

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2022
Constitutional Amendment, 2022

Volume II
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WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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CHAPTER 162

(Com. Sub. for S. B. 245 - By Senators Trump and Woelfel)

[Passed March 11, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §21-5-3 and §21-5-4 of the Code of West Virginia, 1931, as amended, all relating to wage payment; setting forth methods for employer payment of wages; eliminating the requirements that wage payment by payroll card and direct deposit be agreed upon in writing by both payor and payee; requiring an employer paying wages by payroll card to disclose certain information to employees; and requiring an employer paying wages by payroll card to ensure that an employee can make a single withdrawal per pay period without cost to the employee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm, or corporation doing business in this state, except railroad companies as provided in §21-5-1 *et seq.* of this code, shall settle with its employees at least twice every month in a manner of the person, firm, or corporation's choosing, as set forth in subsection (b) of this section, and with no more than 19 days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made by the person, firm, or corporation in one of the following ways:

(1) In lawful money of the United States;

(2) By check or money order;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution: *Provided*, That an employer who compensates its employees using payroll cards shall provide full written disclosure of any applicable fees associated with the payroll card: *Provided, however*, That if an employer compensates its employees using payroll cards, the employer shall ensure that the employee has the ability to make at least one withdrawal or transfer from the payroll card per pay period without cost or fee to the employee for any amount contained on the card: *Provided further*, That if an employer compensates its employees using payroll cards, the employer shall ensure that the employee has the ability to make in-network withdrawals or transfers from the payroll card without cost or fee to the employee for any amount contained on the card.

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union, or savings and loan institution upon the employee's identification of his or her financial institution, the type of account, and the account number: *Provided*, That if an employee does not identify the information necessary to enable a deposit pursuant to this subdivision, the employer may pay the employee by payroll card pursuant to subdivision (3) of this subsection: *Provided, however*, That nothing herein contained shall be construed in a manner to require any person, firm, or corporation to pay employees by depositing funds in a financial institution.

(c) An employer who chooses to compensate its employees using payroll cards pursuant to the provisions of subsection (b)(3) of this section must also give employees the option of being paid by electronic transfer under the provisions of subsection (b)(4) of this section.

(d) If, at any time of payment, any employee is absent from his or her regular place of labor and does not receive his or her wages through a duly authorized representative, he or she is entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(e) Nothing herein contained may affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(f) No assignment of or order for future wages may be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be in writing and shall specify thereon the total amount due and collectible by virtue of the same and, unless otherwise provided for in subsection (g) of this section, three-fourths of the periodical earnings or wages of the assignor are all times exempt from such assignment or order and no assignment or order is valid which does not so state upon its face: *Provided*, That no such order or assignment is valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained may be construed as affecting the right of a private employer and its employees to agree between themselves as to deductions to be made from the payroll of employees.

(g) If an employee of the state has been overpaid wages, including incremental salary increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written assignment or order for future wages to the state to repay the overpayment in an amount not to exceed three-fourths of his or her periodical earnings or wages.

(h) Nothing in this chapter shall be construed to interfere with the right of an employee to join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor organization, or club.

(i) For purposes of this article:

(1) “Payroll card” means a card, code, or combination thereof or other means of access to an employee’s payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments.

(2) “Payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions, or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third person payroll processor, a depository institution, or another person.

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

(a) In lieu of lawful money of the United States, any person, firm, or corporation may compensate employees for services by cash order which may include checks, direct deposits, payroll cards, or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(b) Whenever a person, firm, or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee’s wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, “business day” means any day other than Saturday, Sunday, or any legal holiday as set forth in §2-2-1 of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm, or corporation fails to pay an employee wages as required under this section, the person, firm, or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

(f)(1) Notwithstanding any provision in this section to the contrary, if at the time of discharge or resignation, an employee fails to return employer provided property, as set forth by the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert an employee's final wages, in an amount not to exceed the replacement cost of the employer provided property that was not returned as set forth under

paragraph (C) of this subsection, to recover the replacement cost of the employer provided property, subject to the following:

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer's business;

(B) The employer provided property has a value in excess of \$100;

(C) The employee had signed a written agreement with the employer contemporaneous with the obtaining of the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

(i) Specific itemization of the employer provided property, with a specified replacement cost;

(ii) Clear statement that such items are to be returned immediately upon discharge or resignation; and

(iii) Clear statement, coupled with the employee's acknowledgement and agreement, that should the employee fail to timely return the specified items, the replacement cost of such items may be recovered by the employer from the employee's final wages;

(D) The employer shall notify the employee in writing at the time of discharge or resignation by personal service, or as soon thereafter as practicable by personal service or via certified mail with return receipt requested, as to the replacement cost of the items and make a demand for return of such employer provided property within a certain date, not to exceed 10 business days of the notification; and

(E) The employer shall relinquish the withheld, deducted, or diverted wages to the employee if the employee returns the employer's property, equipment, supplies, and uniforms in a condition suitable for the age and usage of the items within the deadline specified in paragraph (D) of this subsection: *Provided,*

That uniforms returned to the employer within three years of their issuance shall be deemed acceptable in their current condition at the time of separation from employment for purposes of this section: *Provided, however,* That replacement tools are deemed to be the property of the employee and are not subject to the provisions of this section.

(2) Nothing herein precludes an employee from voluntarily consenting in writing to an employer's withholding, deduction, or diversion of a certain amount from the employee's final wages in satisfaction of subsection (1) of this section.

(3) If an employee objects to the replacement cost amount to be deducted by an employer, and provides such written objection within the deadline specified in paragraph (D), subsection (1) of this subsection, then the employer shall place the controverted amount in an interest bearing escrow account: *Provided,* That if a civil action or equitable relief is not brought by the employee for the claimed amount within three months, the employee shall forfeit the amount in escrow and such money shall revert to the employer.

(4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any other remedies available to an employer to recover employer provided property, damages related to employer provided property or any other damages or relief, equitable or otherwise, available under any applicable law.

(5) Notwithstanding any provision in this section to the contrary, this provision shall not apply to employer-employee business relationships that are subject to, and governed by, collective bargaining agreements.

(6) For purposes of this section the following terms mean:

(A) The term "employer provided property" means all property provided by an employer to an employee for use in the employer's business, including but not limited to, equipment, phone, computer, supplies, or uniforms.

(B) The term "replacement cost" means actual cost paid by an employer for employer provided property, or for the same or

similar property, if the original employer provided property no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts provided to the employer for such property.

(C) The term “replacement tools” means equipment, other than uniforms, provided by the employer to the employee for use in the course of the employer’s business and to replace equipment provided by the employee that is lost.

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CHAPTER 163

(S. B. 548 - By Senators Roberts and Tarr)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing WorkForce West Virginia to obtain information regarding employment classifications and work locations from employers; and clarifying that the financial information required by the reports described by §21A-10-11 include all remunerations above and below the threshold wage as described by §21A-1A-28.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name, and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(4) Each employee's job title and the county in which the majority of the employee's job duties are performed; and

(5) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and vocational rehabilitation, employment, and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code;

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 *et seq.* of this code;

(8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

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CHAPTER 164

**(Com. Sub. for S. B. 582 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated †§29-33-1, †§29-33-2, †§29-33-3, and †§29-33-4; and to amend said code by adding thereto a new article, designated †§29-34-1, †§29-34-2, †§29-34-3, and †§29-34-4, all relating to creating the West Virginia Workforce Resiliency Act and Recovery and Hope Act; establishing the West Virginia Workforce Resiliency Office in the Office of the Governor; establishing the position of the West Virginia Workforce Resiliency Officer; setting forth the authority and duties of the West Virginia Workforce Resiliency Officer; allowing for the West Virginia Workforce Resiliency Officer to hire staff; creating the State Recovery and Hope Office, and providing powers thereof; providing for the appointment of the State Recovery and Hope Officer; and authorizing the State Recovery and Hope Officer to act.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 33. WEST VIRGINIA WORKFORCE RESILIENCY ACT.

†§29-33-1. Short title; purpose.

(a) This article may be known and cited as the West Virginia Workforce Resiliency Act.

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(b) It is the purpose of this article to establish an office within the Office of the Governor to coordinate workforce development, job training, education, and related programs and initiatives across agencies and entities to continue to grow West Virginia's workforce and provide greater options for West Virginians seeking work and West Virginia businesses seeking employees.

†§29-33-2. West Virginia Workforce Resiliency Office.

(a) It is determined that a state authority is necessary to coordinate and better facilitate efforts toward workforce development, job training, education, and resource management between government agencies, private partners, federal programs, and all other entities working to develop, train, and reinvigorate West Virginia's workforce. Therefore, the West Virginia Workforce Resiliency Office is hereby created.

(b) The West Virginia Workforce Resiliency Office shall be organized within the Office of the Governor:

(1) The West Virginia Workforce Resiliency Officer shall be appointed by the Governor with the advice and consent of the Senate;

(2) The West Virginia Workforce Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article; and

(3) The West Virginia Workforce Resiliency Officer shall be a person who has managerial or strategic planning experience in matters relating to workforce development, job training, or related fields.

†§29-33-3. Authority of West Virginia Workforce Resiliency Office and West Virginia Workforce Resiliency Officer.

