilty of the offense or charges have been dismissed; and providing that no filing fees or costs be charged for processing the action.

Be it enacted by the Legislature of West Virginia:

That §61-11-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.**

**§61-11-25. Expungement of criminal records for those found
not guilty of crimes or against whom charges
have been dismissed.**

1 (a) Any person who has been charged with a criminal
2 offense under the laws of this state and who has been found
3 not guilty of the offense, or against whom charges have been
4 dismissed, and not in exchange for a guilty plea to another
5 offense, may file a civil petition in the circuit court in which
6 the charges were filed to expunge all records relating to the
7 arrest, charge or other matters arising out of the arrest or
8 charge: *Provided*, That no record in the Division of Motor
9 Vehicles may be expunged by virtue of any order of
10 expungement entered pursuant to section two-b, article five,
11 chapter seventeen-C of this code: *Provided, further*, That any
12 person who has previously been convicted of a felony may
13 not file a petition for expungement pursuant to this section.
14 The term records as used in this section includes, but is not
15 limited to, arrest records, fingerprints, photographs, index
16 references or other data whether in documentary or electronic
17 form, relating to the arrest, charge or other matters arising out
18 of the arrest or charge. Criminal investigation reports and all
19 records relating to offenses subject to the provisions of article
20 twelve, chapter fifteen of this code because the person was
21 found not guilty by reason of mental illness, mental

22 retardation or addiction are exempt from the provisions of
23 this section.

24 (b) The expungement petition shall be filed not sooner
25 than sixty days following the order of acquittal or dismissal
26 by the court. Any court entering an order of acquittal or
27 dismissal shall inform the person who has been found not
28 guilty or against whom charges have been dismissed of his or
29 her rights to file a petition for expungement pursuant to this
30 section.

31 (c) Following the filing of the petition, the court may set
32 a date for a hearing. If the court does so, it shall notify the
33 prosecuting attorney and the arresting agency of the petition
34 and provide an opportunity for a response to the
35 expungement petition.

36 (d) If the court finds that there are no current charges or
37 proceedings pending relating to the matter for which the
38 expungement is sought, the court may grant the petition and
39 order the sealing of all records in the custody of the court and
40 expungement of any records in the custody of any other
41 agency or official including law enforcement records. Every
42 agency with records relating to the arrest, charge or other
43 matters arising out of the arrest or charge, that is ordered to
44 expunge records, shall certify to the court within sixty days
45 of the entry of the expungement order, that the required
46 expungement has been completed. All orders enforcing the
47 expungement procedure shall also be sealed.

48 (e) Upon expungement, the proceedings in the matter
49 shall be deemed never to have occurred. The court and other
50 agencies shall reply to any inquiry that no record exists on
51 the matter. The person whose record is expunged shall not
52 have to disclose the fact of the record or any matter relating
53 thereto on an application for employment, credit or other type
54 of application.

55 (f) Inspection of the sealed records in the court's
56 possession may thereafter be permitted by the court only
57 upon a motion by the person who is the subject of the records
58 or upon a petition filed by a prosecuting attorney that
59 inspection and possible use of the records in question are
60 necessary to the investigation or prosecution of a crime in
61 this state or another jurisdiction. If the court finds that the
62 interests of justice will be served by granting the petition, it
63 may be granted.

64 (g) There shall be no filing fees charged or costs assessed
65 for filing an action pursuant to this section.



CHAPTER 77

**(Com. Sub. for S. B. 149 - By Senators
Unger, Miller and Kessler, Mr. President)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 12, 2012.]

AN ACT to amend and reenact §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West Virginia, 1931, as amended, all relating to the disposition of forfeited or abandoned firearms in state custody; requiring additional measures to identify, find and return firearms and ammunition to owners, if they are eligible to own and possess them; and to allow for the sale of firearms to licensed firearms collectors, dealers, importers or manufacturers.

Be it enacted by the Legislature of West Virginia:

That §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD
BY LAW-ENFORCEMENT AGENCIES.**

§36-8A-2. Unclaimed stolen property reports.

1 (a) On or before September 1, of each year, each law-
2 enforcement agency which has unclaimed stolen property in
3 its possession shall file an unclaimed stolen property report
4 with the Treasurer which identifies all unclaimed stolen
5 property in its possession at the time the report is filed.

6 (b) An unclaimed stolen property report shall include the
7 following information with respect to all unclaimed stolen
8 property in the possession of the law-enforcement agency
9 filing it:

10 (1) A description of each item, including a serial number,
11 if applicable;

12 (2) An estimated value for each item;

13 (3) Whether any nonprofit organization has requested that
14 any item be donated to it and whether any nonprofit
15 organization might be considered to receive the item as a
16 donation;

17 (4) Whether the law-enforcement agency could use the
18 item for any legitimate and authorized law enforcement or
19 educational purpose;

20 (5) The chief executive's recommendation for the
21 disposition of each item; and

22 (6) If any unclaimed stolen property in the law-
23 enforcement agency's possession consists of firearms or
24 ammunition, a description of the best efforts used by the chief
25 executive to determine if the firearm has been lost by, stolen
26 or otherwise unlawfully obtained from an innocent owner
27 prior to its disposition by public auction or as otherwise
28 required by section five of this article.

§36-8A-3. Treasurer's response to unclaimed stolen property report.

1 Within thirty days of the receipt of an unclaimed stolen
2 property report, the Treasurer shall send a response to the
3 law-enforcement agency submitting it. For each item
4 identified in the unclaimed stolen property report, the
5 Treasurer shall either require that it be delivered to the
6 Treasurer, authorize the law-enforcement agency to sell it at
7 a public sale, authorize the law-enforcement agency to donate
8 it to a nonprofit organization, authorize the law-enforcement
9 agency to use it for any legitimate and authorized law
10 enforcement or educational purpose, or authorize the law-
11 enforcement agency either to sell it at a public sale, to donate
12 it to a nonprofit organization, or to use it for any legitimate
13 and authorized law enforcement or educational purpose.
14 However, the Treasurer may not authorize the law-
15 enforcement agency to donate any firearms or ammunition.
16 The sale of any firearms or ammunition by the law
17 enforcement agency must be at a public sale to persons
18 licensed as firearms collectors, dealers, importers or
19 manufacturers under the provisions of 18 U. S. C. §§921 et
20 seq. and authorized to receive firearms under the terms of
21 their license. If the Treasurer determines that any item
22 identified in an unclaimed stolen property report is of such
23 value that it should be processed by the Treasurer's office,
24 the Treasurer shall have the authority to require that the item
25 be delivered to the Treasurer.

§36-8A-5. Regarding the disposition of firearms in state custody.

1 (a) Except as provided in section three of this article,
2 subject to the duty to return firearms to innocent owners
3 pursuant to subsection (b) of this section, all firearms, as
4 defined in section two, article seven, chapter sixty-one of this
5 code, that are forfeited or abandoned to any law-enforcement
6 agency of this state or a political subdivision of this state,
7 including the West Virginia Division of Natural Resources,
8 or that are otherwise acquired by the state or a political
9 subdivision of the state and are no longer needed, shall be
10 transferred to the State Treasurer for disposal as provided in
11 this section.

12 (b) Except as provided in section three of this article,
13 within thirty days of the receipt of an unclaimed stolen
14 property report, the State Treasurer shall coordinate best
15 efforts with the reporting law-enforcement agency to transfer
16 the firearms and ammunition to the State Treasurer for
17 disposal as provided in subsection (e).

18 (c) Prior to the disposal of any firearm that has been
19 forfeited or abandoned to the state, the chief executive of
20 each law-enforcement agency shall use best efforts to
21 determine if the firearm has been lost by, stolen or otherwise
22 unlawfully obtained from an innocent owner, and if so, shall
23 return the firearm to its innocent owner, if ascertainable,
24 unless that person is ineligible to receive or possess a firearm
25 under state or federal law.

26 (d) Upon determination and verification that a lawful
27 owner is unavailable or ineligible to receive or possess a
28 firearm under state or federal law, reporting enforcement
29 agencies may trade the firearms and ammunition to persons
30 licensed as firearms collectors, dealers, importers or
31 manufacturers under the provisions of 18 U. S. C. §§921 *et*

32 *seq.* and authorized to receive firearms under the terms of
33 their license, in exchange for new weapons or ammunition,
34 or appropriate the firearms and ammunition for law-
35 enforcement agency use.

36 (e) Except as provided in subsections (c),(d) and (f) of
37 this section, the State Treasurer shall dispose of the firearms
38 that it receives under subsection (a) by sale at public auction
39 to persons licensed as firearms collectors, dealers, importers
40 or manufacturers under the provisions of 18 U. S. C. §§921
41 *et seq.* and authorized to receive firearms under the terms of
42 their license.

43 (1) The auctions required by this subsection may occur
44 online on a rolling basis or at live events but in no event may
45 occur less frequently than once every six months.

46 (2) The State Treasurer shall retain only the net proceeds
47 necessary to cover the costs of administering this section,
48 with any surplus to be transferred to the general fund of the
49 state: *Provided*, That an agency may be reimbursed for any
50 decommissioned firearms formerly in use by the agency that
51 are sold under this section: *Provided, however*, That an
52 agency may apply to the State Treasurer for payment of the
53 net proceeds generated by the sale of any property by the
54 State Treasurer pursuant to this section.

55 (3) Employees of the State Police or of the agency from
56 which the firearms are received are not eligible to bid on the
57 firearms at an auction conducted under this section.

58 (f) The requirements of subsection (d) do not apply to a
59 firearm that the chief executive of the law-enforcement
60 agency or his or her designee certifies is unsafe for use
61 because of wear, damage, age or modification, and any such
62 firearm shall at the discretion of the superintendent be
63 transferred to the State Police forensic laboratory for training

64 or experimental purposes or to a museum or historical society
65 or be destroyed.

66 (g) The State Treasurer shall keep records of all firearms
67 acquired and disposed of under the provisions of this section,
68 as well as the net proceeds of the sales and the disbursement
69 of such proceeds, and shall maintain these records for not less
70 than ten years from the date on which a firearm is disposed of
71 or on which a disbursement of funds is made, as the case may
72 be.

73 (h) Any firearm or ammunition subject to forfeiture
74 proceedings which is ordered returned to any law
75 enforcement agency for the purposes of public sale or auction
76 may only be sold or transferred to persons licensed as
77 firearms collectors, dealers, importers or manufacturers under
78 the provisions of 18 U. S. C. §§921 *et seq.*



CHAPTER 78

**(Com. Sub. for S. B. 353 - By Senators
Unger, Kessler, Mr. President, Browning,
Laird, Klempa and Snyder)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to possession of firearms generally; clarifying what constitutes carrying a handgun concealed in or on a motor vehicle; procedures for obtaining a license to carry a concealed handgun; providing application requirements; requiring

investigations of applicants through a national criminal background check system and the West Virginia database; providing definitions; prohibiting certain persons from possessing or receiving firearms; providing exceptions; allowing licenses to be transferable within the state; requiring reporting of new address; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) “Blackjack” means a short bludgeon consisting, at the
4 striking end, of an encased piece of lead or some other heavy
5 substance and, at the handle end, a strap or springy shaft
6 which increases the force of impact when a person or object
7 is struck. The term “blackjack” shall include, but not be
8 limited to, a billy, billy club, sand club, sandbag or slapjack.

9 (2) “Gravity knife” means any knife that has a blade
10 released from the handle by the force of gravity or the
11 application of centrifugal force and when so released is
12 locked in place by means of a button, spring, lever or other
13 locking or catching device.

14 (3) “Knife” means an instrument, intended to be used or
15 readily adaptable to be used as a weapon, consisting of a
16 sharp-edged or sharp-pointed blade, usually made of steel,
17 attached to a handle which is capable of inflicting cutting,

18 stabbing or tearing wounds. The term “knife” shall include,
19 but not be limited to, any dagger, dirk, poniard or stiletto,
20 with a blade over three and one-half inches in length, any
21 switchblade knife or gravity knife and any other instrument
22 capable of inflicting cutting, stabbing or tearing wounds. A
23 pocket knife with a blade three and one-half inches or less in
24 length, a hunting or fishing knife carried for hunting, fishing,
25 sports or other recreational uses or a knife designed for use as
26 a tool or household implement shall not be included within
27 the term “knife” as defined herein unless such knife is
28 knowingly used or intended to be used to produce serious
29 bodily injury or death.

30 (4) “Switchblade knife” means any knife having a spring-
31 operated blade which opens automatically upon pressure
32 being applied to a button, catch or other releasing device in
33 its handle.

34 (5) “Nunchuka” means a flailing instrument consisting of
35 two or more rigid parts, connected by a chain, cable, rope or
36 other nonrigid, flexible or springy material, constructed in
37 such a manner as to allow the rigid parts to swing freely so
38 that one rigid part may be used as a handle and the other rigid
39 part may be used as the striking end.

40 (6) “Metallic or false knuckles” means a set of finger
41 rings attached to a transverse piece to be worn over the front
42 of the hand for use as a weapon and constructed in such a
43 manner that, when striking another person with the fist or
44 closed hand, considerable physical damage may be inflicted
45 upon the person struck. The terms “metallic or false
46 knuckles” shall include any such instrument without
47 reference to the metal or other substance or substances from
48 which the metallic or false knuckles are made.

49 (7) “Pistol” means a short firearm having a chamber
50 which is integral with the barrel, designed to be aimed and
51 fired by the use of a single hand.

52 (8) “Revolver” means a short firearm having a cylinder
53 of several chambers that are brought successively into line
54 with the barrel to be discharged, designed to be aimed and
55 fired by the use of a single hand.

56 (9) “Deadly weapon” means an instrument which is
57 designed to be used to produce serious bodily injury or death
58 or is readily adaptable to such use. The term “deadly
59 weapon” shall include, but not be limited to, the instruments
60 defined in subdivisions (1) through (8), inclusive, of this
61 section or other deadly weapons of like kind or character
62 which may be easily concealed on or about the person. For
63 the purposes of section one-a, article five, chapter eighteen-a
64 of this code and section eleven-a, article seven of this
65 chapter, in addition to the definition of “knife” set forth in
66 subdivision (3) of this section, the term “deadly weapon” also
67 includes any instrument included within the definition of
68 “knife” with a blade of three and one-half inches or less in
69 length. Additionally, for the purposes of section one-a,
70 article five, chapter eighteen-a of this code and section
71 eleven-a, article seven of this chapter, the term “deadly
72 weapon” includes explosive, chemical, biological and
73 radiological materials. Notwithstanding any other provision
74 of this section, the term “deadly weapon” does not include
75 any item or material owned by the school or county board,
76 intended for curricular use, and used by the student at the
77 time of the alleged offense solely for curricular purposes.

78 (10) “Concealed” means hidden from ordinary
79 observation so as to prevent disclosure or recognition. A
80 deadly weapon is concealed when it is carried on or about the
81 person in such a manner that another person in the ordinary
82 course of events would not be placed on notice that the
83 deadly weapon was being carried. For purposes of concealed
84 handgun licensees, a licensee shall be deemed to be carrying
85 on or about his or her person while in or on a motor vehicle
86 if the firearm is located in a storage area in or on the motor
87 vehicle.

88 (11) “Firearm” means any weapon which will expel a
89 projectile by action of an explosion.

90 (12) “Controlled substance” has the same meaning as is
91 ascribed to that term in subsection (d), section one hundred
92 one, article one, chapter sixty-a of this code.

93 (13) “Drug” has the same meaning as is ascribed to that
94 term in subsection (1), section one hundred one, article one,
95 chapter sixty-a of this code.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this section,
2 any person desiring to obtain a state license to carry a
3 concealed deadly weapon shall apply to the sheriff of his or
4 her county for the license, and shall pay to the sheriff, at the
5 time of application, a fee of \$75, of which \$15 of that amount
6 shall be deposited in the Courthouse Facilities Improvement
7 Fund created by section six, article twenty-six, chapter
8 twenty-nine of this code. Concealed weapons permits may
9 only be issued for pistols or revolvers. Each applicant shall
10 file with the sheriff a complete application, as prepared by the
11 Superintendent of the West Virginia State Police, in writing,
12 duly verified, which sets forth only the following licensing
13 requirements:

14 (1) The applicant’s full name, date of birth, Social
15 Security number, a description of the applicant’s physical
16 features, the applicant’s place of birth, the applicant’s country
17 of citizenship and, if the applicant is not a United States
18 citizen, any alien or admission number issued by the United
19 States Bureau of Immigration and Customs enforcement, and
20 any basis, if applicable, for an exception to the prohibitions
21 of 18 U. S. C. §922(g)(5)(B);

22 (2) That, on the date the application is made, the
23 applicant is a bona fide resident of this state and of the county

24 in which the application is made and has a valid driver's
25 license or other state-issued photo identification showing the
26 residence;

27 (3) That the applicant is twenty-one years of age or older:
28 *Provided*, That any individual who is less than twenty-one
29 years of age and possesses a properly issued concealed
30 weapons license as of the effective date of this article shall be
31 licensed to maintain his or her concealed weapons license
32 notwithstanding the provisions of this section requiring new
33 applicants to be at least twenty-one years of age: *Provided*,
34 *however*, That upon a showing of any applicant who is
35 eighteen years of age or older that he or she is required to
36 carry a concealed weapon as a condition for employment, and
37 presents satisfactory proof to the sheriff thereof, then he or
38 she shall be issued a license upon meeting all other
39 conditions of this section. Upon discontinuance of
40 employment that requires the concealed weapons license, if
41 the individual issued the license is not yet twenty-one years
42 of age, then the individual issued the license is no longer
43 eligible and must return his or her license to the issuing
44 sheriff;

45 (4) That the applicant is not addicted to alcohol, a
46 controlled substance or a drug and is not an unlawful user
47 thereof as evidenced by either of the following within the
48 three years immediately prior to the application:

49 (A) Residential or court-ordered treatment for alcoholism
50 or alcohol detoxification or drug treatment; or

51 (B) Two or more convictions for driving while under the
52 influence or driving while impaired;

53 (5) That the applicant has not been convicted of a felony
54 or of an act of a misdemeanor crime of violence involving the
55 misuse of a deadly weapon within the five years immediately
56 preceding the application;

57 (6) That the applicant has not been convicted of a
58 misdemeanor crime of domestic violence as defined in 18 U.
59 S. C. §921(a)(33), or a misdemeanor offense of assault or
60 battery either under the provisions of section twenty-eight,
61 article two of this chapter or the provisions of subsection (b)
62 or (c), section nine, article two of this chapter in which the
63 victim was a current or former spouse, current or former
64 sexual or intimate partner, person with whom the defendant
65 cohabits or has cohabited, a parent or guardian, the
66 defendant's child or ward or a member of the defendant's
67 household at the time of the offense, or a misdemeanor
68 offense with similar essential elements in a jurisdiction other
69 than this state;

70 (7) That the applicant is not under indictment for a felony
71 offense or is not currently serving a sentence of confinement,
72 parole, probation or other court-ordered supervision imposed
73 by a court of any jurisdiction or is the subject of an
74 emergency or temporary domestic violence protective order
75 or is the subject of a final domestic violence protective order
76 entered by a court of any jurisdiction;

77 (8) That the applicant has not been adjudicated to be
78 mentally incompetent. If the applicant has been adjudicated
79 mentally incompetent the applicant must provide a court
80 order reflecting that the applicant is no longer under such
81 disability;

82 (9) That the applicant has qualified under the minimum
83 requirements set forth in subsection (d) of this section for
84 handling and firing the weapon: *Provided*, That this
85 requirement shall be waived in the case of a renewal
86 applicant who has previously qualified; and

87 (10) That the applicant authorizes the sheriff of the
88 county, or his or her designee, to conduct an investigation
89 relative to the information contained in the application.

90 (b) For both initial and renewal applications, the sheriff
91 shall conduct an investigation including a nationwide
92 criminal background check consisting of checking the
93 National Instant Criminal Background Check System and the
94 West Virginia criminal history record responses in order to
95 verify that the information required in subsection (a) of this
96 section is true and correct.

97 (c) \$60 of the application fee and any fees for
98 replacement of lost or stolen licenses received by the sheriff
99 shall be deposited by the sheriff into a Concealed Weapons
100 License Administration Fund. The fund shall be administered
101 by the sheriff and shall take the form of an interest-bearing
102 account with any interest earned to be compounded to the
103 fund. Any funds deposited in this Concealed Weapon
104 License Administration Fund are to be expended by the
105 sheriff to pay for the costs associated with issuing concealed
106 weapons licenses. Any surplus in the fund on hand at the end
107 of each fiscal year may be expended for other
108 law-enforcement purposes or operating needs of the sheriff's
109 office, as the sheriff may consider appropriate.

110 (d) All persons applying for a license must complete a
111 training course in handling and firing a handgun. The
112 successful completion of any of the following courses fulfills
113 this training requirement:

114 (1) Any official National Rifle Association handgun
115 safety or training course;

116 (2) Any handgun safety or training course or class
117 available to the general public offered by an official
118 law-enforcement organization, community college, junior
119 college, college or private or public institution or
120 organization or handgun training school utilizing instructors
121 duly certified by the institution;

122 (3) Any handgun training or safety course or class
123 conducted by a handgun instructor certified as such by the
124 state or by the National Rifle Association;

125 (4) Any handgun training or safety course or class
126 conducted by any branch of the United States Military,
127 Reserve or National Guard.

128 A photocopy of a certificate of completion of any of the
129 courses or classes or an affidavit from the instructor, school,
130 club, organization or group that conducted or taught said
131 course or class attesting to the successful completion of the
132 course or class by the applicant or a copy of any document
133 which shows successful completion of the course or class
134 shall constitute evidence of qualification under this section.

135 (e) All concealed weapons license applications must be
136 notarized by a notary public duly licensed under article four,
137 chapter twenty-nine of this code. Falsification of any portion
138 of the application constitutes false swearing and is punishable
139 under the provisions of section two, article five, chapter
140 sixty-one of this code.

141 (f) The sheriff shall issue a license unless he or she
142 determines that the application is incomplete, that it contains
143 statements that are materially false or incorrect or that
144 applicant otherwise does not meet the requirements set forth
145 in this section. The sheriff shall issue, reissue or deny the
146 license within forty-five days after the application is filed if
147 all required background checks authorized by this section are
148 completed.

149 (g) Before any approved license shall be issued or
150 become effective, the applicant shall pay to the sheriff a fee
151 in the amount of \$25 which the sheriff shall forward to the
152 Superintendent of the West Virginia State Police within thirty
153 days of receipt. The license shall be valid for five years
154 throughout the state, unless sooner revoked.

155 (h) Each license shall contain the full name and address
156 of the licensee and a space upon which the signature of the
157 licensee shall be signed with pen and ink. The issuing sheriff
158 shall sign and attach his or her seal to all license cards. The
159 sheriff shall provide to each new licensee a duplicate license
160 card, in size similar to other state identification cards and
161 licenses, suitable for carrying in a wallet, and the license card
162 is considered a license for the purposes of this section.

163 (i) The Superintendent of the West Virginia State Police
164 shall prepare uniform applications for licenses and license
165 cards showing that the license has been granted and shall do
166 any other act required to be done to protect the state and see
167 to the enforcement of this section.

168 (j) If an application is denied, the specific reasons for the
169 denial shall be stated by the sheriff denying the application.
170 Any person denied a license may file, in the circuit court of
171 the county in which the application was made, a petition
172 seeking review of the denial. The petition shall be filed
173 within thirty days of the denial. The court shall then
174 determine whether the applicant is entitled to the issuance of
175 a license under the criteria set forth in this section. The
176 applicant may be represented by counsel, but in no case may
177 the court be required to appoint counsel for an applicant. The
178 final order of the court shall include the court's findings of
179 fact and conclusions of law. If the final order upholds the
180 denial, the applicant may file an appeal in accordance with
181 the Rules of Appellate Procedure of the Supreme Court of
182 Appeals.

183 (k) If a license is lost or destroyed, the person to whom
184 the license was issued may obtain a duplicate or substitute
185 license for a fee of \$5 by filing a notarized statement with the
186 sheriff indicating that the license has been lost or destroyed.

187 (l) Whenever any person after applying for and receiving
188 a concealed handgun license moves from the address named

189 in the application to another county within the state, the
190 license remains valid for the remainder of the five years:
191 *Provided*, That the licensee within twenty days thereafter
192 notifies the sheriff in the new county of residence in writing
193 of the old and new addresses.

194 (m) The sheriff shall, immediately after the license is
195 granted as aforesaid, furnish the Superintendent of the West
196 Virginia State Police a certified copy of the approved
197 application. The sheriff shall furnish to the Superintendent of
198 the West Virginia State Police at any time so requested a
199 certified list of all licenses issued in the county. The
200 Superintendent of the West Virginia State Police shall
201 maintain a registry of all persons who have been issued
202 concealed weapons licenses.

203 (n) Except when subject to an exception under section
204 six, article seven of this chapter, all licensees must carry with
205 them a state-issued photo identification card with the
206 concealed weapons license whenever the licensee is carrying
207 a concealed weapon. Any licensee who, in violation of this
208 subsection, fails to have in his or her possession a state-issued
209 photo identification card and a current concealed weapons
210 license while carrying a concealed weapon is guilty of a
211 misdemeanor and, upon conviction thereof, shall be fined not
212 less than \$50 or more than \$200 for each offense.

213 (o) The sheriff shall deny any application or revoke any
214 existing license upon determination that any of the licensing
215 application requirements established in this section have been
216 violated by the licensee.

217 (p) A person who is engaged in the receipt, review or in
218 the issuance or revocation of a concealed weapon license
219 does not incur any civil liability as the result of the lawful
220 performance of his or her duties under this article.

221 (q) Notwithstanding the provisions of subsection (a) of
222 this section, with respect to application by a former
223 law-enforcement officer honorably retired from agencies
224 governed by article fourteen, chapter seven of this code;
225 article fourteen, chapter eight of this code; article two,
226 chapter fifteen of this code; and article seven, chapter twenty
227 of this code, an honorably retired officer is exempt from
228 payment of fees and costs as otherwise required by this
229 section.

230 (r) Except as restricted or prohibited by the provisions of
231 this article or as otherwise prohibited by law, the issuance of
232 a concealed weapon permit issued in accordance with the
233 provisions of this section authorizes the holder of the permit
234 to carry a concealed pistol or revolver on the lands or waters
235 of this state.

**§61-7-7. Persons prohibited from possessing firearms;
classifications; reinstatement of rights to possess;
offenses; penalties.**

1 (a) Except as provided in this section, no person shall
2 possess a firearm, as such is defined in section two of this
3 article, who:

4 (1) Has been convicted in any court of a crime punishable
5 by imprisonment for a term exceeding one year;

6 (2) Is habitually addicted to alcohol;

7 (3) Is an unlawful user of or habitually addicted to any
8 controlled substance;

9 (4) Has been adjudicated as a mental defective or who
10 has been involuntarily committed to a mental institution
11 pursuant to the provisions of chapter twenty-seven of this
12 code: *Provided*, That once an individual has been adjudicated

13 as a mental defective or involuntarily committed to a mental
14 institution, he or she shall be duly notified that they are to
15 immediately surrender any firearms in their ownership or
16 possession: *Provided, however,* That the mental hygiene
17 commissioner or circuit judge shall first make a
18 determination of the appropriate public or private individual
19 or entity to act as conservator for the surrendered property;

20 (5) Is an alien illegally or unlawfully in the United States;

21 (6) Has been discharged from the armed forces under
22 dishonorable conditions;

23 (7) Is subject to a domestic violence protective order that:

24 (A) Was issued after a hearing of which such person
25 received actual notice and at which such person had an
26 opportunity to participate;

27 (B) Restrains such person from harassing, stalking or
28 threatening an intimate partner of such person or child of
29 such intimate partner or person, or engaging in other conduct
30 that would place an intimate partner in reasonable fear of
31 bodily injury to the partner or child; and

32 (C)(i) Includes a finding that such person represents a
33 credible threat to the physical safety of such intimate partner
34 or child; or

35 (ii) By its terms explicitly prohibits the use, attempted use
36 or threatened use of physical force against such intimate
37 partner or child that would reasonably be expected to cause
38 bodily injury; or

39 (8) Has been convicted of a misdemeanor offense of
40 assault or battery either under the provisions of section
41 twenty-eight, article two of this chapter or the provisions of

42 subsection (b) or (c), section nine of said article or a federal
43 or state statute with the same essential elements in which the
44 victim was a current or former spouse, current or former
45 sexual or intimate partner, person with whom the defendant
46 has a child in common, person with whom the defendant
47 cohabits or has cohabited, a parent or guardian, the
48 defendant's child or ward or a member of the defendant's
49 household at the time of the offense or has been convicted in
50 any court of any jurisdiction of a comparable misdemeanor
51 crime of domestic violence.

52 Any person who violates the provisions of this subsection
53 shall be guilty of a misdemeanor and, upon conviction
54 thereof, shall be fined not less than \$100 nor more than
55 \$1,000 or confined in the county jail for not less than ninety
56 days nor more than one year, or both.

57 (b) Notwithstanding the provisions of subsection (a) of
58 this section, any person:

59 (1) Who has been convicted in this state or any other
60 jurisdiction of a felony crime of violence against the person
61 of another or of a felony sexual offense; or

62 (2) Who has been convicted in this state or any other
63 jurisdiction of a felony controlled substance offense
64 involving a Schedule I controlled substance other than
65 marijuana, a Schedule II or a Schedule III controlled
66 substance as such are defined in sections two hundred four,
67 two hundred five and two hundred six, article two, chapter
68 sixty-a of this code and who possesses a firearm as such is
69 defined in section two of this article shall be guilty of a
70 felony and, upon conviction thereof, shall be confined in a
71 state correctional facility for not more than five years or fined
72 not more than \$5,000, or both. The provisions of subsection
73 (c) of this section shall not apply to persons convicted of
74 offenses referred to in this subsection or to persons convicted
75 of a violation of this subsection.

76 (c) Any person prohibited from possessing a firearm by
77 the provisions of subsection (a) of this section may petition
78 the circuit court of the county in which he or she resides to
79 regain the ability to possess a firearm and if the court finds by
80 clear and convincing evidence that the person is competent
81 and capable of exercising the responsibility concomitant with
82 the possession of a firearm, the court may enter an order
83 allowing the person to possess a firearm if such possession
84 would not violate any federal law: *Provided*, That a person
85 prohibited from possessing a firearm by the provisions of
86 subdivision (4), subsection (a) of this section may petition to
87 regain the ability to possess a firearm in accordance with the
88 provisions of section five, article seven-a of this chapter.



CHAPTER 79

**(Com. Sub. for H. B. 4107 - By Delegates
Morgan, Stephens, Hatfield, Talbott,
Martin, Hartman, Staggers, Azinger,
Howell, Romine and Snuffer)**

[Passed February 14, 2012; in effect from passage.]

[Approved by the Governor on February 23, 2012.]

AN ACT to amend and reenact §29-3-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-3-5d, all relating to volunteer firefighters; requiring the State Fire Commission to establish training, equipment and performance standards by legislative rule; and authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:

That §29-3-9 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 §29-3-5d, all to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5d. Volunteer firefighters' training.

1 (a) On or before July 30, 2012, the State Fire Commission
2 shall propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, to establish training requirements for firefighters
5 which:

6 (1) Provide for:

7 (A) Minimum training levels for rescue and fire fighting;

8 (B) Minimum levels of equipment needed to protect life
9 and property within fire service areas;

10 (C) Minimum performance standards the departments
11 must meet in response times, communications, levels of water
12 flow and pressure; and

13 (D) Other performance measures as considered necessary
14 to meet the overall goals of improved fire prevention and
15 control.

16 (2) Allow the training to be offered in segments, blocks
17 or modules: *Provided*, That no firefighter may engage in fire
18 fighting activities, except in response to wildland fires, until
19 he or she has completed all firefighter one training: *Provided*,
20 *however*, That support members may provide ancillary
21 assistance to firefighters as defined by the rule;

- 22 (3) Provide for online training;
- 23 (4) Allow testing to be done in person or online; and
- 24 (5) Establish the testing requirements which include:
- 25 (A) If the individual is required to test in person, then the
26 tests must be given regionally at various times throughout the
27 year; or
- 28 (B) If the individual is authorized to test online, then the
29 requirements for online testing must be established.
- 30 (b) The State Fire Commission may promulgate
31 emergency rules pursuant to the provisions of section fifteen,
32 article three, chapter twenty-nine-a of this code to effectuate
33 the provisions of this section.
- 34 (c) The training policies in effect as of the effective date
35 of the enactment of this section during the Regular Session of
36 2012 will remain in effect until superceded by the emergency
37 rule or legislative rule promulgated pursuant to this section.

**§29-3-9. Powers, duties and authority of State Fire Commission
and State Fire Marshal.**

- 1 (a) The State Fire Commission may employ personnel, fix
2 their compensation and, within funds available to do so, incur
3 expenses as necessary in the performance of the duties of its
4 office.
- 5 (b) The State Fire Commission is responsible for fire
6 programs within this state, including the State Fire Marshal's
7 office, training, uniform standards and certification, finance
8 and planning and fire prevention.

9 (c) All state and area training and education in fire
10 service shall be coordinated by the State Fire Commission.
11 The State Fire Marshal shall ensure that these programs are
12 operated throughout the state at a level consistent with needs
13 identified by the commission.

14 (d) The State Fire Commission may make
15 recommendations to the State Insurance Commissioner
16 regarding town classifications for fire insurance rates.

17 (e) The formation of any new fire department, including
18 volunteer fire departments, requires the concurrence of the
19 State Fire Commission. The State Fire Commission shall
20 develop a method of certification which can be applied to all
21 fire departments and volunteer fire departments.

22 (f) The State Fire Commission shall develop a plan for
23 fire prevention and control which shall include, but not be
24 limited to, the following areas: Manpower needs; location of
25 training centers; location of fire prevention and control units;
26 communications; fire fighting facilities; water sources;
27 vehicular needs; public education and information; public
28 participation; standardization in record keeping; evaluation
29 of personnel; reporting of fire hazards; programs on mutual
30 aid; location of public safety agencies; outline of fire
31 prevention programs; and accessibility of fire prevention
32 information.

33 (g) The State Fire Commission shall establish fire
34 protection areas and at such times as funds are available shall
35 establish field offices for inspection, planning and certification.

36 (h) The State Fire Marshal may accept, on behalf of the
37 State Fire Commission, gifts, grants, court ordered civil
38 forfeiture proceedings and bequests of funds or property from
39 individuals, foundations, corporations, the federal

40 government, governmental agencies and other organizations
41 or institutions. The State Fire Marshal, acting on behalf of the
42 State Fire Commission, may enter into, sign and execute any
43 agreements and do and perform any acts that may be
44 necessary, useful, desirable or convenient to effectuate the
45 purposes of this article. Moneys from gifts, grants, civil
46 forfeiture proceedings and bequests received by the State Fire
47 Marshal shall be deposited into the special account set forth
48 in subsection (c), section twelve-b of this article, and the
49 State Fire Marshal, with the approval of the State Fire
50 Commission, has the authority to make expenditures of, or
51 use of any tangible property, in order to effectuate the
52 purposes of this article.

53 (i) The State Fire Commission shall establish standards
54 and procedures by policy to implement the provisions of this
55 section with regard to the following:

56 (1) Fire prevention and control;

57 (2) Uniform standards of performance, equipment and
58 training;

59 (3) Certification;

60 (4) Training and education in fire service, subject to the
61 rule-making requirements set forth in section five-d of this
62 article; and

63 (5) The creation, operation and responsibilities of fire
64 departments throughout the state.



CHAPTER 80

**(S. B. 202 - By Senators Williams,
K. Facemyer, Fanning, Helmick,
Miller, Jenkins, Stollings and Wills)**

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §19-1A-4 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Division of Forestry to enter into stewardship contracts with the United States Forest Service; authorizing projects by written agreement or contract; and directing annual reports to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §19-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-4. Additional duties of the Director of the Division of Forestry generally.

- 1 (a) The director shall:
 - 2 (1) Develop, promote and advance the growth of the
 - 3 forest products industries of this state;
 - 4 (2) Cooperate with educational institutions, development
 - 5 agencies and private and public organizations to promote the

6 expansion of the forest products industries of this state in
7 local and global markets;

8 (3) Conduct research on marketing and developing forest
9 products and forest products industries; conserving,
10 managing and utilizing the state's forest land and its multiple
11 uses; and improving the forestry knowledge and practices of
12 private landowners; and

13 (4) Compile its findings and recommendations, and
14 disseminate the results of its research to the public, the forest
15 products industry, the Governor and the Legislature.

16 (b) The director has the power to carry out and effectuate
17 the purposes of this article, article one-b of this chapter and
18 article three of chapter twenty of this code, including the
19 power to:

20 (1) Accept and use gifts, donations or contributions from
21 individuals, organizations or corporations, and to acquire by
22 gift, lease or purchase real estate;

23 (2) Establish law-enforcement practices and procedures
24 to address the law-enforcement requirements of the division;

25 (3) To promulgate rules and regulations, subject to the
26 provisions of chapter twenty-nine-a of this code; and

27 (4) Enter into stewardship end-result contract projects
28 with the United States Forest Service by written agreement or
29 contract and submit an annual report to the Joint Committee
30 on Government and Finance, no later than the first day of
31 October each year, specifying the locations of projects, the
32 amount of funding received, number of contracts and the
33 purpose of each contract.



CHAPTER 81

**(Com. Sub. for H. B. 4118 -
By Delegate Moore)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §30-6-3 and §30-6-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §30-6-22a; and to amend and reenact §61-12-9 of said code, all relating to cremation, preneed funeral contracts and disposition of remains generally; adding a definition of persons authorized to order cremation; clarifying required inquiry about deceased's desires; prioritizing individuals authorized to express desires of the deceased; clarifying funeral directors' responsibilities; establishing the right to control the disposition of the remains of a deceased person; determining who has that right; setting forth how that right may be forfeited; adding a definition of person authorized to agree to a cremation contract; and establishing an order of precedence among persons as to cremation and disposition of remains.

Be it enacted by the Legislature of West Virginia:

That §30-6-3 and §30-6-22 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 §30-6-22a; and that §61-12-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.****§30-6-3. 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) “Apprentice” means a person who is preparing to
5 become a licensed funeral director and embalmer and is
6 learning the practice of embalming, funeral directing or
7 cremation under the direct supervision and personal
8 instruction of a duly licensed embalmer or funeral director.

9 (b) “Authorized representative” means a person legally
10 authorized or entitled to order the cremation of the deceased,
11 as established by rule. An authorized representative may
12 include in the following order of precedence:

13 (1) The deceased, who has expressed his or her wishes
14 regarding the disposal of their remains through a last will and
15 testament, an advance directive or preneed funeral contract,
16 as defined in section two, article fourteen, chapter forty-five
17 of this code;

18 (2) The surviving spouse of the deceased, unless a
19 petition to dissolve the marriage was pending at the time of
20 decedent’s death;

21 (3) An individual previously designated by the deceased
22 as the person with the right to control disposition of the
23 deceased’s remains in a writing signed and notarized by the
24 deceased: *Provided*, That no person may be designated to
25 serve in such capacity for more than one nonrelative at any
26 one time;

27 (4) The deceased's next of kin;

28 (5) A court order;

29 (6) A public official who is charged with arranging the
30 final disposition of an indigent deceased; or

31 (7) A representative of an institution who is charged with
32 arranging the final disposition of a deceased who donated his
33 or her body to science.

34 (c) "Board" means the West Virginia Board of Funeral
35 Service Examiners.

36 (d) "Certificate" means a certification by the board to be
37 a crematory operator.

38 (e) "Courtesy card holder" means a person who only
39 practices funeral directing periodically in West Virginia and
40 is a licensed embalmer and funeral director in a state which
41 borders West Virginia.

42 (f) "Cremated remains" or "cremains" means all human
43 remains, including foreign matter cremated with the human,
44 recovered after the completion of cremation.

45 (g) "Cremation" means the mechanical or thermal process
46 whereby a dead human body is reduced to ashes and bone
47 fragments and then further reduced by additional
48 pulverization, burning or recremating when necessary.

49 (h) "Crematory" means a licensed place of business
50 where a deceased human body is reduced to ashes and bone
51 fragments and includes a crematory that stands alone or is
52 part of or associated with a funeral establishment.

53 (i) "Crematory operator" means a person certified by the
54 board to operate a crematory.

55 (j) "Crematory operator in charge" means a certified
56 crematory operator who accepts responsibility for the
57 operation of a crematory.

58 (k) "Deceased" means a dead human being for which a
59 death certificate is required.

60 (l) "Embalmer" means a person licensed to practice
61 embalming.

62 (m) "Embalming" means the practice of introducing
63 chemical substances, fluids or gases used for the purpose of
64 preservation or disinfection into the vascular system or
65 hollow organs of a dead human body by arterial or
66 hypodermic injection for the restoration of the physical
67 appearance of a deceased.

68 (n) "Funeral" means a service, ceremony or rites
69 performed for the deceased with a body present.

70 (o) "Funeral directing" means the business of engaging in
71 the following:

72 (1) The shelter, custody or care of a deceased;

73 (2) The preparation of a deceased for burial or other
74 disposition;

75 (3) The arranging or supervising of a funeral or memorial
76 service for a deceased; and

77 (4) The maintenance of a funeral establishment for the
78 preparation, care or disposition of a deceased.

79 (p) “Funeral director” means a person licensed to practice
80 funeral directing.

81 (q) “Funeral establishment” means a licensed place of
82 business devoted to: the care, preparation and arrangements
83 for the transporting, embalming, funeral, burial or other
84 disposition of a deceased. A funeral establishment can
85 include a licensed crematory.

86 (r) “Funeral service licensee” means a person licensed
87 after July 1, 2003, to practice embalming and funeral
88 directing.

89 (s) “License” means a license, which is not transferable
90 or assignable, to:

91 (1) Practice embalming and funeral directing;

92 (2) Operate a crematory or a funeral establishment.

93 (t) “Licensee” means a person holding a license issued
94 under the provisions of this article.

95 (u) “Licensee in charge” means a licensed embalmer and
96 funeral director who accepts responsibility for the operation
97 of a funeral establishment.

98 (v) “Memorial service” means a service, ceremony or
99 rites performed for the deceased without a body present.

100 (w) “Mortuary” means a licensed place of business
101 devoted solely to the shelter, care and embalming of the
102 deceased.

103 (x) “Person” means an individual, partnership,
104 association, corporation, not-for-profit organization or any
105 other organization.

106 (y) "Registration" means a registration issued by the
107 board to be an apprentice to learn the practice of embalming,
108 funeral directing or cremation.

109 (z) "State" means the State of West Virginia.

§30-6-22. Disposition of body of deceased person; penalty.

1 (a) No public officer, employee, physician or surgeon, or
2 other person having a professional relationship with the
3 deceased, shall send, or cause to be sent to an embalmer,
4 funeral director or crematory operator the body of a deceased
5 without first inquiring the desires of the deceased who has
6 designated his or her wishes regarding the disposal of their
7 remains through a last will and testament, an advance
8 directive or preneed funeral contract, as defined in section
9 two, article fourteen, chapter forty-five of this code; the
10 surviving spouse of the deceased, unless a petition to dissolve
11 the marriage was pending at the time of decedent's death;
12 and, an individual previously designated by the deceased as
13 the person with the right to control disposition of the
14 deceased's remains in a writing signed and notarized by the
15 deceased: *Provided*, That no person may be designated to
16 serve in such capacity for more than one nonrelative at any
17 one time. If there is no last will and testament, advance
18 directive or preneed funeral contract, surviving spouse, or
19 designated person, then the authority and direction of any
20 next of kin or person who may be chargeable with the funeral
21 expenses of the deceased shall be used as to the disposal of
22 the body of the deceased. The provisions of this subsection
23 are not applicable if the remains of the decedent are subject
24 to disposition pursuant to subsection (b) of this section.

