WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4046

(By Delegates Morgan, Swartzmiller, Hartman, Givens, Manyipenny and Staggers)

Passed March 10, 2012

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

Be it enacted by the Legislature of West Virginia:

That §16-1-16 of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-11 of said code be amended and reenacted; that §9-2-1a of said code be amended and reenacted; that §18-10A-2 of said code be amended and reenacted; that §19-1-3a of said code be amended and reenacted; that §22C-12-6 of said code be amended and reenacted; that §24A-1A-2 of said code be amended and reenacted; and that §47A-1-1 of said code be amended and reenacted, all to read as follows:
CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.


(a) There is continued within the Department of Administration the position of the State Americans with Disabilities Coordinator, who shall be appointed by the Secretary of the Department of Administration with input from the chairperson from each of the following four councils:

(1) The Developmental Disabilities Council;

(2) The Statewide Independent Living Council;

(3) The Mental Health Planning Council; and

(4) The State Rehabilitation Council.

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

(c) The coordinator shall:

(1) Advise the Director of Personnel in the development of comprehensive policies and programs for the development, implementation and monitoring of a statewide program to assure compliance with 42 U.S.C. § 12101, et seq., the federal Americans with Disabilities Act;
(2) Assist in the formulation of rules and standards relating to the review, investigation and resolution of complaints of discrimination in employment, education, housing and public accommodation;

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

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

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

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

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

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

(d) (1) The Secretary of the Department of Administration may assess, charge and collect fees from each state spending unit which utilizes the services of the coordinator, for the direct costs and expenses incurred by the coordinator in providing those services. Costs and expenses include travel, materials, equipment and supplies. Moneys shall be collected through the Division of Finance.
(2) A state spending unit shall agree in writing to all costs and expenses before the services by the Americans with Disabilities coordinator are rendered.

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

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

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

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

(f) Moneys in the fund are to be used for the costs and expenses incurred pursuant to this section. Any balance including accrued interest in this special fund at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund for use by the Secretary of the Department of Administration for providing additional Americans with Disabilities Coordinator services within the State of West Virginia in the ensuing fiscal years.
(g) The Secretary of the Department of Administration shall report annually on the fund to the Governor, President of the Senate and Speaker of the House of Delegates. The report must be on CD ROM or other electronic media and shall not be in print format.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-la. Department of Health and Human Resources.

The Department of Health and Human Resources shall be charged with the administration of this chapter.

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

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

(a) The Division of Rehabilitation Services is transferred to the department of education and the arts created in article one, chapter five-f of this code. The secretary shall appoint any such board, commission or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.
(b) References in this article or article ten-b of this chapter to the State Board of Vocational Education, the State Board of Rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities means the Secretary of Education and the Arts. All references in the code to the Division of Vocational Rehabilitation means the Division of Rehabilitation Services and all references to the Director of the Division of Vocational Rehabilitation means the Director of the Division of Rehabilitation Services.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

The duties of the Marketing and Development Division are to establish marketing, promotional and development programs to advance West Virginia agriculture in the domestic and international markets; to provide grading, inspection and market news services to the various elements of the West Virginia agricultural industry; and to regulate and license individuals involved in the marketing of agricultural products.

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

ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

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

This article shall take effect and become operative and the compact be executed for and on behalf of this state only
CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

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

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

(b) The committee consists of the following members:

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

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

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

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

(5) One member who is an employee of the Development Office, to be appointed by the Governor;
(6) One member who is representative of the coal industry, to be appointed by the Governor;

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

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

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

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

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

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

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

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

(f) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law.
Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(h) On or before January 1 of each year the committee shall submit to the Governor and to the Legislature a report of its recommendations for improving the effectiveness of the commercial vehicle weight and safety enforcement program.

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

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

(a) The Legislature finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and
16 (3) The prescribing of such maximum interest rates and
17 finance charges can be accomplished most effectively and
18 flexibly by a board comprised of the heads of designated
government agencies, university schools of business and
administration and members of the public.

21 (b) In view of the foregoing findings, it is the purpose of
22 this section to establish the West Virginia Lending and Credit
23 Rate Board and authorize said board to prescribe
24 semiannually the maximum interest rates and finance charges
25 on loans, credit sales or transactions, forbearance or similar
26 transactions made pursuant to this section subject to the
27 provisions, conditions and limitations hereinafter set forth
28 and to authorize lenders, sellers and other creditors to charge
29 up to the maximum interest rates or finance charges so fixed.
30 The rates prescribed by the board are alternative rates and
31 any creditor may utilize either the rate or rates set by the
32 board or any other rate or rates which the creditor is
33 permitted to charge under any other provision of this code.

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

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

38 (2) The West Virginia State Treasurer;

39 (3) The West Virginia Banking Commissioner;

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

43 (5) The Director of the Division of Consumer Protection
44 of the Attorney General's Office; and
(6) Three members of the public appointed by the Governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the Governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia Banking Commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia Lending and Credit Rate Board is authorized and directed to meet after December 31, 1983, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on June 1 and on December 1, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending credit and other factors as the board may determine.
(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the Banking Commissioner no later than February 15 in order to be voted on at the board meeting on the first Tuesday of April and no later than August 15 in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of the board, and shall give all interested parties the opportunity to testify and to submit information at such public hearing that is relevant. Notice of the scheduled public hearing shall be issued and disseminated to the public at least twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than April 20 and not later than October 20, in accordance with the provisions of subsection (d) of this section, the maximum rates of interest and finance charge for the next succeeding six months for any loan, credit sale, forbearance or similar transaction made pursuant to this section and shall cause the maximum rate of interest and finance charge to be issued and disseminated to the public, to be effective on June 1 and December 1 for the next succeeding six months.

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

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

(i) Each member of the board, except those whose regular salary is paid by the State of West Virginia, shall receive $75 per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the special revenue account of the Division of Banking upon a requisition upon the State Auditor, properly certified by the Banking Commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determining the rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ________ this the ________ day of ________, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 23 2012

Time 3:35 pm