The West Virginia Workforce Resiliency Officer shall:

(a) Coordinate and work with the Commissioner of WorkForce West Virginia; the Secretary of the Department of Economic

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

Development; the Secretary of the Department of Commerce; the Secretary of the Department of Health and Human Resources; the Secretary of the Department of Tourism; the Chancellor of the Higher Education Policy Commission; the President of West Virginia University; the President of Marshall University; the Director of the West Virginia Economic Development Authority; and such other representatives of private and public partners involved in workforce development as the West Virginia Workforce Resiliency Officer may deem necessary, to facilitate and unify efforts for workforce development, job training, and education of West Virginia's workforce.

(b) Assist in the development, implementation, and management of a common application for workforce development, job training, and wrap-around services available across agencies and programs, which shall be established to ensure that West Virginians encounter no wrongdoer when seeking out services and programs that may be available to them.

(c) Advise the Office of the Governor on the status and overall workforce development landscape across the State of West Virginia and assist in developing policies, plans, and procedures that will ensure that state agencies, private partners, and federal programs are efficiently, effectively, and properly utilized for workforce development across the State of West Virginia.

(d) Propose opportunities for legislative changes to the Office of the Governor that may result in more efficient, effective, and expedient access to programs across the State of West Virginia to improve workforce development.

†§29-33-4. Employees of the office.

(a) The West Virginia Workforce Resiliency Officer shall have the power to hire, administer, and manage employees necessary to fulfill its responsibilities:

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(1) All employees will be exempt from both the classified services category and the classified-exempt services category as set forth in §29-6-4 of this code;

(2) Employee positions are contingent upon the receipt of necessary federal and/or state funds;

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason;

(4) Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 *et seq.* of this code;

(5) Employees may participate in the PEIA, PERS, workers' compensation, and unemployment compensation programs, or their equivalents; and

(6) All employees and officers of the West Virginia Workforce Resiliency Office who are entrusted with funds or property shall execute surety bonds.

(b) The West Virginia Workforce Resiliency Officer will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

†ARTICLE 34. STATE RECOVERY AND HOPE ACT.

†§29-34-1. Short title; legislative findings; purpose.

(a) This article may be known and cited as the Recovery and Hope Act.

(b) The West Virginia Legislature finds that:

(1) The substance use disorder epidemic in the State of West Virginia has created a public health crisis, an economic crisis, and a social services crisis for our state;

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(2) The State of West Virginia, through its various governmental branches and state agencies, offers several programs to assist the citizens of West Virginia battling substance use disorder, likewise, there are numerous programs offered by the federal government, local governments, and private entities to combat this epidemic; and

(3) Creation of the State Recovery and Hope Office is necessary to further the positive results of the Jobs and Hope Program implemented to date and to facilitate and coordinate the various programs offered through the State of West Virginia by and with the assistance of the legislative branch, the judicial branch, various federal agencies, local governments, community advocates, and private sector partners related to the prevention, treatment, and reduction of substance use disorder.

(c) It is the purpose of this article to create an office under the Office of the Governor to focus the comprehensive and coordinated statewide approach to provide West Virginians in need of treatment for substance use disorder with the support and assistance necessary to help provide assistance to combat addiction, as well as to assist those in recovery by providing them opportunities to obtain career training and to ultimately secure meaningful employment, thereby further bettering our people, our communities, and economic opportunities in this state. The office created by this article shall utilize the personnel and resources of the Department of Health and Human Resources and relevant agencies thereunder to the greatest extent practicable.

†§29-34-2. State Recovery and Hope Office.

(a) The State Recovery and Hope Office is hereby created. The office shall be organized within the Office of the Governor. The office will serve as the coordinating agency of recovery efforts.

(b) The State Recovery and Hope Officer shall be appointed by the Governor with the advice and consent of the Senate.

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(c) The State Recovery and Hope Officer shall be vested with the authority and duties prescribed to the office within this article.

(d) The State Recovery and Hope Officer shall be a person who has:

(1) Managerial and strategic planning experience in matters relating to substance use disorder treatment, recovery, and transition into the workforce; and

(2) Be thoroughly knowledgeable in matters relating to substance use disorder treatment, recovery, and matters relating thereto.

(e) The State Recovery and Hope Office shall be tasked with coordinating efforts toward the provision of needed assistance for those in treatment for substance use disorder, toward transitioning those in recovery with the opportunity to obtain career training, and toward ultimately securing meaningful employment.

†§29-34-3. Authority of State Recovery and Hope Office and State Recovery and Hope Officer.

The State Recovery and Hope Office will coordinate the state's efforts to assist those experiencing substance use disorder in their recovery and transition into the workforce. The State Recovery and Hope Officer shall serve as the primary representative of the Governor, and the agencies and departments of the state shall provide assistance, information, data, and/or resources to the State Recovery and Hope Office as may be requested from time to time. The State Recovery and Hope Officer will assist and advise the Governor on all recovery and workforce training issues for this population, and will serve as a liaison between the Governor's office and all other parties, whether state, federal, local, or private to further the purposes of this article. The State Recovery and Hope Officer will:

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(1) Coordinate all planning and implementation efforts relating to substance use disorder treatment, recovery, and transition into the workforce;

(2) Coordinate an annual review of plans relating to substance use disorder treatment, recovery, and transition into the workforce;

(3) Recommend legislation to better facilitate the implementation of recovery efforts;

(4) Report to legislative committees, as called upon to do so;

(5) Establish and facilitate regular communication between federal, state, local, and private sector agencies and organizations to further recovery efforts;

(6) Receive resources, monetary or otherwise, from any other governmental entity or private source and disburse those resources to effectuate the purposes of this article;

(7) Execute cooperative agreements, where appropriate;

(8) Contract, where appropriate, on behalf of the State Recovery and Hope Office, with the federal government, its instrumentalities and agencies, any state, territory, or the District of Columbia, and its agencies and instrumentalities, municipalities, public bodies, private corporations, partnerships, associations, and individuals;

(9) Hire necessary employees at an appropriate salary equivalent to a competitive wage rate;

(10) Enroll appropriate employees in the Public Employees Retirement System, the Public Employees Insurance Agency, and workers' compensation and unemployment programs, or their equivalents: *Provided*, That the State Recovery and Hope Office, through the receipt of federal or state funds, or both, pays the required employer contributions;

(11) Have the ability to secure all other bonding, insurance, or other liability protections necessary for its employees to fulfill their duties and responsibilities;

(12) Utilize the personnel and resources of the Department of Health and Human Resources to the greatest extent practicable, and have the ability to draw upon other departments, divisions, agencies, and all other subdivisions of the state for research and input in fulfilling the requirements of this article, or to facilitate the implementation of the purposes of this article, and its requests are to have priority over other such requests;

(13) Participate in the interdepartmental transfer of permanent state employees, as if he or she were a department secretary, under the provisions of §5F-2-7 of this code;

(14) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the office, its employees, and officers before any court or administrative body from the Office of the Attorney General, who shall provide such legal assistance and representation;

(15) Take all other actions necessary and proper to effectuate the purposes of this article; and

(16) The office shall have any other additional authority, duties, and responsibilities as prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 *et seq.* of this code.

†§29-34-4. Employees.

(a) The State Recovery and Hope Officer shall have the power to hire, administer, and manage employees, but only to the extent necessary to fulfill the office's responsibilities.

†NOTE: H. B. 4634 (Chapter 213), which passed prior to this act, also created a new Article 33. Therefore, these have been redesignated as Article 34 and Article 35 for the code.

(1) Any and all employees will be exempt from both the classified services category and the classified-exempt services category as set forth in §29-6-4 of this code.

(2) Employee positions are contingent upon the receipt of the necessary federal or state funds, or both.

(3) Any employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Any employee may participate in the Public Employees Insurance Agency, the Public Employees Retirement System, and workers' compensation and unemployment compensation programs, or their equivalents.

(5) Any employees and officers of the State Recovery and Hope Office who are entrusted with funds or property shall execute surety bonds.

(b) The State Recovery and Hope Officer will set appropriate salary rates for any employees equivalent to a competitive wage rate necessary to support a specific mission.

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CHAPTER 165

(Com. Sub. for H. B. 3312 - By Delegates Steele and Mallow)

[Passed February 17, 2022; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §10-3A-1, §10-3A-2, §10-3A-3, §10-3A-4, §10-3A-5, §10-3A-6, and §10-3A-7, all relating to the establishment of a monument to child labor; providing for legislative findings; establishing a short title; creating a commission to oversee the siting, design, construction, and dedication of the monument; establishing membership of the commission; outlining the goals of the commission regarding location of the monument; providing for a funding mechanism from existing revenue sources for construction and maintenance of the monument; creating an inscription or plaque to be used in the dedication of the monument; disbanding the commission upon meeting certain conditions; granting the City of Fairmont the ownership of the monument; providing funds for the City of Fairmont to maintain the monument; and establishing a mechanism for maintenance and ownership of the monument under certain conditions.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

**ARTICLE 3A. THE WEST VIRGINIA MEMORIAL TO
CHILD LABOR.**

§10-3A-1. Legislative findings, purposes, intent, and short title.

(a) The Legislature finds that child labor in hazardous industry was commonplace in West Virginia and the United States until state and federal laws prohibited such labor in the early 20th century. Throughout West Virginia, children worked in coal mines, factories, salt works, and other inherently dangerous places. Due to their diminutive size and because child workers could be paid less, many employers preferred to utilize children in formal employment and informal employment arrangements. Because many children were informally employed, the number of children who were permanently maimed or killed due to hazardous labor is unknown.

(b) In order to preserve the memory of children who worked in a hazardous industry, a monument in memory of all children shall be constructed. The monument will be constructed in Fairmont, West Virginia due to the scale of the mine explosion at Monongah, West Virginia on December 6, 1907, and due to the unknown number of children who were killed in that disaster.