25 (b) Notwithstanding any provision of this code to the
26 contrary, a United States Department of Defense Record of
27 Emergency Data Form (DD Form 93) executed by a declarant
28 who dies while serving in a branch of the United States

29 Military as defined in 10 U. S. C. §1481 constitutes a valid
30 form of declaration instrument and governs the disposition of
31 the declarant's remains. The person named in the form as the
32 person authorized to direct disposition of the remains may
33 arrange for the final disposition of the declarant's last
34 remains.

35 (c) Any person who violates the provisions of this section
36 is guilty of a misdemeanor and, upon conviction thereof, shall
37 be fined not less than \$500, nor more than \$1,000, or
38 imprisoned not less than ten days nor more than ninety days,
39 or both.

**§30-6-22a. Right of disposition; preneed contract; affidavit on
disposition of remains; role of county commission;
liability of funeral home.**

1 (a) Notwithstanding section twenty-two of this article, a
2 person who is eighteen years of age or older and of sound
3 mind, by entering into a preneed funeral contract, as defined
4 in section two, article fourteen, chapter forty-seven of this
5 code, may direct the location, manner and conditions of the
6 disposition of the person's remains and the arrangements for
7 funeral goods and services to be provided upon the person's
8 death. The disposition directions and funeral prearrangements
9 that are contained in a preneed funeral contract are not
10 subject to cancellation to revision unless any resources set
11 aside to fund the preneed funeral contract are insufficient
12 under the terms of the preneed funeral contract to carry out
13 the disposition directions and funeral prearrangements
14 contained in the contract.

15 (b) As to any matter not addressed in a preneed funeral
16 contract as described in subsection (a) of this section and
17 except as provided in subsection (c) of this section, the right
18 to control the disposition of the remains of a deceased person,
19 the location, manner and conditions of disposition, and

20 arrangements for funeral goods and services to be provided
21 vests in the following, in the order named, provided that the
22 person is eighteen years or older and is of sound mind:

23 (1)(A) A person designated by the decedent as the person
24 with the right to control the disposition in an affidavit
25 executed in accordance with paragraph (B) of this
26 subdivision; and

27 (B) A person who is eighteen years of age or older and of
28 sound mind wishing to authorize another person to control
29 the disposition of his or her remains may execute an affidavit
30 before a notary public in substantially the following form:

31 "I, _____, do hereby designate
32 _____ with the right to control the
33 disposition of my remains upon my death. I ___ have/ ___
34 have not attached specific directions concerning the
35 disposition of my remains with which the designee shall
36 substantially comply, provided that these directions are
37 lawful and there are sufficient resources in my estate to carry
38 out the directions.

39 _____
40 Signed

41 State of _____

42 County of _____

43 I, _____, a Notary Public of said
44 County, do certify that _____, as
45 principal whose name is signed to the writing above bearing
46 date on the _____ day of _____, 20____, has this day
47 acknowledged the same before me.

48 Given under my hand this _____ day of _____, 20__.

49 My commission expires: _____

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Notary Public”;

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(2) The surviving spouse of the decedent;

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(3) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one half of the surviving children shall be vested with the rights under this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving children;

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(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

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(5) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than the majority of surviving siblings shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving siblings;

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(6) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than the majority of the surviving grandparents shall be vested with the rights and duties under this section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to those instructions on the part of more than one half of all surviving grandparents;

82 (7) The guardian of the person of the decedent at the time
83 of the decedent's death if one had been appointed;

84 (8) The personal representative of the estate of the
85 decedent;

86 (9) The person in the classes of the next degree of
87 kinship, in descending order, under the laws of descent and
88 distribution to inherit the estate of the decedent. If there is
89 more than one person of the same degree, any person of that
90 degree may exercise the right of disposition;

91 (10) If the disposition of the remains of the decedent is
92 the responsibility of the state or a political subdivision of the
93 state, the public officer, administrator or employee
94 responsible for arranging the final disposition of decedent's
95 remains; or

96 (11) In the absence of any person under subdivisions (1)
97 through (10) of this subsection, any other person willing to
98 assume the responsibilities to act and arrange the final
99 disposition of the decedent's remains, including the funeral
100 director with custody of the body, after attesting in writing
101 that a good-faith effort has been made to no avail to contact
102 the individuals under subdivisions (1) through (10) of this
103 subsection.

104 (c) A person entitled under law to the right of disposition
105 forfeits that right, and the right is passed on to the next
106 qualifying person as listed in subsection (b) of this section, in
107 the following circumstances:

108 (1) Any person charged with murder or voluntary
109 manslaughter in connection with the decedent's death and
110 whose charges are known to the funeral director. However,
111 if the charges against that person are dismissed or if the
112 person is acquitted of the charges, the right of disposition is
113 returned to the person;

114 (2) Any person who does not exercise his or her right of
115 disposition within two days of notification of the death of
116 decedent or within three days of decedent's death, whichever
117 is earlier;

118 (3) If the person and the decedent are spouses and a
119 petition to dissolve the marriage was pending at the time of
120 decedent's death.

121 (d) Any person signing a funeral service agreement,
122 cremation authorization form or any other authorization for
123 disposition shall be deemed to warrant the truthfulness of any
124 facts set forth therein, including the identity of the decedent
125 whose remains are to be buried, cremated or otherwise
126 disposed of, and the party's authority to order the disposition.
127 A funeral home has the right to rely on that funeral service
128 agreement or authorization and shall have the authority to
129 carry out the instructions of the person or persons the funeral
130 home reasonably believes holds the right of disposition. The
131 funeral home has no responsibility to independently
132 investigate the existence of any next of kin or relative of the
133 decedent where a means of disposition is fully set forth in a
134 preneed funeral contract or other written directive of the
135 deceased in accordance with this section. If there is more
136 than one person in a class who are equal in priority and the
137 funeral home has no knowledge of any objection by other
138 members of that class, the funeral home may rely on and act
139 according to the instructions of the first person in the class to
140 make funeral and disposition arrangements, if no other person
141 in that class provides written objections to the funeral home.

142 (e) No funeral establishment or funeral director who relies
143 in good faith upon the instructions of a preneed funeral contract,
144 written directive of the deceased, or an individual claiming the
145 right of disposition in accordance with this section shall be
146 subject to criminal or civil liability or subject to disciplinary
147 action under this section for carrying out the disposition of the
148 remains in accordance with those instructions.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 12. POSTMORTEM EXAMINATIONS.****§61-12-9. Permits required for cremation; fee.**

1 (a) It is the duty of any person cremating, or causing or
2 requesting the cremation of, the body of any dead person who
3 died in this state, to secure a permit for the cremation from
4 the Chief Medical Examiner, the county medical examiner or
5 county coroner of the county wherein the death occurred.
6 Any person who willfully fails to secure a permit for a
7 cremation, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than \$200. A permit for
9 cremation shall be acted upon by the Chief Medical
10 Examiner, the county medical examiner or the county coroner
11 after review of the circumstances surrounding the death, as
12 indicated by the death certificate. The person requesting
13 issuance of a permit for cremation shall pay a reasonable fee,
14 as determined by the Chief Medical Examiner, to the county
15 medical examiner or coroner or to the Office of the Chief
16 Medical Examiner, as appropriate, for issuance of the permit.

17 (b) Any person operating a crematory who does not perform
18 a cremation pursuant to the terms of a cremation contract, or
19 pursuant to the order of a court of competent jurisdiction, within
20 the time contractually agreed upon, or, if the cremation contract
21 does not specify a time period, within twenty-one days of receipt
22 of the deceased person's remains by the crematory, whichever
23 time is less, is guilty of a misdemeanor.

24 (c) Any person operating a crematory who fails to deliver
25 the cremated remains of a deceased person, pursuant to the
26 terms of a cremation contract, or pursuant to the order of a
27 court of competent jurisdiction, within the time contractually
28 agreed upon, or, if the cremation contract does not specify a
29 time period, within thirty-five days of receipt of the deceased
30 person's remains by the crematory, whichever time is less, is
31 guilty of a misdemeanor.

32 (d) Any person convicted of a violation of the provisions
33 of subsection (b) or (c) of this section shall be fined not less
34 than \$1,000 nor more than \$5,000 or confined in jail for a
35 period not to exceed six months, or both.

36 (e) In any criminal proceeding alleging that a person
37 violated the time requirements of this section, it is a defense
38 to the charge that a delay beyond the time periods provided
39 for in this section were caused by circumstances wholly
40 outside the control of the defendant.

41 (f) For purposes of this section, “cremation contract”
42 means an agreement to perform a cremation, as a “cremation”
43 is defined in subsection (g), section three, article six, chapter
44 thirty of this code. A cremation contract is an agreement
45 between a crematory and any authorized person or entity,
46 including, but not limited to, the following persons in order
47 of precedence:

48 (1) The deceased, who has expressed his or her wishes
49 regarding the disposal of their remains through a last will and
50 testament, an advance directive or preneed funeral contract,
51 as defined in section two, article fourteen, chapter forty-five
52 of this code;

53 (2) The surviving spouse of the deceased, unless a
54 petition to dissolve the marriage was pending at the time of
55 decedent’s death;

56 (3) An individual previously designated by the deceased
57 as the person with the right to control disposition of the
58 deceased’s remains in a writing signed and notarized by the
59 deceased: *Provided*, That no person may be designated to
60 serve in such capacity for more than one nonrelative at any
61 one time;

62 (4) The deceased person’s next of kin;

63 (5) A public official charged with arranging the final
64 disposition of an indigent deceased person or an unclaimed
65 corpse;

66 (6) A representative of an institution who is charged with
67 arranging the final disposition of a deceased who donated his
68 or her body to science;

69 (7) A public officer required by statute to arrange the
70 final disposition of a deceased person;

71 (8) Another funeral establishment; or

72 (9) An executor, administrator or other personal
73 representative of the deceased.



CHAPTER 82

**(H. B. 4320 - By Delegates Ferro,
Barker and Caputo)**

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §22-18-17 of the Code of West Virginia, 1931, as amended, relating to the settlement of violations of the Hazardous Waste Management Act by consent agreements, as an alternative to instituting a civil action in the circuit courts of the state.

Be it enacted by the Legislature of West Virginia:

That §22-18-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.**§22-18-17. Civil penalties and injunctive relief.**

1 (a) (1) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant to this
3 article is subject to a civil administrative penalty, to be levied
4 by the secretary, of not more than \$7,500 for each day of
5 violation, not to exceed a maximum of \$22,500. In assessing
6 a penalty, the secretary shall take into account the seriousness
7 of the violation and any good faith efforts to comply with
8 applicable requirements as well as any other appropriate
9 factors as may be established by the secretary by rules
10 promulgated pursuant to this article and article three, chapter
11 twenty-nine-a of this code. No assessment may be levied
12 pursuant to this subsection until after the alleged violator has
13 been notified by certified mail or personal service. The
14 notice shall include a reference to the section of the statute,
15 rule, order or statement of permit conditions that was
16 allegedly violated, a concise statement of the facts alleged to
17 constitute the violation, a statement of the amount of the
18 administrative penalty to be imposed and a statement of the
19 alleged violator's right to an informal hearing. The alleged
20 violator has twenty calendar days from receipt of the notice
21 within which to deliver to the secretary a written request for
22 an informal hearing. If no hearing is requested, the notice
23 becomes a final order after the expiration of the twenty-day
24 period. If a hearing is requested, the secretary shall inform
25 the alleged violator of the time and place of the hearing. The
26 secretary may appoint an assessment officer to conduct the
27 informal hearing and then make a written recommendation to
28 the secretary concerning the assessment of a civil
29 administrative penalty. Within thirty days following the
30 informal hearing, the secretary shall issue and furnish to the
31 violator a written decision, and the reasons therefor,
32 concerning the assessment of a civil administrative penalty.

33 Within thirty days after notification of the secretary's
34 decision, the alleged violator may request a formal hearing
35 before the Environmental Quality Board in accordance with
36 the provisions of article one, chapter twenty-two-b of this
37 code. The authority to levy an administrative penalty is in
38 addition to all other enforcement provisions of this article and
39 the payment of any assessment does not affect the availability
40 of any other enforcement provision in connection with the
41 violation for which the assessment is levied: *Provided*, That
42 no combination of assessments against a violator under this
43 section may exceed \$25,000 per day of each violation:
44 *Provided, however*, That any violation for which the violator
45 has paid a civil administrative penalty assessed under this
46 section may not be the subject of a separate civil penalty
47 action under this article to the extent of the amount of the
48 civil administrative penalty paid. All administrative penalties
49 shall be levied in accordance with rules issued pursuant to
50 subsection (a), section six of this article. The net proceeds of
51 assessments collected pursuant to this subsection shall be
52 deposited in the hazardous waste emergency response fund
53 established pursuant to section three, article nineteen of this
54 chapter.

55 (2) No assessment levied pursuant to subdivision (1), of
56 this subsection becomes due and payable until the procedures
57 for review of the assessment have been completed.

58 (b) (1) Any person who violates any provision of this
59 article, any permit or any rule or order issued pursuant to this
60 article is subject to a civil penalty not to exceed \$25,000 for
61 each day of violation, which penalty shall be recovered in a
62 civil action either in the circuit court in which the violation
63 occurs or in the circuit court of Kanawha County.

64 (2) In addition to the powers and authority granted to the
65 secretary by this chapter to enter into consent agreements,

66 settlements and otherwise enforce this chapter, the secretary
67 shall propose rules for legislative approval in accordance
68 with the provisions of article three, chapter twenty-nine-a of
69 this code to establish a mechanism for the administrative
70 resolution of violations set forth in this section through
71 consent order or agreement as an alternative to instituting a
72 civil action.

73 (c) The secretary may seek an injunction, or may institute
74 a civil action against any person in violation of any
75 provisions of this article or any permit, rule or order issued
76 pursuant to this article. In seeking an injunction, it is not
77 necessary for the secretary to post bond nor to allege or prove
78 at any stage of the proceeding that irreparable damage will
79 occur if the injunction is not issued or that the remedy at law
80 is inadequate. An application for injunctive relief or a civil
81 penalty action under this section may be filed and relief
82 granted notwithstanding the fact that all administrative
83 remedies provided for in this article have not been exhausted
84 or invoked against the person or persons against whom the
85 relief is sought.

86 (d) Upon request of the secretary, the Attorney General,
87 or the prosecuting attorney of the county in which the
88 violation occurs, shall assist the secretary in any civil action
89 under this section.

90 (e) In any action brought pursuant to the provisions of
91 this section, the state, or any agency of the state which
92 prevails, may be awarded costs and reasonable attorney's
93 fees.



CHAPTER 83

**(Com. Sub. for S. B. 437 - By Senators
Kessler, Mr. President, and Hall)
[By Request of the Executive]**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2012.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5, §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9 and §16-5H-10; to amend and reenact §30-1-7a of said code; to amend and reenact §30-5-3 of said code; to amend and reenact §60A-3-308 of said code; to amend and reenact §60A-9-3, §60A-9-4, §60A-9-5 and §60A-9-7 of said code; to amend said code by adding thereto three new sections, designated §60A-9-4a, §60A-9-5a and §60A-9-8; to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-7, §60A-10-8 and §60A-10-11 of said code; to amend said code by adding thereto a new section, designated §60A-10-16; and to amend and reenact §61-12-10 of said code, all relating to substance abuse generally; addressing the regulation of opioid treatment programs in this state; updating rules for opioid treatment program facilities to require clinical guidelines, recovery models, education and training requirements for treatment facility staff and treatment limitations and requirements; addressing the licensing and oversight of chronic pain management clinics; creating the Chronic Pain Clinic Licensing Act; providing definitions; establishing requirements for ownership, licensure, operation and management of pain management clinics; establishing

limitations on the dispensing of controlled substances at a pain management clinic; requiring annual inspections of pain management clinics; setting forth exemptions from the act; providing for suspension or revocation of a pain management clinic license and setting forth due process requirements; providing for prohibitions on practicing at or operating a pain management clinic under certain circumstances; providing civil penalties regarding pain management clinics; providing for notice requirements to applicable licensing boards; requiring rules for the licensure of pain management clinics; removing requirement of certain licensed or certified health care professionals to complete continuing education course work on the subject of end-of-life care; requiring certain licensed or certified health care professionals to complete drug diversion training and best practice prescribing of controlled substances training; requiring certain licensing boards to establish drug diversion training and best practice prescribing of controlled substances training; requiring a valid practitioner-patient relationship to exist prior to compounding or dispensing prescriptions; requiring that buprenorphine combined with naloxone prescribed or dispensed for treatment for opioid addiction be in the form of sublingual film unless medically contraindicated as of September 1, 2012; clarifying certain circumstances that do not establish a valid practitioner-patient relationship; requiring certain persons to submit information to the Controlled Substances Monitoring Program database within twenty-four hours; requiring additional information to be submitted to the Controlled Substances Monitoring Program database; clarifying that reporting is required for certain amounts of drugs dispensed to patients; requiring verification of certain information reported to the Controlled Substances Monitoring Program database; providing certain requirements and training for law-enforcement officials in order to access the Controlled Substances Monitoring Program database; permitting the Controlled Substances Monitoring Program Database Review Committee to query the Controlled Substances Monitoring Program database; requiring the Board

of Pharmacy to review the Controlled Substances Monitoring Program database in order to issue certain reports; permitting the Board of Pharmacy to share certain information contained in the Controlled Substances Monitoring Program database with the Department of Health and Human Resources; requiring the Board of Pharmacy to establish an advisory committee; setting forth the membership of the advisory committee; outlining the advisory committee's scope and duties; requiring the Board of Pharmacy to create a Controlled Substances Monitoring Program Database Review Committee; setting forth the membership of the review committee; outlining the review committee's scope, powers and duties; requiring the Board of Pharmacy to promulgate certain legislative rules; permitting prescribing practitioners to notify law enforcement of certain violations with immunity; requiring the Board of Pharmacy to provide annual reports to the Legislature; requiring various boards that regulate professions with prescriptive authority to require persons licensed by the board to conduct an initial search of the Controlled Substances Monitoring Program database when prescribing a course of treatment that includes prescribing of pain-relieving controlled substances and an annual search of the Controlled Substances Monitoring Program database for certain patients; setting forth penalties for failing to search the Controlled Substances Monitoring Program database in certain circumstances; establishing a felony offense and penalties for unauthorized access, use or disclosure of information contained in the Controlled Substances Monitoring Program database; creating Fight Substance Abuse Fund and setting forth permissible uses for fund; defining terms and updating definitions in the Methamphetamine Laboratory Eradication Act; establishing reduced daily, monthly and annual amount restrictions on the sale, transfer, dispensing or possession of ephedrine, pseudoephedrine and phenylpropanolamine by pharmacies; establishing criminal penalties for purchasing, receiving or possessing certain quantities of ephedrine, pseudoephedrine and phenylpropanolamine; establishing criminal penalties for

pharmacies, wholesalers or other entities which sell, transfer or dispense a product under certain circumstances; amending the restrictions on the sale, transfer or delivery of certain designated precursors to the manufacture of methamphetamine or other controlled substances; requiring offer of patient counseling by a pharmacist upon the sale, transfer or delivery of certain designated precursors to the manufacture of methamphetamine or other controlled substances; requiring certain processing requirements of pharmacists, pharmacy intern and pharmacy technicians; establishing use and requirements of the Multi-State Real-Time Tracking System; requiring pharmacies and retail establishments to electronically submit certain information to the Multi-State Real-Time Tracking System; requiring pharmacies and retail establishments to stop pending sales under certain circumstances; limiting liability of retailers utilizing the Multi-State Real-Time Tracking System under certain circumstances; requiring pharmacies or retail establishments to maintain written logs or electronic record-keeping databases under certain circumstances; providing supersession and preemption of all local laws, ordinances and regulations pertaining to the sale of certain substances; amending reporting requirements and requiring real-time electronic reporting of certain information; providing for law enforcement access to information pertaining to the sale of certain substances; establishing an expiration date for Multi-State Real-Time Tracking System; requiring the National Association of Drug Diversion Investigators to forward certain records to the West Virginia State Police and provide real-time access to the Multi-State Real-Time Tracking System to law enforcement; requiring the West Virginia State Police to submit an annual report with data and statistics on methamphetamine use, production and distribution; and requiring the chief medical officer to provide notice to the Controlled Substances Monitoring Program Database Review Committee in the case of a death caused by overdose.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5, §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9 and §16-5H-10; that §30-1-7a of said code be amended and reenacted; that §30-5-3 of said code be amended and reenacted; that §60A-3-308 of said code be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-5 and §60A-9-7 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §60A-9-4a, §60A-9-5a and §60A-9-8; that §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-7, §60A-10-8 and §60A-10-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §60A-10-16; and that §61-12-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with
2 the provisions of article three, chapter twenty-nine-a of this
3 code that are necessary and proper to effectuate the purposes
4 of this chapter. The secretary may appoint or designate
5 advisory councils of professionals in the areas of hospitals,
6 nursing homes, barbers and beauticians, postmortem
7 examinations, mental health and intellectual disability centers
8 and any other areas necessary to advise the secretary on rules.

9 (b) The rules may include, but are not limited to, the
10 regulation of:

11 (1) Land usage endangering the public health: *Provided,*
12 That no rules may be promulgated or enforced restricting the

13 subdivision or development of any parcel of land within
14 which the individual tracts, lots or parcels exceed two acres
15 each in total surface area and which individual tracts, lots or
16 parcels have an average frontage of not less than one hundred
17 fifty feet even though the total surface area of the tract, lot or
18 parcel equals or exceeds two acres in total surface area, and
19 which tracts are sold, leased or utilized only as single-family
20 dwelling units. Notwithstanding the provisions of this
21 subsection, nothing in this section may be construed to abate
22 the authority of the department to:

23 (A) Restrict the subdivision or development of a tract for
24 any more intense or higher density occupancy than a
25 single-family dwelling unit;

26 (B) Propose or enforce rules applicable to single-family
27 dwelling units for single-family dwelling unit sanitary
28 sewerage disposal systems; or

29 (C) Restrict any subdivision or development which might
30 endanger the public health, the sanitary condition of streams
31 or sources of water supply;

32 (2) The sanitary condition of all institutions and schools,
33 whether public or private, public conveyances, dairies,
34 slaughterhouses, workshops, factories, labor camps, all other
35 places open to the general public and inviting public
36 patronage or public assembly, or tendering to the public any
37 item for human consumption and places where trades or
38 industries are conducted;

39 (3) Occupational and industrial health hazards, the
40 sanitary conditions of streams, sources of water supply,
41 sewerage facilities and plumbing systems and the
42 qualifications of personnel connected with any of those
43 facilities, without regard to whether the supplies or systems
44 are publicly or privately owned; and the design of all water

45 systems, plumbing systems, sewerage systems, sewage
46 treatment plants, excreta disposal methods and swimming
47 pools in this state, whether publicly or privately owned;

48 (4) Safe drinking water, including:

49 (A) The maximum contaminant levels to which all public
50 water systems must conform in order to prevent adverse
51 effects on the health of individuals and, if appropriate,
52 treatment techniques that reduce the contaminant or
53 contaminants to a level which will not adversely affect the
54 health of the consumer. The rule shall contain provisions to
55 protect and prevent contamination of wellheads and well
56 fields used by public water supplies so that contaminants do
57 not reach a level that would adversely affect the health of the
58 consumer;

59 (B) The minimum requirements for: Sampling and
60 testing; system operation; public notification by a public
61 water system on being granted a variance or exemption or
62 upon failure to comply with specific requirements of this
63 section and rules promulgated under this section; record
64 keeping; laboratory certification; as well as procedures and
65 conditions for granting variances and exemptions to public
66 water systems from state public water systems rules; and

67 (C) The requirements covering the production and
68 distribution of bottled drinking water and may establish
69 requirements governing the taste, odor, appearance and other
70 consumer acceptability parameters of drinking water;

71 (5) Food and drug standards, including cleanliness,
72 proscription of additives, proscription of sale and other
73 requirements in accordance with article seven of this chapter
74 as are necessary to protect the health of the citizens of this
75 state;

76 (6) The training and examination requirements for
77 emergency medical service attendants and emergency
78 medical care technician- paramedics; the designation of the
79 health care facilities, health care services and the industries
80 and occupations in the state that must have emergency
81 medical service attendants and emergency medical care
82 technician-paramedics employed and the availability,
83 communications and equipment requirements with respect to
84 emergency medical service attendants and to emergency
85 medical care technician-paramedics. Any regulation of
86 emergency medical service attendants and emergency
87 medical care technician- paramedics may not exceed the
88 provisions of article four-c of this chapter;

89 (7) The health and sanitary conditions of establishments
90 commonly referred to as bed and breakfast inns. For
91 purposes of this article, “bed and breakfast inn” means an
92 establishment providing sleeping accommodations and, at a
93 minimum, a breakfast for a fee. The secretary may not
94 require an owner of a bed and breakfast providing sleeping
95 accommodations of six or fewer rooms to install a
96 restaurant-style or commercial food service facility. The
97 secretary may not require an owner of a bed and breakfast
98 providing sleeping accommodations of more than six rooms
99 to install a restaurant-type or commercial food service facility
100 if the entire bed and breakfast inn or those rooms numbering
101 above six are used on an aggregate of two weeks or less per
102 year;

103 (8) Fees for services provided by the Bureau for Public
104 Health including, but not limited to, laboratory service fees,
105 environmental health service fees, health facility fees and
106 permit fees;

107 (9) The collection of data on health status, the health
108 system and the costs of health care;

109 (10) Opioid treatment programs duly licensed and
110 operating under the requirements of chapter twenty-seven of
111 this code.

112 (A) The Health Care Authority shall develop new
113 certificate of need standards, pursuant to the provisions of
114 article two-d of this chapter, that are specific for opioid
115 treatment program facilities.

116 (B) No applications for a certificate of need for opioid
117 treatment programs may be approved by the Health Care
118 Authority as of the effective date of the 2007 amendments to
119 this subsection.

120 (C) There is a moratorium on the licensure of new opioid
121 treatment programs that do not have a certificate of need as
122 of the effective date of the 2007 amendments to this
123 subsection, which shall continue until the Legislature
124 determines that there is a necessity for additional opioid
125 treatment facilities in West Virginia.

126 (D) The secretary shall file revised emergency rules with
127 the Secretary of State to regulate opioid treatment programs
128 in compliance with the provisions of this section. Any opioid
129 treatment program facility that has received a certificate of
130 need pursuant to article two-d, of this chapter by the Health
131 Care Authority shall be permitted to proceed to license and
132 operate the facility.

133 (E) All existing opioid treatment programs shall be
134 subject to monitoring by the secretary. All staff working or
135 volunteering at opioid treatment programs shall complete the
136 minimum education, reporting and safety training criteria
137 established by the secretary. All existing opioid treatment
138 programs shall be in compliance within one hundred eighty
139 days of the effective date of the revised emergency rules as
140 required herein. The revised emergency rules shall provide
141 at a minimum:

142 (i) That the initial assessment prior to admission for entry
143 into the opioid treatment program shall include an initial drug
144 test to determine whether an individual is either opioid
145 addicted or presently receiving methadone for an opioid
146 addiction from another opioid treatment program.

147 (ii) The patient may be admitted to the opioid treatment
148 program if there is a positive test for either opioids or
149 methadone or there are objective symptoms of withdrawal, or
150 both, and all other criteria set forth in the rule for admission
151 into an opioid treatment program are met. Admission to the
152 program may be allowed to the following groups with a high
153 risk of relapse without the necessity of a positive test or the
154 presence of objective symptoms: Pregnant women with a
155 history of opioid abuse, prisoners or parolees recently
156 released from correctional facilities, former clinic patients
157 who have successfully completed treatment but who believe
158 themselves to be at risk of imminent relapse and HIV patients
159 with a history of intravenous drug use.

160 (iii) That within seven days of the admission of a patient,
161 the opioid treatment program shall complete an initial
162 assessment and an initial plan of care.

163 (iv) That within thirty days after admission of a patient,
164 the opioid treatment program shall develop an individualized
165 treatment plan of care and attach the plan to the patient's
166 chart no later than five days after the plan is developed. The
167 opioid treatment program shall follow guidelines established
168 by a nationally recognized authority approved by the
169 secretary and include a recovery model in the individualized
170 treatment plan of care. The treatment plan is to reflect that
171 detoxification is an option for treatment and supported by the
172 program; that under the detoxification protocol the strength
173 of maintenance doses of methadone should decrease over
174 time, the treatment should be limited to a defined period of
175 time, and participants are required to work toward a drug-free
176 lifestyle.

177 (v) That each opioid treatment program shall report and
178 provide statistics to the Department of Health and Human
179 Resources at least semiannually which includes the total
180 number of patients; the number of patients who have been
181 continually receiving methadone treatment in excess of two
182 years, including the total number of months of treatment for
183 each such patient; the state residency of each patient; the
184 number of patients discharged from the program, including
185 the total months in the treatment program prior to discharge
186 and whether the discharge was for:

187 (A) Termination or disqualification;

188 (B) Completion of a program of detoxification;

189 (C) Voluntary withdrawal prior to completion of all
190 requirements of detoxification as determined by the opioid
191 treatment program;

192 (D) Successful completion of the individualized treatment
193 care plan; or

194 (E) An unexplained reason.

195 (vi) That random drug testing of all patients shall be
196 conducted during the course of treatment at least monthly.
197 For purposes of these rules, “random drug testing” means that
198 each patient of an opioid treatment program facility has a
199 statistically equal chance of being selected for testing at
200 random and at unscheduled times. Any refusal to participate
201 in a random drug test shall be considered a positive test.
202 Nothing contained in this section or the legislative rules
203 promulgated in conformity herewith will preclude any opioid
204 treatment program from administering such additional drug
205 tests as determined necessary by the opioid treatment
206 program.

207 (vii) That all random drug tests conducted by an opioid
208 treatment program shall, at a minimum, test for the following:

209 (A) Opiates, including oxycodone at common levels of
210 dosing;

211 (B) Methadone and any other medication used by the
212 program as an intervention;

213 (C) Benzodiazepine including diazepam, lorazepam,
214 clonazepam and alprazolam;

215 (D) Cocaine;

216 (E) Methamphetamine or amphetamine;

217 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol
218 or dronabinol or other similar substances; or

219 (G) Other drugs determined by community standards,
220 regional variation or clinical indication.

221 (viii) That a positive drug test is a test that results in the
222 presence of any drug or substance listed in this schedule and
223 any other drug or substance prohibited by the opioid
224 treatment program. A positive drug test result after the first
225 six months in an opioid treatment program shall result in the
226 following:

227 (A) Upon the first positive drug test result, the opioid
228 treatment program shall:

229 (1) Provide mandatory and documented weekly
230 counseling of no less than thirty minutes to the patient, which
231 shall include weekly meetings with a counselor who is
232 licensed, certified or enrolled in the process of obtaining
233 licensure or certification in compliance with the rules and on
234 staff at the opioid treatment program;

235 (2) Immediately revoke the take home methadone
236 privilege for a minimum of thirty days; and

237 (B) Upon a second positive drug test result within six
238 months of a previous positive drug test result, the opioid
239 treatment program shall:

240 (1) Provide mandatory and documented weekly
241 counseling of no less than thirty minutes, which shall include
242 weekly meetings with a counselor who is licensed, certified
243 or enrolled in the process of obtaining licensure or
244 certification in compliance with the rules and on staff at the
245 opioid treatment program;

246 (2) Immediately revoke the take-home methadone
247 privilege for a minimum of sixty days; and

248 (3) Provide mandatory documented treatment team
249 meetings with the patient.

250 (C) Upon a third positive drug test result within a period
251 of six months the opioid treatment program shall:

252 (1) Provide mandatory and documented weekly
253 counseling of no less than thirty minutes, which shall include
254 weekly meetings with a counselor who is licensed, certified
255 or enrolled in the process of obtaining licensure or
256 certification in compliance with the rules and on staff at the
257 opioid treatment program;

258 (2) Immediately revoke the take-home methadone
259 privilege for a minimum of one hundred twenty days; and

260 (3) Provide mandatory and documented treatment team
261 meetings with the patient which will include, at a minimum:
262 The need for continuing treatment; a discussion of other
263 treatment alternatives; and the execution of a contract with

264 the patient advising the patient of discharge for continued
265 positive drug tests.

266 (D) Upon a fourth positive drug test within a six-month
267 period, the patient shall be immediately discharged from the
268 opioid treatment program or, at the option of the patient, shall
269 immediately be provided the opportunity to participate in a
270 twenty- one day detoxification plan, followed by immediate
271 discharge from the opioid treatment program: *Provided*, That
272 testing positive solely for tetrahydrocannabinol, delta-9-
273 tetrahydrocannabinol or dronabinol or similar substances
274 shall not serve as a basis for discharge from the program.

275 (ix) That the opioid treatment program must report and
276 provide statistics to the Department of Health and Human
277 Resources demonstrating compliance with the random drug
278 test rules, including:

279 (A) Confirmation that the random drug tests were truly
280 random in regard to both the patients tested and to the times
281 random drug tests were administered by lottery or some other
282 objective standard so as not to prejudice or protect any
283 particular patient;

284 (B) Confirmation that the random drug tests were
285 performed at least monthly for all program participants;

286 (C) The total number and the number of positive results;
287 and

288 (D) The number of expulsions from the program.

289 (x) That all opioid treatment facilities be open for
290 business seven days per week; however, the opioid treatment
291 center may be closed for eight holidays and two training days
292 per year. During all operating hours, every opioid treatment

293 program shall have a health care professional as defined by
294 rule promulgated by the secretary actively licensed in this
295 state present and on duty at the treatment center and a
296 physician actively licensed in this state available for
297 consultation.

298 (xi) That the Office of Health Facility Licensure and
299 Certification develop policies and procedures in conjunction
300 with the Board of Pharmacy that will allow physicians
301 treating patients through an opioid treatment program access
302 to the Controlled Substances Monitoring Program database
303 maintained by the Board of Pharmacy at the patient's intake,
304 before administration of methadone or other treatment in an
305 opioid treatment program, after the initial thirty days of
306 treatment, prior to any take-home medication being granted,
307 after any positive drug test, and at each ninety-day treatment
308 review to ensure the patient is not seeking prescription
309 medication from multiple sources. The results obtained from
310 the Controlled Substances Monitoring Program database shall
311 be maintained with the patient records.

312 (xii) That each opioid treatment program shall establish
313 a peer review committee, with at least one physician member,
314 to review whether the program is following guidelines
315 established by a nationally recognized authority approved by
316 the secretary. The secretary shall prescribe the procedure for
317 evaluation by the peer review. Each opioid treatment
318 program shall submit a report of the peer review results to the
319 secretary on a quarterly basis.

320 (xiii) The secretary shall propose a rule for legislative
321 approval in accordance with the provisions of article three,
322 chapter twenty-nine-a of this code for the distribution of state
323 aid to local health departments and basic public health
324 services funds.

325 The rule shall include the following provisions:

326 Base allocation amount for each county;

327 Establishment and administration of an emergency fund
328 of no more than two percent of the total annual funds of
329 which unused amounts are to be distributed back to local
330 boards of health at the end of each fiscal year;

331 A calculation of funds utilized for state support of local
332 health departments;

333 Distribution of remaining funds on a per capita weighted
334 population approach which factors coefficients for poverty,
335 health status, population density and health department
336 interventions for each county and a coefficient which
337 encourages counties to merge in the provision of public
338 health services;

339 A hold-harmless provision to provide that each local
340 health department receives no less in state support for a
341 period of four years beginning in the 2009 budget year.

342 The Legislature finds that an emergency exists and,
343 therefore, the secretary shall file an emergency rule to
344 implement the provisions of this section pursuant to the
345 provisions of section fifteen, article three, chapter
346 twenty-nine-a of this code. The emergency rule is subject to
347 the prior approval of the Legislative Oversight Commission
348 on Health and Human Resources Accountability prior to
349 filing with the Secretary of State.

350 (xiv) Other health-related matters which the department
351 is authorized to supervise and for which the rule-making
352 authority has not been otherwise assigned.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.**§16-5H-1. Purpose and short title.**

1 This article shall be known as the Chronic Pain Clinic
2 Licensing Act. The purpose of this act is to establish
3 licensing requirements for facilities that treat patients for
4 chronic pain management in order to ensure that patients may
5 be lawfully treated for chronic pain by physicians in facilities
6 that comply with oversight requirements developed by the
7 Department of Health and Human Resources.

§16-5H-2. Definitions.

1 (a) “Chronic pain” means pain that has persisted after
2 reasonable medical efforts have been made to relieve the pain
3 or cure its cause and that has continued, either continuously
4 or episodically, for longer than three continuous months. For
5 purposes of this article, “chronic pain” does not include pain
6 associated with a terminal condition or with a progressive
7 disease that, in the normal course of progression, may
8 reasonably be expected to result in a terminal condition.

9 (b) “Director” means the Director of the Office of Health
10 Facility Licensure and Certification within the Office of the
11 Inspector General.

12 (c) “Owner” means any person, partnership, association
13 or corporation listed as the owner of a pain management
14 clinic on the licensing forms required by this article.

15 (d) “Pain management clinic” means all privately owned
16 pain management clinics, facilities or offices not otherwise
17 exempted from this article and which meets both of the
18 following criteria:

19 (1) Where in any month more than fifty percent of
20 patients of the prescribers or dispensers are prescribed or
21 dispensed opioids or other controlled substances specified in
22 rules promulgated pursuant to this article for chronic pain
23 resulting from non-malignant conditions;

24 (2) The facility meets any other identifying criteria
25 established by the secretary by rule.

26 (e) “Physician” means an individual authorized to
27 practice medicine or surgery or osteopathic medicine or
28 surgery in this state.

29 (f) “Prescriber” means an individual who is authorized by
30 law to prescribe drugs or drug therapy related devices in the
31 course of the individual’s professional practice, including
32 only a medical or osteopathic physician authorized to practice
33 medicine or surgery; a physician assistant or osteopathic
34 physician assistant who holds a certificate to prescribe drugs;
35 or an advanced nurse practitioner who holds a certificate to
36 prescribe.

37 (g) “Secretary” means the Secretary of the West Virginia
38 Department of Health and Human Resources. The secretary
39 may define in rules any term or phrase used in this article
40 which is not expressly defined.

**§16-5H-3. Pain management clinics to obtain license;
application; fees and inspections.**

1 (a) No person, partnership, association or corporation
2 may operate a pain management clinic without first obtaining
3 a license from the secretary in accordance with the provisions
4 of this article and the rules lawfully promulgated pursuant to
5 this article.

6 (b) Any person, partnership, association or corporation
7 desiring a license to operate a pain management clinic in this
8 state shall file with the Office of Health Facility Licensure
9 and Certification an application in such form as the secretary
10 shall prescribe and furnish accompanied by a fee to be
11 determined by the secretary.

12 (c) The Director of the Office of Health Facility
13 Licensure and Certification or his or her designee shall
14 inspect each facility prior to issuing a license and review all
15 documentation submitted with the application. The secretary
16 shall issue a license if the facility is in compliance with the
17 provisions of this article and with the rules lawfully
18 promulgated pursuant to this article.

19 (d) A license shall expire one year from the date of
20 issuance. Sixty days prior to the expiration date, an
21 application for renewal shall be submitted on forms furnished
22 by the secretary. A license shall be renewed if the secretary
23 determines that the applicant is in compliance with this article
24 and with all rules promulgated pursuant to this article. A
25 license issued to one facility pursuant to this article is not
26 transferable or assignable. A change of ownership of a
27 licensed pain management clinic requires submission of a
28 new application.

29 (e) The secretary or his or her designee shall inspect on
30 a periodic basis all pain management clinics that are subject
31 to this article and all rules adopted pursuant to this article to
32 ensure continued compliance.

§16-5H-4. Operational requirements.

1 (a) Any person, partnership, association or corporation
2 that desires to operate a pain management clinic in this state
3 must submit to the director documentation that the facility
4 meets all of the following requirements:

5 (1) The clinic shall be licensed in this state with the
6 secretary, the Secretary of State, the State Tax Department
7 and all other applicable business or license entities.

8 (2) The application shall list all owners of the clinic. At
9 least one owner shall be a physician actively licensed to
10 practice medicine, surgery or osteopathic medicine or surgery
11 in this state. The clinic shall notify the secretary of any
12 change in ownership within ten days of the change and must
13 submit a new application within the time frame prescribed by
14 the secretary.

15 (3) Each pain management clinic shall designate a
16 physician owner who shall practice at the clinic and who will
17 be responsible for the operation of the clinic. Within ten days
18 after termination of a designated physician, the clinic shall
19 notify the director of the identity of another designated
20 physician for that clinic. Failing to have a licensed
21 designated physician practicing at the location of the clinic
22 may be the basis for a suspension or revocation of the clinic
23 license. The designated physician shall:

24 (A) Have a full, active and unencumbered license to
25 practice medicine, surgery or osteopathic medicine or surgery
26 in this state:

27 (B) Meet one of the following training requirements:

28 (i) Complete a pain medicine fellowship that is accredited
29 by the Accreditation Council for Graduate Medical Education
30 or such other similar program as may be approved by the
31 secretary; or

32 (ii) Hold current board certification by the American
33 Board of Pain Medicine or current board certification by the
34 American Board of Anesthesiology or such other board
35 certification as may be approved by the secretary.

36 (C) Practice at the licensed clinic location for which the
37 physician has assumed responsibility;

38 (D) Be responsible for complying with all requirements
39 related to the licensing and operation of the clinic;

40 (E) Supervise, control and direct the activities of each
41 individual working or operating at the facility, including any
42 employee, volunteer or individual under contract, who
43 provides treatment of chronic pain at the clinic or is
44 associated with the provision of that treatment. The
45 supervision, control and direction shall be provided in
46 accordance with rules promulgated by the secretary.

47 (4) All persons employed by the facility shall comply
48 with the requirements for the operation of a pain management
49 clinic established by this article or by any rule adopted
50 pursuant to this article.

51 (5) No person may own or be employed by or associated
52 with a pain management clinic who has previously been
53 convicted of, or pleaded guilty to, any felony in this state or
54 another state or territory of the United States. All owners,
55 employees, volunteers or associates of the clinic shall
56 undergo a criminal records check prior to operation of the
57 clinic or engaging in any work, paid or otherwise. The
58 application for license shall include copies of the background
59 check for each anticipated owner, physician, employee,
60 volunteer or associate. The secretary shall review the results
61 of the criminal records check and may deny licensure for any
62 violation of this requirement. The facility shall complete a
63 criminal records check on any subsequent owner, physician,
64 employee, volunteer or associate of the clinic and submit the
65 results to the secretary for continued review.

66 (6) The clinic may not be owned by, nor may it employ
67 or associate with, any physician or prescriber:

68 (A) Whose Drug Enforcement Administration number
69 has ever been revoked;

70 (B) Whose application for a license to prescribe, dispense
71 or administer a controlled substance has been denied by any
72 jurisdiction; or

73 (C) Who, in any jurisdiction of this state or any other
74 state or territory of the United States, has been convicted of
75 or plead guilty or nolo contendere to an offense that
76 constitutes a felony for receipt of illicit and diverted drugs,
77 including controlled substances, as defined by section one
78 hundred one, article one, chapter sixty-a of this code.