(c) This article may be cited as the “West Virginia Child Labor Memorial.”

§10-3A-2. Monument construction commission.

(a) A commission shall be established on July 1, 2022, to oversee construction of the monument. The commission shall be comprised of:

(1) The Curator of the Department of Arts, Culture, and History, who shall serve as chairperson;

(2) A member of the West Virginia House of Delegates, who shall be appointed by the Speaker of the House of Delegates;

(3) A member of the West Virginia Senate, who shall be appointed by the President of the Senate;

(4) A representative of the City of Fairmont, to be appointed by the city council of Fairmont, West Virginia; and

(5) A representative of the West Virginia University College of Creative Arts.

(b) A majority of the members of the commission must be present at a meeting to constitute a quorum, and a majority of those members present at a meeting must vote in the affirmative in order to pass a motion. A meeting may be called by the chair and at least five days written notice of the meeting must be provided to the members of the commission. The chair may call a meeting upon a written demand by at least three members.

§10-3A-3. Design, construction, and administration of the monument.

(a) The commission shall choose a design for the monument by December 31, 2022, that:

- (1) Adheres to the principles described in §10-3A-1,
- (2) The commission finds to be aesthetically pleasing, and
- (3) Preserves green space on the plot chosen.

(b) The commission shall solicit bids for construction of the monument and shall adhere to all state purchasing and payment processing laws and regulations in paying its construction vendors, with a target completion date of November 15, 2023. The commission shall target a date of December 6, 2023, for dedication of the monument, that being the 116th anniversary of the Monongah mine disaster.

§10-3A-4. Funding for the monument; authority for obtaining additional funds to complete or enhance the monument.

The Division of Labor shall allocate funds in the amount of \$500,000 toward the completion of the monument from any available funds that are managed or utilized by the Division of Labor. The commission shall have the authority to obtain funding through grants, charitable donations, or other appropriate means for the completion or enhancement of the monument.

§10-3A-5. Memorial inscription or plaque.

The following text shall be inscribed or engraved upon the monument, or otherwise permanently affixed by means of a plaque:

“On December 6, 1907, an explosion destroyed the Number 6 and Number 8 mines of Fairmont Coal Company in Monongah, West Virginia. The official death toll was 362, but this did not account for miners’ family members, including dozens of children, who were present in the mines that day.

Whether due to enslavement or poverty, child labor was a grievous part of our state’s industrial history—not only in coal mining, but also in factories, salt works, and other inherently hazardous professions—until it was restricted by state and federal laws in the early 20th century.

This monument stands as a memorial to all children who were victimized by child labor in hazardous industry, and may this park serve as a reminder that the primary employment of children ought to be to learn and to play.”

§10-3A-6. Conclusion of the commission’s work.

(a) The Commission shall be disbanded on December 31, 2023: *Provided,* That the monument has been completed as outlined in this article, and that the monument has been appropriately dedicated. If the monument is not completed or dedicated by December 31, 2023, the commission shall continue until such time as the monument is completed and dedicated.

(b) On December 31, 2023 or such time the commission is disbanded, ownership of the monument shall transfer to the City of Fairmont, West Virginia, and any funds remaining in the commission’s control at that time shall be granted to the City of Fairmont for the monument’s enhancement and perpetual maintenance.

§10-3A-7. Return of monument to state administration.

If at any time after the completion and dedication of the monument, the City of Fairmont is unable or unwilling to continue maintaining the monument and its attached greenspace, then ownership of the property shall revert to the Department of Arts, Culture, and History.

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CHAPTER 166

(H. B. 4331 - By Delegates Criss, Rohrbach, Pack, Riley, Queen, Storch, and Capito)

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-27-21a, relating to allowing union or labor organization dues or fees to be deducted from the wages of employees of an urban mass transportation authority which receives federal funding from the Federal Transit Administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-21a. Federal grants; wage deductions.

Notwithstanding any provision of this code to the contrary, the term “deductions”, as defined in §21-5-1 of this code and applied to the wages of an employee of an urban mass transportation authority under this article which is a direct or indirect recipient of federal funding from the Federal Transit Administration pursuant to the Urban Mass Transportation Act of 1964, as amended, includes amounts authorized for union or labor organization dues or fees. This section applies only to urban mass transportation authorities under this article.

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CHAPTER 167

**(H. B. 4604 - By Delegates Ellington, Statler, Smith,
Mazzocchi, Longanacre, Hanna, Tully, Maynor, and
Hamrick)**

[Passed March 10, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18B-3D-2 of the Code of West Virginia, 1931, as amended, relating to abolishing the Workforce Development Initiative Program advisory committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

(a) The Workforce Development Initiative Program is continued under the supervision of the council. The purpose of the program is to administer and oversee grants to community and technical colleges to implement the provisions of this article in accordance with legislative intent.

(b) It is the responsibility of the council to administer the state fund for community and technical college and workforce development, including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds, and evaluating the performance of workforce development initiatives.

(c) The chancellor, under the direction of the council, shall review and approve the expenditure of all grant funds, including

development of application criteria, the review and selection of applicants for funding, and the annual review and justification of applicants for grant renewal.

(1) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(2) The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of \$50,000 of the funds available for grants on an annual basis, for general program administration.

(e) Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.

(f) Nothing in this article requires a specific level of appropriation by the Legislature.



CHAPTER 168

(Com. Sub. for S. B. 279 - By Senator Sypolt)

[Passed February 11, 2022; in effect from passage.]

[Approved by the Governor on February 21, 2022.]

AN ACT to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; 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 control of air pollution from combustion of solid waste; 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 the requirements for the management of coal combustion residuals; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the underground injection control rule; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 16, 2021, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (Ambient Air Quality Standards, 45 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on July 16, 2021, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (Standards of Performance for New Stationary Sources, 45 CSR 16), is authorized.

(c) The legislative rule filed in the State Register on July 16, 2021, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 26, 2021, relating to the Department of Environmental Protection (Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18), is authorized.

(d) The legislative rule filed in the State Register on July 16, 2021, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (Emission Standards for Hazardous Air Pollutants, 45 CSR 34), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §22-15-10 of this code, relating to the Department of Environmental Protection (Requirements for the Management of Coal Combustion Residuals, 33 CSR 01B), is authorized.

(f) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §22-11-4 of this code, modified by the Water Resources to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on December 28, 2021, relating to the Department of Environmental Protection (Requirements Governing Water Quality Standards, 47 CSR 02), is authorized with the amendments set forth below:

On page 16, subdivision 8.2.c, by striking out the word “Permit” and inserting in lieu thereof the words “Site-specific permit”;

And,

On page 16, subdivision 8.2.c., by striking out the words “by the Legislative Rule-Making Review Committee”.

(g) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §22-11-8 of this code, relating to the Department of Environmental Protection (Underground Injection Control, 47 CSR 13), is authorized.

(h) The legislative rule filed in the State Register on October 19, 2021, authorized under the authority of §22-11-22a of this code, relating to the Department of Environmental Protection (Administrative Proceedings and Civil Penalty Assessment, 47 CSR 30B), is authorized.



CHAPTER 169

(Com. Sub. for S. B. 312 - By Senator Sypolt)

[Passed March 12, 2022; to take effect July 1, 2022.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §64-7-1 *et. seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to bailment policies and procedures; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to continuing education for individual insurance producers and individual insurance providers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to the adoption of the valuation manual; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to term and universal life insurance reserve financing; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to bail bondsmen in criminal cases; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to the West Virginia Lottery State Lottery Rules; relating to

authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery Limited Video Lottery Rule; relating to authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; relating to authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; relating to not authorizing the Tax Department to promulgate a legislative rule relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas for ad valorem property tax purposes; relating to authorizing the Tax Department to promulgate a legislative rule relating to the West Virginia tax credit for Federal Excise Tax imposed upon small arms and ammunition manufacturers; relating to authorizing the Tax Department to promulgate a legislative rule relating to the Sales Tax Holiday; relating to authorizing the Tax Department to promulgate a legislative rule relating to the exemption for repair, remodeling, and maintenance of an aircraft; relating to authorizing the Tax Department to promulgate a legislative rule relating to vendor absorption or assumption of Sales and Use tax; and relating to authorizing the Tax Department to promulgate a legislative rule relating to on-line bingo and raffles; and relating to authorizing the Tax Department to promulgate a legislative rule to the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

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

(a) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §60-2-16 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the Alcohol Beverage Control Commission (Private Club Licensing, 175 CSR 02), is authorized; with the following amendments:

On page six, subsection 2.22.5a after the words “wine that a member purchased” by removing the following new language “from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper” and,

On page 17, subsection 3.1.7 by striking the language “being a suitable person, being of good morals and character” and inserting in lieu thereof the following:

“not have been convicted of a felony in the previous five years before the date of application, not have been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and,

On page 18, subsection 3.2.1.e. by striking the words “suitable persons” and inserting in lieu thereof the following:

“persons that have not been convicted of a felony in the previous five years before the date of application, not have been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and,

On page 18, subsection 3.2.2.a, by striking the language “Is not a person of good moral character or repute” and inserting in lieu thereof the following:

“Has not been convicted of a felony in the previous five years before the date of application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years” and

On page 18, subdivision 3.2.2.d, by striking “has the general reputation of drinking alcoholic beverages or nonintoxicating to excess, or is addicted to the use of controlled substances;” in its

entirety and renumbering the remaining subdivisions as appropriate, and

On page 18, subdivision 3.2.3.b, by striking out the words “moral turpitude” and inserting in lieu thereof the following:

“fraud, dishonesty, or deceit” and,

On page 20, subsection 3.2.6, by striking the words “or its officers and directors who have been convicted of a felony or a crime involving moral turpitude” and,

On page 23, subdivision 3.4.6.c.1, by striking the following: “(which does not include a metal crowler that is canned)” and,

On page 23, subdivision 3.4.6.c.2.B, by striking the new language “110%” and inserting in lieu thereof the “the required” and,

On page 26, subdivision 3.4.6.e.5, by adding after the word “requirements” the following:

“ – The delivery person must permit only the person who placed the delivery order through telephone order, mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery. The delivery person must verify the person’s age using the person’s legal identification. The delivery must otherwise comply with W. Va. Code §60-7-8f(f).” And,

On page 26, by striking out subdivision 3.4.6.e.5.A in its entirety, and,

On page 26, by striking out subdivision 3.4.6.e.5.A.i in its entirety, and,

On page 26, by striking out subdivision 3.4.6.e.5.A.ii in its entirety, and,

On page 26 and continuing through page 27, by striking out subdivision 3.4.6.e.5.A.iii in its entirety, and,

On page 27, by striking out subdivision 3.4.6.e.5.B in its entirety, and,

On page 27, subdivision 3.4.6.e.6.B, after the words “transportation permit” by striking out “and pay the transportation permit fee, \$10 for the first transporting vehicle and a one dollar for every transporting vehicle thereafter,” and

On page 28, subdivision 3.4.11.a, by striking out the word “limited” and striking out the words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and

On page 28, subdivision 3.4.11.a, by striking out after the words “outdoor dining area” the comma and “however, in the Commissioner’s determination, any entertainment or alcohol beverage service that has the appearance or function as a festival, event, concert, or in any other manner exceeds what is necessary for private outdoor dining, then such entertainment or alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

“The Commissioner may determine not to authorize entertainment but must provide a written statement indicating why such entertainment is not authorized” and,

On page 28, subdivision 3.4.11.b, by striking out the word “limited” and striking out the words “(ex. Recorded music or limited live music, such as a solo musician, for ambiance)” and,

On page 28, subdivision 3.4.11.b, by striking out after the words “outdoor street dining area” the comma and “however, in the Commissioner’s determination, any entertainment or alcohol beverage service that has the appearance or function as a festival, event, concert, or in any other manner exceeds what is necessary for private outdoor dining, then such entertainment or alcoholic beverage service shall be denied” and inserting in lieu thereof the following:

“The Commissioner may determine not to authorize entertainment but must provide a written statement indicating why such entertainment is not authorized.”

(b) The Legislature directs the Alcohol Beverage Control Commission to amend the legislative rule filed in the State Register on June 23, 2008, authorized under the authority of §60-2-16 of this code, relating to the Alcohol Beverage Control Commission (Bailment Policies and Procedures, 175 CSR 06) with the amendment set forth below:

On page nine, subsection 11.1, by striking “The amount of such charges will be imposed by administrative notices filed in the State Register.”; and inserting in lieu thereof the following:

“The amount of such charges will be approved by the Legislature, pursuant to W. Va. Code §29A-3-1 *et seq.*, then filed in the State Register. The Commission is authorized to promulgate an emergency rule in the event of price changes from vendors affecting the routine warehousing charges.”

(c) The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §11-16-22 of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the Alcohol Beverage Control Commission (Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 01), is authorized with the following amendments:

On page 8, subdivision 3.1.b, by striking out the word “credit” and

On page 8, subdivision 3.1.e, by striking out the words “being a suitable person, being of good morals and character” and inserting in lieu thereof:

“not have been convicted of a felony in the previous five years before application, not have been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application” and

On page 12, section 3.4, by striking the section heading “3.4.a” and the section headings for “3.4.b” and “3.4.c” and renumbering those section accordingly, and

On page 13 and continuing to page 14, subdivision 3.6.b.1, after the word “citizen”, by striking, “and a person of good moral character” and inserting in lieu thereof:

“and has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, and has not been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application.” And

On page 14, subdivision 3.6.3.e.3.B by adding the word “and” at the end of the sentence and entering down to create a new subdivision as follows:

“3.6.e.3.C. that this requirement does not apply to a school or church that has notified the Commissioner, in writing, that it has not objection to the location of a proposed business;” and,

On page 15, subsection 3.6.j, by striking out the words “are suitable persons of good reputation and morals to be licensed” and inserting in lieu thereof:

“have not been convicted of a felony in the previous five years before application, have not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and have not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed;” and,

On page 15, subdivision 3.8.c by striking out the words “is an unsuitable person to be licensed” and inserting in lieu thereof the following:

“has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before

application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed” and

On page 19, subdivision 3.11.f.6, by adding after the colon the following:

“The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person’s identification must be created and retained for at least 3 years.” And,

On page 19 by deleting subdivision 3.11.f.6.A in its entirety, and

On page 19 by deleting subdivision 3.11.f.6.A.i in its entirety, and

On page 19 by deleting subdivision 3.11.f.6.A.ii in its entirety, and

On page 19 by deleting subdivision 3.11.f.6.A.iii in its entirety, and

On page 19, by deleting subdivision 3.11.f.6.B in its entirety, and

On page 19, by deleting subdivision 3.11.f.6.C in its entirety, and

On page 19 and page 20 by renumbering subdivision 3.11.f.6.D and subdivision 3.11.f.6.E, to 3.11.f.6.A and 3.11.f.6.B respectively.

On page 21, subdivision 3.11.g.6. by adding after the colon the following:

“The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person’s legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person’s identification must be created and retained for at least 3 years.” And,

On page 21, by deleting subdivision 3.11.g.6.A in its entirety, and

On page 21, by deleting subdivision 3.11.g.6.A.i in its entirety, and

On page 21, by deleting subdivision 3.11.g.6.A.ii in its entirety, and

On page 21, by deleting subdivision 3.11.g.6.A.iii in its entirety, and

On page 21, by renumbering subdivision 3.11.g.6.B and 3.11.g.6.C to 3.11.g.6.A and 3.11.g.6.B, respectively, and

On page 22, subdivision 3.11.h.3, by striking the word “limited” and striking, after the comma “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the following:

“however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.” And

On page 22, subdivision 3.11.i.3, by striking the word “limited” and striking, after the comma, “like recorded music for ambiance” and inserting, after the comma, in lieu thereof the following:

“however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.” And

On page 23, subdivision 3.11.k.3.B, by adding after the words “or home brewer’s license” a comma and the following “if applicable” and,

On page 24, subdivision 3.11.k.4.C by adding after the word Commissioner a comma and the following: “except that if an unlicensed brewer is licensed in its domicile state and is in good standing, no criminal background checks may be required for the temporary one-day license.”

On page 24, subdivision 3.12.d, by striking the word “suitable” and,

On page 25, subdivision 3.12.d.6 by striking everything and inserting in lieu thereof:

“has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application;” and,

On page 26, subdivision 3.14.b by adding, after the words “bond forfeiture” a comma and the words “if applicable,” and

On page 31, subdivision 6.1.b, by striking the words “known to be insane or known to be a habitual drunkard” and inserting in lieu thereof: “known to be mentally incompetent”

§64-7-2. Insurance Commission.

(a) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §33-12B-12 of this code, relating to the Insurance Commission (Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters, 114 CSR 42), is authorized.

(b) The legislative rule filed in the State Register on March 31, 2021, authorized under the authority of §33-7-9 of this code,

relating to the Insurance Commission (Adoption of Valuation Manual, 114 CSR 98), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §33-51-8 of this code, relating to the Insurance Commission (Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 99), is authorized.

(d) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §33-4-15a of this code, relating to the Insurance Commission (Term and Universal Life Insurance Reserve Financing, 114 CSR 102), is authorized.

(e) The legislative rule filed in the State Register on July 9, 2021, authorized under the authority of §51-10-8 of this code, modified by the Insurance Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Insurance Commission (Bail Bondsmen in Criminal Cases, 114 CSR 103), is authorized.

§64-7-3. Lottery Commission

(a) The legislative rule filed in the State Register on July 7, 2021, authorized under the authority of §29-22-5 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2021, relating to the Lottery Commission (West Virginia Lottery State Lottery Rules, 179 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §29-22B-402 of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2021, relating to the Lottery Commission (West Virginia Lottery Limited Video Lottery Rule, 179 CSR 05), is authorized.

§64-7-4. Racing Commission.

(a) The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2021, relating to the Racing Commission (Thoroughbred Racing, 178 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on April 30, 2021, authorized under the authority of §19-23-6 of this code, relating to the Racing Commission (Pari-Mutuel Wagering, 178 CSR 05), is authorized.

§64-7-5. Tax Department.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §11-1C-10 of this code, relating to the Tax Department (Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110 CSR 01J), is not authorized.

(b) The legislative rule filed in the State Register on July 8, 2021 authorized under the authority of §11-13KK-13 of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 7, 2021 relating to the State Tax Department (West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, 110 CSR 13KK), is authorized.

(c) The legislative rule filed in the State Register on June 30, 2021, authorized under the authority of §11-15-9s of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Tax Department (Sales Tax Holiday, 110 CSR 15F), is authorized.

(d) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15-9t of this code, modified by the State Tax Department to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on September 7, 2021, relating to the State Tax Department (Exemption for Repair, Remodeling, and Maintenance of Aircraft, 110 CSR 15L), is authorized.