79 (7) A person may not dispense any medication, including
80 a controlled substance, as defined by section one hundred
81 one, article one, chapter sixty-a of this code, on the premises
82 of a licensed pain management clinic unless he or she is a
83 physician or pharmacist licensed in this state. Prior to
84 dispensing or prescribing controlled substances, as defined by
85 section one hundred one, article one, chapter sixty-a of this
86 code, at a pain management clinic, the treating physician
87 must access the Controlled Substances Monitoring Program
88 database maintained by the Board of Pharmacy to ensure the
89 patient is not seeking controlled substances from multiple
90 sources. If the patient receives ongoing treatment, the
91 physician shall also review the Controlled Substances
92 Monitoring Program database at each patient examination or
93 at least every ninety days. The results obtained from the
94 Controlled Substances Monitoring Program database shall be
95 maintained with the patient's medical records.

96 (8) Each clinic location shall be licensed separately,
97 regardless of whether the clinic is operated under the same
98 business name or management as another clinic.

99 (9) A pain management clinic shall not dispense to any
100 patient more than a seventy-two-hour supply of a controlled
101 substance, as defined by section one hundred one, article one,
102 chapter sixty-a of this code.

103 (10) The pain management clinic shall develop patient
104 protocols, treatment plans and profiles, as prescribed by the
105 secretary by rule, and which shall include, but not be limited
106 by, the following guidelines:

107 (A) When a physician diagnoses an individual as having
108 chronic pain, the physician may treat the pain by managing
109 it with medications in amounts or combinations that may not
110 be appropriate when treating other medical conditions. The
111 physician's diagnosis shall be made after having the
112 individual evaluated by one or more other physicians who
113 specialize in the treatment of the area, system or organ of the
114 body perceived as the source of the pain unless the individual
115 has been previously diagnosed as suffering from chronic pain
116 and is referred to the pain management clinic by such
117 diagnosing physician. The physician's diagnosis and
118 treatment decisions shall be made according to accepted and
119 prevailing standards for medical care.

120 (B) The physician shall maintain a record of all of the
121 following:

122 (i) Medical history and physical examination of the
123 individual;

124 (ii) The diagnosis of chronic pain, including signs,
125 symptoms and causes;

126 (iii) The plan of treatment proposed, the patient's
127 response to the treatment and any modification to the plan of
128 treatment;

129 (iv) The dates on which any medications were prescribed,
130 dispensed or administered, the name and address of the
131 individual to or for whom the medications were prescribed,
132 dispensed or administered and the amounts and dosage forms
133 for the drugs prescribed, dispensed or administered;

134 (v) A copy of the report made by the physician to whom
135 referral for evaluation was made.

136 (C) A physician, physician assistant, certified registered
137 nurse anesthetist or advanced nurse practitioner shall perform
138 a physical examination of a patient on the same day that the
139 physician initially prescribes, dispenses or administers a
140 controlled substance to a patient and at least four times a year
141 thereafter at a pain management clinic according to accepted
142 and prevailing standards for medical care.

143 (D) A physician authorized to prescribe controlled
144 substances who practices at a pain management clinic is
145 responsible for maintaining the control and security of his or
146 her prescription blanks and any other method used for
147 prescribing controlled substance pain medication. The
148 physician shall comply with all state and federal requirements
149 for tamper-resistant prescription paper. In addition to any
150 other requirements imposed by statute or rule, the physician
151 shall notify the secretary in writing within twenty-four hours
152 following any theft or loss of a prescription blank or breach
153 of any other method for prescribing pain medication.

154 (c) Upon satisfaction that an applicant has met all of the
155 requirements of this article, the secretary may issue a license
156 to operate a pain management clinic. An entity that obtains
157 this license may possess, have custody or control of, and
158 dispense drugs designated as Schedule II or Schedule III in
159 sections two hundred six or two hundred eight, article two,
160 chapter sixty-a of this code.

§16-5H-5. Exemptions.

1 (a) The following facilities are not pain management
2 clinics subject to the requirements of this article:

3 (1) A facility that is affiliated with an accredited medical
4 school at which training is provided for medical or
5 osteopathic students, residents or fellows, podiatrists,
6 dentists, nurses, physician assistants, veterinarians or any
7 affiliated facility to the extent that it participates in the
8 provision of the instruction;

9 (2) A facility that does not prescribe or dispense
10 controlled substances for the treatment of chronic pain;

11 (3) A hospital licensed in this state, a facility located on
12 the campus of a licensed hospital that is owned, operated or
13 controlled by that licensed hospital, and an ambulatory health
14 care facility as defined by section two, article two-d, chapter
15 sixteen of this code that is owned, operated or controlled by
16 a licensed hospital;

17 (4) A physician practice owned or controlled, in whole or
18 in part, by a licensed hospital or by an entity that owns or
19 controls, in whole or in part, one or more licensed hospitals;

20 (5) A hospice program licensed in this state;

21 (6) A nursing home licensed in this state;

22 (7) An ambulatory surgical facility as defined by section
23 two, article two-d, chapter sixteen of this code; and

24 (8) A facility conducting clinical research that may use
25 controlled substances in studies approved by a hospital-based
26 institutional review board or an institutional review board
27 accredited by the association for the accreditation of human
28 research protection programs.

29 (b) Any facility that is not included in this section may
30 petition to the secretary for an exemption from the
31 requirements of this article. All such petitions are subject to
32 the administrative procedures requirements of chapter
33 twenty-nine-a of this code.

§16-5H-6. Inspection.

1 (a) The Office of Health Facility Licensure and
2 Certification shall inspect each pain management clinic
3 annually, including a review of the patient records, to ensure
4 that it complies with this article and the applicable rules.

5 (b) During an onsite inspection, the inspector shall make
6 a reasonable attempt to discuss each violation with the
7 designated physician or other owners of the pain management
8 clinic before issuing a formal written notification.

9 (c) Any action taken to correct a violation shall be
10 documented in writing by the designated physician or other
11 owners of the pain management clinic and verified by
12 follow-up visits by the Office of Health Facility Licensure
13 and Certification.

§16-5H-7. Suspension; revocation.

1 (a) The secretary may suspend or revoke a license issued
2 pursuant to this article if the provisions of this article or of
3 the rules promulgated pursuant to this article are violated.
4 The secretary may revoke a clinic's license and prohibit all
5 physicians associated with that pain management clinic from
6 practicing at the clinic location based upon an annual or
7 periodic inspection and evaluation.

8 (b) Before any such license is suspended or revoked,
9 however, written notice shall be given the licensee, stating
10 the grounds of the complaint, and the date, time and place set

11 for the hearing on the complaint, which date shall not be less
12 than thirty days from the time notice is given. The notice
13 shall be sent by certified mail to the licensee at the address
14 where the pain management clinic concerned is located. The
15 licensee shall be entitled to be represented by legal counsel
16 at the hearing.

17 (c) If a license is revoked as herein provided, a new
18 application for a license shall be considered by the secretary
19 if, when and after the conditions upon which revocation was
20 based have been corrected and evidence of this fact has been
21 furnished. A new license shall then be granted after proper
22 inspection has been made and all provisions of this article
23 and rules promulgated pursuant to this article have been
24 satisfied.

25 (d) All of the pertinent provisions of article five, chapter
26 twenty-nine-a of this code shall apply to and govern any
27 hearing authorized and required by the provisions of this
28 article and the administrative procedure in connection
29 therewith.

30 (e) Any applicant or licensee who is dissatisfied with the
31 decision of the secretary as a result of the hearing provided in
32 this section may, within thirty days after receiving notice of
33 the decision, appeal the decision to the Circuit Court of
34 Kanawha County, in term or in vacation, for judicial review
35 of the decision.

36 (f) The court may affirm, modify or reverse the decision
37 of the secretary and either the applicant or licensee or the
38 secretary may appeal from the court's decision to the
39 Supreme Court of Appeals.

40 (g) If the license of a pain management clinic is revoked
41 or suspended, the designated physician of the clinic, any
42 other owner of the clinic or the owner or lessor of the clinic

43 property shall cease to operate the facility as a pain
44 management clinic as of the effective date of the suspension
45 or revocation. The owner or lessor of the clinic property is
46 responsible for removing all signs and symbols identifying
47 the premises as a pain management clinic within thirty days.

48 (h) Upon the effective date of the suspension or
49 revocation, the designated physician of the pain management
50 clinic shall advise the secretary and the Board of Pharmacy
51 of the disposition of all drugs located on the premises. The
52 disposition is subject to the supervision and approval of the
53 secretary. Drugs that are purchased or held by a pain
54 management clinic that is not licensed may be deemed
55 adulterated.

56 (i) If the license of a pain management clinic is suspended
57 or revoked, any person named in the licensing documents of
58 the clinic, including persons owning or operating the pain
59 management clinic, may not, as an individual or as part of a
60 group, apply to operate another pain management clinic for
61 five years after the date of suspension or revocation.

62 (j) The period of suspension for the license of a pain
63 management clinic shall be prescribed by the secretary, but
64 may not exceed one year.

§16-5H-8. Violations; penalties; injunction.

1 (a) Any person, partnership, association or corporation
2 which establishes, conducts, manages or operates a pain
3 management clinic without first obtaining a license therefor
4 as herein provided, or which violates any provisions of this
5 article or any rule lawfully promulgated pursuant to this
6 article, shall be assessed a civil penalty by the secretary in
7 accordance with this subsection. Each day of continuing
8 violation after conviction shall be considered a separate
9 violation:

10 (1) If a pain management clinic or any owner or
11 designated physician is found to be in violation of any
12 provision of this article, unless otherwise noted herein, the
13 secretary may suspend or revoke the clinic's license.

14 (2) If the clinic's designated physician knowingly and
15 intentionally misrepresents actions taken to correct a
16 violation, the secretary may impose a civil penalty not to
17 exceed \$10,000, and, in the case of an owner-operated pain
18 management clinic, revoke or deny a pain management
19 clinic's license.

20 (3) If an owner or designated physician of a pain
21 management clinic concurrently operates an unlicensed pain
22 management clinic, the secretary may impose a civil penalty
23 upon the owner or physician, or both, not to exceed \$5,000
24 per day.

25 (4) If the owner of a pain management clinic that requires
26 a license under this article fails to apply for a new license for
27 the clinic upon a change-of-ownership and operates the clinic
28 under the new ownership, the secretary may impose a civil
29 penalty not to exceed \$5,000.

30 (5) If a physician knowingly operates, owns or manages
31 an unlicensed pain management clinic that is required to be
32 licensed pursuant to this article; knowingly prescribes or
33 dispenses or causes to be prescribed or dispensed, controlled
34 substances in an unlicensed pain management clinic that is
35 required to be licensed; or licenses a pain management clinic
36 through misrepresentation or fraud; procures or attempts to
37 procure a license for a pain management clinic for any other
38 person by making or causing to be made any false
39 representation, the secretary may assess a civil penalty of not
40 more than \$20,000. The penalty may be in addition to or in
41 lieu of any other action that may be taken by the secretary or
42 any other board, court or entity.

43 (b) Notwithstanding the existence or pursuit of any other
44 remedy, the secretary may, in the manner provided by law,
45 maintain an action in the name of the state for an injunction
46 against any person, partnership, association, or corporation to
47 restrain or prevent the establishment, conduct, management
48 or operation of any pain management clinic or violation of
49 any provisions of this article or any rule lawfully
50 promulgated thereunder without first obtaining a license
51 therefor in the manner hereinbefore provided.

52 (c) In determining whether a penalty is to be imposed and
53 in fixing the amount of the penalty, the secretary shall
54 consider the following factors:

55 (1) The gravity of the violation, including the probability
56 that death or serious physical or emotional harm to a patient
57 has resulted, or could have resulted, from the pain
58 management clinic's actions or the actions of the designated
59 or practicing physician, the severity of the action or potential
60 harm, and the extent to which the provisions of the applicable
61 laws or rules were violated;

62 (2) What actions, if any, the owner or designated
63 physician took to correct the violations;

64 (3) Whether there were any previous violations at the
65 pain management clinic; and

66 (4) The financial benefits that the pain management clinic
67 derived from committing or continuing to commit the violation.

68 (d) Upon finding that a physician has violated the
69 provisions of this article or rules adopted pursuant to this
70 article, the secretary shall provide notice of the violation to
71 the applicable licensing board.

§16-5H-9. Rules.

1 (a) The Secretary of the Department of Health and
2 Human Resources, in collaboration with the West Virginia

3 Board of Medicine and the West Virginia Board of
4 Osteopathy, shall promulgate rules in accordance with the
5 provisions of chapter twenty-nine-a of this code for the
6 licensure of pain management clinics to ensure adequate care,
7 treatment, health, safety, welfare and comfort of patients at
8 these facilities. These rules shall include, at a minimum:

9 (1) The process to be followed by applicants seeking a
10 license;

11 (2) The qualifications and supervision of licensed and
12 non-licensed personnel at pain management clinics and
13 training requirements for all facility health care practitioners
14 who are not regulated by another board;

15 (3) The provision and coordination of patient care,
16 including the development of a written plan of care;

17 (4) The management, operation, staffing and equipping
18 of the pain management clinic;

19 (5) The clinical, medical, patient and business records
20 kept by the pain management clinic;

21 (6) The procedures for inspections and for the review of
22 utilization and quality of patient care;

23 (7) The standards and procedures for the general operation
24 of a pain management clinic, including facility operations,
25 physical operations, infection control requirements, health and
26 safety requirements and quality assurance;

27 (8) Identification of drugs that may be used to treat
28 chronic pain that identify a facility as a pain management
29 clinic, including, at a minimum, tramadol and carisoprodol;

30 (9) Any other criteria that identify a facility as a pain
31 management clinic;

32 (10) The standards and procedures to be followed by an
33 owner in providing supervision, direction and control of
34 individuals employed by or associated with a pain
35 management clinic;

36 (11) Data collection and reporting requirements; and

37 (12) Such other standards or requirements as the secretary
38 determines are appropriate.

39 (b) The rules authorized by this section may be filed as
40 emergency rules if deemed necessary to promptly effectuate
41 the purposes of this article.

§16-5H-10. Advertisement disclosure.

1 Any advertisement made by or on behalf of a pain
2 management clinic through public media, such as a telephone
3 directory, medical directory, newspaper or other periodical,
4 outdoor advertising, radio or television, or through written or
5 recorded communication, concerning the treatment of chronic
6 pain, as defined in section two of this article, shall include the
7 name of, at a minimum, one physician owner responsible for
8 the content of the advertisement.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-7a. Continuing education.

1 (a) Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to license
3 renewal. Each board shall develop continuing education
4 criteria appropriate to its discipline, which shall include, but
5 not be limited to, course content, course approval, hours
6 required and reporting periods.

7 (b) Notwithstanding any other provision of this code or
8 the provision of any rule to the contrary, each person issued
9 a license to practice medicine and surgery or a license to
10 practice podiatry or licensed as a physician assistant by the
11 West Virginia Board of Medicine, each person issued a
12 license to practice dentistry by the West Virginia Board of
13 Dental Examiners, each person issued a license to practice
14 optometry by the West Virginia Board of Optometry, each
15 person licensed as a pharmacist by the West Virginia Board
16 of Pharmacy, each person licensed to practice registered
17 professional nursing or licensed as an advanced nurse
18 practitioner by the West Virginia Board of Examiners for
19 Registered Professional Nurses, each person licensed as a
20 licensed practical nurse by the West Virginia State Board of
21 Examiners for Licensed Practical Nurses and each person
22 licensed to practice medicine and surgery as an osteopathic
23 physician and surgeon or licensed or certified as an
24 osteopathic physician assistant by the West Virginia Board of
25 Osteopathy shall complete drug diversion training and best
26 practice prescribing of controlled substances training, as the
27 trainings are established by his or her respective licensing
28 board, if that person prescribes, administers, or dispenses a
29 controlled substance, as that term is defined in section one
30 hundred one, article one, chapter sixty-a of this code.

31 (1) Notwithstanding any other provision of this code or
32 the provision of any rule to the contrary, the West Virginia
33 Board of Medicine, the West Virginia Board of Dental
34 Examiners, the West Virginia Board of Optometry, the West
35 Virginia Board of Pharmacy, the West Virginia Board of
36 Examiners for Registered Professional Nurses, the West
37 Virginia State Board of Examiners for Licensed Practical
38 Nurses and the West Virginia Board of Osteopathy shall
39 establish continuing education requirements and criteria
40 appropriate to their respective discipline on the subject of
41 drug diversion training and best practice prescribing of
42 controlled substances training for each person issued a
43 license or certificate by their respective board who prescribes,

44 administers or dispenses a controlled substance, as that term
45 is defined in section one hundred one, article one, chapter
46 sixty-a of this code, and shall develop a certification form
47 pursuant to subdivision (b)(2) of this section.

48 (2) Each person who receives his or her initial license or
49 certificate from any of the boards set forth in subsection (b)
50 shall complete the continuing education requirements set
51 forth in subsection (b) within one year of receiving his or her
52 initial license from that board and each person licensed or
53 certified by any of the boards set forth in subsection (b) who
54 has held his or her license or certificate for longer than one
55 year shall complete the continuing education requirements set
56 forth in subsection (b) as a prerequisite to each license
57 renewal: *Provided*, That a person subject to subsection (b)
58 may waive the continuing education requirements for license
59 renewal set forth in subsection (b) if he or she completes and
60 submits to his or her licensing board a certification form
61 developed by his or her licensing board attesting that he or
62 she has not prescribed, administered, or dispensed a
63 controlled substance, as that term is defined in section one
64 hundred one, article one, chapter sixty-a of this code, during
65 the entire applicable reporting period.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

**§30-5-3. When licensed pharmacist required; person not
licensed pharmacist, pharmacy technician or
licensed intern not to compound prescriptions or
dispense poisons or narcotics; licensure of
interns; prohibiting the dispensing of
prescription orders in absence of
practitioner-patient relationship.**

1 (a) It is unlawful for any person not a pharmacist, or who
2 does not employ a pharmacist, to conduct any pharmacy or

3 store for the purpose of retailing, compounding or dispensing
4 prescription drugs or prescription devices.

5 (b) It is unlawful for the proprietor of any store or
6 pharmacy, any ambulatory health care facility, as that term is
7 defined in section one, article five-b, chapter sixteen of this
8 code, that offers pharmaceutical care, or a facility operated to
9 provide health care or mental health care services free of
10 charge or at a reduced rate and that operates a charitable
11 clinic pharmacy to permit any person not a pharmacist to
12 compound or dispense prescriptions or prescription refills or
13 to retail or dispense the poisons and narcotic drugs named in
14 sections two, three and six, article eight, chapter sixteen of
15 this code: *Provided*, That a licensed intern may compound
16 and dispense prescriptions or prescription refills under the
17 direct supervision of a pharmacist: *Provided, however*, That
18 registered pharmacy technicians may assist in the preparation
19 and dispensing of prescriptions or prescription refills,
20 including, but not limited to, reconstitution of liquid
21 medications, typing and affixing labels under the direct
22 supervision of a licensed pharmacist.

23 (c) It is the duty of a pharmacist or employer who
24 employs an intern to license the intern with the board within
25 ninety days after employment. The board shall furnish proper
26 forms for this purpose and shall issue a certificate to the
27 intern upon licensure.

28 (d) The experience requirement for licensure as a
29 pharmacist shall be computed from the date certified by the
30 supervising pharmacist as the date of entering the internship.
31 If the internship is not registered with the Board of Pharmacy,
32 then the intern shall receive no credit for the experience when
33 he or she makes application for examination for licensure as
34 a pharmacist: *Provided*, That credit may be given for the
35 unregistered experience if an appeal is made and evidence

36 produced showing experience was obtained but not registered
37 and that failure to register the internship experience was not
38 the fault of the intern.

39 (e) An intern having served part or all of his or her
40 internship in a pharmacy in another state or foreign country
41 shall be given credit for the same when the affidavit of his or
42 her internship is signed by the pharmacist under whom he or
43 she served, and it shows the dates and number of hours
44 served in the internship and when the affidavit is attested by
45 the secretary of the State Board of Pharmacy of the state or
46 country where the internship was served.

47 (f) Up to one third of the experience requirement for
48 licensure as a pharmacist may be fulfilled by an internship in
49 a foreign country.

50 (g) No pharmacist may compound or dispense any
51 prescription order when he or she has knowledge that the
52 prescription was issued by a practitioner without establishing
53 a valid practitioner-patient relationship. An online or
54 telephonic evaluation by questionnaire, or an online or
55 telephonic consultation, is inadequate to establish a valid
56 practitioner-patient relationship: *Provided*, That this
57 prohibition does not apply:

58 (1) In a documented emergency;

59 (2) In an on-call or cross-coverage situation; or

60 (3) Where patient care is rendered in consultation with
61 another practitioner who has an ongoing relationship with the
62 patient and who has agreed to supervise the patient's
63 treatment, including the use of any prescribed medications.

**CHAPTER 60A. UNIFORM 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.

40 (e) Notwithstanding any provision of this code to the
41 contrary, on or after September 1, 2012, any practitioner or
42 entity prescribing or dispensing a combination of
43 buprenorphine and naloxone to treat opioid addiction shall
44 only prescribe or dispense said product in the form of
45 sublingual film unless the sublingual film is clinically
46 contraindicated. If the prescriber or dispenser determines that
47 sublingual film is contraindicated he or she shall document
48 the reasons for not dispensing sublingual film in the patient's
49 file or chart.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

1 (a) On or before September 1, 2002, the Board of
2 Pharmacy shall implement a program wherein a central
3 repository is established and maintained which shall contain

4 such information as is required by the provisions of this
5 article regarding Schedule II, III and IV controlled substance
6 prescriptions written or filled in this state. In implementing
7 this program, the Board of Pharmacy shall consult with the
8 West Virginia State Police, the licensing boards of
9 practitioners affected by this article and affected practitioners.

10 (b) The program authorized by subsection (a) of this
11 section shall be designed to minimize inconvenience to
12 patients, prescribing practitioners and pharmacists while
13 effectuating the collection and storage of the required
14 information. The State Board of Pharmacy shall allow
15 reporting of the required information by electronic data
16 transfer where feasible, and where not feasible, on reporting
17 forms promulgated by the Board of Pharmacy. The
18 information required to be submitted by the provisions of this
19 article shall be required to be filed no more frequently than
20 within twenty-four hours.

21 (c) (1) The State Board of Pharmacy shall provide for the
22 electronic transmission of the information required to be
23 provided by this article by and through the use of a toll-free
24 telephone line.

25 (2) A dispenser, who does not have an automated
26 record-keeping system capable of producing an electronic
27 report in the established format may request a waiver from
28 electronic reporting. The request for a waiver shall be made
29 to the State Board of Pharmacy in writing and shall be
30 granted if the dispenser agrees in writing to report the data by
31 submitting a completed "Pharmacy Universal Claim Form"
32 as defined by legislative rule.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in Schedule II, III or IV, as

3 established under the provisions of article two of this chapter
4 or whenever a prescription for the controlled substance is
5 filled by: (i) A pharmacist or pharmacy in this state; (ii) a
6 hospital, or other health care facility, for out-patient use; or
7 (iii) a pharmacy or pharmacist licensed by the Board of
8 Pharmacy, but situated outside this state for delivery to a
9 person residing in this state, the medical services provider,
10 health care facility, pharmacist or pharmacy shall, in a
11 manner prescribed by rules promulgated by the Board of
12 Pharmacy under this article, report the following information,
13 as applicable:

14 (1) The name, address, pharmacy prescription number
15 and Drug Enforcement Administration controlled substance
16 registration number of the dispensing pharmacy or the
17 dispensing physician or dentist;

18 (2) The full legal name, address and birth date of the
19 person for whom the prescription is written;

20 (3) The name, address and Drug Enforcement
21 Administration controlled substances registration number of
22 the practitioner writing the prescription;

23 (4) The name and national drug code number of the
24 Schedule II, III and IV controlled substance dispensed;

25 (5) The quantity and dosage of the Schedule II, III and IV
26 controlled substance dispensed;

27 (6) The date the prescription was written and the date
28 filled;

29 (7) The number of refills, if any, authorized by the
30 prescription;

31 (8) If the prescription being dispensed is being picked up
32 by someone other than the patient on behalf of the patient, the

33 full legal name, address and birth date of the person picking
34 up the prescription as set forth on the person's government-
35 issued photo identification card shall be retained in either
36 print or electronic form until such time as otherwise directed
37 by rule promulgated by the board of pharmacy; and

38 (9) The source of payment for the controlled substance
39 dispensed.

40 (b) The Board of Pharmacy may prescribe by rule
41 promulgated under this article the form to be used in
42 prescribing a Schedule II, III and IV substance if, in the
43 determination of the board, the administration of the
44 requirements of this section would be facilitated.

45 (c) Products regulated by the provisions of article ten of
46 this chapter shall be subject to reporting pursuant to the
47 provisions of this article to the extent set forth in said article.

48 (d) Reporting required by this section is not required for
49 a drug administered directly to a patient by a practitioner.
50 Reporting is, however, required by this section for a drug
51 dispensed to a patient by a practitioner: *Provided*, That the
52 quantity dispensed may not exceed an amount adequate to
53 treat the patient for a maximum of seventy-two hours with no
54 greater than two seventy-two-hour cycles dispensed in any
55 fifteen-day period of time.

§60A-9-4a. Verification of identity.

1 Prior to releasing a Schedule II, III or IV controlled
2 substance sold at retail, a pharmacist or pharmacy shall verify
3 the full legal name, address and birth date of the person
4 receiving or otherwise acquiring the controlled substance by
5 requiring the presentation of a valid government-issued photo
6 identification card. This information shall be reported in
7 accordance with the provisions of this article information

8 shall be retained in either print or electronic form until such
9 time as otherwise directed by rule promulgated by the board
10 of pharmacy.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a) (1) The information required by this article to be kept
2 by the State Board of Pharmacy is confidential and not
3 subject to the provisions of chapter twenty-nine-b of this code
4 or obtainable as discovery in civil matters absent a court
5 order and is open to inspection only by inspectors and agents
6 of the State Board of Pharmacy, members of the West
7 Virginia State Police expressly authorized by the
8 Superintendent of the West Virginia State Police to have
9 access to the information, authorized agents of local
10 law-enforcement agencies as members of a federally
11 affiliated drug task force, authorized agents of the federal
12 Drug Enforcement Administration, duly authorized agents of
13 the Bureau for Medical Services, duly authorized agents of
14 the Office of the Chief Medical Examiner for use in
15 post-mortem examinations, duly authorized agents of
16 licensing boards of practitioners in this state and other states
17 authorized to prescribe Schedules II, III and IV controlled
18 substances, prescribing practitioners and pharmacists and
19 persons with an enforceable court order or regulatory agency
20 administrative subpoena: *Provided*, That all law-enforcement
21 personnel who have access to the Controlled Substances
22 Monitoring Program database shall be granted access in
23 accordance with applicable state laws and Board of Pharmacy
24 legislative rules, shall be certified as a West Virginia
25 law-enforcement officer and shall have successfully
26 completed United States Drug Enforcement Administration
27 Diversion Training and National Association of Drug
28 Diversion Investigation Training. All information released
29 by the State Board of Pharmacy must be related to a specific
30 patient or a specific individual or entity under investigation

31 by any of the above parties except that practitioners who
32 prescribe or dispense controlled substances may request
33 specific data related to their Drug Enforcement
34 Administration controlled substance registration number or
35 for the purpose of providing treatment to a patient: *Provided,*
36 *however,* That the West Virginia Controlled Substances
37 Monitoring Program Database Review Committee established
38 in subsection (b) of this section is authorized to query the
39 database to comply with said subsection.

40 (2) Subject to the provisions of subdivision (1) of this
41 subsection, the board shall also review the West Virginia
42 Controlled Substance Monitoring Program database and issue
43 reports that identify abnormal or unusual practices of patients
44 who exceed parameters as determined by the advisory
45 committee established in this section. The board shall
46 communicate with prescribers and dispensers to more
47 effectively manage the medications of their patients in the
48 manner recommended by the advisory committee. All other
49 reports produced by the board shall be kept confidential. The
50 board shall maintain the information required by this article
51 for a period of not less than five years. Notwithstanding any
52 other provisions of this code to the contrary, data obtained
53 under the provisions of this article may be used for
54 compilation of educational, scholarly or statistical purposes,
55 and may be shared with the West Virginia Department of
56 Health and Human Resources for those purposes, as long as
57 the identities of persons or entities and any personally
58 identifiable information, including protected health
59 information, contained therein shall be redacted, scrubbed or
60 otherwise irreversibly destroyed in a manner that will
61 preserve the confidential nature of the information. No
62 individual or entity required to report under section four of
63 this article may be subject to a claim for civil damages or
64 other civil relief for the reporting of information to the Board
65 of Pharmacy as required under and in accordance with the
66 provisions of this article.

67 (3) The board shall establish an advisory committee to
68 develop, implement and recommend parameters to be used in
69 identifying abnormal or unusual usage patterns of patients in
70 this state. This advisory committee shall:

71 (A) Consist of the following members: A physician
72 licensed by the West Virginia Board of Medicine, a dentist
73 licensed by the West Virginia Board of Dental Examiners, a
74 physician licensed by the West Virginia Board of Osteopathy,
75 a licensed physician certified by the American Board of Pain
76 Medicine, a licensed physician board certified in medical
77 oncology recommended by the West Virginia State Medical
78 Association, a licensed physician board certified in palliative
79 care recommended by the West Virginia Center on End of
80 Life Care, a pharmacist licensed by the West Virginia Board
81 of Pharmacy, a licensed physician member of the West
82 Virginia Academy of Family Physicians, an expert in drug
83 diversion and such other members as determined by the
84 board.

85 (B) Recommend parameters to identify abnormal or
86 unusual usage patterns of controlled substances for patients
87 in order to prepare reports as requested in accordance with
88 subsection (a), subdivision (2) of this section.

89 (C) Make recommendations for training, research and
90 other areas that are determined by the committee to have the
91 potential to reduce inappropriate use of prescription drugs in
92 this state, including, but not limited to, studying issues related
93 to diversion of controlled substances used for the
94 management of opioid addiction.

95 (D) Monitor the ability of medical services providers,
96 health care facilities, pharmacists and pharmacies to meet the
97 twenty-four hour reporting requirement for the Controlled
98 Substances Monitoring Program set forth in section three of
99 this article, and report on the feasibility of requiring real-time
100 reporting.

101 (E) Establish outreach programs with local law
102 enforcement to provide education to local law enforcement
103 on the requirements and use of the Controlled Substances
104 Monitoring Program database established in this article.

105 (b) The Board of Pharmacy shall create a West Virginia
106 Controlled Substances Monitoring Program Database Review
107 Committee of individuals consisting of two prosecuting
108 attorneys from West Virginia counties, two physicians with
109 specialties which require extensive use of controlled
110 substances and a pharmacist who is trained in the use and
111 abuse of controlled substances. The review committee may
112 determine that an additional physician who is an expert in the
113 field under investigation be added to the team when the facts
114 of a case indicate that the additional expertise is required.
115 The review committee, working independently, may query
116 the database based on parameters established by the advisory
117 committee. The review committee may make determinations
118 on a case-by-case basis on specific unusual prescribing or
119 dispensing patterns indicated by outliers in the system or
120 abnormal or unusual usage patterns of controlled substances
121 by patients which the review committee has reasonable cause
122 to believe necessitates further action by law enforcement or
123 the licensing board having jurisdiction over the prescribers or
124 dispensers under consideration. The review committee shall
125 also review notices provided by the chief medical examiner
126 pursuant to subsection (h), section ten, article twelve, chapter
127 sixty-one of this code and determine on a case-by-case basis
128 whether a practitioner who prescribed or dispensed a
129 controlled substance resulting in or contributing to the drug
130 overdose may have breached professional or occupational
131 standards or committed a criminal act when prescribing the
132 controlled substance at issue to the decedent. Only in those
133 cases in which there is reasonable cause to believe a breach
134 of professional or occupational standards or a criminal act
135 may have occurred, the review committee shall notify the
136 appropriate professional licensing agency having jurisdiction

137 over the applicable prescriber or dispenser and appropriate
138 law-enforcement agencies and provide pertinent information
139 from the database for their consideration. The number of
140 cases identified shall be determined by the review committee
141 based on a number that can be adequately reviewed by the
142 review committee. The information obtained and developed
143 may not be shared except as provided in this article and is not
144 subject to the provisions of chapter twenty-nine-b of this code
145 or obtainable as discovering in civil matters absent a court
146 order.

147 (c) The Board of Pharmacy is responsible for establishing
148 and providing administrative support for the advisory
149 committee and the West Virginia Controlled Substances
150 Monitoring Program Database Review Committee. The
151 advisory committee and the review committee shall elect a
152 chair by majority vote. Members of the advisory committee
153 and the review committee may not be compensated in their
154 capacity as members but shall be reimbursed for reasonable
155 expenses incurred in the performance of their duties.

156 (d) The board shall promulgate rules with advice and
157 consent of the advisory committee, in accordance with the
158 provisions of article three, chapter twenty-nine-a of this code
159 on or before June 1, 2013. The legislative rules must include,
160 but shall not be limited to, the following matters: (1)
161 Identifying parameters used in identifying abnormal or
162 unusual prescribing or dispensing patterns; (2) processing
163 parameters and developing reports of abnormal or unusual
164 prescribing or dispensing patterns for patients, practitioners
165 and dispensers; (3) establishing the information to be
166 contained in reports and the process by which the reports will
167 be generated and disseminated; and (4) setting up processes
168 and procedures to ensure that the privacy, confidentiality, and
169 security of information collected, recorded, transmitted and
170 maintained by the review committee is not disclosed except
171 as provided in this section.

172 (e) All practitioners, as that term is defined in section one
173 hundred-one, article two of this chapter who prescribe or
174 dispense schedule II, III or IV controlled substances shall, on
175 or before July 1, 2011, have online or other form of electronic
176 access to the West Virginia Controlled Substances
177 Monitoring Program database;

178 (f) Persons or entities with access to the West Virginia
179 Controlled Substances Monitoring Program database
180 pursuant to this section may, pursuant to rules promulgated
181 by the Board of Pharmacy, delegate appropriate personnel to
182 have access to said database;

183 (g) Good faith reliance by a practitioner on information
184 contained in the West Virginia Controlled Substances
185 Monitoring Program database in prescribing or dispensing or
186 refusing or declining to prescribe or dispense a schedule II,
187 III or IV controlled substance shall constitute an absolute
188 defense in any civil or criminal action brought due to
189 prescribing or dispensing or refusing or declining to prescribe
190 or dispense; and

191 (h) A prescribing or dispensing practitioner may notify
192 law enforcement of a patient who, in the prescribing or
193 dispensing practitioner's judgment, may be in violation of
194 section four hundred ten, article four of this chapter, based on
195 information obtained and reviewed from the controlled
196 substances monitoring database. A prescribing or dispensing
197 practitioner who makes a notification pursuant to this
198 subsection is immune from any civil, administrative or
199 criminal liability that otherwise might be incurred or imposed
200 because of the notification if the notification is made in good
201 faith.

202 (i) Nothing in the article may be construed to require a
203 practitioner to access the West Virginia Controlled
204 Substances Monitoring Program database except as provided
205 in section five-a of this article.

206 (j) The Board of Pharmacy shall provide an annual report
207 on the West Virginia Controlled Substance Monitoring
208 Program to the Legislative Oversight Commission on Health
209 and Human Resources Accountability with recommendations
210 for needed legislation no later than January 1 of each year.

**§60A-9-5a. Practitioner requirements to conduct annual search
of the database; required rulemaking.**

1 (a) Upon initially prescribing or dispensing any
2 pain-relieving controlled substance for a patient and at least
3 annually thereafter should the prescriber or dispenser
4 continue to treat the patient with controlled substances, all
5 persons with prescriptive or dispensing authority and in
6 possession of a valid Drug Enforcement Administration
7 registration identification number and, who are licensed by
8 the Board of Medicine as set forth in article three, chapter
9 thirty of this code, the Board of Registered Professional
10 Nurses as set forth in article seven, chapter thirty of this code,
11 the Board of Dental Examiners as set forth in article four,
12 chapter thirty of this code and the Board of Osteopathy as set
13 forth in article fourteen, chapter thirty of this code shall
14 access the West Virginia Controlled Substances Monitoring
15 Program database for information regarding specific patients
16 for whom they are providing pain-relieving controlled
17 substances as part of a course of treatment for chronic,
18 nonmalignant pain but who are not suffering from a terminal
19 illness. The information obtained from accessing the West
20 Virginia Controlled Substances Monitoring Program database
21 for the patient shall be documented in the patient's medical
22 record. A pain-relieving controlled substance shall be
23 defined as set forth in section one, article three-a, chapter
24 thirty of this code.

25 (b) The various boards mentioned in subsection (a) above
26 shall promulgate both emergency and legislative rules
27 pursuant to the provisions of article three, chapter
28 twenty-nine-a of this code to effectuate the provisions of this
29 section.

§60A-9-7. Criminal penalties.

1 (a) Any person who is required to submit information to
2 the state Board of Pharmacy pursuant to the provisions of this
3 article who fails to do so as directed by the board is guilty of
4 a misdemeanor and, upon conviction thereof, shall be fined
5 not less than \$100 nor more than \$500.

6 (b) Any person who is required to submit information to
7 the state Board of Pharmacy pursuant to the provisions of this
8 article who knowingly and willfully refuses to submit the
9 information required by this article is guilty of a
10 misdemeanor and, upon conviction thereof, shall be confined
11 in a county or regional jail not more than six months or fined
12 not more than \$1,000, or both confined or fined.

13 (c) Any person who is required by the provisions of this
14 article to submit information to the state Board of Pharmacy
15 who knowingly submits thereto information known to that
16 person to be false or fraudulent is guilty of a misdemeanor
17 and, upon conviction thereof, shall be confined in a county or
18 regional jail not more than one year or fined not more than
19 \$5,000, or both confined or fined.

20 (d) Any prescriber or dispenser who is required to access
21 the information contained in the West Virginia Controlled
22 Substances Monitoring Program database as set forth in
23 subsection (a) of section five-a of this article and fails to do
24 so as directed by the rules of their licensing board shall be
25 subject to such discipline as the licensing board deems
26 appropriate.

27 (e) Any person granted access to the information required
28 by the provisions of this article to be maintained by the state
29 Board of Pharmacy, who shall willfully disclose the
30 information required to be maintained by this article in a
31 manner inconsistent with a legitimate law-enforcement

32 purpose, a legitimate professional regulatory purpose, the
33 terms of a court order or as otherwise expressly authorized by
34 the provisions of this article is guilty of a misdemeanor and,
35 upon conviction thereof, shall be confined in a county or
36 regional jail for not more than six months or fined not more
37 than \$1,000, or both confined or fined.

38 (f) Unauthorized access or use or unauthorized disclosure
39 for reasons unrelated to the purposes of this article of the
40 information in the database is a felony punishable by
41 imprisonment in a state correctional facility for not less than
42 one year nor more than five years or fined not less than
43 \$3,000 nor more than \$10,000, or both imprisoned or fined.

§60A-9-8. Creation of Fight Substance Abuse Fund.

1 There is hereby created a special revenue account in the
2 state treasury, designated the Fight Substance Abuse Fund,
3 which shall be an interest-bearing account and may be
4 invested in accordance with the provisions of article six,
5 chapter twelve of this code, with interest income a proper
6 credit to the fund. The fund shall consist of appropriations by
7 the Legislature, gifts, donations or any other source.
8 Expenditures from the fund shall be for the following
9 purposes: to provide funding for substance abuse prevention,
10 treatment, treatment coordination, recovery and education.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.

1 In this article:

2 (a) “Board of Pharmacy” or “board” means the West
3 Virginia Board of Pharmacy established by the provisions of
4 article five, chapter thirty of this code.

5 (b) “Designated precursor” means any drug product made
6 subject to the requirements of this article by the provisions of
7 section seven of this article.

8 (c) “Distributor” means any person within this state or
9 another state, other than a manufacturer or wholesaler, who
10 sells, delivers, transfers or in any manner furnishes a drug
11 product to any person who is not the ultimate user or
12 consumer of the product.

13 (d) “Drug product” means a pharmaceutical product that
14 contains ephedrine, pseudoephedrine or
15 phenylpropanolamine or a substance identified on the
16 supplemental list provided in section seven of this article
17 which may be sold without a prescription and which is
18 labeled for use by a consumer in accordance with the
19 requirements of the laws and rules of this state and the federal
20 government.

21 (e) “Ephedrine” means ephedrine, its salts or optical
22 isomers or salts of optical isomers.

23 (f) “Manufacturer” means any person within this state
24 who produces, compounds, packages or in any manner
25 initially prepares for sale or use any drug product or any such
26 person in another state if they cause the products to be
27 compounded, packaged or transported into this state.

28 (g) “National Association of Drug Diversion
29 Investigators” or “NADDI” means the non-profit 501(c)(3)
30 organization established in 1989, made up of members who
31 are responsible for investigating and prosecuting
32 pharmaceutical drug diversion, and that facilitates
33 cooperation between law enforcement, health care
34 professionals, state regulatory agencies and pharmaceutical
35 manufacturers in the investigation and prevention of
36 prescription drug abuse and diversion.

37 (h) “Multi-State Real-Time Tracking System” or
38 “MSRTTS” means the real-time electronic logging system
39 provided by NADDI at no cost to states that have legislation
40 requiring real-time electronic monitoring of precursor
41 purchases, and agree to use the system. MSRTTS is used by
42 pharmacies and law enforcement to track sales of
43 over-the-counter (OTC) cold and allergy medications
44 containing precursors to the illegal drug, methamphetamine.

45 (i) “Phenylpropanolamine” means phenylpropanolamine,
46 its salts, optical isomers and salts of optical isomers.

47 (j) “Pseudoephedrine” means pseudoephedrine, its salts,
48 optical isomers and salts of optical isomers.

49 (k) “Precursor” means any substance which may be used
50 along with other substances as a component in the production
51 and distribution of illegal methamphetamine.

52 (l) “Pharmacist” means an individual currently licensed
53 by this state to engage in the practice of pharmacy and
54 pharmaceutical care as defined in subsection (t), section
55 one-b, article five, chapter thirty of this code.

56 (m) “Pharmacy intern” has the same meaning as the term
57 “intern” as set forth in section one-b, article five, chapter
58 thirty of this code.

59 (n) “Pharmacy” means any drugstore, apothecary or place
60 within this state where drugs are dispensed and sold at retail
61 or display for sale at retail and pharmaceutical care is
62 provided outside of this state where drugs are dispensed and
63 pharmaceutical care is provided to residents of this state.

64 (o) “Pharmacy counter” means an area in the pharmacy
65 restricted to the public where controlled substances are stored
66 and housed and where controlled substances may only be

67 sold, transferred or dispensed by a pharmacist, pharmacy
68 intern or pharmacy technician.

69 (p) "Pharmacy technician" means a registered technician
70 who meets the requirements for registration as set forth in
71 article five, chapter thirty of this code.

72 (q) "Retail establishment" means any entity or person
73 within this state who sells, transfers or distributes goods,
74 including over-the-counter drug products, to an ultimate
75 consumer.

76 (r) "Schedule V" means the schedule of controlled
77 substances set out in section two hundred twelve, section two
78 of this chapter.

79 (s) "Superintendent of the State Police" or
80 "Superintendent" means the Superintendent of the West
81 Virginia State Police as set forth in section five, article two,
82 chapter fifteen of this code.

83 (t) "Wholesaler" means any person within this state or
84 another state, other than a manufacturer, who sells, transfers
85 or in any manner furnishes a drug product to any other person
86 in this state for the purpose of being resold.

**§60A-10-4. Purchase, receipt, acquisition and possession of
substances to be used as precursor to
manufacture of methamphetamine or another
controlled substance; offenses; exceptions;
penalties.**

1 (a) A pharmacy may not sell, transfer or dispense to the
2 same person, and a person may not purchase more than three
3 and six-tenths grams per day, more than seven and two-tenths
4 grams in a thirty-day period or more than forty-eight grams
5 annually of ephedrine, pseudoephedrine or

6 phenylpropanolamine without a prescription. The limits shall
7 apply to the total amount of ephedrine, pseudoephedrine and
8 phenylpropanolamine contained in the products, and not the
9 overall weight of the products.

10 (1) Any person who or knowingly purchases, receives or
11 otherwise possesses more than seven and two-tenths grams in
12 a thirty-day period of ephedrine, pseudoephedrine or
13 phenylpropanolamine in any form without a prescription is
14 guilty of a misdemeanor and, upon conviction, shall be
15 confined in a jail for not more than one year, fined not more
16 than \$1,000, or both fined and confined.

17 (2) Any pharmacy, wholesaler or other entity operating
18 the retail establishment which sells, transfers or dispenses a
19 product in violation of this section is guilty of a misdemeanor
20 and, upon conviction, shall be fined not more than \$1,000 for
21 the first offense, or more than \$10,000 for each subsequent
22 offense.

23 (b) Notwithstanding the provisions of subdivision (a)(1) of
24 this section, any person convicted of a second or subsequent
25 violation of the provisions of said subdivision or a statute or
26 ordinance of the United States or another state which contains
27 the same essential elements is guilty of a felony and, upon
28 conviction, shall be imprisoned in a state correctional facility for
29 not less than one nor more than five years, fined not more than
30 \$25,000, or both imprisoned and fined.

31 (c) The provisions of subsection (a) of this section shall
32 not apply to:

33 (1) Products dispensed pursuant to a valid prescription;

34 (2) Drug products which are for pediatric use primarily
35 intended for administration to children under the age of
36 twelve;

37 (3) Drug products containing ephedrine, pseudoephedrine
38 or phenylpropanolamine, their salts or optical isomers or salts
39 of optical isomers or other designated precursor which have
40 been determined by the Board of Pharmacy to be in a form
41 which is not feasible for being used for the manufacture of
42 methamphetamine; or

43 (4) Persons lawfully possessing drug products in their
44 capacities as distributors, wholesalers, manufacturers,
45 pharmacists, pharmacy interns, pharmacy technicians, or
46 health care professionals.

47 (d) Notwithstanding any provision of this code to the
48 contrary, any person who knowingly possesses any amount of
49 ephedrine, pseudoephedrine, phenylpropanolamine or other
50 designated precursor with the intent to use it in the manufacture
51 of methamphetamine or who knowingly possesses a substance
52 containing ephedrine, pseudoephedrine or phenylpropanolamine
53 or their salts, optical isomers or salts of optical isomers in a state
54 or form which is, or has been altered or converted from the state
55 or form in which these chemicals are, or were, commercially
56 distributed is guilty of a felony and, upon conviction, shall be
57 imprisoned in a state correctional facility for not less than two
58 nor more than ten years, fined not more than \$25,000, or both
59 imprisoned and fined.

60 (e) (1) Any pharmacy, wholesaler, manufacturer or
61 distributor of drug products containing ephedrine,
62 pseudoephedrine, phenylpropanolamine, their salts or optical
63 isomers or salts of optical isomers or other designated
64 precursor shall obtain a registration annually from the State
65 Board of Pharmacy as described in section six of this article.
66 Any such pharmacy, wholesaler, manufacturer or distributor
67 shall keep complete records of all sales and transactions as
68 provided in section eight of this article. The records shall be
69 gathered and maintained pursuant to legislative rule
70 promulgated by the Board of Pharmacy.

71 (2) Any drug products possessed without a registration as
72 provided in this section are subject to forfeiture upon
73 conviction for a violation of this section.

74 (3) In addition to any administrative penalties provided
75 by law, any violation of this subsection is a misdemeanor,
76 punishable upon conviction by a fine in an amount not more
77 than \$10,000.

**§60A-10-5. Restrictions on the sale, transfer or delivery of
certain drug products; penalties.**

1 (a) No pharmacy or individual may display, offer for sale
2 or place a drug product containing ephedrine,
3 pseudoephedrine or phenylpropanolamine or other designated
4 precursor where the public may freely access the drug
5 product. All such drug products or designated precursors
6 shall be placed behind a pharmacy counter where access is
7 restricted to a pharmacist, a pharmacy intern, a pharmacy
8 technician or other pharmacy employee.

9 (b) All storage of drug products regulated by the
10 provisions of this section shall be in a controlled and locked
11 access location that is not accessible by the general public
12 and shall maintain strict inventory control standards and
13 complete records of quantity of the product maintained in
14 bulk form.

15 (c) No pharmacy may sell, deliver or provide any drug
16 product regulated by the provisions of this section to any
17 person who is under the age of eighteen.

18 (d) If a drug product regulated by the provisions of this
19 section is transferred, sold or delivered, the individual,
20 pharmacy or retail establishment transferring, selling or
21 delivering the drug product shall offer to have a pharmacist
22 provide patient counseling, as defined by section one-b,

23 article five, chapter thirty of this code and the rules of the
24 Board of Pharmacy, to the person purchasing, receiving or
25 acquiring the drug product in order to improve the proper use
26 of the drug product and to discuss contraindications.

27 (e) If a drug product regulated by the provisions of this
28 section is transferred, sold or delivered, the individual,
29 pharmacy or retail establishment transferring, selling or
30 delivering the drug product shall require the person
31 purchasing, receiving or otherwise acquiring the drug product
32 to:

33 (1) Produce a valid government-issued photo
34 identification showing his or her date of birth; and

35 (2) Sign a logbook, in either paper or electronic format,
36 containing the information set forth in subsection (b), section
37 eight of this article and attesting to the validity of the
38 information.

39 (f) Any person who knowingly makes a false
40 representation or statement pursuant to the requirements of
41 this section is guilty of a misdemeanor and, upon conviction,
42 be confined in a jail for not more than six months, fined not
43 more than \$5,000, or both fined and confined.

44 (g) (1) The pharmacist, pharmacy intern or pharmacy
45 technician processing the transaction shall determine that the
46 name entered in the logbook corresponds to the name
47 provided on the identification.

48 (2) Beginning January 1, 2013, a pharmacy or retail
49 establishment shall, before completing a sale under this
50 section, electronically submit the information required by
51 section eight of this article to the Multi-State Real-Time
52 Tracking System (MSRTTS) administered by the National
53 Association of Drug Diversion Investigators (NADDI):

54 *Provided*, That the system is available to retailers in the state
55 without a charge for accessing the system. This system shall
56 be capable of generating a stop-sale alert, which shall be a
57 notification that completion of the sale would result in the
58 seller or purchaser violating the quantity limits set forth in
59 this article. The seller may not complete the sale if the
60 system generates a stop-sale alert. The system shall contain
61 an override function that may be used by a dispenser of a
62 drug product who has a reasonable fear of imminent bodily
63 harm if he or she does not complete a sale. Each instance in
64 which the override function is utilized shall be logged by the
65 system. Absent negligence, wantonness, recklessness or
66 deliberate misconduct, any retailer utilizing the Multi-State
67 Real-Time Tracking System in accordance with this
68 subdivision may not be civilly liable as a result of any act or
69 omission in carrying out the duties required by this
70 subdivision and is immune from liability to any third party
71 unless the retailer has violated any provision of this
72 subdivision in relation to a claim brought for the violation.

73 (3) If a pharmacy or retail establishment selling a
74 nonprescription product containing ephedrine,
75 pseudoephedrine or phenylpropanolamine experiences
76 mechanical or electronic failure of the Multi-State Real-Time
77 Tracking System and is unable to comply with the electronic
78 sales tracking requirement, the pharmacy or retail
79 establishment shall maintain a written log or an alternative
80 electronic record keeping mechanism until such time as the
81 pharmacy or retail establishment is able to comply with the
82 electronic sales tracking requirement.

83 (h) This section does not apply to drug products that are
84 dispensed pursuant to a prescription, are pediatric products
85 primarily intended for administration, according to label
86 instructions, to children under twelve years of age.

87 (i) Any violation of this section is a misdemeanor,
88 punishable upon conviction by a fine in an amount not more
89 than \$10,000.

90 (j) The provisions of this section supersede and preempt
91 all local laws, ordinances, rules and regulations pertaining to
92 the sale of any compounds, mixtures or preparation
93 containing ephedrine, pseudoephedrine or
94 phenylpropanolamine.

§60A-10-7. Restricted products; rule-making authority.

1 (a) On or before July 1, 2005, the Board of Pharmacy
2 shall promulgate emergency and legislative rules pursuant to
3 the provision of article three, chapter twenty-nine-a of this
4 code to implement a program wherein the Board of Pharmacy
5 shall consult with the Superintendent of the State Police in
6 identifying drug products which are a designated precursor,
7 in addition to those that contain ephedrine, pseudoephedrine
8 or phenylpropanolamine, that are commonly being used in
9 the production and distribution of methamphetamine. Those
10 drug products which the Superintendent of the State Police
11 have demonstrated by empirical evidence are commonly used
12 in the manufacture of methamphetamine shall be added to a
13 supplemental list and shall be subject to all of the restrictions
14 of this article. These rules established pursuant to this section
15 shall include:

16 (1) A process whereby pharmacies are made aware of all
17 drug products that contain ephedrine, pseudoephedrine and
18 phenylpropanolamine that will be listed as a Schedule V
19 substance and must be sold, transferred or dispensed from
20 behind a pharmacy counter;

21 (2) A process whereby pharmacies and retail
22 establishments are made aware of additional drug products
23 added to Schedule V that are required to be placed behind the

24 pharmacy counter for sale, transfer or distribution can be
25 periodically reviewed and updated.

26 (b) At any time after July 1, 2005, the Board of
27 Pharmacy, upon the recommendation of the Superintendent
28 of the State Police, shall promulgate emergency and
29 legislative rules pursuant to the provision of article three,
30 chapter twenty-nine-a of this code to implement an updated
31 supplemental list of products containing the controlled
32 substances ephedrine, pseudoephedrine or
33 phenylpropanolamine as an active ingredient or any other
34 drug used as a precursor in the manufacture of
35 methamphetamine, which the Superintendent of the State
36 Police has demonstrated by empirical evidence is being used
37 in the manufacture of methamphetamine. This listing process
38 shall comport with the requirements of subsection (a) of this
39 section.

§60A-10-8. Reporting requirements; confidentiality.

1 (a) Until January 1, 2013, upon each sale, retail, transfer
2 or distribution of any drug product referred to in section
3 seven of this article or another designated precursor, the
4 pharmacist, pharmacy intern, or pharmacy technician making
5 the sale, transfer or distribution shall report the following
6 information for inclusion in the central repository established
7 and maintained by the Board of Pharmacy:

8 (1) The date of the transaction;

9 (2) The name, address and driver's license or state-issued
10 identification number of the person; and

11 (3) The name, quantity of packages and total gram weight
12 of the product or products purchased, received or otherwise
13 acquired.

14 (b) The information required to be reported by this
15 section shall be reported by paper log maintained at the point
16 of sale: *Provided*, That, beginning on January 1, 2007,
17 reporting shall be by electronic transmission to the Board of
18 Pharmacy no more frequently than once a week. Beginning
19 on January 1, 2013, the electronic transmission of the
20 information required to be reported in subsection (a) of this
21 section shall be reported to the MSRTTS, and shall be made
22 in real time at the time of the transaction.

23 (c) The information required by this section shall be the
24 property of the state. The information shall be disclosed as
25 appropriate to the federal Drug Enforcement Administration
26 and to state and local law-enforcement agencies. The
27 information shall not be accessed, used or shared for any
28 purpose other than to ensure compliance with this article and
29 federal law. NADDI shall forward state transaction records
30 in the MSRTTS to the West Virginia State Police weekly,
31 and provide real-time access to MSRTTS information
32 through the MSRTTS online portal to authorized agents of
33 the federal Drug Enforcement Administration and certified
34 law enforcement in this and other states for use in the
35 detection of violations of this article or of federal laws
36 designed to prevent the illegal use, production or distribution
37 of methamphetamine.

**§60A-10-11. Reporting to the Legislative Oversight Commission
on Health and Human Resources
Accountability.**

1 Beginning July 1, 2013, the Superintendent of the West
2 Virginia State Police shall submit an annual report no later
3 than July 1 of each year to the Legislative Oversight
4 Commission on Health and Human Resources Accountability
5 with data and statistics related to methamphetamine use,
6 production and distribution in this state including, but not
7 limited to, the number of clandestine methamphetamine lab
8 incidents per year.

§60A-10-16. Expiration of enactments made during two thousand twelve regular session.

1 The provisions of this article enacted during the 2012
2 regular legislative session establishing the Multi-State Real-
3 Time Tracking System shall expire on June 30, 2015.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

1 (a) If in the opinion of the chief medical examiner, or of
2 the county medical examiner of the county in which the death
3 in question occurred, it is advisable and in the public interest
4 that an autopsy be made, or if an autopsy is requested by
5 either the prosecuting attorney or the judge of the circuit
6 court or other court of record having criminal jurisdiction in
7 that county, an autopsy shall be conducted by the chief
8 medical examiner or his or her designee, by a member of his
9 or her staff, or by a competent pathologist designated and
10 employed by the chief medical examiner under the provisions
11 of this article. For this purpose, the chief medical examiner
12 may employ any county medical examiner who is a
13 pathologist who holds board certification or board eligibility
14 in forensic pathology or has completed an American Board
15 of Pathology fellowship in forensic pathology to make the
16 autopsies, and the fees to be paid for autopsies under this
17 section shall be in addition to the fee provided for
18 investigations pursuant to section eight of this article. A full
19 record and report of the findings developed by the autopsy
20 shall be filed with the office of the chief medical examiner by
21 the person making the autopsy.

22 (b) Within the discretion of the chief medical examiner,
23 or of the person making the autopsy, or if requested by the

24 prosecuting attorney of the county, or of the county where
25 any injury contributing to or causing the death was sustained,
26 a copy of the report of the autopsy shall be furnished to the
27 prosecuting attorney.

28 (c) The office of the chief medical examiner shall keep
29 full, complete and properly indexed records of all deaths
30 investigated, containing all relevant information concerning
31 the death and the autopsy report if an autopsy report is made.
32 Any prosecuting attorney or law-enforcement officer may
33 secure copies of these records or information necessary for
34 the performance of his or her official duties.

35 (d) Copies of these records or information shall be
36 furnished, upon request, to any court of law, or to the parties
37 therein to whom the cause of death is a material issue, except
38 where the court determines that interests in a civil matter
39 conflict with the interests in a criminal proceeding, in which
40 case the interests in the criminal proceeding shall take
41 precedence. The office of chief medical examiner shall be
42 reimbursed a reasonable rate by the requesting party for costs
43 incurred in the production of records under this subsection
44 and subsection (c) of this section.

45 (e) The chief medical examiner is authorized to release
46 investigation records and autopsy reports to the
47 multidisciplinary team authorized by section three, article
48 five-d, chapter forty-nine of this code and as authorized in
49 subsection (h) of this section. At the direction of the
50 Secretary of the Department of Health and Human Resources
51 the chief medical examiner may release records and
52 information to other state agencies when considered to be in
53 the public interest.

54 (f) Any person performing an autopsy under this section
55 is empowered to keep and retain, for and on behalf of the
56 chief medical examiner, any tissue from the body upon which
57 the autopsy was performed which may be necessary for
58 further study or consideration.

59 (g) In cases of the death of any infant in the State of West
60 Virginia where sudden infant death syndrome is the
61 suspected cause of death and the chief medical examiner or
62 the medical examiner of the county in which the death in
63 question occurred considers it advisable to perform an
64 autopsy, it is the duty of the chief medical examiner or the
65 medical examiner of the county in which the death occurred
66 to notify the sudden infant death syndrome program within
67 the division of maternal and child health and to inform the
68 program of all information to be given to the infant's parents.

69 (h) If the chief medical officer determines that a drug
70 overdose is the cause of death of a person, the chief medical
71 examiner shall provide notice of the death to the West
72 Virginia Controlled Substances Monitoring Program
73 Database Review Committee established pursuant to
74 subsection (b), section five, article nine, chapter sixty-a of
75 this code and shall include in the notice any information
76 relating to the cause of the fatal overdose.



CHAPTER 84

**(Com. Sub. for S. B. 109 -
By Senators Jenkins and Foster)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, all relating to permitting unlicensed personnel to administer or assist with administration of medications in certain circumstances; defining terms; and providing exemptions from licensure.

Be it enacted by the Legislature of West Virginia:

That §16-5O-2, §16-5O-3 and §16-5O-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5O-2. Definitions.

1 As used in this article, unless a different meaning appears
2 from the context, the following definitions apply:

3 (a) “Administration of medication” means:

4 (1) Assisting a person in the ingestion, application or
5 inhalation of medications, including prescription drugs, or in
6 the use of universal precautions or rectal or vaginal insertion
7 of medication, according to the legibly written or printed
8 directions of the attending physician or authorized
9 practitioner, or as written on the prescription label; and

10 (2) Making a written record of such assistance with regard
11 to each medication administered, including the time, route and
12 amount taken. However, for purposes of this article,
13 “administration” does not include judgment, evaluation,
14 assessments, injections of medication, monitoring of medication
15 or self-administration of medications, including prescription
16 drugs and self-injection of medication by the resident.

17 (b) “Authorizing agency” means the department's office
18 of Health Facility Licensure and Certification.

19 (c) “Department” means the Department of Health and
20 Human Resources.

21 (d) “Facility” means an ICF/ID, assisted living,
22 behavioral health group home, private residence in which
23 health care services are provided under the supervision of a
24 registered nurse or an adult family care home that is licensed
25 by or approved by the department.

26 (e) “Facility staff member” means an individual
27 employed by a facility but does not include a health care
28 professional acting within the scope of a professional license
29 or certificate.

30 (f) “Health care professional” means a medical doctor or
31 doctor of osteopathy, a podiatrist, registered nurse, practical
32 nurse, registered nurse practitioner, physician's assistant,
33 dentist, optometrist or respiratory care professional licensed
34 under chapter thirty of this code.

35 (g) “ICF/ID” means an intermediate care facility for
36 individuals with an intellectual disability which is certified by
37 the department.

38 (h) “Location of medication administration” means a
39 facility or location where the resident requires administration
40 of medication or assistance in taking medications.

41 (i) “Medication” means a drug, as defined in section one
42 hundred one, article one, chapter sixty-a of this code, which
43 has been prescribed by a duly authorized health care
44 professional to be ingested through the mouth, applied to the
45 outer skin, eye or ear, or applied through nose drops, vaginal
46 or rectal suppositories.

47 (j) “Registered professional nurse” means a person who
48 holds a valid license pursuant to article seven, chapter thirty
49 of this code.

50 (k) “Resident” means a resident of a facility.

51 (l) “Secretary” means the Secretary of the Department of
52 Health and Human Resources or his or her designee.

53 (m) “Self-administration of medication” means the act of
54 a resident, who is independently capable of reading and
55 understanding the labels of drugs ordered by a physician, in
56 opening and accessing prepackaged drug containers,
57 accurately identifying and taking the correct dosage of the
58 drugs as ordered by the physician, at the correct time and
59 under the correct circumstances.

60 (n) “Self-administration of medication with assistance”
61 means assisting residents who are otherwise able to self
62 administer their own medications except their physical
63 disabilities prevent them from completing one or more steps
64 in the process.

65 (o) “Supervision of self-administration of medication”
66 means a personal service which includes reminding residents
67 to take medications, opening medication containers for
68 residents, reading the medication label to residents, observing
69 residents while they take medication, checking the self
70 administered dosage against the label on the container and
71 reassuring residents that they have obtained and are taking
72 the dosage as prescribed.

§16-50-3. Administration of medications in facilities.

1 (a) The secretary is authorized to establish and implement
2 a program for the administration of medications in locations
3 of medication administration where the resident requires
4 administration of or assistance in taking medications. The
5 program shall be developed and conducted in cooperation
6 with the appropriate agencies, advisory bodies and boards.

7 (b) Administration of medication pursuant to this article
8 shall be performed only by:

9 (1) Registered professional nurses;

10 (2) Other licensed health care professionals; or

11 (3) Facility staff members who have been trained and
12 retrained every two years and who are subject to the supervision
13 of and approval by a registered professional nurse.

14 (c) Subsequent to assessing the health status of an individual
15 resident, a registered professional nurse, in collaboration with
16 the resident's attending physician and the facility staff
17 member, may recommend that the facility authorize a facility
18 staff member to administer medication if the staff member:

19 (1) Has been trained pursuant to the requirements of this
20 article;

21 (2) Is considered by the registered professional nurse to
22 be competent;

23 (3) Consults with the registered professional nurse or
24 attending physician on a regular basis; and

25 (4) Is monitored or supervised by the registered
26 professional nurse.

27 (d) Nothing in this article may be construed to prohibit
28 any facility staff member from administering medications or
29 providing any other prudent emergency assistance to aid any
30 person who is in acute physical distress or requires
31 emergency assistance.

32 (e) Supervision of self-administration of medication by
33 facility staff members who are not licensed health care
34 professionals may be permitted in certain circumstances,
35 when the substantial purpose of the setting is other than the
36 provision of health care.

§16-5O-4. Exemption from licensure; statutory construction.

1 (a) Any individual who is not otherwise authorized by
2 law to administer medication may administer medication in
3 locations covered by this article if he or she meets the
4 requirements and provisions of this article. Any person who
5 administers medication pursuant to the provisions of this
6 article shall be exempt from the licensing requirements of
7 chapter thirty of this code.

8 (b) All licensed health care professionals as defined in
9 this article remain subject to the provisions of their respective
10 licensing laws.

11 (c) Notwithstanding any other provision of law to the
12 contrary, this article shall not be construed to violate or be in
13 conflict with any of the provisions of articles seven or seven-
14 a, chapter thirty of this code.

15 (d) Any parent or guardian may administer medication to
16 his or her adult or minor child regardless of whether or not
17 the parent or guardian receives compensation for caring for
18 said child.



CHAPTER 85

**(H. B. 4481 - By Delegates Hatfield,
Hall, Moore, Morgan, L. Phillips,
D. Campbell and Butcher)**

[Passed March 6, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 14, 2012.]

AN ACT to repeal §16-42-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-42-3 of said code, relating to the Comprehensive Behavioral Health Commission;

increasing the membership of the Commission and the membership of the Advisory Board to the Commission; reestablishing the Advisory Board; and repealing the termination date of the commission.

Be it enacted by the Legislature of West Virginia:

That §16-42-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-42-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.

§16-42-3. Comprehensive Behavioral Health Commission.

1 (a) Effective July 1, 2011, the Comprehensive Behavioral
2 Health Commission is reestablished to continue the study of
3 the current behavioral health system of care, including
4 services to adults and children, substance abuse and domestic
5 violence when those conditions have an effect upon or are
6 impacted by the system.

7 (b) The commission consists of:

8 (1) A representative of the circuit and family court
9 system, appointed by the Chief Justice of the West Virginia
10 Supreme Court of Appeals;

11 (2) A representative of the Commissioner of the Division
12 of Corrections;

13 (3) The Commissioner of the Bureau of Senior Services
14 or a designee;

15 (4) The Secretary of the Department of Health and
16 Human Resources or a designee, who is a nonvoting member;

17 (5) The Commissioner of the Bureau for Behavioral
18 Health and Health Facilities or a designee, who is a
19 nonvoting member;

20 (6) The Commissioner of the Bureau for Children and
21 Families or a designee, who is a nonvoting member;

22 (7) The Chancellor for Higher Education or a designee,
23 who is a nonvoting member;

24 (8) One physician with a specialty in psychiatry
25 appointed by the Governor from a list provided by the West
26 Virginia Medical Association;

27 (9) One physician with a specialty in child psychiatry,
28 appointed by the Governor from a list of names provided by
29 the West Virginia Medical Association;

30 (10) One member of the advisory board, selected by the
31 advisory board, who shall serve as the vice chairperson of the
32 commission;

33 (11) The director of the Division of Rehabilitative
34 Services or his or her designee;

35 (12) The executive director of a behavioral health
36 consumer's organization or his or her designee;

37 (13) The director of the West Virginia Coalition Against
38 Domestic Violence or his or her designee;

39 (14) One member of the House of Delegates, who is a
40 nonvoting member, appointed by the speaker; and

41 (15) One member of the Senate, who is a nonvoting
42 member, appointed by the president.

43 (c) The commission shall meet at times and places as it
44 finds necessary and shall be staffed by the Bureau for
45 Behavioral Health and Health Facilities.

46 (d) The commission shall elect a chairperson from those
47 who are appointed. The chairperson's term shall be no longer
48 than two consecutive years whereupon the chairperson is to
49 be replaced by a vote of the membership.

50 (e) The commission shall add or delete additional
51 members of the advisory board at the time when it is apparent
52 that certain expertise is needed and the members of the
53 commission so decide.

54 (f) Effective July 1, 2012, the Comprehensive Behavioral
55 Health Commission Advisory Board is reestablished to serve
56 in a consulting role to the commission with the following
57 members appointed by the Governor:

58 (1) One member from a list of three candidates provided
59 by the West Virginia Chapter of the National Association of
60 Social Workers;

61 (2) One member from a list of three candidates provided
62 by the West Virginia Hospital Association;

63 (3) One member who is a psychologist from a list of three
64 candidates provided by the West Virginia Psychological
65 Association;

66 (4) One representative from each medical school
67 affiliated with some aspect of behavioral health from a list of
68 three candidates provided by the Dean of West Virginia
69 University School of Medicine, the Dean of Marshall
70 University School of Medicine and the Dean of the West
71 Virginia School of Osteopathic Medicine;

72 (5) The executive director of the Primary Care
73 Association or his or her designee;

74 (6) One member who is the chief executive officer of a
75 comprehensive behavioral health center;

76 (7) Two members who are the chairperson or the chief
77 executive officer of a not-for-profit corporation, that provides
78 residential or nonresidential care or treatment for children in
79 West Virginia;

80 (8) One member from a list of three candidates provided
81 by the Council of Churches;

82 (9) A consumer of behavioral health services to be
83 selected by the commission;

84 (10) A child advocate to be selected by the commission
85 from suggestions by FAST (Family Advocacy, Support and
86 Training);

87 (11) A representative of the West Virginia Coalition
88 Against Domestic Violence to be selected by the commission;
89 and

90 (12) One representative of the county probation program
91 from a list of three candidates provided to the Governor by
92 the Supreme Court of Appeals.

93 (g) Those persons serving on the commission and the
94 advisory board on July 1, 2011, may continue serving on the
95 reestablished commission and advisory board and the person
96 so designated as chairperson of the commission shall remain
97 as chairperson until an election occurs as provided in this
98 section.

99 (h) Each member of the commission and advisory board
100 is entitled to receive compensation and expense
101 reimbursement for attending official meetings or engaging in
102 official duties not to exceed the amount paid to members of
103 the Legislature for their interim duties as recommended by
104 the Citizens Legislative Compensation Commission and
105 authorized by law. A commission member may not receive
106 compensation for travel days that are not on the same day as
107 the official meeting or official duties.



CHAPTER 86

**(Com. Sub. for H. B. 4327 - By Delegates
Hatfield, D. Poling, Brown and Stagers)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-44-1 and §16-44-2, all relating to requiring pulse oximetry testing for newborns; setting forth legislative findings; authorizing the Commissioner of the Bureau of Public Health to require testing; providing timing requirements for testing; and requiring the commissioner to adopt procedural and legislative 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 article, designated §16-44-1 and §16-44-2, all to read as follows:

ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.**§16-44-1. Legislative findings.**

1 The Legislature finds and declares that:

2 (1) Congenital heart defects are structural abnormalities
3 of the heart that are present at birth; congenital heart defects
4 range in severity from simple problems such as holes between
5 chambers of the heart, to severe malformations, such as the
6 complete absence of one or more chambers or valves; some
7 critical congenital heart defects can cause severe and
8 life-threatening symptoms which require intervention within
9 the first days of life;

10 (2) According to the United States Secretary of Health
11 and Human Services' Advisory Committee on Heritable
12 Disorders in Newborns and Children, congenital heart disease
13 affects approximately seven to nine of every thousand live
14 births in the United States and Europe; the federal Centers for
15 Disease Control and Prevention states that congenital heart
16 defects are the leading cause of infant death due to birth
17 defects;

18 (3) Current methods for detecting congenital heart defects
19 generally include prenatal ultrasound screening and repeated
20 clinical examinations; while prenatal ultrasound screenings
21 can detect some major congenital heart defects, these
22 screenings, alone, identify less than half of all congenital
23 heart defect cases, and critical congenital heart defect cases
24 are often missed during routine clinical exams performed
25 prior to a newborn's discharge from a birthing facility;

26 (4) Pulse oximetry is a noninvasive test that estimates the
27 percentage of hemoglobin in blood that is saturated with
28 oxygen; when performed on a newborn when the baby is

29 twenty-four to forty-eight hours of age, or as late as possible
30 if the baby is to be discharged from the hospital before he or
31 she is twenty-four hours of age, pulse oximetry screening is
32 often more effective at detecting critical, life-threatening
33 congenital heart defects which otherwise go undetected by
34 current screening methods; newborns with abnormal pulse
35 oximetry results require immediate confirmatory testing and
36 intervention; and

37 (5) Many newborn lives could potentially be saved by
38 earlier detection and treatment of congenital heart defects if
39 birthing facilities in the state were required to perform this
40 simple, noninvasive newborn screening in conjunction with
41 current congenital heart defect screening methods.

§16-44-2. Pulse oximetry screening required; definition; rules.

1 (a) The Commissioner of the Bureau for Public Health
2 shall require each birthing facility licensed by the Department
3 of Health and Human Resources to perform a pulse oximetry
4 screening on every newborn in its care, when the baby is
5 twenty-four to forty-eight hours of age, or as late as possible
6 if the baby is to be discharged from the hospital before he or
7 she is twenty-four hours of age.

8 (b) As used in this article, “birthing facility” means an
9 inpatient or ambulatory health care facility licensed by the
10 Department of Health and Human Resources that provides
11 birthing and newborn care services.

12 (c) The commissioner shall adopt procedural rules and
13 propose legislative rules for legislative approval, in
14 accordance with the provisions of article three, chapter
15 twenty-nine-a of this code, that are necessary to carry out the
16 purposes of this article.

CHAPTER 87

**(Com. Sub. for H. B. 4438 - By Delegates
Perdue, Perry, Hamilton, Hartman,
Poore, D. Campbell, M. Poling, Hatfield,
Ellington, Hunt and Williams)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and to amend said code by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all relating to provider sponsored networks; stating the purpose; making legislative findings; defining terms; authorizing the Secretary of the Department of Health and Human Resources to contract with provider sponsored networks to provide services to Medicaid beneficiaries; assigning certain medicaid beneficiaries to provider sponsored networks; guaranteeing Medicaid beneficiaries' freedom to choose a managed care plan; providing an exemption from anti-trust laws; requiring reports to the Legislature; providing for shared savings with the state; authorizing the Insurance Commissioner to license provider sponsored networks; subjecting provider sponsored networks generally to the laws governing HMOs; providing for participation of health care providers in a provider sponsored network; permitting lower or different minimum capital and surplus amounts; and providing rule-making authority, including 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 article, designated §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and that said code be amended by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 2L. PROVIDER SPONSORED NETWORKS.

§16-2L-1. Legislative purpose.

1 The Legislature finds that it inures to the benefit of the
2 state and its Medicaid populations to foster the development
3 of care systems and Medicaid options that allow for the
4 functional integration and participation of privately practicing
5 physicians with provider sponsored networks who have
6 patient-centered medical home resources and who are willing
7 to share access and use of those resources; that privately
8 practicing physicians provide indispensable and important
9 health care services to Medicaid enrollees in West Virginia
10 but many do not have the resources to develop
11 patient-centered medical homes in their respective practices;
12 that federally qualified health centers are deeply engaged
13 with integrating behavioral health providers and other
14 community services in their care of Medicaid beneficiaries
15 and that such centers lead in the development and
16 implementation of recognized medical homes in West
17 Virginia; and that better health outcomes can be achieved and
18 inappropriate utilization avoided through the integration and
19 coordination of physical health care with mental health care.
20 Therefore, in order to develop innovative means of meeting
21 the health care needs of the state's citizens and to address the
22 impact on the state's budget arising from the growing cost of
23 Medicaid, and in recognition of the important role that
24 federally qualified health centers play in providing health

25 care services to Medicaid beneficiaries, the Legislature
26 authorizes the secretary to enter into contracts with provider
27 sponsored networks.

§16-2L-2. Definitions.

1 As used in this article, unless the context requires
2 otherwise:

3 (1) “Continuity-of-care” means the clinical practice of a
4 medical professional who provides care to patients in which:

5 (A) In addition to episodic or urgent care provided from
6 time to time as needed, preventive care and counseling is
7 provided and a patient’s overall health status is monitored
8 even when illness is not present or not in crisis; and

9 (B) Without being limited to discrete episodes of care,
10 medical records and care processes are used that track and
11 manage health status over time and allow the medical
12 professional to refer care to, and receive reports from, other
13 medical professionals and other care team members
14 responsible for a patient’s care.

15 (2) “Federally Qualified Health Center” means an entity
16 as defined in 42 U.S.C. §1396d(1)(2)(B).

17 (3) “Medicaid beneficiary” means any person
18 participating, through either a state plan amendment or
19 waiver demonstration, in any Medicaid program administered
20 by the West Virginia Department of Health and Human
21 Resources or its Bureau for Medical Services.

22 (4) “Medical home” means a team-based model of care in
23 a patient-centered medical home.

24 (5) “Participating provider” means a licensed health care
25 provider who has entered into a contract with a provider
26 sponsored network to provide services to Medicaid enrollees.

27 (6) “Participating primary care provider” is a primary
28 care provider who is also a participating provider.

29 (7) “Patient-centered medical home” means a health care
30 setting as described in section nine, article twenty-nine-h of
31 this chapter.

32 (8) “Primary care provider” means a licensed behavioral
33 health professional or a person licensed as an allopathic or
34 osteopathic physician primarily practicing internal medicine,
35 family or general practice, obstetrics and gynecology, or
36 pediatrics who provides continuity-of-care services to the
37 majority of his or her patients.

38 (9) “Provider sponsored network” means an entity
39 licensed by the West Virginia insurance commissioner in
40 accordance with article twenty-five-g, chapter thirty-three of
41 this code.

42 (10) “Secretary” means the Secretary of the West
43 Virginia Department of Health and Human Resources.

§16-2L-3. Contracts with provider sponsored networks.

1 (a) The secretary is authorized to enter into contracts with
2 any provider sponsored network licensed by the insurance
3 commissioner in accordance with the provisions of article
4 twenty-five-g, chapter thirty-three of this code, to arrange for
5 the provision of health care, services and supplies for
6 Medicaid beneficiaries. Such contract:

7 (1) Shall be subject to the same criteria and standards
8 applied to other managed care organizations; and

9 (2) May provide that the provider sponsored network will
10 share with the department up to 25% of any net profits
11 realized during the period of the contract.

12 (b) The service, administrative and performance criteria
13 to be met by provider sponsored networks shall be the same
14 as required of other managed care organizations providing
15 services to Medicaid beneficiaries in the state.

16 (c) A licensed provider sponsored network shall be
17 deemed an HMO for the purposes of federal regulations
18 governing the Medicaid program to the extent permitted by
19 such regulations.

§16-2L-4. Options for Medicaid beneficiaries; assignment of enrollees.

1 (a) Notwithstanding the prior availability or utilization of
2 other options, every licensed provider sponsored network
3 available in a county shall be offered by the secretary as an
4 enrollment option to that county's Medicaid beneficiaries. A
5 provider sponsored network is deemed to be "available in a
6 county" if the secretary has entered into a contract with it to
7 provide services to Medicaid beneficiaries in that county.

8 (b) The secretary shall require that each eligible Medicaid
9 beneficiary be given the option to choose any available
10 managed care plan, including a provider sponsored network,
11 to arrange for and provide his or her medical services under
12 the Medicaid program, and nothing in this article shall be
13 construed to remove or diminish the right of Medicaid
14 beneficiaries to choose among such available options.

15 (c) The secretary shall seek approval from the Centers for
16 Medicare and Medicaid Services to permit the assignment to
17 an available provider sponsored network of any Medicaid
18 beneficiary who does not exercise the option to choose a

19 managed care plan or provider sponsored network offered to
20 him or her. The secretary shall promulgate emergency rules
21 and shall propose for legislative approval legislative rules as
22 may be necessary to implement such assignment process.

23 (d) A Medicaid beneficiary assigned to a provider
24 sponsored network or another managed care organization may
25 change enrollment to any other available provider sponsored
26 network or managed care organization as such options may be
27 available, and nothing in this article requires that a Medicaid
28 beneficiary who is a patient of a participating provider must
29 remain an enrollee in the provider sponsored network with
30 which such participating provider has a contract.

§16-2L-5. Anti-trust exemption.

1 Because agreement and coordination among health care
2 providers, who may be potential competitors with each other,
3 is required to establish and operate provider sponsored
4 networks, an exemption from anti-trust laws for these
5 activities will further the purposes of this article. Therefore,
6 the West Virginia Anti-Trust Act, article eighteen, chapter
7 forty-seven of this code, is inapplicable to the development
8 of provider sponsored networks, activities necessary to
9 operate provider sponsored networks or any arrangements or
10 agreements between or among provider sponsored networks
11 and participating providers that are performed or entered into
12 consistent with and pursuant to the provisions of this article
13 and the provisions of article twenty-five-g, chapter thirty-
14 three of this code. It is the intent of the Legislature that the
15 federal anti-trust statutes be interpreted in this manner as
16 well.

§16-2L-6. Rulemaking authority.

1 The secretary may promulgate emergency rules and shall
2 propose for legislative approval legislative rules, in accordance

- 3 with the provisions of article three, chapter twenty-nine-a of
- 4 this code, as are necessary to provide for implementation and
- 5 enforcement of the provisions of this article.

§16-2L-7. Reports to the Legislature.

- 1 The secretary shall include in his or her annual report to
- 2 the Legislature the status of the provider sponsored network
- 3 programs operating during the previous fiscal year.

CHAPTER 33. INSURANCE.

ARTICLE 25G. PROVIDER SPONSORED NETWORKS.

§33-25G-1. Legislative findings.

- 1 The Legislature finds that, in light of the need to provide
- 2 health care to a Medicaid population that is expected to rise
- 3 dramatically in the near future, new models of managed care
- 4 should be explored in order to enhance the state's ability to
- 5 improve health outcomes and to manage the financial risk
- 6 associated with the provision of such care. This article
- 7 provides a licensing and regulatory scheme for provider
- 8 sponsored networks, an alternative managed care model
- 9 recognized in federal law, that recognizes the unique features
- 10 of such entities.

§33-25G-2. Definitions.

- 1 (a) "Federally Qualified Health Center" means an entity
- 2 as defined in 42 U.S.C. §1396d(1)(2)(B).

- 3 (b) "Medicaid beneficiary" means any person
- 4 participating, through either a state plan amendment or
- 5 waiver demonstration, in any Medicaid program administered
- 6 by the West Virginia Department of Health and Human
- 7 Resources or its Bureau for Medical Services.

8 (c) “Participating provider” means a licensed health care
9 provider who has entered into a contract with a provider
10 sponsored network to provide services to Medicaid enrollees.

11 (d) “Provider sponsored network” means an entity that
12 satisfies the definition of a “Medicaid managed care
13 organization” set forth in 42 U.S.C. §1396b(m)(1)(A), is
14 controlled by one or more Federally Qualified Health
15 Centers, as set forth in 42 U.S.C. §1396b(m)(1)(C)(ii)(IV),
16 and provides or otherwise makes available health care
17 services solely to Medicaid beneficiaries or beneficiaries of
18 medicaid or medicare pursuant to contract with the secretary
19 executed in accordance with article two-1, chapter sixteen of
20 this code.

21 (e) “Secretary” means the Secretary of the West Virginia
22 Department of Health and Human Resources.

§33-25G-3. Licensing of provider sponsored networks.

1 (a) Except to the extent provided otherwise in this article,
2 a provider sponsored network is subject to the provisions of
3 article twenty-five-a of this chapter to the same extent as an
4 HMO.

5 (b) Notwithstanding the provisions of section four, article
6 twenty-five-a of this chapter, in determining whether a
7 provider sponsored network has demonstrated in its
8 application for a certificate of authority or at a later time that
9 it is financially responsible and may reasonably be expected
10 to meet its obligations to Medicaid beneficiaries, the
11 commissioner may, in his or her sole discretion and after
12 consultation with the secretary, impose lower or different
13 solvency requirements, including lower surplus and capital.
14 In deciding whether to permit lower or different solvency
15 standards, the commissioner shall consider actuarial
16 evaluations and other qualified technical standards and may
17 also consider factors such as a lower risk of insolvency, any

18 transfer of risk to a third party, and the restriction of the
19 provider sponsored network to the provision of Medicaid-
20 related services; these same factors may also be considered in
21 reviewing and acting upon a provider sponsored network's
22 RBC report.

23 (c) A provider sponsored network may at any time seek
24 to convert its certificate of authority granted pursuant to this
25 article to a certificate of authority to operate as an HMO by
26 filing an application in accordance with the provisions of
27 article twenty-five-a of this chapter.

§33-25G-4. Provider participation.

1 (a) Any willing physician or licensed behavioral health
2 provider is entitled to participate in a provider sponsored
3 network provided that he or she is willing to participate in the
4 health care delivery approach designed by the provider
5 sponsored network and such other applicable requirements of
6 the Department of Health and Human Resources.

7 (b) As a condition of provider participation, including
8 participation by hospitals, a provider sponsored network may
9 require that its care management protocols be observed,
10 including provisions for designations of certain services that
11 may be provided only by designated providers or classes of
12 providers, requirements that providers be credentialed before
13 they may provide certain services, and requirements that
14 providers comply with utilization management programs and
15 referral systems as established by the provider sponsored
16 network. A provider sponsored network may not require a
17 participating physician provider to sell or transfer ownership
18 of his, her or its assets or practice operations to the provider
19 sponsored network or any of its participating providers as a
20 condition of participation or of being permitted access or use
21 of the provider sponsored network's medical home resources
22 and care management systems.

23 (c) A participating provider shall have the right to
24 participate in, and contract with, other networks or other
25 managed care organizations to provide services to Medicaid
26 beneficiaries.

§33-25G-5. Rules.

1 The commissioner may promulgate emergency rules and
2 shall propose for legislative approval legislative rules, in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, as are necessary to provide for
5 implementation and enforcement of the provisions of this
6 article.