(e) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15A-8 of this code, relating to the Tax Department (Vendor Absorption or Assumption of Sales and Use Tax, 110 CSR 15M), is authorized.

(f) The legislative rule filed in the State Register on July 8, 2021, authorized under the authority of §11-15A-8 of this code, relating to the Tax Department (On-line Bingo and Raffles, 110 CSR 16A), is authorized with the following amendments:

On page four, subsection 8.1, by striking out the words “A licensee may only use bingo equipment or raffle equipment,” and inserting in lieu thereof the words “A bingo licensee may use only bingo equipment,”;

On page four, after subsection 8.1, by adding a new subsection 8.2 to read as follows:

8.2. A raffle licensee may use only raffle equipment, including software or programming for conducting raffles on-line over the Internet, which the licensee owns or which it borrows without compensation, or leases for a reasonable and customary amount from a wholesaler or distributor of raffle boards and games licensed under W. Va. Code §47-23-3.

And,

By renumbering the remaining subsections.

(g) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §11-24-6b of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Tax Department (Corporation Net Income Tax, 110 CSR 24), is authorized.

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CHAPTER 170

(Com. Sub. for S. B. 330 - By Senator Sypolt)

[Passed March 8, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as modified and amended by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the examination and issuance of driver's license; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to dealer licensing; relating to authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the collection of tax on the sale of a vehicle; and relating to authorizing the Department of Transportation to promulgate a legislative rule relating to employment procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §17B-2-15 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 30, 2021, relating to the Division of

Motor Vehicles (Examination and Issuance of Driver's License, 91 CSR 04), is authorized with the amendment set forth below:

On page twelve, subdivision 8.2, after the word "license" by inserting the words "expired 36 months or less".

(b) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §17A-2-9 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2021, relating to the Division of Motor Vehicles (Dealer Licensing, 91 CSR 06), is authorized with the amendment set forth below:

On page thirty-six, subsection 16.2, after the word "service" by striking out the remainder of the sentence and inserting in lieu thereof the words "for 24 hours."

(c) The legislative rule filed in the State Register on July 20, 2021, authorized under the authority of §11-15-3c of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 30, 2021, relating to the Division of Motor Vehicles (Collection of Tax on the Sale of a Vehicle, 91 CSR 09), is authorized.

§64-8-2. Division of Transportation.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §5F-2-8 of this code, modified by the Department of Transportation to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 3, 2022, relating to the Department of Transportation (Employment Procedures, 217 CSR 01), is authorized with the amendments set forth below:

On page five, subsection 2.56., by striking out the words "at his or her will" and inserting in lieu thereof the words "for a classified exempt employee, at the will and pleasure of the agency head";

On page five, subsection 2.62., after the word “range” by striking out the word “and” and inserting in lieu thereof the word “or”;

On page nine, section four, paragraph one, by striking out the word “regulations” and inserting in lieu thereof the word “requirements”;

On page twelve, by adding a new subsection 4.11. to read as follows:

“4.11. Leave Donation Program. – The Division shall establish uniform procedures which shall be followed by all DOT agencies for providing a leave donation program pursuant to W. Va. Code §29-6-27.”

On page thirteen, paragraph 5.4.a.5., by striking out the words “public service” and inserting in lieu thereof the words “state public employment”;

On page fourteen, subdivision 5.4.b., by striking out the words “shall not” and inserting in lieu thereof the words “will be”;

On page fourteen, subdivision 5.4.b., by striking out the word “except”;

On page fourteen, subdivision 5.4.c., after the words “shall determine” by striking out the word “that” and inserting in lieu thereof the word “whether”;

On page fourteen, subdivision 5.4.c., after the word “reconsideration” by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page fifteen, subdivision 6.2.a., by striking out the words “he or she shall notify”;

On page fifteen, subdivision 6.2.a., after the word “register” by inserting the words “will be notified”;

On page, sixteen, paragraph 6.3.b.1., after the word “causes” by inserting the words “for removal”;

On page seventeen, subdivision 6.4.a., after the words “A person” by striking out the words “who has had his or her name” and inserting in lieu thereof the words “whose name was”;

On page eighteen subdivision 7.4.b., by striking out the words “in section” and inserting in lieu thereof the words “provided in Section”;

On page twenty-five, subdivision 11.4.d., after the word “approval” by inserting the words “or disapproval.”;

On page twenty-seven, subdivision 12.1.a., after the word “May;” by striking out the words “Juneteenth, the nineteenth day of June”;

On page twenty-eight, subdivision 12.1.b., after the word “four” by striking out the numeral “(4)”;

On page twenty-eight, subdivision 12.3.a., by striking out the words “permanent, probationary,” and inserting in lieu thereof the words “full-time and part-time permanent or probationary”;

On page thirty-one, subdivision 12.4.a., by striking out the words “permanent, probationary, and provisional” and inserting in lieu thereof the words “permanent and probationary”;

And,

On page 40, subsection 14.2, by striking out the word “principle” and inserting in lieu thereof the word “principal”.



CHAPTER 171

(Com. Sub. for S. B. 334 - By Senator Sypolt)

[Passed March 12, 2022; in effect from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing and directing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules, as filed, as modified, and as amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to feeding of untreated garbage to swine; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to enrichment of flour and bread law regulations; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to fruits and vegetables: certification for potatoes for seedling purposes; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to Fresh Food Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; to authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to hemp products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Farm-to-Food Bank Tax Credit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner

of Agriculture to promulgate a legislative rule relating to seed certification; authorizing the State Auditor to promulgate a legislative rule relating to the procedure for local levying bodies to apply for permission to extend time to meet as levying body; authorizing the State Auditor to promulgate a legislative rule relating to accountability requirements for state funds and grants; authorizing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to fees established by the Board; directing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to chiropractic telehealth practices; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the Contractor Licensing Act; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensure; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselors fees; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist licensing; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist fees; authorizing the Dangerous Wild Animal Board to promulgate a legislative rule relating to dangerous wild animals; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the West Virginia Board of Dentistry; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; directing the West Virginia Board of Dentistry to promulgate a legislative rule relating to fees; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of dental corporation and dental practice ownership; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to continuing education requirements; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the administration of anesthesia by dentists; authorizing the West Virginia Board of Dentistry to

promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to teledentistry; directing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; directing the West Virginia Board of Professional Engineers to promulgate a legislative rule relating to examination, licensure, and practice of professional engineers; authorizing the West Virginia Board of Funeral Service Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; directing the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners relating to medical imaging technologists; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures for physicians, podiatric physicians, and surgeons; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensure, practice requirements disciplinary and complaint procedures, continuing education, and physician assistants; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to dispensing of prescription drugs by practitioners; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of limited license to practice medicine and surgery at certain state veterans nursing home facilities; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to registration to practice during a declared state of emergency; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to telehealth and interstate telehealth registration for physicians, podiatric

physicians, and physician assistants; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to Osteopathic Physicians Assistants; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to practitioner requirements for controlled substances licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to telehealth practice and interstate telehealth registration for osteopathic physicians and physician assistants; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy care; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to the Controlled Substance Monitoring Program; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; directing the West Virginia Board of Psychologists to promulgate a legislative rule relating to fees; authorizing the Public Service Commission to promulgate a legislative rule relating to rules governing the occupancy of customer-provided conduit; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure or certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to the renewal of licensure and certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing the West Virginia Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the West Virginia Board of Examiners of Registered Professional Nurses to promulgate a legislative rule

relating to telehealth practice; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration at the Division of Motor Vehicles; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration list maintenance by the Secretary of State; authorizing the Secretary of State to promulgate a legislative rule relating to the combined Voter Registration and Driver Licensing Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the use of digital signatures; authorizing the Secretary of State to promulgate a legislative rule relating to regulation of political party headquarters finances; authorizing the Secretary of State to promulgate a legislative rule relating to standards and guidelines for electronic notarization, remote online notarization, and remote ink notarization; authorizing the Secretary of State to promulgate a legislative rule relating to real property electronic recording standards and regulations; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to qualifications for the profession of social work; directing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the West Virginia Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the State Treasurer to promulgate a legislative rule relating to Substitute Checks-Exceptional Items Fund; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for deposit of monies with the State Treasurer's Office by state agencies; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for disbursement accounts through competitive bidding; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for processing payments from the State Treasury;

authorizing the State Treasurer to promulgate a legislative rule relating to reporting debt; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit, or debit card or by electronic payment; and authorizing the State Treasurer to promulgate a legislative rule relating to procedures for providing services to political subdivisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

(a) The legislative rule filed in the State Register on July 19, 2021, authorized under the authority of §19-9A-7 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Feeding of Untreated Garbage to Swine, 61 CSR 01A), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §19-14-3 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 3, 2022, relating to the Commissioner of Agriculture (Commercial Feed, 61 CSR 05), is authorized with the amendment set forth below:

On page 14, subsection 11.4, after the word “may” by deleting the word “NOT”.

(c) The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §19-11A-10 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2021, relating to the

Commissioner of Agriculture (Enrichment of Flour and Bread Law Regulations, 61 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §19-16-7 of this code, relating to the Commissioner of Agriculture (Fruits and Vegetables: Certification of Potatoes for Seedling Purposes, 61 CSR 08C), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §19-37-3 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Fresh Food Act, 61 CSR 10), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §19-2C-3a of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Auctioneers, 61 CSR 11B), is authorized, with the following amendments:

On page 8, subdivision 16.1, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 8 subdivision 16.3, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 9, subdivision 16.6 by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 9, subdivision 16.7, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”.