CHAPTER 88

**(H. B. 4126 - By Delegates M. Poling,
Paxton, Perry, Moye and Fragale)**

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to higher education; legislative rules; authorizing a rule for the Higher Education Policy Commission regarding tuition and fees; and authorizing a rule for the Council for Community and Technical College Education regarding the Workforce Development Initiative Program and tuition and fees.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.**§18B-17-2. Authorizing rules of Higher Education Policy Commission.**

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship Program
4 rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science and
8 Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (Authorization of degree-granting institutions)
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in Employing
31 and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program) is authorized,
35 with the following amendment:

36 On page 2, subsection 5.1, following the words “financial
37 aid office” by inserting a new subdivision 5.1.3 to read as
38 follows: “United States citizenship or legal immigrant status
39 while actively pursuing United States citizenship.”

40 (j) The legislative rule filed in the State Register on
41 December 1, 2008, relating to the Higher Education Policy
42 Commission (West Virginia Higher Education Grant
43 Program) is authorized.

44 (k) The legislative rule filed in the State Register on
45 January 26, 2009, relating to the Higher Education Policy
46 Commission (Accountability System) is authorized.

47 (l) The legislative rule filed in the State Register on May
48 20, 2009, relating to the Higher Education Policy
49 Commission (Energy and Water Savings Revolving Loan
50 Fund Program) is authorized.

51 (m) The legislative rule filed in the State Register on
52 January 27, 2010, relating to the Higher Education Policy
53 Commission (Providing Real Opportunities for Maximizing
54 In-state Student Excellence - PROMISE) is authorized.

55 (n) The legislative rule filed in the State Register on
56 December 8, 2010, relating to the Higher Education Policy
57 Commission (Authorization of Degree Granting Institutions)
58 is authorized, with the following amendment:

59 On page 28, subsection 9.1.b, following the words “Good
60 cause shall consist of” by inserting the words “any one or
61 more of the following”.

62 (o) The legislative rule filed in the State Register on
63 December 12, 2011, relating to the Higher Education Policy
64 Commission (Tuition and Fee Policy) is authorized.

**§18B-17-3. Authorizing rule of the Council for Community and
Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council for
3 Community and Technical College Education (performance
4 indicators rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 13, 2005, relating to the West Virginia Council for
7 Community and Technical College Education (Authorization
8 of degree-granting institutions) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 30, 2006, relating to the West Virginia Council for
11 Community and Technical College Education (Workforce
12 Development Initiative Program) is authorized.

13 (d) The legislative rule filed in the State Register on
14 December 4, 2008, relating to the West Virginia Council for
15 Community and Technical College Education (Employing
16 and Evaluating Presidents) is authorized.

17 (e) The legislative rule filed in the State Register on
18 December 23, 2008, relating to the West Virginia Council for
19 Community and Technical College Education (Performance
20 Indicators) is authorized.

21 (f) The legislative rule filed in the State Register on
22 February 5, 2009, relating to the West Virginia Council for
23 Community and Technical College Education (Finance) is
24 authorized.

25 (g) The legislative rule filed in the State Register on
26 February 5, 2009, relating to the West Virginia Council for
27 Community and Technical College Education (Accountability
28 System) is authorized.

29 (h) The legislative rule filed in the State Register on June
30 15, 2011, relating to the West Virginia Council for
31 Community and Technical College Education (Workforce
32 Development Initiative Program) is authorized.

33 (i) The legislative rule filed in the State Register on
34 October 26, 2011, relating to the West Virginia Council for
35 Community and Technical College Education (Tuition and
36 Fees) is authorized.



CHAPTER 89

**(Com. Sub. for S. B. 498 - By
Senators Foster and Klempa)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, all relating to adult protective services and reports of abuse, neglect or exploitation of vulnerable adults; permitting distribution of adult protective services records to certain individuals and entities; permitting

distribution of a summary of those records to certain other individuals and entities; protecting the confidentiality of the identity of the reporter; and requiring a program for notifying mandatory reporters at the outset and conclusion of investigations.

Be it enacted by the Legislature of West Virginia:

That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all
2 records of the department, state and regional long-term care
3 ombudsmen, nursing home or facility administrators, the
4 office of health facility licensure and certification and all
5 protective services agencies concerning an adult or facility
6 resident under this article are confidential and may not be
7 released, except in accordance with the provisions of section
8 eleven of this article.

9 (b) Unless the adult concerned is receiving adult
10 protective services or unless there are pending proceedings
11 with regard to the adult, the records maintained by the adult
12 protective services agency shall be destroyed thirty years
13 following their preparation.

14 (c) Notwithstanding the provisions of subsection (a) of
15 this section or any other provision of this code to the
16 contrary, all records concerning reports of abuse, neglect or
17 exploitation of vulnerable adults, including all records
18 generated as a result of such reports, may be made available
19 to:

20 (1) Employees or agents of the department who need
21 access to the records for official business.

22 (2) Any law-enforcement agency investigating a report of
23 known or suspected abuse, neglect or exploitation of a
24 vulnerable adult.

25 (3) The prosecuting attorney of the judicial circuit in
26 which the vulnerable adult resides or in which the alleged
27 abuse, neglect or exploitation occurred.

28 (4) A circuit court or the Supreme Court of Appeals
29 subpoenaing the records. The court shall, before permitting
30 use of the records in connection with any court proceeding,
31 review the records for relevancy and materiality to the issues
32 in the proceeding. The court may issue an order to limit the
33 examination and use of the records or any part of the record.

34 (5) A grand jury, by subpoena, upon its determination
35 that access to the records is necessary in the conduct of its
36 official business.

37 (6) The recognized protection and advocacy agency for
38 the disabled of the State of West Virginia.

39 (7) The victim.

40 (8) The victim's legal representative, unless he or she is
41 the subject of an investigation under this article.

42 (d) Notwithstanding the provisions of subsection (a) of
43 this section or any other provision of this code to the
44 contrary, summaries concerning substantiated investigative
45 reports of abuse, neglect or exploitation of adults may be
46 made available to:

47 (1) Any person who the department has determined to
48 have abused, neglected or exploited the victim.

49 (2) Any appropriate official of the state or regional long-
50 term care ombudsman investigating a report of known or
51 suspected abuse, neglect or exploitation of a vulnerable adult.

52 (3) Any person engaged in bona fide research or auditing,
53 as defined by the department. However, information
54 identifying the subjects of the report may not be made
55 available to the researcher.

56 (4) Employees or agents of an agency of another state
57 that has jurisdiction to investigate known or suspected abuse,
58 neglect or exploitation of vulnerable adults.

59 (5) A professional person when the information is
60 necessary for the diagnosis and treatment of, and service
61 delivery to, a vulnerable adult.

62 (6) A department administrative hearing officer when the
63 hearing officer determines the information is necessary for
64 the determination of an issue before the officer.

65 (e) The identity of any person reporting abuse, neglect or
66 exploitation of a vulnerable adult may not be released,
67 without that person's written consent, to any person other
68 than employees of the department responsible for protective
69 services or the appropriate prosecuting attorney or law-
70 enforcement agency. This subsection grants protection only
71 for the person who reported the abuse, neglect or exploitation
72 and protects only the fact that the person is the reporter. This
73 subsection does not prohibit the subpoena of a person
74 reporting the abuse, neglect or exploitation when deemed
75 necessary by the prosecuting attorney or the department to
76 protect a vulnerable adult who is the subject of a report, if the
77 fact that the person made the report is not disclosed.

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

1 (a) If any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, social service
3 worker, law-enforcement officer, humane officer, state or
4 regional ombudsman or any employee of any nursing home
5 or other residential facility has reasonable cause to believe
6 that an incapacitated adult or facility resident is or has been
7 neglected, abused or placed in an emergency situation, or if
8 such person observes an incapacitated adult or facility
9 resident being subjected to conditions that are likely to result
10 in abuse, neglect or an emergency situation, the person shall
11 immediately report the circumstances pursuant to the
12 provisions of section eleven of this article: *Provided*, That
13 nothing in this article is intended to prevent individuals from
14 reporting on their own behalf.

15 (b) In addition to those persons and officials specifically
16 required to report situations involving suspected abuse or
17 neglect of an incapacitated adult or facility resident or the
18 existence of an emergency situation, any other person may
19 make such a report.

20 (c) The secretary shall develop a form for the filing of
21 written complaints, as provided by section eleven of this
22 article, and provide these forms to all nursing homes or other
23 residential facilities, hospitals, ombudsmen and adult
24 protective service agencies in this state. The forms shall be
25 designed to protect the identity of the complainant, if desired,
26 and to facilitate the prompt filing of complaints.

27 (d) The Department of Health and Human Resources
28 shall develop and implement a procedure to notify any person
29 mandated to report suspected abuse and neglect of an
30 incapacitated adult or facility resident of whether an
31 investigation into the reported suspected abuse or neglect has
32 been initiated and when the investigation is completed.



CHAPTER 90

**(Com. Sub. for H. B. 4053 - By Delegates
Brown, Poore, Fleischauer, Guthrie,
Moore, Frazier, Sobonya and L. Phillips)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-2-14a of said code; and to amend said code by adding a new section, designated §61-2-17, all relating to kidnapping and human trafficking; authorizing the Governor's Committee on Crime, Delinquency and Correction to establish standards governing training to effectively investigate human trafficking offenses and procedures for implementation of a course in investigation of human trafficking offenses; amending the elements of the crime of kidnapping and providing certain defenses and exceptions; creating the new criminal offense of human trafficking; defining certain terms; specifying the penalties for the new human trafficking offense; and including human trafficking as a qualifying offense in the prohibition against operating a criminal enterprise.

Be it enacted by the Legislature of West Virginia:

That §30-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §61-2-14a of said code be amended and reenacted; and that said code be amended by adding a new section, designated §61-2-17, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.****§30-29-3. Duties of the Governor's committee and the subcommittee.**

1 (a) Upon recommendation of the subcommittee, the
2 Governor's committee shall, by or pursuant to rules proposed
3 for legislative approval in accordance with article three,
4 chapter twenty-nine-a of this code:

5 (1) Provide funding for the establishment and support of
6 law-enforcement training academies in the state;

7 (2) Establish standards governing the establishment and
8 operation of the law-enforcement training academies,
9 including regional locations throughout the state, in order to
10 provide access to each law-enforcement agency in the state
11 in accordance with available funds;

12 (3) Establish minimum law-enforcement instructor
13 qualifications;

14 (4) Certify qualified law-enforcement instructors;

15 (5) Maintain a list of approved law-enforcement
16 instructors;

17 (6) Promulgate standards governing the qualification of
18 law-enforcement officers and the entry-level law-
19 enforcement training curricula. These standards shall require
20 satisfactory completion of a minimum of four hundred
21 classroom hours, shall provide for credit to be given for
22 relevant classroom hours earned pursuant to training other
23 than training at an established law-enforcement training

24 academy if earned within five years immediately preceding
25 the date of application for certification, and shall provide that
26 the required classroom hours can be accumulated on the basis
27 of a part-time curricula spanning no more than twelve
28 months, or a full-time curricula;

29 (7) Establish standards governing in-service law-
30 enforcement officer training curricula and in-service
31 supervisory level training curricula;

32 (8) Certify organized criminal enterprise investigation
33 techniques with a qualified anti-racial profiling training
34 course or module;

35 (9) Establish standards governing mandatory training to
36 effectively investigate organized criminal enterprises as
37 defined in article thirteen, chapter sixty-one of this code,
38 while preventing racial profiling, as defined in section ten of
39 this article, for entry level training curricula and for law-
40 enforcement officers who have not received such training as
41 certified by the Governor's committee as required in this
42 section;

43 (10) Establish, no later than July 1, 2011, procedures for
44 implementation of a course in investigation of organized
45 criminal enterprises which includes an anti-racial training
46 module to be available on the Internet or otherwise to all law-
47 enforcement officers. The procedures shall include the
48 frequency with which a law-enforcement officer shall receive
49 training in investigation of organized criminal enterprises and
50 anti-racial profiling, and a time frame for which all law-
51 enforcement officers must receive such training: *Provided,*
52 That all law-enforcement officers in this state shall receive
53 such training no later than July 1, 2012. In order to
54 implement and carry out the intent of this section, the
55 Governor's committee may promulgate emergency rules
56 pursuant to section fifteen, article three, chapter twenty-nine-
57 a of this code;

58 (11) Certify or decertify or reactivate law-enforcement
59 officers, as provided in sections five and eleven of this
60 article;

61 (12) Establish standards and procedures for the reporting
62 of complaints and certain disciplinary matters concerning
63 law-enforcement officers and for reviewing the certification
64 of law-enforcement officers. These standards and procedures
65 shall provide for preservation of records and access to records
66 by law-enforcement agencies and conditions as to how the
67 information in those records is to be used regarding an
68 officer's law-enforcement employment by another law-
69 enforcement agency;

70 (A) The subcommittee shall establish and manage a
71 database that is available to all law-enforcement agencies in
72 the state concerning the status of any person's certification.

73 (B) Personnel or personal information not resulting in a
74 criminal conviction is exempt from disclosure pursuant to the
75 provisions of chapter twenty-nine-b of this code.

76 (13) Seek supplemental funding for law-enforcement
77 training academies from sources other than the fees collected
78 pursuant to section four of this article;

79 (14) Any responsibilities and duties as the Legislature
80 may, from time to time, see fit to direct to the committee; and

81 (15) Submit, on or before September 30 of each year, to
82 the Governor, and upon request to individual members of the
83 Legislature, a report on its activities during the previous year
84 and an accounting of funds paid into and disbursed from the
85 special revenue account established pursuant to section four
86 of this article.

87 (b) In addition to the duties authorized and established by
88 this section, the Governor's committee may:

89 (1) Establish training to effectively investigate human
90 trafficking offenses as defined in article two, chapter sixty-
91 one of this code, for entry level training curricula and for
92 law-enforcement officers who have not received such training
93 as certified by the committee as required by this section; and

94 (2) Establish procedures for the implementation of a
95 course in investigation of human trafficking offenses. The
96 course may include methods of identifying and investigating
97 human trafficking and methods for assisting trafficking
98 victims. In order to implement and carry out the intent of this
99 subdivision, the committee may promulgate emergency rules
100 pursuant to section fifteen, article three, chapter twenty-nine-
101 a of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

1 (a) Any person who unlawfully restrains another person
2 with the intent:

3 (1) To hold another person for ransom, reward, or
4 concession;

5 (2) To transport another person with the intent to inflict
6 bodily injury or to terrorize the victim or another person; or

7 (3) To use another person as a shield or hostage, shall be
8 guilty of a felony and, upon conviction, shall be punished by
9 confinement by the division of corrections for life, and,
10 notwithstanding the provisions of article twelve, chapter
11 sixty-two of this code, shall not be eligible for parole.

12 (b) The following exceptions shall apply to the penalty
13 contained in subsection (a):

14 (1) A jury may, in their discretion, recommend mercy,
15 and if such recommendation is added to their verdict, such
16 person shall be eligible for parole in accordance with the
17 provisions of said article twelve;

18 (2) If such person pleads guilty, the court may, in its
19 discretion, provide that such person shall be eligible for
20 parole in accordance with the provisions of said article
21 twelve, and, if the court so provides, such person shall be
22 eligible for parole in accordance with the provisions of said
23 article twelve in the same manner and with like effect as if
24 such person had been found guilty by the verdict of a jury
25 and the jury had recommended mercy;

26 (3) In all cases where the person against whom the
27 offense is committed is returned, or is permitted to return,
28 alive, without bodily harm having been inflicted upon him or
29 her, but after ransom, money or other thing, or any
30 concession or advantage of any sort has been paid or yielded,
31 the punishment shall be confinement by the division of
32 corrections for a definite term of years not less than twenty
33 nor more than fifty; or

34 (4) In all cases where the person against whom the
35 offense is committed is returned, or is permitted to return,
36 alive, without bodily harm having been inflicted upon him or
37 her, but without ransom, money or other thing, or any
38 concession or advantage of any sort having been paid or
39 yielded, the punishment shall be confinement by the division
40 of corrections for a definite term of years not less than ten nor
41 more than thirty.

42 (c) For purposes of this section: "To use another as a
43 hostage" means to seize or detain and threaten to kill or injure

44 another in order to compel a third person or a governmental
45 organization to do or abstain from doing any legal act as an
46 explicit or implicit condition for the release of the person
47 detained.

48 (d) Notwithstanding any other provision of this section,
49 if a violation of this section is committed by a family member
50 of a minor abducted or held hostage and he or she is not
51 motivated by monetary purposes, but rather intends to
52 conceal, take, remove the child or refuse to return the child to
53 his or her lawful guardian in the belief, mistaken or not, that
54 it is in the child's interest to do so, he or she shall be guilty of
55 a felony and, upon conviction thereof, be confined in a
56 correctional facility for not less than one or more than five
57 years or fined not more than one thousand dollars, or both.

58 (e) Notwithstanding any provision of this code to the
59 contrary, where a law-enforcement agency of this state or a
60 political subdivision thereof receives a complaint that a
61 violation of the provisions of this section has occurred, the
62 receiving law-enforcement agency shall notify any other
63 law-enforcement agency with jurisdiction over the offense,
64 including, but not limited to, the state police and each agency
65 so notified, shall cooperate in the investigation forthwith.

66 (f) It shall be a defense to a violation of subsection (d) of
67 this section, that the accused's action was necessary to
68 preserve the welfare of the minor child and the accused
69 promptly reported his or her actions to a person with lawful
70 custody of the minor, to law-enforcement or to Child
71 Protective Services division of the Department of Health and
72 Human Resources.

§61-2-17. Human trafficking; criminal penalties.

1 (a) As used in this section:

2 (1) “Debt bondage” means the status or condition of a
3 debtor arising from a pledge by the debtor of the debtor’s
4 personal services or those of a person under the debtor’s
5 control as a security for debt, if the value of those services as
6 reasonably assessed is not applied toward the liquidation of
7 the debt or the length and nature of those services are not
8 respectively limited and defined.

9 (2) “Forced labor or services” means labor or services
10 that are performed or provided by another person and are
11 obtained or maintained through a person’s:

12 (A) Threat, either implicit or explicit, deception or fraud,
13 scheme, plan, or pattern, or other action intended to cause a
14 person to believe that, if the person did not perform or
15 provide the labor or services that person or another person
16 would suffer serious bodily harm or physical restraint:
17 *Provided*, That this does not include work or services
18 provided by a minor to the minor’s parent or legal guardian
19 so long as the legal guardianship or custody of the minor was
20 not obtained for the purpose compelling the minor to
21 participate in commercial sex acts or sexually explicit
22 performance, or perform forced labor or services.

23 (B) Physically restraining or threatening to physically
24 restrain a person;

25 (C) Abuse or threatened abuse of the legal process; or

26 (D) Knowingly destroying, concealing, removing,
27 confiscating, or possessing any actual or purported passport
28 or other immigration document, or any other actual or
29 purported government identification document, of another
30 person.

31 “Forced labor or services” does not mean labor or
32 services required to be performed by a person in compliance

33 with a court order or as a required condition of probation,
34 parole, or imprisonment.

35 (3) “Human trafficking” means the labor trafficking or
36 sex trafficking involving adults or minors where two or more
37 persons are trafficked within any one year period.

38 (4) “Labor trafficking” means the promotion, recruitment,
39 transportation, transfer, harboring, enticement, provision,
40 obtaining or receipt of a person by any means, whether a
41 United States citizen or foreign national, for the purpose of:

42 (A) Debt bondage or forced labor or services;

43 (B) Slavery or practices similar to slavery.

44 (5) “Sex trafficking of minors” means the promotion,
45 recruitment, transportation, transfer, harboring, enticement,
46 provision, obtaining or receipt of a person under the age of
47 eighteen by any means, whether a United States citizen or
48 foreign national, for the purpose of causing the minor to
49 engage in sexual acts, or in sexual conduct violating the
50 provisions of subsection (b), section five, article eight of this
51 chapter or article eight-c of this chapter.

52 (6) “Sex trafficking of adults” means the promotion,
53 recruitment, transportation, transfer, harboring, enticement,
54 provision, obtaining or receipt of a person eighteen years of
55 age or older, whether a United States citizen or foreign
56 national, for the purposes of engaging in violations of
57 subsection (b), section five, article eight of this chapter by
58 means of force, threat or deception.

59 (b) Any person who knowingly and wilfully engages in
60 human trafficking is guilty of a felony and upon conviction
61 shall be incarcerated in a state correctional facility for an
62 indeterminate sentence of not less than three nor more than
63 fifteen years or fined not more than \$200,000, or both.



CHAPTER 91

**(H. B. 4322 - By Delegates Talbott,
Crosier, Romine, Shaver, Hamilton,
Azinger and Ireland)
[By Request of the Division of Natural Resources]**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to hunting; adding coyote and fox to the list of species in which any color artificial light is permitted for hunting at night; removing redundant language relating to hunting while under the influence of alcohol; and referencing Class Y special crossbow hunting permits.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it
4 is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take
6 or attempt to take, any live wild animal or wild bird out of its
7 den or place of refuge except as may be authorized by rules
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light
10 in hunting, locating, attracting, taking, trapping or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his or her possession or subject to his or her control, or for
13 any person accompanying him or her to have in his or her
14 possession or subject to his or her control, any firearm,
15 whether cased or uncased, bow, arrow, or both, or other
16 implement or device suitable for taking, killing or trapping a
17 wild bird or animal: *Provided*, That it is lawful to hunt or
18 take coyote, fox, raccoon, opossum or skunk by the use of
19 artificial light subject to the restrictions set forth in this
20 subdivision. No person is guilty of a violation of this
21 subdivision merely because he or she looks for, looks at,
22 attracts or makes motionless a wild bird or wild animal with
23 or by the use of an artificial light, unless at the time he or she
24 has in his or her possession a firearm, whether cased or
25 uncased, bow, arrow, or both, or other implement or device
26 suitable for taking, killing or trapping a wild bird or wild
27 animal, or unless the artificial light (other than the head
28 lamps of an automobile or other land conveyance) is attached
29 to, a part of or used from within or upon an automobile or
30 other land conveyance.

31 Any person violating the provisions of this subdivision is
32 guilty of a misdemeanor and, upon conviction thereof, shall
33 for each offense be fined not less than \$100 nor more than
34 \$500 and shall be confined in jail for not less than ten days
35 nor more than one hundred days;

36 (4) Hunt for, take, kill, wound or shoot at wild animals or
37 wild birds from an airplane, or other airborne conveyance, an
38 automobile, or other land conveyance, or from a motor-driven

39 water conveyance, except as authorized by rules promulgated
40 by the director;

41 (5) Take any beaver or muskrat by any means other than
42 by trap;

43 (6) Catch, capture, take or kill by seine, net, bait, trap or
44 snare or like device of any kind any wild turkey, ruffed
45 grouse, pheasant or quail;

46 (7) Destroy or attempt to destroy needlessly or willfully
47 the nest or eggs of any wild bird or have in his or her
48 possession the nest or eggs unless authorized to do so under
49 rules promulgated by or under a permit issued by the director;

50 (8) Except as provided in section six of this article, carry
51 an uncased or loaded gun in any of the woods of this state
52 except during the open firearms hunting season for wild
53 animals and nonmigratory wild birds within any county of the
54 state unless he or she has in his or her possession a permit in
55 writing issued to him or her by the director: *Provided*, That
56 this section does not prohibit hunting or taking of unprotected
57 species of wild animals and wild birds and migratory wild
58 birds, during the open season, in the open fields, open water
59 and open marshes of the state;

60 (9) Have in his or her possession a crossbow with a
61 nocked bolt, a loaded firearm or a firearm from the magazine
62 of which all shells and cartridges have not been removed, in
63 or on any vehicle or conveyance, or its attachments, within
64 the state, except as may otherwise be provided by law or
65 regulation. Except as hereinafter provided, between five
66 o'clock postmeridian of one day and seven o'clock
67 antemeridian, eastern standard time of the day following, any
68 unloaded firearm or crossbow, being lawfully carried in
69 accordance with the foregoing provisions, may be so carried
70 only when in a case or taken apart and securely wrapped.

71 During the period from July 1 to September 30, inclusive, of
72 each year, the foregoing requirements relative to carrying
73 certain unloaded firearms are permissible only from eight-
74 thirty o'clock postmeridian to five o'clock antemeridian,
75 eastern standard time: *Provided*, That the time periods for
76 carrying unloaded and uncased firearms are extended for one
77 hour after the postmeridian times and one hour before the
78 antemeridian times established above if a hunter is preparing
79 to or in the process of transporting or transferring the
80 firearms to or from a hunting site, campsite, home or other
81 place of abode;

82 (10) Hunt, catch, take, kill, trap, injure or pursue with
83 firearms or other implement by which wildlife may be taken
84 after the hour of five o'clock antemeridian on Sunday on
85 private land without the written consent of the landowner any
86 wild animals or wild birds except when a big game season
87 opens on a Monday, the Sunday prior to that opening day will
88 be closed for any taking of wild animals or birds after five
89 o'clock antemeridian on that Sunday: *Provided*, That traps
90 previously and legally set may be tended after the hour of
91 five o'clock antemeridian on Sunday and the person so doing
92 may carry only a twenty-two caliber firearm for the purpose
93 of humanely dispatching trapped animals. Any person
94 violating the provisions of this subdivision is guilty of a
95 misdemeanor and, upon conviction thereof, in addition to any
96 fines that may be imposed by this or other sections of this
97 code, is subject to a \$100 fine;

98 (11) Hunt, catch, take, kill, injure or pursue a wild animal
99 or bird with the use of a ferret;

100 (12) Buy raw furs, pelts or skins of fur-bearing animals
101 unless licensed to do so;

102 (13) Catch, take, kill or attempt to catch, take or kill any
103 fish at any time by any means other than by rod, line and

104 hooks with natural or artificial lures unless otherwise
105 authorized by law or rules issued by the Director: *Provided*,
106 That snaring of any species of suckers, carp, fallfish and
107 creek chubs shall at all times be lawful;

108 (14) Employ or hire, or induce or persuade, by the use of
109 money or other things of value, or by any means, any person
110 to hunt, take, catch or kill any wild animal or wild bird except
111 those species on which there is no closed season, or to fish
112 for, catch, take or kill any fish, amphibian or aquatic life
113 which is protected by the provisions of this chapter or rules
114 of the director or the sale of which is prohibited;

115 (15) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds
117 included in the terms of conventions between the United
118 States and Great Britain and between the United States and
119 United Mexican States for the protection of migratory birds
120 and wild mammals concluded, respectively, August 16, 1916,
121 and February 7, 1936, except during the time and in the
122 manner and numbers prescribed by the federal Migratory
123 Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations
124 made thereunder;

125 (16) Kill, take, catch or have in his or her possession,
126 living or dead, any wild bird other than a game bird; or
127 expose for sale or transport within or without the state any
128 bird except as aforesaid. No part of the plumage, skin or
129 body of any protected bird may be sold or had in possession
130 for sale except mounted or stuffed plumage, skin, bodies or
131 heads of the birds legally taken and stuffed or mounted,
132 irrespective of whether the bird was captured within or
133 without this state, except the English or European sparrow
134 (passer domesticus), starling (sturnus vulgaris) and cowbird
135 (molothrus ater), which may not be protected and the killing
136 thereof at any time is lawful;

137 (17) Use dynamite or any like explosive or poisonous
138 mixture placed in any waters of the state for the purpose of
139 killing or taking fish. Any person violating the provisions of
140 this subdivision is guilty of a felony and, upon conviction
141 thereof, shall be fined not more than \$500 or imprisoned for
142 not less than six months nor more than three years, or both
143 fined and imprisoned;

144 (18) Have a bow and gun, or have a gun and any arrow or
145 arrows, in the fields or woods at the same time;

146 (19) Have a crossbow in the woods or fields or use a
147 crossbow to hunt for, take or attempt to take any wildlife
148 except as otherwise provided in section 42w of this article;

149 (20) Take or attempt to take turkey, bear, elk or deer with
150 any arrow unless the arrow is equipped with a point having
151 at least two sharp cutting edges measuring in excess of three
152 fourths of an inch wide;

153 (21) Take or attempt to take any wildlife with an arrow
154 having an explosive head or shaft, a poisoned arrow or an
155 arrow which would affect wildlife by any chemical action;

156 (22) Shoot an arrow across any public highway or from
157 aircraft, motor-driven watercraft, motor vehicle or other land
158 conveyance;

159 (23) Permit any dog owned by him or her or under his or
160 her control to chase, pursue or follow upon the track of any
161 wild animal or wild bird, either day or night, between May 1
162 and the August 15 next following: *Provided*, That dogs may
163 be trained on wild animals and wild birds, except deer and
164 wild turkeys, and field trials may be held or conducted on the
165 grounds or lands of the owner or by his or her bona fide
166 tenant or tenants or upon the grounds or lands of another
167 person with his or her written permission or on public lands

168 at any time: *Provided, however,* That nonresidents may not
169 train dogs in this state at any time except during the legal
170 small game hunting season: *Provided further,* That the person
171 training said dogs does not have firearms or other implements
172 in his or her possession during the closed season on wild
173 animals and wild birds, whereby wild animals or wild birds
174 could be taken or killed;

175 (24) Conduct or participate in a field trial, shoot-to-
176 retrieve field trial, water race or wild hunt hereafter referred
177 to as trial: *Provided,* That any person, group of persons, club
178 or organization may hold the trial at any time of the year
179 upon obtaining a permit as is provided in section fifty-six of
180 this article. The person responsible for obtaining the permit
181 shall prepare and keep an accurate record of the names and
182 addresses of all persons participating in said trial and make
183 same readily available for inspection by any natural resources
184 police officer upon request;

185 (25) Except as provided in section four of this article,
186 hunt, catch, take, kill or attempt to hunt, catch, take or kill
187 any wild animal, wild bird or wild fowl except during the
188 open season established by rule of the director as authorized
189 by subdivision (6), section seven, article one of this chapter;

190 (26) Hunting on public lands on Sunday after five o'clock
191 antemeridian is prohibited;

192 (27) Hunt, catch, take, kill, trap, injure or pursue with
193 firearms or other implement which wildlife can be taken, on
194 private lands on Sunday after the hour of five o'clock
195 antemeridian: *Provided,* That the provisions of this
196 subdivision do not apply in any county until the county
197 commission of the county holds an election on the question
198 of whether the provisions of this subdivision prohibiting
199 hunting on Sunday shall apply within the county and the
200 voters approve the allowance of hunting on Sunday in the

201 county. The election is determined by a vote of the resident
202 voters of the county in which the hunting on Sunday is
203 proposed to be authorized. The county commission of the
204 county in which Sunday hunting is proposed shall give notice
205 to the public of the election by publication of the notice as a
206 Class II-0 legal advertisement in compliance with the
207 provisions of article three, chapter fifty-nine of this code and
208 the publication area for the publication is the county in which
209 the election is to be held. The date of the last publication of
210 the notice shall fall on a date within the period of the fourteen
211 consecutive days next preceding the election.

212 On the local option election ballot shall be printed the
213 following:

214 Shall hunting on Sunday be authorized in _____
215 County?

216 Yes No

217 (Place a cross mark in the square opposite your choice.)

218 Any local option election to approve or disapprove of the
219 proposed authorization of Sunday hunting within a county
220 shall be in accordance with procedures adopted by the
221 commission. The local option election may be held in
222 conjunction with a primary or general election or at a special
223 election. Approval shall be by a majority of the voters
224 casting votes on the question of approval or disapproval of
225 Sunday hunting at the election.

226 If a majority votes against allowing Sunday hunting, no
227 election on the issue may be held for a period of one hundred
228 four weeks. If a majority votes "yes," no election
229 reconsidering the action may be held for a period of five
230 years. A local option election may thereafter be held if a
231 written petition of qualified voters residing within the county

232 equal to at least five percent of the number of persons who
233 were registered to vote in the next preceding general election
234 is received by the county commission of the county in which
235 Sunday hunting is authorized. The petition may be in any
236 number of counterparts. The election shall take place at the
237 next primary or general election scheduled more than ninety
238 days following receipt by the county commission of the
239 petition required by this subsection: *Provided*, That the issue
240 may not be placed on the ballot until all statutory notice
241 requirements have been met. No local law or regulation
242 providing any penalty, disability, restriction, regulation or
243 prohibition of Sunday hunting may be enacted and the
244 provisions of this article preempt all regulations, rules,
245 ordinances and laws of any county or municipality in conflict
246 with this subdivision; and

247 (28) Hunt or conduct hunts for a fee where the hunter is
248 not physically present in the same location as the wildlife
249 being hunted within West Virginia.

CHAPTER 92

**(H. B. 4328 - By Delegates Talbott,
Crosier, R. Phillips, Anderson, Azinger,
Rodighiero, Hamilton and Hall)
[By Request of the Division of Natural Resources]**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §20-2-22 of the Code of West Virginia, 1931, as amended, relating to tagging of certain game animals; and removing bobcats from the list of species requiring a field tag.

Be it enacted by the Legislature of West Virginia:

That §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22. Tagging, removing, transporting and reporting bear, deer, wild boar and wild turkey.

1 (a) Each person killing a bear, deer, wild boar or wild
2 turkey found in a wild state shall either attach a completed
3 field tag to the animal or remain with the animal and have
4 upon his or her person a completed field tag before removing
5 the carcass in any manner from where it was killed.

6 (b) While transporting the carcass of a bear, deer, wild
7 boar or wild turkey from where it was killed, each person
8 shall either attach a completed field tag to the animal or have
9 upon his or her person a completed field tag.

10 (c) Upon arriving at a residence, camp, hunting lodge,
11 vehicle or vessel each person shall attach a field tag to the
12 killed bear, deer, wild boar or wild turkey. The field tag shall
13 remain on the carcass until it is retagged with a game tag by
14 a natural resources police officer or an official checking
15 station. The game tag shall remain on the carcass until it is
16 dressed for consumption.

17 (d) If a person who does not possess a field tag kills a
18 bear, deer, wild boar or wild turkey, he or she shall make a
19 tag. The field tag shall bear the name, address and, if
20 applicable, the license number of the hunter and the time,
21 date and county of killing.

22 (e) The carcass of a wild turkey shall be delivered to a
23 natural resources police officer or an official checking station

24 for checking and retagging before it is either skinned or
25 transported beyond the boundaries of the county adjacent to
26 that in which the kill was made.

27 (f) The fresh skin and head or carcass of the deer shall be
28 delivered to a natural resources police officer or an official
29 checking station for checking and retagging before it is
30 transported beyond the boundaries of the county adjacent to
31 that in which the kill was made.

32 (g) A person who kills a bear shall treat the carcass and
33 remains in accordance with the provisions of section twenty-
34 two-a of this article.

35 (h) For each violation of this section a person is subject
36 to the penalties provided in this article.



CHAPTER 93

**(Com. Sub. for S. B. 478 - By Senators
Unger, Klempa and Kessler, Mr. President)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §20-2-30a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-42y, all relating to creating apprentice hunting and trapping licenses; exempting hunter training requirements for apprentice hunting and trapping licenses; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-30a 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 §20-2-42y, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

1 (a) Notwithstanding any other provisions of this article,
2 no base hunting license may be issued to any person who was
3 born on or after January 1, 1975, unless the person submits to
4 the person authorized to issue hunting licenses a certificate of
5 training as provided in this section or proof of completion of
6 any course which promotes as a major objective safety in the
7 handling of firearms and of bow and arrows and which
8 course is approved by the hunter education association or the
9 director, or provides a State of West Virginia resident or
10 nonresident hunting license from the previous hunting season
11 that displays a certification of training, or attests that a hunter
12 training course has been completed when purchasing a
13 license or stamp online: *Provided*, That after January 1, 2013,
14 a person may be issued a Class AH, Class AHJ, Class AAH
15 and Class AAHJ apprentice hunting and trapping license
16 pursuant to the provisions of section forty-two-y of this
17 article and is exempt from the hunter training requirements
18 set forth herein.

19 (b) The director shall establish a course in the safe
20 handling of firearms and of bows and arrows, such as the
21 course approved by the Hunter Education Association. This
22 course shall be given at least once per year in each county in

23 this state and shall be taught by instructors certified by the
24 director. In establishing and conducting this course, the
25 director may cooperate with any reputable association or
26 organization which promotes as a major objective safety in
27 the handling of firearms and of bows and arrows: *Provided,*
28 That any person holding a Class A-L or AB-L lifetime
29 resident license obtained prior to his or her fifteenth birthday
30 shall be required to obtain a certificate of training as provided
31 in this section before hunting or trapping pursuant to said
32 license. This course of instruction shall be offered without
33 charge, except for materials or ammunition consumed. Upon
34 satisfactory completion of the course, each person instructed
35 in the course shall be issued a certificate of training for the
36 purposes of complying with the requirements of subsection
37 (a) of this section. The certificate shall be in the form
38 prescribed by the director and shall be valid for hunting
39 license application purposes.

40 (c) (1) Upon satisfactory completion of this course, any
41 person whose hunting license has been revoked for a
42 violation of the provisions of this chapter may petition the
43 director for a reduction of his or her revocation time.
44 However, under no circumstances may the time be reduced
45 to less than one year.

46 (2) Successful completion of this course shall be required
47 to consider the reinstatement of a hunting license of any
48 person whose license has been revoked due to a conviction
49 for negligent shooting of a human being or of livestock under
50 the provisions of section fifty-seven of this article, and who
51 petitions the director for an early reinstatement of his or her
52 hunting privileges. Such a petitioner shall also comply with
53 the other requirements for consideration of reinstatement
54 contained in section thirty-eight of this article.

55 (d) It is unlawful for any person to falsify, alter, forge,
56 counterfeit or utter a certificate of training. Any person who
57 violates the provisions of this subsection is guilty of a
58 misdemeanor and, upon conviction thereof, shall be fined not
59 less than \$500 nor more than \$1,000, or confined in jail for
60 a period not to exceed one year, or both fined and
61 imprisoned.

62 (e) Nothing herein contained shall mandate that any
63 county school district in the state be responsible for
64 implementing hunter safety education programs.

**§20-2-42y. Class AH, AHJ, AAH, AAHJ apprentice hunting
and trapping licenses; penalties.**

1 (a) Except for persons otherwise exempted, Class AH,
2 AHJ, AAH, and AAHJ licenses are apprentice hunting and
3 trapping licenses and entitle the licensee to hunt and trap for
4 all legal species of wild animals and wild birds. The licenses
5 shall be base licenses and entitle the licensee to a deferral of
6 the proof of a certificate of training required under the
7 provisions of section thirty-a of this article.

8 (b) The apprentice hunting and trapping licensee shall not
9 hunt or trap unless he or she is in possession of all other
10 required documentation and stamps and is accompanied and
11 directly supervised by an adult eighteen years of age or older
12 who either possesses a valid West Virginia hunting license or
13 has the lawful privilege to hunt pursuant to the provisions of
14 this chapter. For purposes of this section, "accompanied and
15 directly supervised" means that a person maintains a close
16 visual and verbal contact with, provides adequate direction to
17 and can assume control of the firearm from the apprentice
18 hunter.

19 (c) The cost of the Class AH license for residents who
20 have reached their eighteenth birthday shall be \$19 and shall
21 have the same privileges associated with Class A base
22 license. The cost of the Class AAH license for nonresidents
23 who have reached their eighteenth birthday shall be \$119 and
24 shall have the same privileges associated with a Class E base
25 license. The cost of the Class AHJ license shall be \$16 for
26 residents who have reached their fifteenth birthday and who
27 have not reached their eighteenth birthday, and shall have the
28 same privileges associated with Class XJ base license. The
29 cost of the Class AAHJ license shall be \$16 for nonresidents
30 who have not reached their eighteenth birthday and shall
31 have the same privileges associated with a Class XXJ base
32 license.

33 (d) An apprentice hunting and trapping license is a yearly
34 license and may only be purchased electronically in a manner
35 designated by the director. No person who has ever had a
36 valid base hunting license, other than a Class AH, Class AHJ,
37 Class AAH, or Class AAHJ license, may be issued one of the
38 apprentice hunting and trapping licenses. Further, no person
39 may purchase more than three apprentice hunting and
40 trapping licenses, and the purchases must occur within a
41 period of five consecutive years.

42 (e) The director may promulgate rules in accordance with
43 chapter twenty-nine-a of this code regulating the issuance of
44 apprentice hunting and trapping licenses.

45 (f) Any person violating the provisions of this section is
46 guilty of a misdemeanor and, upon conviction thereof, shall
47 be subject to the punishment and penalties prescribed in
48 section nine, article seven of this chapter.



CHAPTER 94

**(Com. Sub. for H. B. 4260 - By Delegates
Fleischauer, Miley, Brown,
Caputo, Hunt, Longstreth, Pino,
Overington and Sobonya)**

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16B-6e of said code; to amend and reenact §33-16-3v of said code; to amend and reenact §33-24-7k of said code; and to amend and reenact §33-25A-8j of said code, all relating to insurance coverage for autism spectrum disorders; specifying application of benefit caps; clarifying time frames; adding evaluation of autism spectrum disorder to included coverage; clarifying diagnosis, evaluation and treatment requirements; clarifying reporting requirements; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16B-6e of said code be amended and reenacted; that §33-16-3v of said code be amended and reenacted; that §33-24-7k of said code be amended and reenacted; and that §33-25A-8j 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.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§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 to establish and promulgate rules for the administration of
7 these 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
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 no
36 plan may 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 that its total costs for the treatment of mental illness for any
68 plan exceeded two percent of the total costs for such plan in
69 any experience period, then the agency may apply whatever
70 additional cost-containment measures may be necessary,
71 including, but not limited to, limitations on inpatient and
72 outpatient benefits, to maintain costs below two percent of
73 the total costs for the plan for the next experience period.

74 (C) The agency shall not discriminate between medical-
75 surgical benefits and mental health benefits in the
76 administration of its plan. With regard to both medical-
77 surgical and mental health benefits, it may make
78 determinations of medical necessity and appropriateness, and
79 it may use recognized health care quality and cost
80 management tools, including, but not limited to, limitations
81 on inpatient and outpatient benefits, utilization review,
82 implementation of cost-containment measures,

83 preauthorization for certain treatments, setting coverage
84 levels, setting maximum number of visits within certain time
85 periods, using capitated benefit arrangements, using fee-for-
86 service arrangements, using third-party administrators, using
87 provider networks and using patient cost sharing in the form
88 of copayments, deductibles and coinsurance.

89 (7) Coverage for general anesthesia for dental procedures
90 and associated outpatient hospital or ambulatory facility
91 charges provided by appropriately licensed health care
92 individuals in conjunction with dental care if the covered
93 person is:

94 (A) Seven years of age or younger or is developmentally
95 disabled, and is an individual for whom a successful result
96 cannot be expected from dental care provided under local
97 anesthesia because of a physical, intellectual or other
98 medically compromising condition of the individual and for
99 whom a superior result can be expected from dental care
100 provided under general anesthesia;

101 (B) A child who is twelve years of age or younger with
102 documented phobias, or with documented mental illness, and
103 with dental needs of such magnitude that treatment should
104 not be delayed or deferred and for whom lack of treatment
105 can be expected to result in infection, loss of teeth or other
106 increased oral or dental morbidity and for whom a successful
107 result cannot be expected from dental care provided under
108 local anesthesia because of such condition and for whom a
109 superior result can be expected from dental care provided
110 under general anesthesia.

111 (8)(A) Any plan issued or renewed on or after January 1,
112 2012, shall include coverage for diagnosis, evaluation and
113 treatment of autism spectrum disorder in individuals ages
114 eighteen months to eighteen years. To be eligible for

115 coverage and benefits under this subdivision, the individual
116 must be diagnosed with autism spectrum disorder at age eight
117 or younger. Such policy shall provide coverage for
118 treatments that are medically necessary and ordered or
119 prescribed by a licensed physician or licensed psychologist
120 and in accordance with a treatment plan developed from a
121 comprehensive evaluation by a certified behavior analyst for
122 an individual diagnosed with autism spectrum disorder.

123 (B) The coverage shall include, but not be limited to,
124 applied behavior analysis. Applied behavior analysis shall be
125 provided or supervised by a certified behavior analyst. The
126 annual maximum benefit for applied behavior analysis
127 required by this subdivision shall be in an amount not to
128 exceed \$30,000 per individual, for three consecutive years
129 from the date treatment commences. At the conclusion of the
130 third year, coverage for applied behavior analysis required by
131 this subdivision shall be in an amount not to exceed \$2,000
132 per month, until the individual reaches eighteen years of age,
133 as long as the treatment is medically necessary and in
134 accordance with a treatment plan developed by a certified
135 behavior analyst pursuant to a comprehensive evaluation or
136 reevaluation of the individual. This subdivision shall not be
137 construed as limiting, replacing or affecting any obligation to
138 provide services to an individual under the Individuals with
139 Disabilities Education Act, 20 U.S.C. 1400 et seq., as
140 amended from time to time or other publicly funded
141 programs. Nothing in this subdivision shall be construed as
142 requiring reimbursement for services provided by public
143 school personnel.

144 (C) The certified behavior analyst shall file progress
145 reports with the agency semiannually. In order for treatment
146 to continue, the agency must receive objective evidence or a
147 clinically supportable statement of expectation that:

148 (i) The individual's condition is improving in response to
149 treatment; and

150 (ii) A maximum improvement is yet to be attained; and

151 (iii) There is an expectation that the anticipated
152 improvement is attainable in a reasonable and generally
153 predictable period of time.

154 (D) On or before January 1 each year, the agency shall
155 file an annual report with the Joint Committee on
156 Government and Finance describing its implementation of the
157 coverage provided pursuant to this subdivision. The report
158 shall include, but shall not be limited to, the number of
159 individuals in the plan utilizing the coverage required by this
160 subdivision, the fiscal and administrative impact of the
161 implementation, and any recommendations the agency may
162 have as to changes in law or policy related to the coverage
163 provided under this subdivision. In addition, the agency shall
164 provide such other information as may be required by the
165 Joint Committee on Government and Finance as it may from
166 time to time request.

167 (E) For purposes of this subdivision, the term:

168 (i) "Applied Behavior Analysis" means the design,
169 implementation, and evaluation of environmental
170 modifications using behavioral stimuli and consequences, to
171 produce socially significant improvement in human behavior,
172 including the use of direct observation, measurement, and
173 functional analysis of the relationship between environment
174 and behavior.

175 (ii) "Autism spectrum disorder" means any pervasive
176 developmental disorder, including autistic disorder,

177 Asperger's Syndrome, Rett Syndrome, childhood
178 disintegrative disorder, or Pervasive Development Disorder
179 as defined in the most recent edition of the Diagnostic and
180 Statistical Manual of Mental Disorders of the American
181 Psychiatric Association.

182 (iii) "Certified behavior analyst" means an individual
183 who is certified by the Behavior Analyst Certification Board
184 or certified by a similar nationally recognized organization.

185 (iv) "Objective evidence" means standardized patient
186 assessment instruments, outcome measurements tools or
187 measurable assessments of functional outcome. Use of
188 objective measures at the beginning of treatment, during and
189 after treatment is recommended to quantify progress and
190 support justifications for continued treatment. The tools are
191 not required, but their use will enhance the justification for
192 continued treatment.

193 (F) To the extent that the application of this subdivision
194 for autism spectrum disorder causes an increase of at least
195 one percent of actual total costs of coverage for the plan year
196 the agency may apply additional cost containment measures.

197 (G) To the extent that the provisions of this subdivision
198 require benefits that exceed the essential health benefits
199 specified under section 1302(b) of the Patient Protection and
200 Affordable Care Act, Pub. L. No. 111-148, as amended, the
201 specific benefits that exceed the specified essential health
202 benefits shall not be required of insurance plans offered by
203 the Public Employees Insurance Agency.

204 (b) The agency shall make available to each eligible
205 employee, at full cost to the employee, the opportunity to
206 purchase optional group life and accidental death insurance
207 as established under the rules of the agency. In addition, each

208 employee is entitled to have his or her spouse and
209 dependents, as defined by the rules of the agency, included in
210 the optional coverage, at full cost to the employee, for each
211 eligible dependent; and with full authorization to the agency
212 to make the optional coverage available and provide an
213 opportunity of purchase to each employee.

214 (c) The finance board may cause to be separately rated
215 for claims experience purposes:

216 (1) All employees of the State of West Virginia;

217 (2) All teaching and professional employees of state
218 public institutions of higher education and county boards of
219 education;

220 (3) All nonteaching employees of the Higher Education
221 Policy Commission, West Virginia Council for Community
222 and Technical College Education and county boards of
223 education; or

224 (4) Any other categorization which would ensure the
225 stability of the overall program.

226 (d) The agency shall maintain the medical and
227 prescription drug coverage for Medicare-eligible retirees by
228 providing coverage through one of the existing plans or by
229 enrolling the Medicare-eligible retired employees into a
230 Medicare-specific plan, including, but not limited to, the
231 Medicare/Advantage Prescription Drug Plan. In the event that
232 a Medicare specific plan would no longer be available or
233 advantageous for the agency and the retirees, the retirees
234 shall remain eligible for coverage through the agency.

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH
INSURANCE PROGRAM.**

**§5-16B-6e. Coverage for treatment of autism spectrum
disorders.**

1 (a) To the extent that the diagnosis, evaluation and
2 treatment of autism spectrum disorders are not already
3 covered by this agency, on or after January 1, 2012, a policy,
4 plan or contract subject to this section shall provide coverage
5 for such diagnosis, evaluation and treatment, for individuals
6 ages eighteen months to eighteen years. To be eligible for
7 coverage and benefits under this section, the individual must
8 be diagnosed with autism spectrum disorder at age eight or
9 younger. Such policy shall provide coverage for treatments
10 that are medically necessary and ordered or prescribed by a
11 licensed physician or licensed psychologist and in accordance
12 with a treatment plan developed from a comprehensive
13 evaluation by a certified behavior analyst for an individual
14 diagnosed with autism spectrum disorder.

15 (b) The coverage shall include, but not be limited to,
16 applied behavior analysis. Applied behavior analysis shall be
17 provided or supervised by a certified behavior analyst. The
18 annual maximum benefit for applied behavior analysis
19 required by this subsection shall be in an amount not to
20 exceed \$30,000 per individual, for three consecutive years
21 from the date treatment commences. At the conclusion of the
22 third year, coverage for applied behavior analysis required by
23 this subsection shall be in an amount not to exceed \$2,000
24 per month, until the individual reaches eighteen years of age,
25 as long as the treatment is medically necessary and in
26 accordance with a treatment plan developed by a certified
27 behavior analyst pursuant to a comprehensive evaluation or
28 reevaluation of the individual. This section shall not be
29 construed as limiting, replacing or affecting any obligation to

30 provide services to an individual under the Individuals with
31 Disabilities Education Act, 20 U.S.C. 1400 et seq., as
32 amended from time to time, or other publicly funded
33 programs. Nothing in this section shall be construed as
34 requiring reimbursement for services provided by public
35 school personnel.

36 (c) The certified behavior analyst shall file progress
37 reports with the agency semiannually. In order for treatment
38 to continue, the agency must receive objective evidence or a
39 clinically supportable statement of expectation that:

40 (1) The individual's condition is improving in response
41 to treatment; and

42 (2) A maximum improvement is yet to be attained; and

43 (3) There is an expectation that the anticipated
44 improvement is attainable in a reasonable and generally
45 predictable period of time.

46 (d) On or before January 1 each year, the agency shall file
47 an annual report with the Joint Committee on Government
48 and Finance describing its implementation of the coverage
49 provided pursuant to this section. The report shall include,
50 but shall not be limited to, the number of individuals in the
51 plan utilizing the coverage required by this section, the fiscal
52 and administrative impact of the implementation, and any
53 recommendations the agency may have as to changes in law
54 or policy related to the coverage provided under this section.
55 In addition, the agency shall provide such other information
56 as may be requested by the Joint Committee on Government
57 and Finance as it may from time to time request.

58 (e) For purposes of this section, the term:

59 (1) “Applied Behavior Analysis” means the design,
60 implementation, and evaluation of environmental
61 modifications using behavioral stimuli and consequences, to
62 produce socially significant improvement in human behavior,
63 including the use of direct observation, measurement, and
64 functional analysis of the relationship between environment
65 and behavior.

66 (2) “Autism spectrum disorder” means any pervasive
67 developmental disorder, including autistic disorder,
68 Asperger’s Syndrome, Rett syndrome, childhood
69 disintegrative disorder, or Pervasive Development Disorder
70 as defined in the most recent edition of the Diagnostic and
71 Statistical Manual of Mental Disorders of the American
72 Psychiatric Association.

73 (3) “Certified behavior analyst” means an individual who
74 is certified by the Behavior Analyst Certification Board or
75 certified by a similar nationally recognized organization.

76 (4) “Objective evidence” means standardized patient
77 assessment instruments, outcome measurements tools or
78 measurable assessments of functional outcome. Use of
79 objective measures at the beginning of treatment, during and
80 after treatment is recommended to quantify progress and
81 support justifications for continued treatment. The tools are
82 not required, but their use will enhance the justification for
83 continued treatment.

84 (f) To the extent that the application of this section for
85 autism spectrum disorder causes an increase of at least one
86 percent of actual total costs of coverage for the plan year the
87 agency may apply additional cost containment measures.

88 (g) To the extent that the provisions of this section
89 require benefits that exceed the essential health benefits

90 specified under section 1302(b) of the Patient Protection and
91 Affordable Care Act, Pub. L. No. 111-148, as amended, the
92 specific benefits that exceed the specified essential health
93 benefits shall not be required of the West Virginia Children's
94 Health Insurance Program.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3v. Required coverage for treatment of autism spectrum disorders.

1 (a) Any insurer who, on or after January 1, 2012,
2 delivers, renews or issues a policy of group accident and
3 sickness insurance in this state under the provisions of this
4 article shall include coverage for diagnosis, evaluation and
5 treatment of autism spectrum disorder in individuals ages
6 eighteen months to eighteen years. To be eligible for
7 coverage and benefits under this section, the individual must
8 be diagnosed with autism spectrum disorder at age eight or
9 younger. Such policy shall provide coverage for treatments
10 that are medically necessary and ordered or prescribed by a
11 licensed physician or licensed psychologist and in accordance
12 with a treatment plan developed from a comprehensive
13 evaluation by a certified behavior analyst for an individual
14 diagnosed with autism spectrum disorder.

15 (b) Coverage shall include, but not be limited to, applied
16 behavior analysis. Applied behavior analysis shall be
17 provided or supervised by a certified behavior analyst. The
18 annual maximum benefit for applied behavior analysis
19 required by this subsection shall be in an amount not to
20 exceed \$30,000 per individual, for three consecutive years
21 from the date treatment commences. At the conclusion of the

22 third year, required coverage shall be in an amount not
23 exceed \$2,000 per month, until the individual reaches
24 eighteen years of age, as long as the treatment is medically
25 necessary and in accordance with a treatment plan developed
26 by a certified behavior analyst pursuant to a comprehensive
27 evaluation or reevaluation of the individual. This section
28 shall not be construed as limiting, replacing or affecting any
29 obligation to provide services to an individual under the
30 Individuals with Disabilities Education Act, 20 U.S.C. 1400
31 et seq., as amended from time to time or other publicly
32 funded programs. Nothing in this section shall be construed
33 as requiring reimbursement for services provided by public
34 school personnel.

35 (c) The certified behavior analyst shall file progress
36 reports with the insurer semiannually. In order for treatment
37 to continue, the insurer must receive objective evidence or a
38 clinically supportable statement of expectation that:

39 (1) The individual's condition is improving in response
40 to treatment; and

41 (2) A maximum improvement is yet to be attained; and

42 (3) There is an expectation that the anticipated
43 improvement is attainable in a reasonable and generally
44 predictable period of time.

45 (d) For purposes of this section, the term:

46 (1) "Applied Behavior Analysis" means the design,
47 implementation, and evaluation of environmental
48 modifications using behavioral stimuli and consequences, to
49 produce socially significant improvement in human behavior,
50 including the use of direct observation, measurement, and
51 functional analysis of the relationship between environment
52 and behavior.

53 (2) “Autism spectrum disorder” means any pervasive
54 developmental disorder, including autistic disorder,
55 Asperger’s Syndrome, Rett syndrome, childhood
56 disintegrative disorder, or Pervasive Development Disorder
57 as defined in the most recent edition of the Diagnostic and
58 Statistical Manual of Mental Disorders of the American
59 Psychiatric Association.

60 (3) “Certified behavior analyst” means an individual who
61 is certified by the Behavior Analyst Certification Board or
62 certified by a similar nationally recognized organization.

63 (4) “Objective evidence” means standardized patient
64 assessment instruments, outcome measurements tools or
65 measurable assessments of functional outcome. Use of
66 objective measures at the beginning of treatment, during and
67 after treatment is recommended to quantify progress and
68 support justifications for continued treatment. The tools are
69 not required, but their use will enhance the justification for
70 continued treatment.

71 (e) The provisions of this section do not apply to small
72 employers. For purposes of this section a small employer
73 means any person, firm, corporation, partnership or
74 association actively engaged in business in the State of West
75 Virginia who, during the preceding calendar year, employed
76 an average of no more than twenty-five eligible employees.

77 (f) To the extent that the application of this section for
78 autism spectrum disorder causes an increase of at least one
79 percent of actual total costs of coverage for the plan year the
80 insurer may apply additional cost containment measures.

81 (g) To the extent that the provisions of this section
82 require benefits that exceed the essential health benefits
83 specified under section 1302(b) of the Patient Protection and

84 Affordable Care Act, Pub. L. No. 111-148, as amended, the
85 specific benefits that exceed the specified essential health
86 benefits shall not be required of a health benefit plan when
87 the plan is offered by a health care insurer in this state.

**ARTICLE 24. HOSPITAL MEDICAL AND DENTAL
CORPORATIONS.**

**§33-24-7k. Coverage for diagnosis and treatment of autism
spectrum disorders.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article, for policies issued
4 or renewed on or after January 1, 2012, which delivers,
5 renews or issues a policy of group accident and sickness
6 insurance in this state under the provisions of this article shall
7 include coverage for diagnosis and treatment of autism
8 spectrum disorder in individuals ages eighteen months to
9 eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age eight or younger. The policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist and in accordance with a treatment
15 plan developed from a comprehensive evaluation by a
16 certified behavior analyst for an individual diagnosed with
17 autism spectrum disorder.

18 (b) Coverage shall include, but not be limited to, applied
19 behavior analysis. Applied behavior analysis shall be
20 provided or supervised by a certified behavior analyst. The
21 annual maximum benefit for applied behavior analysis
22 required by this subsection shall be in an amount not to
23 exceed \$30,000 per individual, for three consecutive years
24 from the date treatment commences. At the conclusion of the

25 third year, coverage for applied behavior analysis required by
26 this subsection shall be in an amount not to exceed \$2,000
27 per month, until the individual reaches eighteen years of age,
28 as long as the treatment is medically necessary and in
29 accordance with a treatment plan developed by a certified
30 behavior analyst pursuant to a comprehensive evaluation or
31 reevaluation of the individual. This section shall not be
32 construed as limiting, replacing or affecting any obligation to
33 provide services to an individual under the Individuals with
34 Disabilities Education Act, 20 U.S.C. 1400 et seq., as
35 amended from time to time or other publicly funded
36 programs. Nothing in this section shall be construed as
37 requiring reimbursement for services provided by public
38 school personnel.

39 (c) The certified behavior analyst shall file progress
40 reports with the agency semiannually. In order for treatment
41 to continue, the insurer must receive objective evidence or a
42 clinically supportable statement of expectation that:

43 (1) The individual's condition is improving in response
44 to treatment; and

45 (2) A maximum improvement is yet to be attained; and

46 (3) There is an expectation that the anticipated
47 improvement is attainable in a reasonable and generally
48 predictable period of time.

49 (d) For purposes of this section, the term:

50 (1) "Applied Behavior Analysis" means the design,
51 implementation, and evaluation of environmental
52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and

55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder,
59 Asperger’s Syndrome, Rett Syndrome, childhood
60 disintegrative disorder, or Pervasive Development Disorder
61 as defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders of the American
63 Psychiatric Association.

64 (3) “Certified behavior analyst” means an individual who
65 is certified by the Behavior Analyst Certification Board or
66 certified by a similar nationally recognized organization.

67 (4) “Objective evidence” means standardized patient
68 assessment instruments, outcome measurements tools or
69 measurable assessments of functional outcome. Use of
70 objective measures at the beginning of treatment, during and
71 after treatment is recommended to quantify progress and
72 support justifications for continued treatment. The tools are
73 not required, but their use will enhance the justification for
74 continued treatment.

75 (e) The provisions of this section do not apply to small
76 employers. For purposes of this section a small employer
77 means any person, firm, corporation, partnership or
78 association actively engaged in business in the State of West
79 Virginia who, during the preceding calendar year, employed
80 an average of no more than twenty-five eligible employees.

81 (f) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one
83 percent of actual total costs of coverage for the plan year the
84 corporation may apply additional cost containment measures.

85 (g) To the extent that the provisions of this section
86 require benefits that exceed the essential health benefits
87 specified under section 1302(b) of the Patient Protection and
88 Affordable Care Act, Pub. L. No. 111-148, as amended, the
89 specific benefits that exceed the specified essential health
90 benefits shall not be required of a health benefit plan when
91 the plan is offered by a corporation in this state.

**ARTICLE 25A. HEALTH MAINTENANCE
ORGANIZATION ACT.**

**§33-25A-8j. Coverage for diagnosis and treatment of autism
spectrum disorders.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article for policies issued
4 or renewed on or after January 1, 2012, which delivers,
5 renews or issues a policy of group accident and sickness
6 insurance in this state under the provisions of this article shall
7 include coverage for diagnosis, evaluation and treatment of
8 autism spectrum disorder in individuals ages eighteen months
9 to eighteen years. To be eligible for coverage and benefits
10 under this section, the individual must be diagnosed with
11 autism spectrum disorder at age eight or younger. The policy
12 shall provide coverage for treatments that are medically
13 necessary and ordered or prescribed by a licensed physician
14 or licensed psychologist and in accordance with a treatment
15 plan developed from a comprehensive evaluation by a
16 certified behavior analyst for an individual diagnosed with
17 autism spectrum disorder.

18 (b) Coverage shall include, but not be limited to, applied
19 behavior analysis. Applied behavior analysis shall be
20 provided or supervised by a certified behavior analyst. The
21 annual maximum benefit for applied behavior analysis

22 required by this subsection shall be in amount not to exceed
23 \$30,000 per individual, for three consecutive years from the
24 date treatment commences. At the conclusion of the third
25 year, coverage for applied behavior analysis required by this
26 subsection shall be in an amount not to exceed \$2,000 per
27 month, until the individual reaches eighteen years of age, as
28 long as the treatment is medically necessary and in
29 accordance with a treatment plan developed by a certified
30 behavior analyst pursuant to a comprehensive evaluation or
31 reevaluation of the individual. This section shall not be
32 construed as limiting, replacing or affecting any obligation to
33 provide services to an individual under the Individuals with
34 Disabilities Education Act, 20 U.S.C. 1400 et seq., as
35 amended from time to time or other publicly funded
36 programs. Nothing in this section shall be construed as
37 requiring reimbursement for services provided by public
38 school personnel.

39 (c) The certified behavior analyst shall file progress
40 reports with the agency semiannually. In order for treatment
41 to continue, the agency must receive objective evidence or a
42 clinically supportable statement of expectation that:

43 (1) The individual's condition is improving in response
44 to treatment; and

45 (2) A maximum improvement is yet to be attained; and

46 (3) There is an expectation that the anticipated
47 improvement is attainable in a reasonable and generally
48 predictable period of time.

49 (d) For purposes of this section, the term:

50 (1) "Applied Behavior Analysis" means the design,
51 implementation, and evaluation of environmental

52 modifications using behavioral stimuli and consequences, to
53 produce socially significant improvement in human behavior,
54 including the use of direct observation, measurement, and
55 functional analysis of the relationship between environment
56 and behavior.

57 (2) “Autism spectrum disorder” means any pervasive
58 developmental disorder, including autistic disorder,
59 Asperger’s Syndrome, Rett syndrome, childhood
60 disintegrative disorder, or Pervasive Development Disorder
61 as defined in the most recent edition of the Diagnostic and
62 Statistical Manual of Mental Disorders of the American
63 Psychiatric Association.

64 (3) “Certified behavior analyst” means an individual who
65 is certified by the Behavior Analyst Certification Board or
66 certified by a similar nationally recognized organization.

67 (4) “Objective evidence” means standardized patient
68 assessment instruments, outcome measurements tools or
69 measurable assessments of functional outcome. Use of
70 objective measures at the beginning of treatment, during and
71 after treatment is recommended to quantify progress and
72 support justifications for continued treatment. The tools are
73 not required, but their use will enhance the justification for
74 continued treatment.

75 (e) The provisions of this section do not apply to small
76 employers. For purposes of this section a small employer
77 means any person, firm, corporation, partnership or
78 association actively engaged in business in the State of West
79 Virginia who, during the preceding calendar year, employed
80 an average of no more than twenty-five eligible employees.

81 (f) To the extent that the application of this section for
82 autism spectrum disorder causes an increase of at least one

83 percent of actual total costs of coverage for the plan year the
84 health maintenance organization may apply additional cost
85 containment measures.

86 (g) To the extent that the provisions of this section
87 require benefits that exceed the essential health benefits
88 specified under section 1302(b) of the Patient Protection and
89 Affordable Care Act, Pub. L. No. 111-148, as amended, the
90 specific benefits that exceed the specified essential health
91 benefits shall not be required of a health benefit plan when
92 the plan is offered by a health maintenance organization in
93 this state.



CHAPTER 95

**(Com. Sub. for H. B. 4486 - By Delegates
Miley, Hatfield, Ellem, Poore,
Reynolds, Hunt, Walters and Manchin)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §33-6F-2, relating
to the disclosure of certain information regarding liability
insurance coverage.

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 §33-6F-2, to read as
follows:

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-2. Disclosure of certain insurance information required.

1 Notwithstanding the provisions of section one, article six-
2 f, of this chapter:

3 (a) Each insurer that may provide personal lines liability
4 insurance coverage as that term is defined in section nine,
5 article twelve of this chapter to pay all or a portion of a claim
6 asserted against an insurance policy insuring a motor vehicle
7 shall provide, within thirty days of its receipt of a written
8 request from a claimant's attorney who has given written
9 notice that he or she represents the claimant: (1) A response
10 providing the following information relating to each of the
11 insurer's known policies of insurance, including excess or
12 umbrella insurance, which does or may provide liability
13 coverage for the claim:

14 (A) The name of the insurer;

15 (B) The name of each named insured of the subject
16 policy; and

17 (C) The limits of any motor vehicle liability insurance
18 policy at the time of the events that are the subject of the
19 claim; or

20 (2) The declarations page of any motor vehicle liability
21 policy applicable at the time of the events that are the subject
22 of the claim, appropriately redacted to comply with
23 applicable privacy laws or regulations;

24 (b) Any written request by the claimant's attorney under
25 this section must include: (1) The date and location of the
26 events that are the subject of the claim; (2) the name and, if
27 known, the last known address of the insured; (3) a copy of
28 the accident or incident report, if any; (4) the insurer's claim
29 number;(5) a good faith estimate and documentation of all of
30 the claimant's medical expenses if any and any wage loss
31 documentation as of the date of the request, if any; and (6)
32 documentation as of the date of the request of any and all
33 property damage.

34 (c) Disclosure of the information required by subsection
35 (a) of this section shall not constitute an admission that the
36 alleged injury or damage is subject to the policy, nor shall
37 such disclosure waive any reservation of rights an insurer
38 may have.

39 (d) No information disclosed by any party pursuant to this
40 section shall be, by reason of such disclosure, admissible as
41 evidence at trial.

42 (e) An insurer's compliance with this section does not
43 constitute a violation of this article, or subsection twelve,
44 section eleven, article six of this chapter.

45 (f) An insurer that fails to comply with this section is
46 subject to a penalty of five hundred dollars, plus reasonable
47 attorneys' fees and expenses incurred in obtaining disclosure
48 of the information required by subsection (a) of this section.
49 This penalty is the sole and exclusive remedy for an insurer's
50 failure to comply with this section.



CHAPTER 96

(Com. Sub. for H. B. 4256 - By Delegates
Perry, Ashley, Walters and Hall)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended, relating to captive insurance; limiting risk retention groups' risks on single subjects of insurance; and requiring captive insurance companies to notify the insurance commissioner of any material changes to certain information.

Be it enacted by the Legislature of West Virginia:

That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

- 1 (a) Any captive insurance company, when permitted by
- 2 its articles of association, charter or other organizational
- 3 document, may apply to the commissioner for a license to do
- 4 any and all insurance comprised in section ten, article one of
- 5 this chapter: *Provided*, That all captive insurance companies,
- 6 except pure captive insurance companies, shall maintain their
- 7 principal office and principal place of business in this state:
- 8 *Provided, however*, That:

9 (1) No pure captive insurance company may insure any
10 risks other than those of its parent and affiliated companies or
11 controlled unaffiliated business;

12 (2) No association captive insurance company may insure
13 any risks other than those of the member organizations of its
14 association, and their affiliated companies;

15 (3) No industrial insured captive insurance company may
16 insure any risks other than those of the industrial insureds
17 that comprise the industrial insured group, and their affiliated
18 companies;

19 (4) No risk retention group may insure any risks other
20 than those of its members and owners;

21 (5) No captive insurance company may provide personal
22 motor vehicle or homeowner's insurance coverage or any
23 component thereof;

24 (6) No captive insurance company may accept or cede
25 reinsurance except as provided in section eleven of this
26 article;

27 (7) No risk retention group may retain any risk on any
28 one subject of insurance, whether located or to be performed
29 in West Virginia or elsewhere, in an amount exceeding ten
30 percent of the surplus required by section four of this article,
31 unless approved by the commissioner;

32 (8) Any captive insurance company may provide excess
33 workers' compensation insurance to its parent and affiliated
34 companies, unless prohibited by the federal law or laws of the
35 state having jurisdiction over the transaction. Any captive
36 insurance company, unless prohibited by federal law, may
37 reinsure workers' compensation of a qualified self-insured
38 plan of its parent and affiliated companies; and

39 (9) Any captive insurance company which insures risks
40 described in subsections (a) and (b) of section ten, article one
41 of this chapter shall comply with all applicable state and
42 federal laws.

43 (b) No captive insurance company may do any insurance
44 business in this state unless:

45 (1) It first obtains from the commissioner a license
46 authorizing it to do insurance business in this state;

47 (2) Its board of directors, or, in the case of a reciprocal
48 insurer, its subscribers' advisory committee, holds at least one
49 meeting each year in this state; and

50 (3) It appoints a registered agent to accept service of
51 process and to otherwise act on its behalf in this state:
52 *Provided*, That whenever such registered agent cannot with
53 reasonable diligence be found at the registered office of the
54 captive insurance company, the Secretary of State shall be an
55 agent of such captive insurance company upon whom any
56 process, notice, or demand may be served.

57 (c)(1) Before receiving a license, a captive insurance
58 company shall:

59 (A) File with the commissioner a certified copy of its
60 organizational documents, a statement under oath of its
61 president and secretary showing its financial condition, and
62 any other statements or documents required by the
63 commissioner; and

64 (B) Submit to the commissioner for approval a
65 description of the coverages, deductibles, coverage limits and
66 rates, together with such additional information as the
67 commissioner may reasonably require. In the event of any
68 subsequent material change in any item in such description,

69 the captive insurance company shall submit to the
70 commissioner for approval an appropriate revision and shall
71 not offer any additional kinds of insurance until a revision of
72 such description is approved by the commissioner. The
73 captive insurance company shall inform the commissioner of
74 any material change in rates within thirty days of the
75 adoption of such change.

76 (2) Each applicant captive insurance company shall also
77 file with the commissioner evidence of the following:

78 (A) The amount and liquidity of its assets relative to the
79 risks to be assumed;

80 (B) The adequacy of the expertise, experience and
81 character of the person or persons who will manage it;

82 (C) The overall soundness of its plan of operation;

83 (D) The adequacy of the loss prevention programs of its
84 insureds; and

85 (E) Such other factors deemed relevant by the
86 commissioner in ascertaining whether the proposed captive
87 insurance company will be able to meet its policy obligations.

88 (3) Information submitted pursuant to this subsection
89 shall be and remain confidential and may not be made public
90 by the commissioner or an employee or agent of the
91 commissioner without the written consent of the company,
92 except that:

93 (A) Such information may be discoverable by a party in
94 a civil action or contested case to which the captive insurance
95 company that submitted such information is a party, upon a
96 showing by the party seeking to discover such information
97 that:

98 (i) The information sought is relevant to and necessary
99 for the furtherance of such action or case;

100 (ii) The information sought is unavailable from other
101 nonconfidential sources; and

102 (iii) A subpoena issued by a judicial or administrative
103 officer of competent jurisdiction has been submitted to the
104 commissioner: *Provided*, That the provisions of subdivision
105 (3) of this subsection shall not apply to any risk retention
106 group; and

107 (B) The commissioner may, in the commissioner's
108 discretion, disclose such information to a public officer
109 having jurisdiction over the regulation of insurance in another
110 state, if:

111 (i) The public official shall agree in writing to maintain
112 the confidentiality of such information; and

113 (ii) The laws of the state in which such public official
114 serves require such information to be and to remain
115 confidential.

116 (d) Each captive insurance company shall pay to the
117 commissioner a nonrefundable fee of \$200 for examining,
118 investigating and processing its application for license, and
119 the commissioner is authorized to retain legal, financial and
120 examination services from outside the department, the
121 reasonable cost of which may be charged against the
122 applicant. The provisions of subsection (r), section nine,
123 article two of this chapter shall apply to examinations,
124 investigations and processing conducted under the authority
125 of this section. In addition, each captive insurance company
126 shall pay a license fee for the year of registration and a
127 renewal fee for each year thereafter of \$300.

128 (e) If the commissioner is satisfied that the documents
129 and statements that such captive insurance company has filed
130 comply with the provisions of this article, the commissioner
131 may grant a license authorizing it to do insurance business in
132 this state until May 31, thereafter, which license may be
133 renewed.

134 (f) A captive insurance company shall notify the
135 commissioner in writing within thirty days of becoming
136 aware of any material change in information previously
137 submitted to the commissioner, including information
138 submitted in or with the license application.



CHAPTER 97

**(Com. Sub. for S. B. 621 -
By Senator Unger)**

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend and reenact §8A-5-7 of the Code of West Virginia, 1931, as amended, relating to the approval of major subdivision or land development plans and plats; and requiring a letter from the Division of Highways stating there is sufficient access to state roads.

Be it enacted by the Legislature of West Virginia:

That §8A-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT
PLAN AND PLAT.****§8A-5-7. Contents of a major subdivision or land development
plan and plat.**

1 (a) A land development plan and plat must include
2 everything required by the governing body's subdivision and
3 land development ordinance.

4 (b) If a governing body does not have a subdivision and
5 land development ordinance or if a governing body's
6 subdivision and land development ordinance does not specify
7 what may be included in a subdivision or land development
8 plan and plat, then the following may be included, when
9 applicable, in a subdivision or land development plan and
10 plat:

11 (1) Show that the subdivision or land development
12 conforms to the governing body's comprehensive plan;

13 (2) A method of payment to cover the cost of the water
14 and sewer service infrastructure, which can include, but is not
15 limited to, bonds, impact fees, escrow fees and proffers;

16 (3) Coordination among land development with adjoining
17 land owners, including, but not limited to, facilities and
18 streets;

19 (4) Distribution of population and traffic in a manner
20 tending to create conditions favorable to health, safety,
21 convenience and the harmonious development of the
22 municipality or county;

23 (5) Show that there is a fair allocation of areas for
24 different uses, including, but not limited to, streets, parks,

25 schools, public and private buildings, utilities, businesses and
26 industry;

27 (6) Show that there is a water and sewer supply;

28 (7) Setback and lot size measures were used;

29 (8) The standards used for designating land which is
30 subject to flooding or subsidence, details for making it safe,
31 or information showing that such land will be set aside for
32 use which will not endanger life or property and will not
33 further aggravate or increase the existing menace;

34 (9) The control measures for drainage, erosion and
35 sediment;

36 (10) The coordination of streets, sidewalks and pedestrian
37 pathways in and bordering the land development, including
38 a letter from the Division of Highways stating that the plan
39 provides sufficient access to state roads; and

40 (11) The design, construction and improvement measures
41 to be used for the streets, sidewalks, easements, rights-of-
42 way, drainage, utilities, walkways, curbs, gutters, street
43 lights, fire hydrants, water and wastewater facilities, and
44 other improvements installed, including the width, grade and
45 location for the purpose of accommodating prospective
46 traffic, customers and facilitating fire protection.



CHAPTER 98

**(Com. Sub. for H. B. 3177 - By Delegates
Lawrence, Marshall, Doyle,
Pino, Hunt and Frazier)**

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §38-1-16, relating to the status and rights of parties under a preexisting tenancy and lease when residential rental property is sold by a trustee pursuant to a deed of trust; declaring the rights of new owner to terminate tenancy with notice; providing a right of existing tenant to terminate tenancy; creating minimum notice requirements; setting requirements for providing notice; declaring that the terms and conditions of the preexisting lease survive the trustee sale; naming certain exceptions; and setting 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 §38-1-16, to read as follows:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**§38-1-16. Sale of real property pursuant to a deed of trust; preexisting tenancy.**

1 (a) Notwithstanding the notice requirements of section
2 five, article six, chapter thirty-seven of this code, following
3 the conveyance of residential rental property to a purchaser
4 by a trustee pursuant to a deed of trust, the tenancy of a
5 tenant occupying the property under an unexpired written
6 lease that is either not of record or was placed of record after
7 the deed of trust under which the trustee sold the residential
8 rental property was placed of record, may be terminated by
9 giving ninety days written notice or by giving written notice
10 not less than thirty days prior to the expiration of the lease,
11 whichever is shorter. However, the tenancy of a tenant
12 occupying the property under a month to month or other
13 tenancy may be terminated by giving thirty days written
14 notice. The terms and conditions of the lease of the property
15 remain fully enforceable during the notice period. If the
16 tenant fails to timely comply with the terms of the lease, the
17 new owner, or the agent of the new owner, may proceed
18 under article three-a of chapter fifty-five of this code,
19 notwithstanding the provisions of this section. The tenancy
20 of a factory built home may only be terminated as provided
21 in section six, article fifteen, chapter thirty-seven of this code.

22 (b) The notice required by subsection (a) of this section
23 shall, at a minimum, identify the residential real property
24 occupied by the tenant, state the date of the trustee's sale at
25 which the residential real property was purchased, state the
26 book and page number at which the trustee's deed to the
27 purchaser appears of record, state the date on which the
28 tenancy will expire, and identify the purchaser, including
29 information sufficient to contact the purchaser.

30 (c) Service of written notice upon the tenant, or anyone
31 else holding the leased premises, or any part thereof, under

32 the tenant is sufficient if made by regular mail addressed to
33 the tenant or person holding under the tenant at the address of
34 the property and by either personal delivery to the tenant or
35 person holding under the tenant, by posting a copy of the
36 notice on the front door of the rental real property or by
37 certified mail addressed to the tenant or person holding under
38 the tenant at the address of the property. When notice is given
39 by the tenant, it may be served upon any person owning the
40 premises, in whole or in part, or the agent of an owner.

41 (d) The provisions of this section take effect on the first
42 day of January, two thousand thirteen.



CHAPTER 99

(H. B. 4634 - By Delegate White)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §49-6C-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-2-21 of said code, all relating to fiscal audits conducted by the Legislative Auditor of the Alcohol Beverage Control Commission and the Children's Trust Fund; increasing audits of the Alcohol Beverage Control Commission from two fiscal years to five fiscal years; and increasing audits of the Children's Trust Fund from three fiscal years to five fiscal years.

Be it enacted by the Legislature of West Virginia:

That §49-6C-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-2-21 of said code be amended and reenacted, all to read as follows:

**CHAPTER 49. WEST VIRGINIA CHILD PROTECTIVE
SERVICES ACT.**

ARTICLE 6C. CHILDREN'S TRUST FUND.

§49-6C-1. Continuation and transfer of control of trust fund.

1 (a) The Children's Fund, created for the sole purpose of
2 awarding grants, loans and loan guarantees for child abuse and
3 neglect prevention activities by enactment of chapter twenty-
4 seven, Acts of the Legislature, 1984, as last amended and
5 reenacted by chapter one hundred fifty-nine, Acts of the
6 Legislature, 1999, is hereby continued and renamed the West
7 Virginia Children's Trust Fund: *Provided*, That upon the
8 effective date of the enactment of this section during the
9 second extraordinary session of the 2007 Legislature, the fund
10 shall be administered by the Commissioner of the Bureau for
11 Children and Families. Gifts, bequests or donations for this
12 purpose, in addition to appropriations to the fund, shall be
13 deposited in the State Treasury in a special revenue account
14 under the control of the Secretary of the Department of Health
15 and Human Resources or his or her designee.

16 (b) Each state taxpayer may voluntarily contribute a
17 portion of the taxpayer's state income tax refund to the
18 Children's Trust Fund by designating the contribution on the
19 state personal income tax return form. The bureau shall
20 approve the wording of the designation on the income tax
21 return form. The State Tax Commissioner shall determine by
22 July 1, of each year the total amount designated pursuant to
23 this subsection and shall report that amount to the State
24 Treasurer, who shall credit that amount to the Children's
25 Trust Fund.

26 (c) All interest accruing from investment of moneys in
27 the Children's Trust Fund shall be credited to the fund. The
28 Legislative Auditor shall conduct an audit of the fund at least
29 every five fiscal years.

30 (d) Grants, loans and loan guarantees may be awarded
31 from the Children's Trust Fund by the Commissioner of the
32 Bureau for Children and Families for child abuse and neglect
33 prevention activities.

34 (e) Upon the effective date of the enactment of this
35 section, all employees, records, responsibilities, obligations,
36 assets and property, of whatever kind and character, of the
37 Governor's Cabinet on Children and Families are hereby
38 transferred to the Bureau for Children and Families within the
39 Department of Health and Human Resources, including, but
40 not limited to, all rights and obligations held by the
41 Governor's Cabinet on Children and Families under any
42 grants, loans or loan guarantees previously awarded from the
43 Children's Trust Fund.

44 (f) All orders, determinations, rules, permits, grants,
45 contracts, certificates, licenses, waivers, bonds,
46 authorizations and privileges which have been issued, made,
47 granted or allowed to become effective by the Governor, by
48 any state department or agency or official thereof, or by a
49 court of competent jurisdiction, in the performance of
50 functions which have been transferred to the Bureau for
51 Children and Families within the Department of Health and
52 Human Resources, and were in effect on the date the transfer
53 occurred continue in effect, for the benefit of the department,
54 according to their terms until modified, terminated,
55 superseded, set aside or revoked in accordance with the law
56 by the Governor, the Secretary of the Department of Health
57 and Human Resources or other authorized official, a court of
58 competent jurisdiction or by operation of law.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOLIC BEVERAGE CONTROL COMMISSIONER.

§60-2-21. Audit.

1 At least every five fiscal years, the Legislative Auditor
2 shall audit the affairs of the West Virginia Alcohol Beverage
3 Control Commissioner and report the results of the audit to
4 the Governor. The cost of the audit shall be paid from the
5 operating fund.



CHAPTER 100

**(Com. Sub. for H. B. 4142 - By Delegates Brown,
D. Poling, Fleischauer, Talbott and Overington)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; 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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Administration to promulgate a legislative rule relating to certification for small, women and minority-owned businesses; 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, retroactive service, loan and employer error interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Division of Personnel to promulgate a legislative rule relating to the administration of the Division; and authorizing the Division of Personnel to promulgate a legislative rule relating to Workers' Compensation temporary total disability.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-2-1. Department of Administration.

- 1 The legislative rule filed in the State Register on the
- 2 fifteenth day of July, two thousand eleven, authorized under
- 3 the authority of section fifty-nine, article three, chapter five-a,
- 4 of this code, modified by the Department of Administration

5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 nineteenth day of September, two thousand eleven, relating
8 to the Department of Administration (certification for small,
9 women and minority-owned businesses, 148 CSR 22), is
10 authorized.

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

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand eleven, authorized
3 under the authority of section one, article ten-d, chapter five,
4 of this code, modified by the Consolidated Public Retirement
5 Board to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twenty-third day of September, two thousand eleven, relating
8 to the Consolidated Public Retirement Board (Public
9 Employees Retirement System, 162 CSR 5), is authorized,
10 with the following amendment:

11 On page three, section eight, subsection 8.1, after the
12 words “fourteen and five-tenths (14.5%) of each
13 compensation payment of all its employees who are members
14 of the Public Employees Retirement System” by changing the
15 period to a colon and inserting the following: “And provided
16 further, that beginning July 1, 2012, each participating public
17 employer shall contribute fourteen percent (14%) of each
18 compensation payment of all its employees who are members
19 of the Public Employees Retirement System”.

20 (b) The legislative rule filed in the State Register on the
21 twenty-seventh day of July, two thousand eleven, authorized
22 under the authority of section one, article ten-d, chapter five,
23 of this code, relating to the Consolidated Public Retirement
24 Board (refund, reinstatement, retroactive service, loan and
25 employer error interest factors, 162 CSR 7), is authorized.

26 (c) The legislative rule filed in the State Register on the
27 twenty-seventh day of July, two thousand eleven, authorized
28 under the authority of section one, article ten-d, chapter five,
29 of this code, relating to the Consolidated Public Retirement
30 Board (West Virginia State Police, 162 CSR 9), is authorized,
31 with the following amendment:

32 On page eight, section fourteen, subsection 14.1, line 10,
33 after the words “seventeen and five-tenths (17.5%) of the
34 monthly salary of each member of the West Virginia State
35 Police Retirement System to the West Virginia State Police
36 Retirement System” by changing the period to a colon and
37 inserting the following: “And provided further, that
38 beginning July 1, 2012, the West Virginia State Police shall
39 contribute fifteen and five-tenths percent (15.5%) of the
40 monthly salary of each member of the West Virginia State
41 Police Retirement System to the West Virginia State Police
42 Retirement System”.

§64-2-3. Division of Personnel.