(g) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §19-12E-7 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Hemp Products, 61 CSR 30), is authorized.

(h) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §19-1C-4 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 3, 2022, relating to the Commissioner of Agriculture (Livestock Care Standards , 61 CSR 31), is authorized with the amendments set forth below:

On page 2, subsection 2.15, by striking out “2018” and inserting in lieu thereof “2020”;

On page 6, subdivision 13.2.a., by striking out the “5” and inserting in lieu thereof a “9”;

On page 7, subsection 13.12., by striking out the word “and”;

On page 7, subsection 13.13., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 7, after subsection 13.13, by adding a new subsection 13.14. to read as follows:

“13.14. Any other widely accepted practices.”;

On page 9, subdivision 14.4.p., by striking out the word “and”;

On page 9, subdivision 14.4.q., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 9, after subdivision 14.4.q., by adding a new subdivision 14.q.r. to read as follows:

“14.q.r. Any other widely accepted practices.”;

On page 11, subdivision 15.6.j., by striking out the word “and”;

On page 11, subdivision 15.6.k., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 11, after subdivision 15.6.k. by adding a new subdivision 16.6.l. to read as follows:

“16.6.l. Any other widely accepted practices.”;

On page 12, paragraph 16.2.a.6., by striking out the word “and”;

On page 12, paragraph 16.2.a.7., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 12, after paragraph 14.2.a.7., by adding a new paragraph 16.2.a.8. to read as follows:

“16.2.a.8. Any other widely accepted practices.”;

On page 12, paragraph 16.2.b.7., by striking out the word “and”;

On page 12, paragraph 16.2.b.8., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page twelve, after paragraph 16.2.b.8. by adding a new paragraph 16.2.b.9. to read as follows:

“16.2.b.9. Any other widely accepted practices.”;

On page 12, paragraph 16.2.c.2., by striking out the word “and”;

On page 12, paragraph 16.2.c.3., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 12, after paragraph 16.2.c.3., by adding a new paragraph 16.2.c.4. to read as follows:

“16.2.c.4. Any other widely accepted practices.”;

On page 13, subdivision 17.3.j., by striking out the word “and”;

On page 13, subdivision 17.3.k., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page 13, after subdivision 17.3.k., by adding a new subdivision 17.3.l. to read as follows:

“17.3.l. Any other widely accepted practices.”;

On page 14, paragraph 18.3.d.2., by striking out the word “and”;

On page 14, subdivision 18.3.e., by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

And,

On page 14, after subdivision 18.3.e., by adding a new subsection 18.3.f., to read as follows:

“18.3.f. Any other widely accepted practices.”

(i) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §19-1-11 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Rural Rehabilitation Program, 61 CSR 33), is authorized.

(j) The legislative rule filed in the State Register on July 19, 2021, authorized under the authority of §11-13DD-5 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Farm-to-Food Bank Tax Credit, 61 CSR 36), is authorized.

(k) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §19-35-4 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Farmers Markets, 61 CSR 38), is authorized with the amendments set forth below:

On page 11, subdivision 8.1.d by striking out the words “holding a Food Handler’s Card;

And,

On page 11, subdivision 8.1.d, after the word “completed” by inserting the words “Better Process Control School or”.

(l) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §19-16-6 of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 6, 2021, relating to the Commissioner of Agriculture (Seed Certification, 61 CSR 39), is authorized.

§64-9-2. State Auditor.

(a) The legislative rule filed in the State Register on January 3, 2022, authorized under the authority of §11-8-9 of this code, modified by the Auditor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2022, relating to the Auditor (Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body, 155 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on September 13, 2021, authorized under the authority of §12-4-14 of this code, modified by the Auditor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 3, 2022, relating to the Auditor (Accountability Requirements for State Funds and Grants, 155 CSR 09), is authorized.

§64-9-3. West Virginia Board of Chiropractic Examiners.

(a) The Legislature directs the West Virginia Board of Chiropractic Examiners to amend the legislative rule filed in the State Register on April 1, 2014, authorized under the authority of §30-16-5 of this code, relating to the West Virginia Board of

Chiropractic Examiners (Fees Established by the Board, 4 CSR 06) with the amendments set forth below:

On page one, after subsection 1.4., by adding a new subsection 1.5. to read as follows:

“1.5. Sunset Provision. — This rule shall terminate and have no further force or effect on August 1, 2027.”;

On page one, subdivision 6.2.1, after the words “in West Virginia is,” by striking out “\$300”, and inserting in lieu thereof “\$261”;

On page one, subdivision 6.2.1., after the words “chiropractors is,” by striking out “\$150” and inserting in lieu thereof “\$130”;

On page one, subdivision 6.2.2 by striking out “\$200”, and inserting in lieu thereof “\$175”;

On page one, subdivision 6.2.3 by striking out “\$200”, and inserting in lieu thereof “\$175”;

On page one, subdivision 6.2.4, after the words “articles of incorporation,” by striking out “\$150”, and inserting in lieu thereof “\$130”;

On page one, subdivision 6.2.4., after the words “limited liability company is,” by striking out “\$150”, and inserting in lieu thereof “\$130”;

One page one, subdivision 6.2.4., after the words “annual renewal fee of,” by striking out “\$150”, and inserting in lieu thereof “\$130”;

On page one, subdivision 6.2.5, after the words “examination fee is,” by striking out “\$150”, and inserting in lieu thereof “\$130”;

On page one, subdivision 6.2.5., after the words “and a fee of,” by striking out “\$50” and inserting “\$45.”;

On page one, subdivision 6.2.6 by striking out “\$50”, and inserting in lieu thereof “\$45”;

On page one, subdivision 6.2.7 by striking out “\$100”, and inserting in lieu thereof “\$87”;

On page one, subdivision 6.2.8 by striking out “\$50”, and inserting in lieu thereof “\$45”;

And,

On page one, subdivision 6.2.2 by striking out “\$250”, and inserting in lieu thereof “\$218”;

(b) The legislative rule filed in the State Register on July 13, 2021, authorized under the authority of §30-16-5 of this code, modified by the West Virginia Board of Chiropractic Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2021, relating to the West Virginia Board of Chiropractic Examiners (Chiropractic Telehealth Practice, 4 CSR 09), is authorized.

§64-9-4. West Virginia Contractor Licensing Board.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-42-5 of this code, modified by the West Virginia Contractor Licensing Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2021, relating to the West Virginia Contractor Licensing Board (Contractor Licensing Act, 28 CSR 02), is authorized with the amendment set forth below:

On page 1, subsection 3.2, after the word “public.” by adding a new sentence to read as follows: “If a contractor maintains an internet website, any advertisement by the contractor may direct potential customers to the contractor’s online landing page for a link to the information required by W. Va. Code §30-42-6(b).”

§64-9-5. West Virginia Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling

to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2021, relating to the West Virginia Board of Examiners in Counseling (Licensing Rule, 27 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2021, relating to the West Virginia Board of Examiners in Counseling (Licensed Professional Counselors Fees Rule, 27 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2021, relating to the West Virginia Board of Examiners in Counseling (Marriage and Family Therapist Licensing Rule, 27 CSR 08), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2021, relating to the West Virginia Board of Examiners in Counseling (Marriage and Family Therapist Fees Rule, 27 CSR 09), is authorized.

§64-9-6. Dangerous Wild Animal Board.

The legislative rule filed in the State Register on April 5, 2021, authorized under the authority of §19-34-3 of this code, relating to the Dangerous Wild Animal Board (Dangerous Wild Animal, 74 CSR 01), is authorized.

§64-9-7. West Virginia Board of Dentistry.

(a) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2021, relating to the West Virginia Board of Dentistry (Rule for the West Virginia Board of Dentistry, 5 CSR 01), is authorized with the amendments set forth below:

On page 2, subsection 3.3, after the words “certification of the dean of the dental school” by inserting the words “or program director of a dental residency program”;

On page 2, subsection 3.3, after the word “staff at that school” by inserting the words “or program”;

On page 2, subsection 3.3, after the words “dental school dean” by inserting the words “or program director of a dental residency program”;

On page 2, subsection 3.3, after the words “location of the dental school” by inserting the words “or program”;

And,

On page 2, subsection 3.3, after the word “functions in the dental school” by inserting the words “or program”.

(b) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §31B-13-1304 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2021, relating to the West Virginia Board of Dentistry (Formation and Approval of Professional Limited Liability Companies, 5 CSR 02), is authorized.

(c) The Legislature directs the West Virginia Board of Dentistry to amend the legislative rule filed in the State Register on

May 1, 2014, authorized under the authority of §30-4-6 of this code, relating to the West Virginia Board of Dentistry (Fees Established by the Board, 5 CSR 03) with the amendments set forth below:

On page one, after subsection 1.4., by adding a new subsection 1.5. to read as follows:

“1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on August 1, 2027.”;

On page one, subsection 2.1 by striking out “\$185.00”, and inserting in lieu thereof “\$167.00”;

On page one, subsection 2.2 by striking out “\$20.00”, and inserting in lieu thereof “\$18.00”;

On page one, subsection 2.3 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page one, subsection 2.4 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page one, subsection 2.5 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page one, subsection 2.6 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page one, subsection 2.7 by striking out “\$185.00”, and inserting in lieu thereof “\$167.00”;

On page one, subsection 3.1 by striking out “\$300.00”, and inserting in lieu thereof “\$270.00”;

On page one, subsection 4.1 by striking out “\$75.00”, and inserting in lieu thereof “\$68.00”;

On page one, subsection 4.2 by striking out “\$20.00”, and inserting in lieu thereof “\$18.00”;

On page one, subsection 4.3 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page one, subsection 4.4 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page one, subsection 4.5 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page two, subsection 4.6 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 4.7 by striking out “\$75.00”, and inserting in lieu thereof “\$68.00”;

On page two, subsection 4.8 by striking out “\$65.00”, and inserting in lieu thereof “\$59.00”;

On page two, subsection 4.9 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 4.10 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 4.11 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 4.12 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page two, subsection 4.13 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 4.14 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 4.15 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 4.16 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 5.1 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 5.2 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 6.1 by striking out “\$250.00”, and inserting in lieu thereof “\$225.00”;

On page two, subsection 6.2 by striking out “\$150.00”, and inserting in lieu thereof “\$135.00”;

On page two, subsection 6.3 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page two, subsection 7.1 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 7.2 by striking out “\$15.00”, and inserting in lieu thereof “\$14.00”;

On page two, subsection 7.3 by striking out “\$900.00”, and inserting in lieu thereof “\$810.00”;

On page two, subsection 7.4 by striking out “\$300.00”, and inserting in lieu thereof “\$270.00”;

On page two, subsection 7.5 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page three, subsection 7.6 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page three, subsection 7.7 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page three, subsection 8.1 by striking out “\$250.00”, and inserting in lieu thereof “\$225.00”;

On page three, subsection 8.2 by striking out “\$175.00”, and inserting in lieu thereof “\$158.00”;

On page three, subsection 8.3 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page three, subsection 9.1 by striking out “\$1,500.00”, and inserting in lieu thereof “\$1,350.00”;

On page three, subsection 9.2 by striking out “\$250.00”, and inserting in lieu thereof “\$225.00”;

On page three, subsection 9.3 by striking out “\$1,000.00”, and inserting in lieu thereof “\$900.00”;

On page three, subsection 9.4 by striking out “\$250.00”, and inserting in lieu thereof “\$225.00”;

On page three, subsection 9.5 by striking out “\$500.00”, and inserting in lieu thereof “\$450.00”;

On page three, subsection 9.6 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page three, subsection 9.7 by striking out “\$250.00”, and inserting in lieu thereof “\$225.00”;

On page three, subsection 9.8 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page three, subsection 10.1 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page three, subsection 10.2 by striking out “\$25.00”, and inserting in lieu thereof “\$23.00”;

On page three, subsection 10.3 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page three, subsection 10.6 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

And,

On page three, subsection 10.7 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”.

(d) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2021, relating to the West Virginia Board of Dentistry (Formation and Approval of Dental Corporation and Dental Practice Ownership, 5 CSR 06), is authorized.

(e) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2021, relating to the West Virginia Board of Dentistry (Continuing Education Requirements, 5 CSR 11), is authorized.

(f) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2021, relating to the West Virginia Board of Dentistry (Administration of Anesthesia by Dentists, 5 CSR 12), is authorized.

(g) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2021, relating to the West Virginia Board of Dentistry (Expanded Duties of Dental Hygienists and Dental Assistants, 5 CSR 13), is authorized.

(h) The legislative rule filed in the State Register on July 26, 2021, authorized under the authority of §30-4-6 of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on December 13, 2021, relating to the West Virginia Board of Dentistry (Teledentistry, 5 CSR 16), is authorized.

§64-9-8. West Virginia Board of Licensed Dietitians.

The Legislature directs the West Virginia Board of Licensed Dietitians to amend the legislative rule filed in the State Register on March 26, 2020, authorized under the authority of §30-35-4 of this code, relating to the West Virginia Board of Licensed Dietitians (Licensure and Renewal Requirements, 31 CSR 01) with the amendments set forth below:

On page one, subsection 1.5 by striking out “March 26, 2030”, and inserting in lieu thereof “August 1, 2030”

On page two, paragraph 4.1.2.1 by striking out “\$75.00”, and inserting in lieu thereof “\$69.00”;

On page two, paragraph 4.1.2.2 by striking out “\$75.00”, and inserting in lieu thereof “\$69.00”;

On page two, paragraph 4.1.2.3 by striking out “\$50.00”, and inserting in lieu thereof “\$46.00”;

And,

On page two, subsection 31.6.3 by striking out “\$50.00”, and inserting in lieu thereof “\$46.00”.

§64-9-9. West Virginia Board of Professional Engineers.

The Legislature directs the West Virginia Board of Professional Engineers to amend the legislative rule filed in the State Register on March 30, 2020, authorized under the authority of §30-13-9 of this code, relating to the West Virginia Board of Professional Engineers (Examination, Licensure and Practice of Professional Engineers, 7 CSR 01) with the amendments set forth below:

On page one, subsection 1.5., by striking “April 1, 2030” and inserting in lieu thereof “August 1, 2030”;

On page eighteen, by striking all of subsection 13.4, and inserting in lieu thereof a new subsection 13.4 to read as follows:

“13.4. Fee Amounts. The fees for various services provided by Board are:

Engineering Intern	
Application Fee	\$23.00
Examination Fee	As charged by NCEES
Professional Engineer	
Application Fee	\$72.00
Examination Fee	As charged by NCEES
Re-examination Fee	As charged by NCEES
Certificate Fee	\$23.00
Comity Application Fee	\$135.00
Certificate of Authorization	
Application Fee for Sole Proprietor with no employees	\$ 0.00
Application Fee for Firm with three or fewer Professional Engineers*	\$90.00
Application Fee for Firm with four or more Engineers*	\$135.00
Two-Year Renewal Fee	
Professional Engineer	\$63.00
Professional Engineer-Retired	\$27.00
COA for Sole Proprietor with no Employees	\$ 0.00
COA for Firm with three Or fewer Professional Engineers*	\$ 90.00
COA for Firm with four or more Professional Engineers*	\$450.00
Late Fee	25% of fee

Reinstatement Applications

Professional Engineer	\$167.00
COA for Sole Proprietor with No employees	0.00
COA for Firm with three or fewer engineers	\$180.00
COA for Firm with four or more Professional Engineers*	\$630.00
PE or COA Roster **	\$ 23.00
Replacement Certificates	\$ 23.00
Returned Checks	\$ 23.00

*Regardless of the PE's state of registration or licensure

**Available for free download on the Board website"

§64-9-10. West Virginia Board of Funeral Service Examiners.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-6-6 of this code, modified by the West Virginia Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2021, relating to the West Virginia Board of Funeral Service Examiners (Fee Schedule, 6 CSR 07), is authorized.

§64-9-11. West Virginia Massage Therapy Licensure Board.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2021, relating to

the West Virginia Massage Therapy Licensure Board (General Provisions, 194 CSR 01), is authorized with the amendment set forth below:

On page 4, subdivision 4.1.h, after the words “written medical directive” by inserting the words “prescribed by a medical doctor, doctor of osteopathy, physician assistant, or an advanced practice registered nurse”.

§64-9-12. West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

The Legislature directs the West Virginia Board of Medical Imaging and Radiation Therapy Technology Board of Examiners to amend the legislative rule filed in the State Register on March 30, 2020, authorized under the authority of §30-23-7 of this code, relating to the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (Medical Imaging Technologists, 18 CSR 01) with the amendments set forth below:

On page one, subsection 1.5., by striking “March 30, 2035” and inserting in lieu thereof “August 1, 2035”;

On page 6, subdivision 4.7.a. by striking out “\$100.00” and inserting in lieu thereof “\$92.00”;

On page 6, subdivision 4.7.b. by striking out “\$65.00” and inserting in lieu thereof “\$60.00”;

On page 6, subdivision 4.7.c. by striking out “\$40.00” and inserting in lieu thereof “\$37.00”;

On page 6, subdivision 4.7.f. by striking out “\$40.00” and inserting in lieu thereof “\$37.00”;

On page 6, subdivision 4.7.j. by striking out “\$100.00” and inserting in lieu thereof “\$92.00”;

On page 6, subdivision 4.7.k. by striking out “\$100.00” and inserting in lieu thereof “\$92.00”;

On page 7, paragraph 4.8.a.1. by striking out “\$1000.00” and inserting in lieu thereof “\$920.00”;

On page 7, paragraph 4.8.a.2. by striking out “\$1000.00” and inserting in lieu thereof “\$920.00”;

On page 7, paragraph 4.8.a.3. by striking out “\$500.00” and inserting in lieu thereof “\$460.00”;

And,

On page 7, paragraph 4.8.a.4. by striking out “\$500.00” and inserting in lieu thereof “\$460.00”.

§64-9-13. West Virginia Board of Medicine.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons, 11 CSR 01A), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2021, relating to the West Virginia Board of Medicine (Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants, 11 CSR 01B), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3-7 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2021, relating to the West Virginia Board of Medicine (Dispensing of Prescription Drugs by Practitioners, 11 CSR 05), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3-7 of this code,

relating to the West Virginia Board of Medicine (Continuing Education for Physicians and Podiatric Physicians, 11 CSR 06), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §60A-9-5a of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2021, relating to the West Virginia Board of Medicine (Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 11 CSR 10), is authorized.

(f) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3-7 of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2021, relating to the West Virginia Board of Medicine (Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities, 11 CSR 11), is authorized.

(g) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2021, relating to the West Virginia Board of Medicine (Registration to Practice During Declared State of Emergency, 11 CSR 14), is authorized.