1 (a) The legislative rule filed in the State Register on the
2 twenty-second day of July, two thousand eleven, authorized
3 under the authority of section ten, article six, chapter twenty-
4 nine, of this code, modified by the Division of Personnel to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth
7 day of November, two thousand eleven, relating to the
8 Division of Personnel (administrative rule of the West
9 Virginia Division of Personnel, 143 CSR 1), is authorized,
10 with the following amendments:

11 On page 10, line 3, by striking out the subsection
12 designation “3.80” and inserting in lieu thereof the subsection
13 designation “3.81”, and re-designating the remaining
14 subsections accordingly;

15 On page forty-six, subdivision 12.4.(i), after the words
16 “after layoff shall” by inserting the word “not”;

17 On page seventy, after subdivision 21.3.(b), by inserting
18 a new section, designated section 22, to read as follows:

19 Section. Grievance Procedure.

20 An employee hired for permanent employment may file a
21 grievance with the West Virginia Public Employees Grievance
22 Board as provided in W. Va. Code §6C-2-1 et seq.;

23 And,

24 By renumbering the remaining sections.

25 (b) The legislative rule filed in the State Register on the
26 twenty-second day of July, two thousand eleven, authorized
27 under the authority of section one, article four, chapter twenty-
28 three, of this code, modified by the Division of Personnel to
29 meet the objections of the Legislative Rule-Making Review
30 Committee and refiled in the State Register on the eighteenth
31 day of November, two thousand eleven, relating to the Division
32 of Personnel (Workers' Compensation temporary total disability,
33 143 CSR 3), is authorized.

CHAPTER 101

**(Com. Sub. for S. B. 253 -
By Senator Minard)**

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; 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 in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources which cause or contribute to nonattainment areas; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of

Environmental Protection to promulgate a legislative rule relating to determining conformity of general federal actions to applicable implementation plans; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the greenhouse gas emissions inventory program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section five,
3 article fifteen, chapter twenty-two of this code, relating to the
4 Department of Environmental Protection (solid waste
5 management, 33 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 28, 2011, authorized under the authority of section six, article
8 eighteen, chapter twenty-two of this code, relating to the
9 Department of Environmental Protection (hazardous waste
10 management system, 33 CSR 20), is authorized.

11 (c) The legislative rule filed in the State Register on July
12 29, 2011, authorized under the authority of section four,

13 article five, chapter twenty-two of this code, relating to the
14 Department of Environmental Protection (ambient air quality
15 standards, 45 CSR 8), is authorized.

16 (d) The legislative rule filed in the State Register on July
17 29, 2011, authorized under the authority of section four,
18 article five, chapter twenty-two of this code, relating to the
19 Department of Environmental Protection (permits for
20 construction and major modification of major stationary
21 sources for the prevention of significant deterioration of air
22 quality, 45 CSR 14), is authorized.

23 (e) The legislative rule filed in the State Register on July
24 29, 2011, authorized under the authority of section four,
25 article five, chapter twenty-two of this code, relating to the
26 Department of Environmental Protection (standards of
27 performance for new stationary sources, 45 CSR 16), is
28 authorized.

29 (f) The legislative rule filed in the State Register on July
30 29, 2011, authorized under the authority of section four,
31 article five, chapter twenty-two of this code, relating to the
32 Department of Environmental Protection (control of air
33 pollution from combustion of solid waste, 45 CSR 18), is
34 authorized.

35 (g) The legislative rule filed in the State Register on July
36 29, 2011, authorized under the authority of section four,
37 article five, chapter twenty-two of this code, relating to the
38 Department of Environmental Protection (permits for
39 construction and major modification of major stationary
40 sources which cause or contribute to nonattainment areas, 45
41 CSR 19), is authorized.

42 (h) The legislative rule filed in the State Register on July
43 29, 2011, authorized under the authority of section four,
44 article five, chapter twenty-two of this code, relating to the

45 Department of Environmental Protection (control of air
46 pollution from hazardous waste treatment, storage or disposal
47 facilities, 45 CSR 25), is authorized.

48 (i) The legislative rule filed in the State Register on
49 March 16, 2011, authorized under the authority of section
50 four, article five, chapter twenty-two of this code, relating to
51 the Department of Environmental Protection (requirements
52 for operating permits, 45 CSR 30), is authorized.

53 (j) The legislative rule filed in the State Register on July
54 29, 2011, authorized under the authority of section four,
55 article five, chapter twenty-two of this code, relating to the
56 Department of Environmental Protection (emission standards
57 for hazardous air pollutants, 45 CSR 34), is authorized.

58 (k) The legislative rule filed in the State Register on July
59 29, 2011, authorized under the authority of section four,
60 article five, chapter twenty-two of this code, relating to the
61 Department of Environmental Protection (determining
62 conformity of general federal actions to applicable
63 implementation plans (general conformity), 45 CSR 35), is
64 authorized.

65 (l) The legislative rule filed in the State Register on July
66 29, 2011, authorized under the authority of section four,
67 article five, chapter twenty-two of this code, relating to the
68 Department of Environmental Protection (greenhouse gas
69 emissions inventory program, 45 CSR 42), is authorized.

70 (m) The legislative rule filed in the State Register on July
71 8, 2011, authorized under the authority of section four, article
72 eleven, chapter twenty-two of this code, approved for
73 promulgation by the Legislature on March 18, 2011, relating
74 to the Department of Environmental Protection (National
75 Pollutant Discharge Elimination System (NPDES) Program,
76 47 CSR 10), is authorized with the following amendments:

77 On page one, subsection 2.6., by striking out “2006” and
78 inserting in lieu thereof “2009”;

79 On page fifteen, subparagraph 4.4.c.1.J., by striking out
80 “40 C.F.R. §412(C) or (D)” and inserting in lieu thereof “40
81 C.F.R. Part 412, Subpart C or D”;

82 And,

83 On page forty-seven, paragraph 13.1.f.2., by striking out
84 all of paragraph 13.1.f.2. and inserting in lieu thereof a new
85 paragraph 13.1.f.2. to read as follows:

86 13.1.f.2. Expansion of AFO to CAFO. For other
87 operations (e.g. resulting from an increase in the number of
88 animals), the owner or operator must seek to obtain coverage
89 under a permit as soon as possible, but no later than ninety
90 (90) days after becoming defined as a CAFO.

91 (n) The legislative rule filed in the State Register on July
92 29, 2011, authorized under the authority of section three,
93 article twenty-two, chapter twenty-two of this code, relating
94 to the Department of Environmental Protection (voluntary
95 remediation and redevelopment, 60 CSR 3), is authorized
96 with the following amendments:

97 On page seventy-eight, by striking out all of the de
98 minimis values for the parameter “Hexachloroethane” and
99 inserting in lieu thereof new de minimis values for the
100 parameter “Hexachloroethane” to read as follows:

101 “Residential Soil - 1.2E+01, Industrial Soil - 6.2E+02,
102 Ground Water - 1.7E+00, Migration to Groundwater - 2.0E-
103 02”;

104 And,

105 On page eighty-two, by striking out all of the de minimis
106 values for the parameter “Trichloroethylene (TCE)” and
107 inserting in lieu thereof new de minimis values for the
108 parameter “Trichloroethylene (TCE)” to read as follows:

109 “Residential Soil - 4.8E-01, Industrial Soil - 2.1E+01,
110 Ground Water - 5.0E+00, Migration to Groundwater - 3.6E-
111 02”.

CHAPTER 102

**(Com. Sub. for S. B. 245 -
By Senator Minard)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

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; 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 in the form that the rules were filed in the State Register and 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; 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 Department of Health and Human Resources to promulgate a legislative rule relating to credentialing verification organizations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a safety and treatment program; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to an all-payer claims database--data submission requirements; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to the all-payer claims database program's privacy and security; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems operators; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to wastewater systems and operations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to manufactured home communities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems design standards; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to a child care quality rating and improvement system;

authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to fees for qualified interpreters; and authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators.

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. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on July
2 28, 2011, authorized under the authority of section three,
3 article two, chapter thirty-three of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December 9,
7 2011, relating to the Department of Health and Human
8 Resources (credentialing verification organizations, 64 CSR
9 89B), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 29, 2011, authorized under the authority of section three,
12 article five-a, chapter seventeen-c of this code, modified by
13 the Department of Health and Human Resources to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on December 14,
16 2011, relating to the Department of Health and Human
17 Resources (safety and treatment program, 64 CSR 98), is
18 authorized.

19 (c) The legislative rule filed in the State Register on July
20 28, 2011, authorized under the authority of section eight,
21 article four-a, chapter thirty-three of this code, modified by
22 the Secretary of the Department of Health and Human
23 Resources, the Insurance Commissioner and the Chair of the
24 West Virginia Health Care Authority to meet the objections
25 of the Legislative Rule-Making Review Committee and
26 refiled in the State Register on October 21, 2011, relating to
27 the Secretary of the Department of Health and Human
28 Resources, the Insurance Commissioner and the Chair of the
29 West Virginia Health Care Authority (all-payer claims
30 database -- data submission requirements, 114A CSR 1), is
31 authorized with the following amendments:

32 On page four, subsection 3.2., by striking out “OIC” and
33 inserting in lieu thereof the words “Offices of the Insurance
34 Commissioner”;

35 On page four, subdivision 3.2.a., by striking out “OIC”
36 and inserting in lieu thereof the words “Offices of the
37 Insurance Commissioner”;

38 And,

39 On page seven, by striking out all of subdivision 7.1.e.
40 and inserting in lieu thereof a new subdivision 7.1.e., to read
41 as follows:

42 “7.1.e. The Director of the Public Employees Insurance
43 Agency or his or her designee, the Commissioner of the
44 Bureau for Medical Services or his or her designee and the
45 Director of the Children’s Health Insurance Program or his or
46 her designee.”.

47 (d) The legislative rule filed in the State Register on July
48 28, 2011, authorized under the authority of section eight,
49 article four-a, chapter thirty-three of this code, relating to the

50 Secretary of the Department of Health and Human Resources,
51 the Insurance Commissioner and the Chair of the West
52 Virginia Health Care Authority (all-payer claims database
53 program's privacy and security, 114A CSR 2), is authorized.

§64-5-2. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section four,
3 article one, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December 1,
7 2011, relating to the Department of Health and Human
8 Resources (public water systems, 64 CSR 3), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section four,
11 article one, chapter sixteen of this code, modified by the
12 Department of Health and Human Resources to meet the
13 objections of the Legislative Rule-Making Review
14 Committee and refiled in the State Register on December 30,
15 2011, relating to the Department of Health and Human
16 Resources (public water systems operators, 64 CSR 4), is
17 authorized with the following amendments:

18 On page three, subsection 3.23., after the words "Water
19 Distribution" by inserting the word "System";

20 And,

21 On page six, subdivision 5.5.c., by striking out the word
22 "subsection" and inserting in lieu thereof the word
23 "subdivision".

24 (c) The legislative rule filed in the State Register on July
25 29, 2011, authorized under the authority of section four,

26 article one, chapter sixteen of this code, modified by the
27 Department of Health and Human Resources to meet the
28 objections of the Legislative Rule-Making Review
29 Committee and refiled in the State Register on December 30,
30 2011, relating to the Department of Health and Human
31 Resources (wastewater systems and operations, 64 CSR 5),
32 is authorized with the following amendments:

33 On page three, subsection 3.26., by striking out the words
34 “West Virginia Department of Environmental Protection
35 (WVDEP)” and inserting in lieu thereof “WV DEP”;

36 On page four, subdivision 4.1.e., by striking out the word
37 “Extended” and inserting in lieu thereof the words “This class
38 includes extended”;

39 On page five, by striking out “5.4.a.2.” and inserting in
40 lieu thereof “5.4.a.1.A.”;

41 On page five, by striking out “5.4.a.3.” and inserting in
42 lieu thereof “5.4.a.1.B.”;

43 On page seven, subsection 6.2., after the words “based
44 on” by inserting the words “his or her”;

45 On page nine, subdivision 7.7.a., by striking out the word
46 “requirement” and inserting in lieu thereof the word
47 “requirements”;

48 On page ten, subsection 10.1., by striking out the word
49 “applications” and inserting in lieu thereof the word
50 “application”;

51 On page ten, subsection 10.4., by striking out the word
52 “Applicant” and inserting in lieu thereof the words “An
53 applicant”;

54 On page eleven, subdivision 12.1.d., after the word “one”
55 by inserting “(1)”;

56 On page twelve, subdivision 12.1.g., after the word
57 “three” by inserting “(3)”;

58 On page twelve, subdivision 12.1.h., after the words
59 “with this rule,” by inserting the word “an”;

60 On page twelve, subdivision 12.1.h., line eight, following
61 the words “under this rule shall”, by striking out the word
62 “take” and inserting in lieu thereof “complete”;

63 On page twelve, subdivision 12.1.h., line ten, following
64 the words “advanced certified operator”, by inserting the
65 words “without examination”;

66 And,

67 On page fifteen, Table 64-5B, in the row beginning with
68 the word “Advanced”, under the column heading labeled
69 “Education”, following the words “Commissioner-approved
70 training course” by striking out the words “& passing the
71 Advanced exam”.

72 (d) The legislative rule filed in the State Register on July
73 29, 2011, authorized under the authority of section three,
74 article five, chapter sixteen of this code, modified by the
75 Department of Health and Human Resources to meet the
76 objections of the Legislative Rule-Making Review
77 Committee and refiled in the State Register on December 1,
78 2011, relating to the Department of Health and Human
79 Resources (vital statistics, 64 CSR 32), is authorized.

80 (e) The legislative rule filed in the State Register on July
81 29, 2011, authorized under the authority of section four,
82 article one, chapter sixteen of this code, modified by the

83 Department of Health and Human Resources to meet the
84 objections of the Legislative Rule-Making Review
85 Committee and refiled in the State Register on December 1,
86 2011, relating to the Department of Health and Human
87 Resources (manufactured home communities, 64 CSR 40), is
88 authorized with the following amendments:

89 On page four, by striking out all of subdivision 5.1.5. and
90 inserting in lieu thereof a new subdivision 5.1.5., to read as
91 follows:

92 “5.1.5. The Commissioner shall deny a permit if the
93 information on the application form, plans or specifications
94 is incomplete, inaccurate, false or misleading, or indicates
95 that the application provisions of this rule cannot be met. A
96 permit to construct shall be issued or denied within forty-five
97 (45) days of receipt of the completed application. Reasons
98 for denial shall be in writing.”;

99 And,

100 On page four, by striking out all of paragraph 5.1.5.a.

101 (f) The legislative rule filed in the State Register on July
102 29, 2011, authorized under the authority of section four,
103 article one, chapter sixteen of this code, modified by the
104 Department of Health and Human Resources to meet the
105 objections of the Legislative Rule-Making Review
106 Committee and refiled in the State Register on December 1,
107 2011, relating to the Department of Health and Human
108 Resources (AIDS-related medical testing and confidentiality,
109 64 CSR 64), is authorized with the following amendments:

110 On page four, by striking out all of paragraph 4.1.d.4. and
111 inserting in lieu thereof a new paragraph 4.1.d.4., to read as
112 follows:

113 “4.1.d.4. It is recommended that health care providers test
114 women as early as possible during each pregnancy. Women
115 who decline the test early in prenatal care may be encouraged
116 to be tested at subsequent visits.”;

117 On page five, by striking out all of subdivision 4.2.c. and
118 inserting in lieu thereof a new subdivision 4.2.c. to read as
119 follows:

120 “4.2.c. If the pregnant woman’s HIV status is unknown
121 at the time she presents for delivery, an HIV test shall be
122 offered and if she refuses the test, the infant may be tested
123 and the mother shall be informed of the testing and the
124 results.”;

125 On page six, by striking out all of paragraph 4.2.c.1.;

126 On page six, by striking out all of paragraph 4.2.c.2;

127 On page six, by striking out “4.2.c.3.” and inserting in
128 lieu thereof “4.2.c.1.”;

129 On page six, by striking out “4.2.c.4.” and inserting in
130 lieu thereof “4.2.c.2.”;

131 On page six, by striking out all of paragraph 4.3.b.1. and
132 inserting in lieu thereof a new paragraph 4.3.b.1, to read as
133 follows:

134 “4.3.b.1. A court shall order a defendant charged with an
135 offense set forth in subdivision two, subsection f, section two,
136 article three-c, chapter sixteen of the code, to undergo an oral
137 test for HIV test not later than 48 hours after the date on
138 which the information or indictment is presented”;

139 On page six, by striking out all of paragraph 4.3.b.3. and
140 inserting in lieu thereof a new paragraph 4.3.b.3, to read as
141 follows:

142 “4.3.b.3. Follow-up tests for HIV are authorized as may
143 be medically appropriate, and the results of any follow-up
144 tests shall be made available in accordance with paragraph
145 4.3.b.2, as soon as practicable.”;

146 And,

147 On page seven, by striking out all of subsection 5.3.

148 (g) The legislative rule filed in the State Register on July
149 29, 2011, authorized under the authority of section four,
150 article one, chapter sixteen of this code, relating to the
151 Department of Health and Human Resources (public water
152 systems design standards, 64 CSR 77), is authorized with the
153 following amendments:

154 On page seven, after subdivision 3.3.d., by inserting a
155 new subsection, designated subsection 3.4., to read as
156 follows:

157 “3.4. Specifications – The applicant or the applicant’s
158 engineer shall supply complete, detailed technical
159 specifications for the proposed project, including: pipe,
160 valves and other building materials; a program for keeping
161 existing public water system facilities in operation during
162 construction of additional facilities so as to minimize
163 interruption of service; laboratory facilities and equipment;
164 the number and design of chemical feeding equipment; and
165 materials or proprietary equipment for sanitary or other
166 facilities including any necessary backflow or backsiphonage
167 protection.”;

168 On page eleven, by striking out “§65-77-5.” and inserting
169 in lieu thereof “§64-77-5.”;

170 On page thirty-five, paragraph 6.3.h.2., after the words
171 “at a minimum,” by inserting the word “of”;

172 On page forty, paragraph 6.4.g.1., by striking out the
173 word “led” and inserting in lieu thereof the word “lead”;

174 On page forty-five, paragraph 6.4.i.2., by striking out the
175 word “devise” and inserting in lieu thereof the word
176 “device”;

177 On page sixty-seven, paragraph 7.5.d.2., by striking out
178 the word “shallbe” and inserting in lieu thereof the words
179 “shall be”;

180 And,

181 On page sixty-seven, paragraph 7.5.e.3., by striking out
182 the word “serve” and inserting in lieu thereof the word
183 “severe”.

§64-5-3. Division of Human Services.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section four,
3 article two-b, chapter forty-nine of this code, modified by the
4 Division of Human Services to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 23, 2011, relating to the
7 Division of Human Services (family child care facility
8 licensing requirements, 78 CSR 18), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 29, 2011, authorized under the authority of section four,
11 article two-b, chapter forty-nine of this code, modified by the
12 Division of Human Services to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on November 23, 2011, relating to the
15 Division of Human Services (family child care home
16 registration requirements, 78 CSR 19), is authorized.

17 (c) The legislative rule filed in the State Register on July
18 29, 2011, authorized under the authority of section two,
19 article two-e, chapter forty-nine of this code, modified by the
20 Division of Human Services to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in
22 the State Register on November 23, 2011, relating to the
23 Division of Human Services (child care quality rating and
24 improvement system, 78 CSR 22), is authorized, with the
25 following amendment:

26 On page one, subsection 1.4, line six, by striking out the
27 words “July 1, 2012” and inserting in lieu thereof the words
28 “This rule is effective upon the date specified in an
29 emergency rule promulgated by the Department of Health
30 and Human Resources as being the date funding for
31 implementation of the Child Care Quality Rating and
32 Improvement System will become available pursuant to a
33 duly enacted appropriation bill authorizing the expenditure of
34 funds for that purpose.”;

35 And,

36 On page one, beginning on line thirteen, by striking out
37 subsection 2.3 in its entirety and inserting in lieu thereof a
38 new subsection 2.3, to read as follows:

39 “2.3 Pursuant to W.Va. Code §49-2E-4, no provision of
40 this rule may be construed to require implementation of a
41 quality rating and improvement system unless funds are
42 appropriated therefor. The ‘Quality Rating and Improvement
43 System Cost Implementation Study’ dated July 31, 2011,
44 prepared and published by the Marshall University Center for
45 Business and Economic Research for the Department of
46 Health and Human Resources and accessible on-line at
47 <http://www.marshall.edu/cber/research/QualityRatingImprovementSystemFINAL.pdf>, is the financial plan submitted by
48

49 the Secretary of the Department of Health and Human
50 Resources pursuant to Chapter §49-2E-3, and is hereby
51 attached by reference and incorporated into this rule as if
52 fully set forth herein. The financial plan prioritizes the
53 components of the system for implementation and provides
54 for gradual implementation over a period of several years in
55 the event that funding is not sufficient to implement all
56 requirements in code.”.

§64-5-4. Commission for the Deaf and Hard of Hearing.

1 (a) The legislative rule filed in the State Register on July
2 29, 2011, authorized under the authority of section nine,
3 article fourteen-a, chapter five of this code, relating to the
4 Commission for the Deaf and Hard of Hearing (fees for
5 qualified interpreters, 192 CSR 1), is authorized, with the
6 following amendment:

7 On page four, subsection 2.24, by striking out the words
8 “spoken translating” and inserting in lieu thereof the words
9 “translating spoken”.

10 (b) The legislative rule filed in the State Register on July
11 29, 2011, authorized under the authority of section five,
12 article fourteen-a, chapter five of this code, modified by the
13 Commission for the Deaf and Hard of Hearing to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on December 1,
16 2011, relating to the Commission for the Deaf and Hard of
17 Hearing (establishment of required qualifications and ethical
18 standards for interpreters and transliterators, 192 CSR 3), is
19 authorized.

CHAPTER 103

**(Com. Sub. for S. B. 321 -
By Senator Minard)**

[Passed March 9, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Career Progression System; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Modified Vehicle Inspection Manual; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to motor vehicle search standards; and authorizing the Division of Corrections to promulgate a legislative rule relating to fees for electronic monitoring of offenders.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE
LEGISLATIVE RULES.**

§64-6-1. State Police.

1 (a) The legislative rule filed in the State Register on July
2 25, 2011, authorized under the authority of section twenty-
3 five, article two, chapter fifteen of this code, modified by the
4 State Police to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on January 6, 2012, relating to the State Police (West
7 Virginia State Police Career Progression System, 81 CSR 3),
8 is authorized.

9 (b) The legislative rule filed in the State Register on July
10 25, 2011, authorized under the authority of section forty-
11 eight, article fifteen, chapter seventeen-c of this code,
12 modified by the State Police to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on January 6, 2012, relating to the State
15 Police (West Virginia State Police Modified Vehicle
16 Inspection Manual, 81 CSR 4), is authorized, with the
17 following amendment:

18 On page ten, paragraph 81-4-4.6.2., after the word
19 “spacers” by adding the following, “on the end of the coil”.

**§64-6-2. Governor’s Committee on Crime, Delinquency and
Correction.**

1 (a) The legislative rule filed in the State Register on July
2 28, 2011, authorized under the authority of section three,

3 article twenty-nine, chapter thirty of this code, modified by
4 the Governor's Committee on Crime, Delinquency and
5 Correction to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on January 3, 2012, relating to the Governor's Committee on
8 Crime, Delinquency and Correction (law- enforcement
9 training standards, 149 CSR 2), is authorized.

10 (b) The legislative rule filed in the State Register on July
11 28, 2011, authorized under the authority of section eleven,
12 article one-a, chapter sixty-two of this code, modified by the
13 Governor's Committee on Crime, Delinquency and
14 Correction to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the State Register
16 on January 3, 2012, relating to the Governor's Committee on
17 Crime, Delinquency and Correction (motor vehicle search
18 standards, 149 CSR 6), is authorized.

§64-6-3. Division of Corrections.

1 The legislative rule filed in the State Register on May 23,
2 2011, authorized under the authority of section fourteen,
3 article one, chapter twenty-five of this code, modified by the
4 Division of Corrections to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on July 20, 2011, relating to the Division
7 of Corrections (fees for electronic monitoring of offenders,
8 90 CSR 8), is authorized.

CHAPTER 104

(Com. Sub. for S. B. 287 - By Senator Minard)

[Passed March 10, 2012; in effect from passage.]

[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; 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 in the form that the rules were filed in the State Register and 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; 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 State Tax Department to promulgate a legislative rule relating to the payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to an

exchange of information agreement between the State Tax Department and the Department of Commerce, the Department of Transportation and the Department of Environmental Protection; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers and agencies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance holding company systems; authorizing the Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mini COBRA; authorizing the Insurance Commissioner to promulgate a legislative rule relating to workers' compensation insurance for state agencies; authorizing the Division of Banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the licensing of retail outlets; authorizing the Racing Commission to promulgate a legislative rule relating to simulcast pari-mutuel wagering at an authorized gaming facility in a historic hotel; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; and authorizing the Board of Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on April
2 21, 2011, authorized under the authority of section five-z,
3 article ten, chapter eleven of this code, modified by the State
4 Tax Department to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on August 5, 2011, relating to the State Tax
7 Department (payment of taxes by electronic funds transfer,
8 110 CSR 10F), is authorized with the following amendments:

9 On page four, subsection 3.2., by striking out all of
10 subsection 3.2. and inserting in lieu thereof a new subsection
11 3.2., to read as follows:

12 3.2. The threshold amount is \$100,000.00 in tax liability
13 per tax type per taxable year or reporting period beginning on
14 or after January 1, 2004, subject to subdivisions 3.2.1., 3.2.2.,
15 3.2.3. and 3.2.4. of this subsection.;

16 And,

17 On page four, after subsection 3.2., by inserting four new
18 subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and
19 3.2.4., to read as follows:

20 “3.2.1. For tax years beginning on or after January 1,
21 2013, the threshold amount for determining whether a
22 taxpayer shall pay electronically is \$50,000 in tax liability
23 paid for a single tax type in the immediately preceding tax
24 year: *Provided*, That for tax years beginning on or after
25 January 1, 2013, any taxpayer that pays more than \$50,000
26 for any tax type in the immediately preceding tax year shall
27 electronically pay the taxes for all tax returns filed;

28 3.2.2. For tax years beginning on or after January 1,
29 2014, the threshold amount for determining whether a
30 taxpayer shall pay electronically is \$25,000 in tax liability
31 paid for a single tax type in the immediately preceding tax
32 year: *Provided*, That for tax years beginning on or after
33 January 1, 2014, any taxpayer that pays more than \$25,000
34 for any tax type in the immediately preceding tax year shall
35 electronically pay the taxes for all tax returns filed;

36 3.2.3. For tax years beginning on or after January 1,
37 2015, the threshold amount for determining whether a
38 taxpayer shall pay electronically is \$10,000 in tax liability
39 paid for a single tax type in the immediately preceding tax
40 year: *Provided*, That for tax years beginning on or after
41 January 1, 2015, any taxpayer that pays more than \$10,000
42 for any tax type in the immediately preceding tax year shall
43 electronically pay the taxes for all tax returns filed;

44 3.2.4. Tax Commissioner may determine the tax types for
45 which electronic payment of taxes is not required.”

46 (b) The legislative rule filed in the State Register on July
47 18, 2011, authorized under the authority of section ten, article
48 thirteen-aa, chapter eleven of this code, modified by the State
49 Tax Department to meet the objections of the Legislative
50 Rule-Making Review Committee and refiled in the State
51 Register on November 22, 2011, relating to the State Tax
52 Department (commercial patent incentives tax credit, 110
53 CSR 13Q), is authorized, with the following amendment:

54 On page three, subsection 2.18, line twenty-one,
55 following the words “June 19” and the comma, by striking
56 out the number “2970” and inserting in lieu thereof the
57 number “1970”;

58 On page five, subsection 3.1.7, line six, following the
59 words “allowed under”, by striking out the words
60 “Subsection 3.1 or 3.2 of”;

61 And,

62 On page five, subsection 3.1.8, line ten, following the
63 words “allowed under”, by striking out the words
64 “Subsection 3.1 or 3.2 of”.

65 (c) The legislative rule filed in the State Register on July
66 29, 2011, authorized under the authority of section five-s,
67 article ten, chapter eleven of this code, modified by the State
68 Tax Department to meet the objections of the Legislative
69 Rule-Making Review Committee and refiled in the State
70 Register on November 22, 2011, relating to the State Tax
71 Department (exchange of information agreement between the
72 State Tax Department and the Department of Commerce, the
73 Department of Transportation and the Department of
74 Environmental Protection, 110 CSR 50G), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on July
2 28, 2011, authorized under the authority of section ten, article
3 two, chapter thirty-three of this code, relating to the Insurance
4 Commissioner (licensing and conduct of insurance producers
5 and agencies, 114 CSR 2), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 28, 2011, authorized under the authority of section ten, article
8 two, chapter thirty-three of this code, relating to the Insurance
9 Commissioner (surplus lines insurance, 114 CSR 20), is
10 authorized.

11 (c) The legislative rule filed in the State Register on July
12 28, 2011, authorized under the authority of section ten, article
13 two, chapter thirty-three of this code, modified by the
14 Insurance Commissioner to meet the objections of the
15 Legislative Rule-Making Review Committee and refiled in
16 the State Register on October 21, 2011, relating to the

17 Insurance Commissioner (insurance holding company
18 systems, 114 CSR 35), is authorized.

19 (d) The legislative rule filed in the State Register on July
20 28, 2011, authorized under the authority of section ten, article
21 two, chapter thirty-three of this code, modified by the
22 Insurance Commissioner to meet the objections of the
23 Legislative Rule-Making Review Committee and refiled in
24 the State Register on October 21, 2011, relating to the
25 Insurance Commissioner (continuing education for individual
26 insurance producers, 114 CSR 42), is authorized with the
27 following amendment:

28 On page three, subsection 4.2., by striking out all of
29 subsection 4.2. and inserting in lieu thereof a new subsection
30 4.2. to read as follows:

31 “4.2. The commissioner shall, in consultation with the
32 board, develop a program regarding continuing education
33 requirements during the transition to the new biennium
34 period established pursuant to the 2012 amendments to this
35 rule; such program shall be posted on the agency website.”

36 (e) The legislative rule filed in the State Register on July
37 28, 2011, authorized under the authority of section ten, article
38 two, chapter thirty-three of this code, relating to the Insurance
39 Commissioner (mini COBRA, 114 CSR 93), is authorized
40 with the following amendments:

41 On page three, subsection 3.5., after the word
42 “subsection” by striking out “3.5.” and inserting in lieu
43 thereof “3.4.”;

44 On page three, subsection 3.6, by striking out the
45 subsection in its entirety and inserting in lieu thereof, the
46 following:

47 “3.6. *Election of coverage by beneficiary.* A covered
48 employee or other qualified beneficiary who wants to elect
49 continuation coverage must do so in writing to the carrier
50 within 30 days after receiving a notice under subsection 3.5
51 of this section and must include payment of the initial
52 premium set forth in such notice. The premium payment due
53 shall be for the period beginning on the date coverage would
54 have otherwise terminated due to the qualifying event. The
55 premium charged for continuation of coverage may not
56 exceed 100% percent of the applicable premium.”;

57 On page four, subdivision 3.6.a., by striking out the
58 subdivision in its entirety and inserting in lieu thereof, the
59 following:

60 “3.6.a. The carrier or its designee shall process all
61 elections promptly and provide coverage retroactively to the
62 date coverage would otherwise have terminated on the basis
63 of the qualifying event. Employers are required to promptly
64 provide to the carrier or its designee any information and
65 paperwork necessary to facilitate the processing of a request
66 for continuation of coverage. After an election and initial
67 premium remittance, the carrier must bill the beneficiary for
68 premiums no more often than monthly and with an allowance
69 for a 30-day grace period for payment.”;

70 And,

71 On page four, subsection 3.7., by striking out all of
72 subsection 3.7. and inserting in lieu thereof a new subsection
73 3.7., to read as follows:

74 “3.7. *Remedies in the event of carrier noncompliance.* If
75 a carrier fails to comply with the requirements of this rule,
76 including the notice requirements of subsection 3.5. of this
77 section, and such noncompliance results in the failure of an
78 eligible adult qualified beneficiary of a covered employee to

79 timely elect continuation coverage, every qualified
80 beneficiary of the covered employee covered on the day of
81 the qualifying event shall remain covered under the health
82 benefit plan until the qualified beneficiaries are afforded the
83 opportunity to elect such coverage.”

84 (f) The legislative rule filed in the State Register on July
85 28, 2011, authorized under the authority of section ten, article
86 two, chapter thirty-three of this code, relating to the Insurance
87 Commissioner (Workers’ Compensation Insurance for state
88 agencies, 114 CSR 94), is authorized with the following
89 amendments:

90 On page one, subsection 2.2., by striking out all of
91 subsection 2.2. and inserting in lieu thereof a new subsection
92 2.2., to read as follows:

93 “2.2. ‘Discretionary participant’ means any discretionary
94 participant as defined in W. Va. Code §33-2-21a(a)(1).”;

95 On page two, subsection 2.8., by striking out the words
96 “and those discretionary participants that have agreed to
97 participate in SAWC under an agreement with the
98 Commissioner” and inserting in lieu thereof the words “and
99 for those discretionary participants that participate in
100 SAWC”;

101 On page two, subsection 3.1., by striking out the words
102 “and shall send to each a notice of such determination”;

103 On page two, subdivision 3.1.a., by striking out the words
104 “Such notice shall inform: (i) Executive state entities that
105 they will be required to execute the Agreement and” and
106 inserting in lieu thereof the words “The Commissioner shall
107 inform: (i) Executive state entities that they will be required”;

108 On page two, subdivision 3.1.b., by striking out the words
109 “Any recipient of a notice sent pursuant to subdivision a of
110 this subsection that believes it should have been classified
111 differently, or any entity that did not receive a notice” and
112 inserting in lieu thereof the words “Any entity that believes
113 it should have been classified differently, or any entity that
114 did not receive a notice of eligibility”;

115 On page two, subsection 3.2., by striking out all of
116 subsection 3.2. and inserting in lieu thereof a new subsection
117 3.2., to read as follows:

118 “3.2. The Commissioner may make participation in
119 SAWC by a discretionary participant contingent on the
120 execution of the Agreement.”;

121 On page three, subdivision 3.3.a., after the word
122 “Agreement” by inserting the words “or other noncompliance
123 with program requirements”;

124 On page three, subdivision 3.3.c., by striking out the
125 words “the latter of one year from removal or the next open
126 enrollment period” and inserting in lieu thereof the words “a
127 period of not more than one year to be determined by the
128 commissioner based on the seriousness of the non-
129 compliance and the efforts of the participant to come into
130 compliance”;

131 On page three, subdivision 3.3.d., by striking out the
132 words “upon application and re-execution of the Agreement”
133 and inserting in lieu thereof the words “upon written request
134 and expiration of the exclusion period determined in
135 accordance with subdivision 3.3.c. of this subsection”;

136 On page three, subdivision 3.4.a., by striking out the
137 words “any fee” and inserting in lieu thereof the words “any
138 assessment”;

139 On page three, subdivision 3.4.a., by striking out the
140 words “assessed fee” and inserting in lieu thereof the word
141 “assessment”;

142 On page three, subdivision 3.4.a., by striking out the
143 words “such fee” and inserting in lieu thereof the words
144 “such assessment”;

145 And,

146 On page three, subdivision 3.4.b., by striking out the
147 word “fees” and inserting in lieu thereof the word
148 “assessment”.

§64-7-3. Division of Banking.

1 The legislative rule filed in the State Register on July 21,
2 2011, authorized under the authority of section three, article
3 seventeen, chapter thirty-one of this code, relating to the
4 Division of Banking (residential mortgage lenders, brokers
5 and loan originators, 106 CSR 5), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on July
2 13, 2011, authorized under the authority of section six, article
3 three-a, chapter sixty of this code, modified by the Alcohol
4 Beverage Control Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 21, 2011, relating to the
7 Alcohol Beverage Commission (licensed retailer operations,
8 175 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 13, 2011, authorized under the authority of section six, article
11 three-a, chapter sixty of this code, relating to the Alcohol
12 Beverage Control Commission (licensing of retail outlets,
13 175 CSR 5), is authorized.

§64-7-5. Racing Commission.

1 The legislative rule filed in the State Register on
2 September 13, 2011, authorized under the authority of section
3 twelve-d, article twenty-three, chapter nineteen of this code,
4 relating to the Racing Commission (simulcast pari-mutual
5 wagering at an authorized gaming facility in a historic hotel,
6 178 CSR 7), is authorized.

§64-7-6. Athletic Commission.

1 The legislative rule filed in the State Register on July 28,
2 2011, authorized under the authority of section three-a, article
3 five-a, chapter twenty-nine of this code, modified by the
4 Athletic Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on January 6, 2012, relating to the Athletic
7 Commission (mixed martial arts, 177 CSR 2), is authorized,
8 with the following amendments:

9 On pages three and four, §177-2.5., by striking out all of
10 §177-2.5. and inserting in lieu thereof a new §177-2.5., to
11 read as follows:

12 “§177-2.5. Venues must have a minimum seating
13 capacity of 2,500 and video replay capabilities in good
14 working order. However, the Commission may waive the
15 minimum seating capacity requirement. Venues with a
16 seating capacity of 3,500 or more must have a minimum of
17 four video monitors displaying a continuous live feed of the
18 match for the spectators; venues with a maximum seating
19 capacity of 3,499 or less must have at least two monitors
20 displaying a continuous live feed of the match for the
21 spectators. All such video monitors must be a minimum of
22 six feet by six feet. No event shall take place until the venue
23 has been approved by the commission.”;

24 On page twelve, subsection 29.5., by striking out all of
25 subsection 29.5. and inserting in lieu thereof a new
26 subsection 29.5., to read as follows:

27 “29.5. Prohibition of certain dressings. – No second shall
28 be permitted to use grease or any other substances on the
29 body of a contestant. The use of petroleum jelly in corners is
30 not allowed except in the use of stopping blood and on cuts.
31 Petroleum jelly, or other substances approved by the
32 commission, may be used in between rounds in the use of
33 stopping blood and on cuts and only in the presence of a
34 representative of the commission. The use of drugs, alcohols
35 or stimulants during a match by any contestant is adequate
36 cause for revoking license.”;

37 On page twenty, subsection 41.1., by striking out all of
38 subsection 41.1. and inserting in lieu thereof a new
39 subsection 41.1., to read as follows:

40 “41.1. Matches may take place in a cage or ring that has
41 been approved by the commission. The cage or ring shall
42 meet the requirements set forth by the commission and is
43 subject to inspection prior to each match by a commission
44 representative such as a referee.”;

45 On page twenty-one, subsection 41.3., by striking out all
46 of subsection 41.3. and inserting in lieu thereof a new
47 subsection 41.3., to read as follows:

48 “41.3. The commission shall determine all seating
49 arrangements at cage side necessary to effectuate the match.
50 A promoter may submit a proposed seating arrangement to
51 the commission one week before the event.”;

52 And,

53 On page twenty-one, after subsection 41.3., by inserting
54 a new subsection, designated subsection 41.4., to read as
55 follows:

56 41.4. Ring - The ring specifications shall meet the
57 following requirements:

58 41.4.a. The ring shall be no smaller than twenty feet
59 square and larger than thirty-two feet square within the ropes.
60 One corner shall have a red designation and the corner
61 directly opposite shall have a blue designation.

62 41.4.b. The floor must extend at least eighteen inches
63 beyond the ropes. The ring floor must be padded in a manner
64 as approved by the commission, with at least one inch layer
65 of foam padding. No vinyl or other plastic rubberized cover
66 shall be permitted. The fighting area canvas shall not be
67 more than four feet above the floor of the building and shall
68 have suitable steps or ramp for use by the participants.

69 41.4.c. Ring posts must be made of metal, not more than
70 three inches in diameter, extending from the floor of the
71 building to a minimum height of fifty-eight inches above the
72 ring floor, and must be properly padded in a manner
73 approved by the commission. Ring posts must be at least
74 eighteen inches away from the ring ropes.

75 41.4.d. There must be five ring ropes, not less than one
76 inch in diameter and wrapped in soft material. The lowest
77 ring rope must be twelve inches above the ring floor.

78 41.4.e. There must not be any obstruction or object,
79 including, without limitation, a triangular border, on any part
80 of the ring floor.”.

§64-7-7. Directors of the West Virginia Health Insurance Plan.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section seven-b, article forty-eight,
4 chapter thirty-three, of this code, relating to the Board of
5 Directors of the West Virginia Health Insurance Plan
6 (premium subsidy, 113 CSR 1), is authorized.

CHAPTER 105

**(Com. Sub. for H. B. 4206 - By Delegates
Brown, D. Poling, Fleischauer and Talbott)**

[Passed February 29, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, 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 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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the

construction and reconstruction of state roads (157 CSR 3); authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways (157 CSR 7); and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to compulsory motor vehicle liability insurance (91 CSR 13).

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF
TRANSPORTATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-8-1. Commissioner of Highways.

1 (a) The legislative rule filed in the State Register on the
2 twenty-first day of July, two thousand eleven, authorized
3 under the authority of section eight, article two-a, chapter
4 seventeen, of this code, modified by the Commissioner of
5 Highways to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the tenth day of January, two thousand twelve, relating to
8 the Commissioner of Highways (construction and
9 reconstruction of state roads, 157 CSR 3), is authorized with
10 the following amendments:

11 On page twenty-seven, subdivision 7.2.1., by striking out
12 the word “al” and inserting in lieu thereof the word “all”;

13 On page thirty-five, subdivision 8.1.a., by striking out all
14 of subdivision 8.1.a.;

15 And relettering the remaining subdivisions;

16 On page forty-three, subdivision 9.7.c., by striking out
17 the word “subsection” and inserting in lieu thereof the word
18 “subdivision”;

19 On page fifty-four, subdivision 9.21.b, by striking out the
20 words “W.Va. Code §22-11” and inserting in lieu thereof the
21 words “Water Pollution Control Act, W.Va. Code §22-11-1
22 *et seq*”;

23 And,

24 On page ninety-five, subdivision 13.2.e., by striking out
25 “§5A-3-33a-f” and inserting in lieu thereof “§5A-3-33d”.

26 (b) The legislative rule filed in the State Register on the
27 eighth day of July, two thousand eleven, authorized under the
28 authority of section seven, article eighteen, chapter twenty-
29 two, of this code, relating to the Commissioner of Highways
30 (transportation of hazardous wastes upon the roads and
31 highways, 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

1 The legislative rule filed in the state register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section eight, article two-a, chapter
4 seventeen-d, of this code, modified by the Division of Motor
5 Vehicles to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twentieth day of October, two thousand eleven,
8 relating to the Division of Motor Vehicles (compulsory motor
9 vehicle liability insurance, 91 CSR 13), is authorized.

CHAPTER 106

**(Com. Sub. for H. B. 4139 - By Delegates
Brown, D. Poling, Fleischauer and Overington)**

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

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 and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; 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 Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees;

authorizing the Board of Medicine to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Human Rights Commission to promulgate a legislative rule relating to housing discrimination against persons with disabilities who utilize assistance animals; authorizing the State Auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the labeling of imported honey, honey products or honey bee by-products and adulterated honey, honey products or honey bee by-products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to nutrient management certification; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to shampoo assistants; authorizing the Courthouse Facilities Improvement Authority to promulgate a legislative rule relating to the Courthouse Facilities Improvement Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the Vote-by-Mail Pilot Project Phase 2: Voting by Mail; authorizing the Secretary of State to promulgate a legislative rule relating to the general management and preservation of state records; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services

rendered by the Board; authorizing the Board of Osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substances Act; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education for the licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure of wholesale drug distributors; and authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists.

Be it enacted by the Legislature of West Virginia:

That article nine, 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. Board of Dental Examiners.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section eighteen, article four-a, chapter
4 thirty, of this code, modified by the Board of Dental
5 Examiners to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-first day of October, two thousand eleven,
8 relating to the Board of Dental Examiners (fees established
9 by the Board, 5 CSR 3), is authorized, with the following
10 amendments:

11 On page one, subsection 2.1., by striking out all of
12 subsection 2.1. and inserting in lieu thereof a new subsection
13 2.1. to read as follows:

14 2.1. Dental Licensure Application \$185.00;

15 On page one, subsection 2.8., by striking out all of
16 subsection 2.8. and inserting in lieu thereof a new subsection
17 2.8. to read as follows:

18 2.8. Annual Information & Renewal
19 fee for a Dentist \$185.00;

20 On page one, subsection 4.1., by striking out all of
21 subsection 4.1. and inserting in lieu thereof a new subsection
22 4.1. to read as follows:

23 4.1. Dental Hygiene Licensure Application \$75.00;

24 On page two, subsection 4.7., by striking out all of
25 subsection 4.7. and inserting in lieu thereof a new subsection
26 4.7. to read as follows:

27 4.7. Annual Information & Renewal fee
28 for a Dental Hygienist \$75.00;

29 On page two, subsections 4.8. through 4.15., by striking
30 out all of subsections 4.8. through 4.15. and inserting in lieu
31 thereof new subsections, designated subsections 4.8. through
32 subsection 4.16. to read as follows:

33 4.8 Annual Information & Renewal fee
34 for a Dental Hygienist employed
35 by a public health agency \$65.00

36 4.9. Local Anesthesia Certificate Application fee \$50.00

37 4.10. Nitrous Oxide Monitoring
38 Certificate Application fee \$50.00

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39	4.11. Bleaching Certificate Application fee	\$25.00
40	4.12. General Supervision Application fee	\$100.00
41	4.13. Public Health Practice Application fee	\$25.00
42	4.14. Annual Renewal fee of Local	
43	Anesthesia Certificate	\$25.00
44	4.15. Annual Renewal fee of	
45	General Supervision Certificate	\$50.00
46	4.16. Annual Renewal fee of Public	
47	Health Practice Certificate	\$25.00;
48	On page two, subsection 7.2., by striking out all of	
49	subsection 7.2. and inserting in lieu thereof a new subsection	
50	7.2. to read as follows:	
51	7.2. Class Two Certification Renewal Fee	\$15.00;
52	And,	
53	On page two, subsection 7.6., by striking out all of	
54	subsection 7.6. and inserting in lieu thereof a new subsection	
55	7.6. to read as follows:	
56	7.6. Qualified Monitor Annual Renewal Fee	\$25.00;

§64-9-2. Board of Accountancy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section five, article nine, chapter thirty
4 of this code, relating to the Board of Accountancy (the Board
5 and rules of professional conduct, 1 CSR 1), is authorized.

§64-9-3. Massage Therapy Licensure Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article thirty-seven, chapter
4 thirty, of this code, relating to the Massage Therapy
5 Licensure Board (general provisions, 194 CSR 1), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of July, two thousand eleven, authorized
9 under the authority of section six, article thirty-seven, chapter
10 thirty, of this code, relating to the Massage Therapy
11 Licensure Board (schedule of fees, 194 CSR 4), is authorized,
12 with the following amendment:

13 On page 1, at the end of the rule, by adding thereto a new
14 section, designated section 3, to read as follows:

“§194-4-3. Expiration of fee increases.

1 The fee increases enacted by emergency rule in 2011 and
2 by legislative rule in 2012 will expire as of July 1, 2014”.

§64-9-4. Board of Medicine.

1 The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand eleven, authorized under
3 the authority of section fifteen, article three, chapter thirty, of
4 this code, relating to the Board of Medicine (formation and
5 approval of professional limited liability companies, 11 CSR
6 7), is authorized.

§64-9-5. Human Rights Commission.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized

3 under the authority of section eight, article eleven, chapter
4 five of this code, relating to the Human Rights Commission
5 (housing discrimination against persons with disabilities who
6 utilize assistance animals, 77 CSR 9), is authorized.

§64-9-6. Auditor.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section ten-c, article three, chapter
4 twelve, of this code, relating to the State Auditor (transaction
5 fee and rate structure, 155 CSR 4), is authorized, with the
6 following amendment:

7 On page one, section three, by striking out all of
8 subsection 3.1 and inserting in lieu thereof the following:

9 “3.1. The transaction fee structure and rate shall be in
10 compliance with the following federal Office of Management
11 and Budget Circulars and provisions of the Code of Federal
12 Regulations: Circular No. A-21, “Cost Principles for
13 Educational Institutions” as amended ~~August 29, 1997~~ May
14 10, 2004; 2CFR Part 225: Circular No. A-87, “Cost
15 Principles for State, Local, and Indian Tribal Governments”
16 as amended ~~August 29, 1997~~ August 31, 2005; and Circular
17 A-110, “Uniform Administrative Requirements for Grants
18 and Agreements with Institutions of Higher Education,
19 Hospitals, and other Non-Profit Organizations” as amended
20 ~~August 29, 1997~~ September 30, 1999.”.

§64-9-7. Department of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand eleven, authorized
3 under the authority of section three, article two-b, chapter
4 nineteen, of this code, relating to the Commissioner of
5 Agriculture (inspection of meat and poultry, 61 CSR 16), is
6 authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of July, two thousand eleven, authorized
9 under the authority of section four, article one, chapter
10 nineteen, of this code, modified by the Commissioner of
11 Agriculture to meet the objections of the Legislative Rule-
12 Making Review Committee and refiled in the State Register
13 on the nineteenth day of October, two thousand eleven,
14 relating to the Commissioner of Agriculture (labeling of
15 imported honey, honey products or honey bee by-products
16 and adulterated honey, honey products or honey bee by-
17 products, 61 CSR 2A), is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section twelve, article fifteen, chapter
21 nineteen, of this code, modified by the Department of
22 Agriculture to meet the objections of the Legislative Rule-
23 Making Review Committee and refiled in the State Register
24 on the nineteenth day of October, two thousand eleven,
25 relating to the Commissioner of Agriculture (nutrient
26 management certification, 61 CSR 6D), is authorized.

§64-9-8. Board of Barbers & Cosmetologists.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section six, article twenty-seven,
4 chapter thirty, of this code, relating to the Board of Barbers
5 and Cosmetologists (procedures, criteria and curricula for
6 examinations and licensure of barbers, cosmetologists,
7 manicurists and aestheticians, 3 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on the
9 twenty-ninth day of July, two thousand eleven, authorized
10 under the authority of section six, article twenty-seven,
11 chapter thirty, of this code, modified by the Board of Barbers
12 and Cosmetologists to meet the objections of the Legislative

13 Rule-Making Review Committee and refiled in the State
14 Register on the twentieth day of September, two thousand
15 eleven, relating to the Board of Barbers and Cosmetologists
16 (licensing schools of barbering and beauty culture, 3 CSR 3),
17 is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand eleven, authorized
20 under the authority of section eleven-a, article twenty-seven,
21 chapter thirty, of this code, relating to the Board of Barbers
22 and Cosmetologists (shampoo assistants, 3 CSR 8), is
23 authorized.

§64-9-9. Courthouse Facilities Improvement Authority.

1 The legislative rule filed in the State Register on the first
2 day of September, two thousand eleven, authorized under the
3 authority of section three, article twenty-six, chapter twenty-
4 nine, of this code, modified by the Courthouse Facilities
5 Improvement Authority to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eleventh day of January, two
8 thousand twelve, relating to the Courthouse Facilities
9 Improvement Authority (Courthouse Facilities Improvement
10 Fund, 203 CSR 1), is authorized.

§64-9-10. Secretary of State.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section three, article three-a, chapter
4 three, of this code, modified by the Secretary of State to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 third day of December, two thousand eleven, relating to the
8 Secretary of State (Vote-by-Mail Pilot Project Phase 2:
9 Voting by Mail, 153 CSR 39), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand eleven, authorized
12 under the authority of three, article three-a, chapter three, of
13 this 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 twelfth day
16 of January, two thousand twelve, relating to the Secretary of
17 State (general management and preservation of state records,
18 153 CSR 42), is authorized, with the following amendment:

19 On page one, subsection 1.5, line ten, following the
20 words “record-keeping systems”, by inserting the words “for
21 essential public records created or filed with the West
22 Virginia Secretary of State”;

23 On page four, subsection 3.1, line twelve, following the
24 words “Archives and History”, by striking out the word
25 “division” and inserting in lieu thereof the word “section”;

26 On page four, subsection 3.2a, line fourteen, following
27 the words “Culture and History”, by inserting a comma and
28 the words “Archives and History section”;

29 And

30 On page four, subsection 3.2d, line twenty-five, following
31 the words “Director of Archives”, by inserting the words
32 “and History”.

§64-9-11. Board of Professional Surveyors.

1 The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand eleven, authorized under
3 the authority of section six, article thirteen-a, chapter thirty,
4 of this code, modified by the Board of Professional Surveyors
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the

7 twenty-first day of November, two thousand eleven, relating
8 to the Board of Professional Surveyors (examination and
9 licensing of professional surveyors in West Virginia, 23 CSR
10 1), is authorized.

§64-9-12. Nursing Home Administrators Licensing Board.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of March, two thousand eleven, authorized
3 under the authority of section six, article twenty-five, chapter
4 thirty, of this code, modified by the Nursing Home
5 Administrators Licensing Board to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the eighteenth day of October, two
8 thousand eleven, relating to the Nursing Home
9 Administrators Licensing Board (nursing home
10 administrators, 21 CSR 1), is authorized.

§64-9-13. Board of Occupational Therapy.

1 The legislative rule filed in the State Register on the
2 fourteenth day of July, two thousand eleven, authorized under
3 the authority of section seven, article twenty-eight, chapter
4 thirty, of this code, relating to the Board of Occupational
5 Therapy (fees for services rendered by the Board, 13 CSR 3),
6 is authorized.

§64-9-14. Board of Osteopathy.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized
3 under the authority of section four, article one, chapter thirty,
4 of this code, relating to the Board of Osteopathy (licensing
5 procedures for osteopathic physicians, 24 CSR 1), is
6 authorized.

§64-9-15. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section three hundred one, article three,
4 chapter sixty-a, of this code, relating to the Board of
5 Pharmacy (Uniform Controlled Substances Act, 15 CSR 2),
6 is authorized with the following amendment:

7 On page twenty three, subdivision 7.10.1., by striking out
8 the word “full” and inserting in lieu thereof the word “fill”.

9 (b) The legislative rule filed in the State Register on the
10 twenty-ninth day of July, two thousand eleven, authorized
11 under the authority of section three-a, article five, chapter
12 thirty, of this code, relating to the Board of Pharmacy
13 (continuing education for licensure of pharmacists, 15 CSR
14 3), is authorized.

15 (c) The legislative rule filed in the State Register on the
16 twenty-ninth day of July, two thousand eleven, authorized
17 under the authority of section nine, article eight, chapter
18 sixty-a, of this code, relating to the Board of Pharmacy
19 (licensure of wholesale drug distributors, 15 CSR 5), is
20 authorized with the following amendment:

21 On page three, subsection 3.1, after the words
22 “prescription drugs.” by adding the following:
23 Notwithstanding the provisions of W. Va. Code §60A-8-7,
24 the fee for a license for the wholesale distribution of drugs is
25 \$750.00.

26 (d) The legislative rule filed in the State Register on the
27 ninth day of December, two thousand eleven, authorized
28 under the authority of section thirty, article five, chapter
29 thirty, of this code, relating to the Board of Pharmacy
30 (immunizations administered by pharmacists, 15 CSR 12), is
31 authorized.

CHAPTER 107

**(Com. Sub. for H. B. 4220 - By Delegates
Brown, D. Poling, Fleischauer and Talbott)**

[Passed March 6, 2012; in effect from passage.]
[Approved by the Governor on March 14, 2012.]

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; 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 Development Office to promulgate a legislative rule relating to brownfield economic development districts; authorizing the Development Office to promulgate a legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to the certification of registered foresters; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a schedule of

fees; authorizing the Board of Registration for Foresters to promulgate a legislative rule relating to a code of ethics; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - logger certification; authorizing the Division of Labor to promulgate a legislative rule relating to the Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motor boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing.

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. Development Office.

1 (a) The legislative rule filed in the State Register on the
2 fifth day of July, two thousand eleven, authorized under the
3 authority of section six-a, article two, chapter five-b, of this
4 code, modified by the Development Office to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 third day of December, two thousand eleven, relating to the
8 Development Office (brownfield economic development
9 districts, 145 CSR 11), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 fourteenth day of July, two thousand eleven, authorized under
12 the authority of section twenty-a, article thirteen-a, chapter
13 eleven, of this code, modified by the Development Office to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the sixteenth
16 day of December, two thousand eleven, relating to the
17 Development Office (use of coalbed methane severance tax
18 proceeds, 145 CSR 13), is authorized, with the following
19 amendment:

20 On page one, section three, by striking out “*W. Va. Code*
21 §11-12-1” and inserting in lieu thereof “*W. Va. Code* §7-12-
22 1”.

§64-10-2. Board of Registration for Foresters.

1 (a) The legislative rule filed in the State Register on the
2 third day of August, two thousand eleven, authorized under
3 the authority of section six, article nineteen, chapter thirty, of
4 this code, modified by the Board of Registration for Foresters

5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 fifth day of December, two thousand eleven, relating to the
8 Board of Registration for Foresters (certification of registered
9 foresters, 200 CSR 1), is authorized, with the following
10 amendment:

11 On page 1, subsection 1.1, after the words “rule
12 establishes” by striking out the remainder of the sentence and
13 inserting in lieu thereof the words “educational and
14 experience requirements, approved job titles and continuing
15 education requirements for foresters and forestry technicians,
16 and meeting requirements for the board.”;

17 On page 2, subsection 2.9, at the end of the subsection,
18 by striking out the words “this article” and inserting in lieu
19 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
20 rule.”;

21 On page 2, in the first subsection 2.10, by striking out the
22 word “Permittee” and inserting in lieu thereof the word
23 “Permittee”, and at the end of the subsection, by striking out
24 the words “this article” and inserting in lieu thereof the words
25 “*W. Va. Code §30-19-1 et seq.* and this rule.”;

26 On page 2, subsection 2.11, at the end of the subsection,
27 by striking out the words “this article” and inserting in lieu
28 thereof the words “*W. Va. Code §30-19-1 et seq.* and this
29 rule.”;

30 On page 2, in the second subsection 2.10, at the end of
31 the subsection, by striking out the words “this article” and
32 inserting in lieu thereof the words “*W. Va. Code §30-19-1 et*
33 *seq.* and this rule.”;

34 On page 2, by redesignating the second subsection 2.10
35 as subsection 2.12;

36 On page 2, section 3, after the section heading, by
37 striking out section 3 in its entirety and inserting in lieu
38 thereof a new section 3 to read as follows:

“§200-1-3. Applications.

1 3.1. An applicant for certification as a registered forester
2 shall submit evidence to the board of the following:

3 3.1.a. A bachelor’s degree in forestry from a four
4 year school, college or university accredited by the Society
5 of American Foresters and at least two years of full-time
6 equivalent work experience as a professional forester within
7 the ten years preceding the date of filing an application for
8 registration; or

9 3.1.b. An associate’s degree from a two year
10 technical forestry program recognized by the Society of
11 American Foresters plus a bachelor’s degree in another
12 natural science or business and at least four years of full-time
13 equivalent work experience in the field of forestry acceptable
14 to the board within the ten years preceding the date of filing
15 an application for registration.

16 3.2. An applicant for certification as a registered forestry
17 technician shall submit evidence to the board of an
18 associate’s degree from a two year technical forestry program
19 recognized by the Society of American Foresters and at least
20 four years of full-time equivalent work experience in the field
21 of forestry acceptable to the board within the ten years
22 preceding the date of filing an application for registration.

23 3.3. All applicants must complete the application form
24 provided by the Board and supply the following:

25 3.3.a. Personal information;

26 3.3.b. Educational information;

27 3.3.c. Qualifying work experience;

28 3.3.d. Verification of license, certification or other
29 authority to practice from other state licensing boards, if
30 applicable;

31 3.3.e. Written responses to questions regarding
32 criminal offenses;

33 3.3.f. Written responses to questions regarding child
34 support obligations; and

35 3.3.g. Applicable fee or fees as provided in 200 *CSR*
36 4.”;

37 On page 3, subsection 6.1, after the words “name and” by
38 striking out the word “license” and inserting in lieu thereof
39 the word “certification”;

40 On page 4, subsection 6.7, by striking out the words “will
41 automatically” and inserting in lieu thereof the words “will be
42 automatically classified as”;

43 On page 4, subsection 6.9, after the words “non-renewal
44 of any” by striking out the word “license” and inserting in
45 lieu thereof the word “certification” and after the words
46 “return the certificate” by striking out the words “of
47 registration”;

48 On page 4, subsection 7.1, after the words “issuing of a
49 certificate” by striking out the words “of registration”;

50 On page 5, subsection 7.2, after the words “working
51 toward eligibility for” by striking out the word “licensing”
52 and inserting in lieu thereof the word “certification”, and

53 after the words “leading to the issuance of a” by striking out
54 the words “license and” and after the word “certificate” by
55 striking out the words “of registration”;

56 And,

57 On page 6, subsection 10.1, after the words “To renew a”
58 by striking out the word “license” and inserting in lieu
59 thereof the word “certificate” and after the words “renewal or
60 initial” by striking out the word “registration” and inserting
61 in lieu thereof the word “certification” and after the words
62 “The board shall not renew a” by striking out the word
63 “license” and inserting in lieu thereof the word “certificate”.

64 (b) The legislative rule filed in the State Register on the
65 third day of August, two thousand eleven, authorized under
66 the authority of section six, article nineteen, chapter thirty, of
67 this code, modified by the Board of Registration for Foresters
68 to meet the objections of the Legislative Rule-Making
69 Review Committee and refiled in the State Register on the
70 fifth day of December, two thousand eleven, relating to the
71 Board of Registration for Foresters (schedule of fees, 200
72 CSR 4), is authorized, with the following amendments:

73 On page 1, in the first subsection 2.2, after the word “fee”
74 by striking out the word “for”;

75 On page 1, in the second subsection 2.2, after the word
76 “certification” by striking out the word “license”; and

77 On page 1, section 2, by numbering the subsections of
78 said section 2 sequentially.

79 (c) The legislative rule filed in the State Register on the third
80 day of August, two thousand eleven, authorized under the
81 authority of section six, article nineteen, chapter thirty, of this
82 code, modified by the Board of Registration for Foresters to meet

83 the objections of the Legislative Rule-Making Review Committee
84 and refiled in the State Register on the fifth day of December, two
85 thousand eleven, relating to the Board of Registration for Foresters
86 (code of ethics, 200 CSR 5), is authorized.

§64-10-3. Division of Forestry.

1 (a) The legislative rule filed in the State Register on the
2 twentieth day of July, two thousand eleven, authorized under the
3 authority of section four, article one-b, chapter nineteen, of this
4 code, relating to the Division of Forestry (sediment control
5 during commercial timber-harvesting operations - licensing, 22
6 CSR 2), is authorized, with the following amendment:

7 On page two, section two, subsection 2.22, after “§19-
8 1B-3e” by striking out the remainder of the subsection and
9 inserting in lieu thereof the following: “includes all aspects
10 of logging, including but not limited to severing and
11 delimiting of trees, cutting of the delimited tree into logs
12 either at the point of severing or at a landing, the preparation
13 of any skid and haul roads and the skidding or otherwise
14 moving of logs to landings.”.

15 (b) The legislative rule filed in the State Register on the
16 twentieth day of July, two thousand eleven, authorized under
17 the authority of section seven, article one-b, chapter nineteen,
18 of this code, relating to the Division of Forestry (sediment
19 control during commercial timber-harvesting operations -
20 logger certification, 22 CSR 3), is authorized, with the
21 following amendment:

22 On page two, section two, subsection 2.13, after the word
23 “Operations”, by inserting the words “or the singular”.

§64-10-4. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand eleven, authorized

3 under the authority of section six, article fifteen, chapter
4 twenty-one, of this code, modified by the Division of Labor
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twenty-fifth day of October, two thousand eleven, relating to
8 the Division of Labor (Zipline and Canopy Tour
9 Responsibility Act, 42 CSR 10), is authorized with the
10 following amendments:

11 On page two, subsection 3.5., by striking out all of
12 subsection 3.5. and inserting in lieu thereof a new subsection,
13 designated subsection 3.5., to read as follows:

14 3.5. "Serious injury," means an injury that is directly
15 related to any mechanical, electrical, operational or structural
16 malfunction of a zipline or canopy tour that results in death,
17 loss of consciousness, or requires medical treatment other
18 than first aid by a physician or other medical professional for
19 which a record is created.;

20 And,

21 On pages four through six, by striking out the remainder
22 of the rule and inserting in lieu thereof the following:

§42-10-10. Unscheduled Cessation of Operation.

1 10.1. Following any unscheduled cessation of operation,
2 the operator of a zipline or canopy tour shall immediately
3 have the participants safely removed or unloaded from the
4 zipline or canopy tour.

5 10.2. If the operator determines that the zipline or canopy
6 tour can safely resume operation, the qualified person shall
7 first operate the zipline or canopy tour without participants to
8 ensure that the cause of the unscheduled cessation of
9 operation has been corrected.

10 10.3. The operator shall document any unscheduled
11 cessation of operation, including the identification of the zipline
12 or canopy tour, the name of the employee operating the zipline
13 or canopy tour during the unscheduled cessation, and a complete
14 description of the incident, including the date, time, weather
15 conditions, location, number of participants, etc.

§42-10-11. Imminent Danger.

1 11.1. If the Commissioner or a special inspector
2 determines that a zipline or canopy tour presents an imminent
3 danger, he or she shall immediately give written notification
4 to the zipline or canopy tour owner or operator, advising him
5 or her that the zipline or canopy tour shall be immediately
6 removed from service.

7 11.2. If the owner or operator does not immediately
8 remove the zipline or canopy tour from service, the inspector
9 shall immediately report the imminent danger to the
10 Commissioner.

11 11.3. If the owner or operator does not immediately
12 remove the zipline or canopy tour from service, the
13 Commissioner may seek a temporary or permanent
14 restraining order or injunction to prohibit the continuing
15 operation of the zipline or canopy tour.

§42-10-12. Serious Injury or Fatality.

1 12.1. If a participant or member of the general public is
2 involved in an accident related to the operation of a zipline or
3 canopy tour that results in a serious injury or a fatality, the
4 owner or operator shall immediately shut down the operation
5 of the zipline or canopy tour and secure the safety of other
6 participants and the general public.

7 12.2. An owner or operator shall ensure that the scene of
8 a serious injury or fatality is left intact from the time of the

9 accident and shall ensure that the zipline or canopy tour
10 involved is not removed from the scene of the accident
11 without written authorization from the Commissioner or a
12 law enforcement officer.

13 12.3. The owner, operator, and any employees who
14 witnessed the accident or who operated the zipline or canopy
15 tour when the accident occurred shall be available to be
16 interviewed by the Commissioner.

17 12.4. The owner of the zipline or canopy tour shall make
18 a report of the injury or fatality to the Commissioner within
19 24 hours of its occurrence, using the Division's emergency
20 contact protocol.

21 12.4.a. After the owner of the zipline or canopy tour
22 notifies the Commissioner of a serious injury or fatality, the
23 Commissioner shall, with reasonable promptness, advise the
24 owner whether the zipline or canopy tour shall remain shut
25 down pending investigation and inspection or whether it can
26 be placed back in service.

27 12.4.b. In deciding whether the zipline or canopy
28 tour shall remain shut down or whether it can be placed back
29 in service, the Commissioner's sole consideration shall be the
30 safety of participants and the general public.

31 12.5. The owner shall document the accident, to include the
32 full name, address and telephone number of the injured person, a
33 description of his or her injuries, identification of the zipline or
34 canopy tour involved, the names and addresses of the owner and
35 employees who witnessed the accident, and any other pertinent
36 information describing the events leading up to the accident.

37 12.6. An owner or operator shall keep a record of every
38 accident or fatality with the certificate of inspection, which
39 shall be readily accessible to the general public. The record
40 shall include the following information:

- 41 12.6.a. The date of every accident or fatality;
- 42 12.6.b. A description of the type of accident;
- 43 12.6.c. The number of people injured or killed; and
- 44 12.6.d. A description of the types of injuries.

§42-10-13. Reports and Records.

1 13.1. The owner of the zipline or canopy tour shall retain
2 all reports, documents, photographs and records required by
3 this rule for not less than 3 years from the date of the
4 unscheduled cessation, imminent danger notification, or
5 serious injury or fatality.

6 13.2. If an owner violates any provision of this section of
7 the rule, the Commissioner may permanently revoke the
8 permit to operate.

9 (b) The legislative rule filed in the State Register on the
10 twenty-eighth day of July, two thousand eleven, authorized
11 under the authority of section three, article ten, chapter
12 twenty-one, of this code, modified by the Division of Labor
13 to meet the objections of the Legislative Rule-Making
14 Review Committee and refiled in the State Register on the
15 twenty-fifth day of October, two thousand eleven, relating to
16 the Division of Labor (Amusement Rides and Amusement
17 Attractions Safety Act, 42 CSR 17), is authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-eighth day of July, two thousand eleven, authorized
20 under the authority of section eleven, article three-c, chapter
21 twenty-one, of this code, modified by the Division of Labor
22 to meet the objections of the Legislative Rule-Making
23 Review Committee and refiled in the State Register on the
24 twenty-fifth day of October, two thousand eleven, relating to
25 the Division of Labor (supervision of elevator mechanics and
26 apprentices, 42 CSR 21A), is authorized.

§64-10-5. Office of Miners' Health, Safety & Training.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand eleven, authorized
3 under the authority of section thirteen, article thirteen-bb,
4 chapter eleven, of this code, modified by the Office of
5 Miners' Health, Safety and Training to meet the objections of
6 the Legislative Rule-Making Review Committee and refiled
7 in the State Register on the twenty-second day of November,
8 two thousand eleven, relating to the Office of Miners' Health,
9 Safety and Training (application process for the West
10 Virginia Innovative Mine Safety Technology Tax Credit Act,
11 56 CSR 14), is authorized.

§64-10-6. Division of Natural Resources

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand eleven, authorized
3 under the authority of section seven, article one, chapter
4 twenty, of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-second day of September, two thousand
8 eleven, relating to the Division of Natural Resources (special
9 boating, 58 CSR 26), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-sixth day of July, two thousand eleven, authorized
12 under the authority of section twenty-three, article seven,
13 chapter twenty, of this code, modified by the Division of
14 Natural Resources to meet the objections of the Legislative
15 Rule-Making Review Committee and refiled in the State
16 Register on the twenty-second day of September, two
17 thousand eleven, relating to the Division of Natural
18 Resources (special motorboating, 58 CSR 27), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-sixth day of July, two thousand eleven, authorized

21 under the authority of section seven, article one, chapter
22 twenty, of this code, relating to the Division of Natural
23 Resources (hunting, trapping and fishing, 58 CSR 45A), is
24 authorized.

25 (d) The legislative rule filed in the State Register on the
26 twenty-fifth day of July, two thousand eleven, authorized
27 under the authority of section seven, article one, chapter
28 twenty, of this code, modified by the Division of Natural
29 Resources to meet the objections of the Legislative Rule-
30 Making Review Committee and refiled in the State Register
31 on the twenty-second day of September, two thousand
32 eleven, relating to the Division of Natural Resources
33 (defining the terms used in all hunting and trapping, 58 CSR
34 46), is authorized.

35 (e) The legislative rule filed in the State Register on the
36 twenty-fifth day of July, two thousand eleven, authorized
37 under the authority of section seven, article one, chapter
38 twenty, of this code, modified by the Division of Natural
39 Resources to meet the objections of the Legislative Rule-
40 Making Review Committee and refiled in the State Register
41 on the twenty-second day of September, two thousand
42 eleven, relating to the Division of Natural Resources
43 (prohibitions when hunting and trapping, 58 CSR 47), is
44 authorized.

45 (f) The legislative rule filed in the State Register on the
46 twenty-fifth day of July, two thousand eleven, authorized
47 under the authority of section seven, article one, chapter
48 twenty, of this code, modified by the Division of Natural
49 Resources to meet the objections of the Legislative Rule-
50 Making Review Committee and refiled in the State Register
51 on the twenty-second day of September, two thousand
52 eleven, relating to the Division of Natural Resources (general
53 trapping, 58 CSR 53), is authorized, with the following
54 amendment:

55 On page one, section three, subsection 3.2, in the first
56 sentence, after the word “Areas” by adding “and State
57 Forests”,

58 And,

59 On page one, section three, subsection 3.2, in the second
60 sentence, after the word “Area” by adding “or State Forest”.

61 (g) The legislative rule filed in the State Register on the
62 twenty-fifth day of July, two thousand eleven, authorized
63 under the authority of section seven, article one, chapter
64 twenty, of this code, modified by the Division of Natural
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 September, two thousand
68 eleven, relating to the Division of Natural Resources (special
69 fishing, 58 CSR 61), is authorized.

CHAPTER 108

**(Com. Sub. for S. B. 434 -
By Senator Palumbo)**

[Passed March 2, 2012; in effect from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §38-5-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-5A-3 of said code, all relating to proceedings in aid of execution on judgments; and providing that a suggestion and suggestee execution shall contain the date of birth and last four digits of the Social Security number of the judgment debtor.

Be it enacted by the Legislature of West Virginia:

That §38-5-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-5A-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION;
INTERROGATORIES; SUGGESTION.**

§38-5-10. Suggestion on judgment; summons against person suggested.

1 (a) Upon a suggestion by the judgment creditor that a
2 person is indebted or liable to the judgment debtor or has in
3 the person's possession or control personal property
4 belonging to the judgment debtor, which debt or liability
5 could be enforced when due, or which property could be
6 recovered when it became returnable by the judgment debtor
7 in a court of law and which debt or liability or property is
8 subject to the judgment creditor's writ of fieri facias, a
9 summons against such person may be issued out of the office
10 of the clerk of the circuit court or of the magistrate court of
11 the county in which the judgment creditor obtained the writ
12 of fieri facias, requiring such person to answer the suggestion
13 in writing and under oath. Service of a summons issued
14 under this section may be made as provided by subdivision
15 (1), subsection (d) of rule four of the rules of civil procedure
16 for trial courts of record. The return day for a summons
17 issued under this section is governed by the provisions of rule
18 sixty-nine of the rules of civil procedure for trial courts of
19 record.

20 (b) The suggestion by the judgment creditor provided for
21 in this section shall include, to the extent possible, the present
22 address, the last four digits of the Social Security number and
23 date of birth of the judgment debtor, which information shall
24 be made available to the person suggested for purposes of

25 identifying the judgment debtor and facilitating a proper
26 answer to the suggestion.

**ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES
OF PERSONS ENGAGED IN PRIVATE
EMPLOYMENT.**

**§38-5A-3. Application for suggestee execution against salary or
wages; extent of lien and continuing levy;
exemption; priority among suggestee executions.**

1 (a) A judgment creditor may apply to the court in which
2 the judgment was recovered or a court having jurisdiction of
3 the same, without notice to the judgment debtor, for a
4 suggestee execution against any money due or to become due
5 within one year after the issuance of such execution to the
6 judgment debtor as salary or wages arising out of any private
7 employment. If satisfactory proof shall be made, by affidavit
8 or otherwise, of such facts and the fact that the amount due or
9 to become due as salary or wages after the deduction of all
10 state and federal taxes exceeds in any week thirty times the
11 federal minimum hourly wage then in effect, the court, if not
12 a court of record, or if a court of record the clerk thereof,
13 shall issue a suggestee execution against the salary or wages
14 of the judgment debtor and upon presentation of such
15 execution by the officer to whom delivered for collection to
16 the person or persons from which such salary or wages are
17 due and owing or thereafter may become due and owing to
18 the judgment debtor, the execution and the expenses thereof
19 shall become a lien and continuing levy upon the salary or
20 wages due or to become due to the judgment debtor within
21 one year after the issuance of the same, unless sooner vacated
22 or modified as hereinafter provided, to an amount equal to
23 twenty percent thereof and no more, but in no event shall the
24 payments in satisfaction of such an execution reduce the
25 amount payable to the judgment debtor to an amount per
26 week that is less than thirty times the federal minimum hourly

27 wage then in effect. Only one such execution shall be
28 satisfied, at one time, except that in the event two or more
29 such executions have been served and satisfaction of the one
30 having priority is completed without exhausting the amount
31 of the salary or wages then due and payable that is subject to
32 suggestion under this article the balance of such amount shall
33 be paid in satisfaction, in the order of their priority, of junior
34 suggestee executions against such salary or wages theretofore
35 served.

36 (b) The suggestee execution by the judgment creditor
37 provided in this section shall include, to the extent possible,
38 the present address, the last four digits of the Social Security
39 number and date of birth of the judgment debtor, which
40 information shall be made available for the purpose of
41 properly identifying the judgment debtor whose salary or
42 wages are being levied upon.

CHAPTER 109

**(S. B. 619 - By Senators Prezioso
and Minard)**

[Passed March 10, 2012; in effect July 1, 2012.]

[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating to annual business fees paid to the Secretary of State; clarifying that limited liability companies, foreign limited liability companies and foreign corporations are required to file annual reports; eliminating criminal penalties; changing a \$100 penalty to a \$50 late fee for delinquent annual reports; providing a \$25 late fee for

delinquent annual reports for nonprofit corporations; allowing the Secretary of State to deposit a portion of late fees collected in its general administrative fees account; authorizing the Secretary of State to charge a fee for online purchases of data or conducting transactions online; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

1 (a) *Definitions.* -- As used in this section:

2 (1) “Annual report fee” means the fee described in
3 subsection (c) of this section that is to be paid to the
4 Secretary of State each year by corporations, limited
5 partnerships, domestic limited liability companies and foreign
6 limited liability companies. After June 30, 2008, any
7 reference in this code to a fee paid to the Secretary of State
8 for services as a statutory attorney in fact shall mean the
9 annual report fee described in this section.

10 (2) “Business activity” means all activities engaged in or
11 caused to be engaged in with the object of gain or economic
12 benefit, direct or indirect, but does not mean any of the
13 activities of foreign corporations enumerated in subsection
14 (b), section one thousand five hundred one, article fifteen,
15 chapter thirty-one-d of this code, except for the activity of
16 conducting affairs in interstate commerce when activity
17 occurs in this state, nor does it mean any of the activities of
18 foreign limited liability companies enumerated in subsection
19 (a), section one thousand three, article ten, chapter thirty-one-

20 b of this code except for the activity of conducting affairs in
21 interstate commerce when activity occurs in this state.

22 (3) “Corporation” means a “domestic corporation”, a
23 “foreign corporation” or a “nonprofit corporation”.

24 (4) “Deliver or delivery” means any method of delivery
25 used in conventional commercial practice, including, but not
26 limited to, delivery by hand, mail, commercial delivery and
27 electronic transmission.

28 (5) “Domestic corporation” means a corporation for profit
29 which is not a foreign corporation incorporated under or
30 subject to chapter thirty-one-d of this code.

31 (6) “Domestic limited liability company” means a limited
32 liability company which is not a foreign limited liability
33 company under or subject to chapter thirty-one-b of this code.

34 (7) “Foreign corporation” means a for-profit corporation
35 incorporated under a law other than the laws of this state.

36 (8) “Foreign limited liability company” means a limited
37 liability company organized under a law other than the laws
38 of this state.

39 (9) “Limited partnership” means a partnership as defined
40 by section one, article nine, chapter forty-seven of this code.

41 (10) “Nonprofit corporation” means a nonprofit
42 corporation as defined by section one hundred fifty, article
43 one, chapter thirty-one-e of this code.

44 (11) “Registration fee” means the fee for the issuance of
45 a certificate relating to the initial registration of a corporation,
46 limited partnership, domestic limited liability company or
47 foreign limited liability company described in subdivision

48 (2), subsection (a), section two of this article. The term
49 “initial registration” also means the date upon which the
50 registration fee is paid.

51 (b) *Required payment of annual report fee and filing of*
52 *annual report.* -- After June 30, 2008, no corporation, limited
53 partnership, domestic limited liability company or foreign
54 limited liability company may engage in any business activity
55 in this state without paying the annual report fee and filing
56 the annual report as required by this section.

57 (c) *Annual report fee.* -- After June 30, 2008, each
58 corporation, limited partnership, domestic limited liability
59 company and foreign limited liability company engaged in or
60 authorized to do business in this state shall pay an annual
61 report fee of \$25 for the services of the Secretary of State as
62 attorney-in-fact for the corporation, limited partnership,
63 domestic limited liability company or foreign limited liability
64 company, and for such other administrative services as may
65 be imposed by law upon the Secretary of State. The fee is
66 due and payable each year after the initial registration of the
67 corporation, limited partnership, domestic limited liability
68 company or foreign limited liability company with the annual
69 report described in subsection (d) of this section on or before
70 the dates specified in subsection (e) of this section. The fee
71 is due and payable each year with the annual report from
72 corporations, limited partnerships, domestic limited liability
73 companies and foreign limited liability companies that paid
74 the registration fee prior to July 1, 2008, on or before the
75 dates specified in subsection (e) of this section. The annual
76 report fees received by the Secretary of State pursuant to this
77 subsection shall be deposited by the Secretary of State in the
78 general administrative fees account established by section
79 two of this article.

80 (d) *Annual report.* -- (1) After June 30, 2008, each
81 corporation, limited partnership, domestic limited liability

82 company and foreign limited liability company engaged in or
83 authorized to do business in this state shall file an annual
84 report. The report is due each year after the initial
85 registration of the corporation, limited partnership, domestic
86 limited liability company or foreign limited liability company
87 with the annual report fee described in subsection (c) of this
88 section on or before the dates specified in subsection (e) of
89 this section. The report is due each year from corporations,
90 limited partnerships, domestic limited liability companies and
91 foreign limited liability companies that paid the registration
92 fee prior to July 1, 2008, on or before the dates specified in
93 subsection (e) of this section.

94 (2) (A) The annual report shall be filed with the Secretary
95 of State on forms provided by the Secretary of State for that
96 purpose. The annual report shall, in the case of corporations,
97 contain: (i) The address of the corporation's principal office;
98 (ii) the names and mailing addresses of its officers and
99 directors; (iii) the name and mailing address of the person on
100 whom notice of process may be served; (iv) the name and
101 address of the corporation's parent corporation and of each
102 subsidiary of the corporation licensed to do business in this
103 state; (v) in the case of limited partnerships domestic limited
104 liability companies and foreign limited liability companies,
105 similar information with respect to their principal or
106 controlling interests as determined by the Secretary of State
107 or otherwise required by law to be reported to the Secretary
108 of State; (vi) the county or county code in which the principal
109 office address or mailing address of the company is located;
110 (vii) business class code; and (viii) any other information the
111 Secretary of State considers appropriate.

112 (B) Notwithstanding any other provision of law to the
113 contrary, the Secretary of State shall, upon request of any
114 person, disclose, with respect to corporations: (i) The address
115 of the corporation's principal office; (ii) the names and
116 addresses of its officers and directors; (iii) the name and

117 mailing address of the person on whom notice of process may
118 be served; (iv) the name and address of each subsidiary of the
119 corporation and the corporation's parent corporation; (v) the
120 county or county code in which the principal office address
121 or mailing address of the company is located; and (vi) the
122 business class code. The Secretary of State shall provide
123 similar information with respect to information in its
124 possession relating to limited partnerships domestic limited
125 liability companies and foreign limited liability companies,
126 similar information with respect to their principal or
127 controlling interests.

128 (e) *Annual reports and fees due July 1.* -- Each domestic
129 and foreign corporation, limited partnership, limited liability
130 company and foreign limited liability company shall file with
131 the Secretary of State the annual report and pay the annual
132 report fee by July 1 of each year.

133 (f) *Deposit of fees.* -- The annual report fees received by
134 the Secretary of State pursuant to this section shall be
135 deposited by the Secretary of State in the general
136 administrative fees account established by section two, article
137 one, chapter fifty-nine of this code.

138 (g) *Duty to pay.* -- It shall be the duty of each corporation,
139 limited partnership, limited liability company and foreign
140 limited liability company required to pay the annual report
141 fees imposed under this article, to remit them with a properly
142 completed annual report to the Secretary of State, and if it
143 fails to do so it shall be subject to the late fees prescribed in
144 subsection (h) of this article.

145 (h) *Late fees.* -- (1) The following late fees shall be in
146 addition to any other penalties and remedies available
147 elsewhere in this code:

148 (A) *Administrative late fee.* -- The Secretary of State shall
149 assess upon each corporation, limited partnership, limited
150 liability company and foreign limited liability company
151 delinquent in the payment of an annual report fee or the filing
152 of an annual report an administrative late fee in the amount
153 of \$50.

154 (B) *Administrative late fees for nonprofit corporations.* --
155 The Secretary of State shall assess each nonprofit corporation
156 delinquent in the payment of an annual report fee or the filing
157 of an annual report an administrative late fee in the amount
158 of \$25.

159 (2) The Secretary of State shall deposit the first \$25,000
160 of fees collected under this subsection into the general
161 administrative fees account established in subsection (h),
162 section two of this article, and shall deposit any additional
163 fees collected under this section into the General Revenue
164 Fund of the state.

165 (i) *Reports to Tax Commissioner; suspension,*
166 *cancellation or withholding of business registration*
167 *certificate.* -- (1) The Secretary of State shall, within twenty
168 days after the close of each month, make a report to the Tax
169 Commissioner for the preceding month, in which he or she
170 shall set out the name of every business entity to which he or
171 she issued a certificate to conduct business in the State of
172 West Virginia during that month. The report shall set out the
173 names and addresses all corporations, limited partnerships,
174 limited liability companies and foreign limited liability
175 companies to which he or she issued certificates of change of
176 name or of change of location of principal office, dissolution,
177 withdrawal or merger. If the Secretary of State fails to make
178 the report, it shall be the duty of the Tax Commissioner to
179 report such failure to the Governor. A writ of mandamus shall
180 lie for correction of such failure.

181 (2) Notwithstanding any other provisions of this code to
182 the contrary, upon receipt of notice from the Secretary of
183 State that a corporation, limited partnership, limited liability
184 company and foreign limited liability company is more than
185 thirty days delinquent in the payment of annual report fees or
186 in the filing of an annual report required by this section, the
187 Tax Commissioner may suspend, cancel or withhold a
188 business registration certificate issued to or applied for by the
189 delinquent corporation, limited partnership, limited liability
190 company or foreign limited liability company until the same
191 is paid and filed in the manner provided for the suspension,
192 cancellation or withholding of business registration
193 certificates for other reasons under article twelve, chapter
194 eleven of this code.

195 (j) *Purchase of data.* -- The Secretary of State will
196 provide electronically, for purchase, any data maintained in
197 the Secretary of State's Business Organizations Database.
198 For the electronic purchase of the entire Business
199 Organizations Database, the cost is \$12,000. For the
200 purchase of the monthly updates of the Business
201 Organizations Database, the cost is \$1,000 per month. The
202 fees received by the Secretary of State pursuant to this
203 subsection shall be deposited by the Secretary of State in the
204 general administrative fees account established by section
205 two, article one, chapter fifty-nine of this code.

206 (k) The Secretary of State is authorized to collect the
207 service fee per transaction, if any, charged for an online
208 service from any customer who purchases data or conducts
209 transactions through an online service.

210 (l) *Rules.* -- The Secretary of State may propose
211 legislative rules for promulgation pursuant to article three,
212 chapter twenty-nine-a of this code to implement this article,
213 and may, pending promulgation of those rules, promulgate
214 emergency rules pursuant to those provisions for those
215 purposes.