(h) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3-7 of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Board of Medicine (Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants, 11 CSR 15), is authorized with the amendment set forth below:

On page seven, by striking out all of subsection 7.4 and inserting in lieu thereof a new subsection 7.4 to read as follows:

7.4 Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion, determines that an in-person encounter is required.;

And,

On page nine, subsection 8.4, by striking out the words “based solely upon a telemedicine encounter”.

§64-9-14. West Virginia Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-14-14 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2021, relating to the West Virginia Board of Osteopathic Medicine (Licensing Procedures for Osteopathic Physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2021, relating to the West Virginia Board of Osteopathic Medicine (Osteopathic Physician Assistants, 24 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §60A-9-5a of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2021, relating to the West Virginia Board of Osteopathic Medicine (Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database, 24 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-14-14 of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2021, relating to the Board of Osteopathic Medicine (Telehealth Practice and Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants, 24 CSR 10), is authorized with the amendment set forth below:

On page seven, by striking out all of subsection 7.4 and inserting in lieu thereof a new subsection 7.4 to read as follows:

7.4 Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion, determines that an in-person encounter is required.;

And,

On page nine, subsection 8.4, by striking out the words “based solely upon a telemedicine encounter”.

§64-9-15. West Virginia Board of Pharmacy.

(a) The legislative rule filed in the State Register on July 21, 2021, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2021, relating to the West Virginia Board of Pharmacy (Licensure and Practice of Pharmacist Care, 15 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 21, 2021, authorized under the authority of §60A-9-6 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2021, relating to the West Virginia Board of Pharmacy (Controlled Substances Monitoring Program, 15 CSR 08), is authorized.

(c) The legislative rule filed in the State Register on July 21, 2021, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2021, relating to the West Virginia Board of Pharmacy (Regulations Governing Pharmacists, 15 CSR 16), is authorized.

§64-9-16. West Virginia Board of Psychologists.

The Legislature directs the West Virginia Board of Psychologists to amend the legislative rule filed in the State Register on April 25, 2018, authorized under the authority of §30-21-6 of this code, relating to the West Virginia Board of Psychologists (Fees, 17 CSR 01) with the amendments set forth below:

One page one, subsection 1.5. by striking out “July 1, 2028”, and inserting in lieu thereof “August 1, 2028”;

On page one, subsection 2.1 by striking out “\$133.00”, and inserting in lieu thereof “\$120.00”;

On page one, paragraph 2.2 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page one, subdivision 2.2.1 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page one, subdivision 2.3.1 by striking out “\$450.00”, and inserting in lieu thereof “\$405.00”;

On page one, subdivision 2.3.2 by striking out “\$133.00”, and inserting in lieu thereof “\$120.00”;

On page one, subdivision 2.2.3 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page two, subdivision 2.3.4 by striking out “\$300.00”, and inserting in lieu thereof “\$270.00”;

Strike the entirety of page two, subsection 2.5, and renumber the remaining subsections;

On page two, subsection 2.6 by striking out “\$78.00”, and inserting in lieu thereof “\$68.00”;

On page two, subdivision 2.7.1 by striking out “\$450.00”, and inserting in lieu thereof “\$405.00”;

On page two, subdivision 2.7.2 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page two, subsection 2.8 by striking out “\$133.00”, and inserting in lieu thereof “\$120.00”;

On page two, subsection 2.9 by striking out “\$300.00”, and inserting in lieu thereof “\$270.00”;

On page two, subsection 2.11 by striking out “\$100.00”, and inserting in lieu thereof “\$90.00”;

On page two, subdivision 2.12.1 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”;

On page two, subdivision 2.12.2 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 2.13 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

On page two, subsection 2.14 by striking out “\$50.00”, and inserting in lieu thereof “\$45.00”;

And,

On page two, subsection 2.15 by striking out “\$200.00”, and inserting in lieu thereof “\$180.00”.

§64-9-17. Public Service Commission.

The legislative rule filed in the State Register on August 6, 2021, authorized under the authority of §24-2E-3 of this code,

modified by the Public Service Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Public Service Commission (Rules Governing the Occupancy of Customer-Provided Conduit, 150 CSR 37), is authorized.

§64-9-18. West Virginia Real Estate Appraiser Licensing and Certification Board.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-38-9 of this code, modified by the West Virginia Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2021, relating to the West Virginia Real Estate Appraiser Licensing and Certification Board (Requirements for Licensure and Certification, 190 CSR 02), is authorized with the amendments set forth below:

On page twenty-five, subdivision 10.2.a., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-five, subdivision 10.2.b., by striking out “two hundred sixty-five dollars (\$265)”, and inserting in lieu thereof “\$210”;

On page twenty-five, subdivision 10.2.c., by striking out “one hundred dollars (\$100)”, and inserting in lieu thereof “\$80”;

On page twenty-five, subdivision 10.2.d., following the words “temporary permit fee of” by striking out “two hundred fifty dollars (\$250)”, and inserting in lieu thereof “\$200”;

On page twenty-five, subdivision 10.2.d., following the words “non-residential appraisal and,” and inserting in lieu thereof “\$200”;

On page twenty-six, subdivision 10.2.e., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-six, subdivision 10.2.f., by striking out “four hundred sixty-five dollars (\$465)”, and inserting in lieu thereof “\$375”;

On page twenty-six, subdivision 10.2.g., by striking out “three hundred fifteen dollars (\$315)”, and inserting in lieu thereof “\$250”;

On page twenty-six, subdivision 10.2.h., by striking out “one hundred dollars (\$100)”, and inserting in lieu thereof “\$80”;

On page twenty-six, subdivision 10.2.j., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-six, subdivision 10.2.k., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-six, subdivision 10.2.l., by striking out “one hundred ninety dollars (\$190)”, and inserting in lieu thereof “\$150”;

On page twenty-six, subdivision 10.2.m., by striking out “twenty-five dollars (\$25)”, and inserting in lieu thereof “\$20”;

On page twenty-six, subdivision 10.2.n., by striking out “Copy fees: fifty cents (\$.50) per page”

On page twenty-six, subdivision 10.2.n., following the words Administrative fee of,” striking “fifty cents (\$.50),” and inserting in lieu thereof “\$.40”

On page twenty-six, subdivision 10.2.o., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-six, subdivision 10.2.p., by striking out “one hundred fifty dollars (\$150)”, and inserting in lieu thereof “\$120”;

On page twenty-six, subdivision 10.2.q., after the words “One roster-fee of” by striking out “thirty-five dollars (\$35), and inserting in lieu thereof “\$28”;

On page twenty-six, subdivision 10.2.q., after the words roster subscription fee-of” by striking out “fifty dollars (\$50)”, and inserting in lieu thereof “\$40”;

On page twenty-six, subdivision 10.2.r., by striking out “fifty dollars (\$50)”, and inserting in lieu thereof “\$40”;

On page twenty-six, subdivision 10.2.s., by striking out “fifty dollars (\$550)”, and inserting in lieu thereof “\$40”;

On page twenty-six, subdivision 10.2.t., by striking out “seventy-five dollars (\$75)”, and inserting in lieu thereof “\$60”;

And,

On page twenty-six, subdivision 10.2.u., by striking out “twenty-five dollars (\$25)”, and inserting in lieu thereof “\$20”.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-38-9 of this code, modified by the West Virginia Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2021, relating to the West Virginia Real Estate Appraiser Licensing and Certification Board (Renewal of Licensure or Certification, 190 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-38A-2 of this code, modified by the West Virginia Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2021, relating to the West Virginia Real Estate Appraiser Licensing and Certification Board (Requirements for Registration and Renewal of Appraisal Management Companies, 190 CSR 05), is authorized.

§64-9-19. West Virginia Board of Examiners for Registered Professional Nurses.

(a) The legislative rule filed in the State Register on May 10, 2021, authorized under the authority of §30-7-15a of this code, relating to the West Virginia Board of Examiners for Registered

Professional Nurses (Limited Prescriptive Authority for Nurses in Advanced Practice, 19 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on August 31, 2021, authorized under the authority of §30-7-4 of this code, relating to the Board of Registered Professional Nurses (Telehealth Practice, 19 CSR 16), is authorized with the amendments set forth below:

On page three, subdivision 3.3.2., by striking out the word “state” and inserting in lieu thereof the words “State of West Virginia”;

On page three, subdivision 3.3.2., by striking out the words “location or”;

On page five, subsection 5.9., by striking out the word “applicant” and inserting in lieu thereof the word “registrant”;

On page five, after subsection 5.12, by renumbering the remaining subsections;

On page six, subsection 5.11., by striking out the words “apply anew” and inserting in lieu thereof the word “reapply”;

On page seven, subsection 7.3., after the words “prescription if” by inserting in lieu thereof the words “the nurse”;

On page seven, by striking out all of subsection 7.4 and inserting in lieu thereof a new subsection 7.4 to read as follows:

7.4. Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion, determines that an in-person encounter is required.;

On page eight, subsection 7.8., after the word “practices” by striking out the word “to” and inserting in lieu thereof the words “while treating”;

On page eight, subsection 8.1, by striking out the words “of the provider’s profession in the State of West Virginia pursuant to

qualified advanced practice registered nurses to prescribe prescription drugs in accordance with the” and inserting in lieu thereof the words “as set forth in the”;

On page eight, subsection 8.2, by striking out the words “Schedules III through V of”;

On page eight, subsection 8.3, by striking out the words “based solely upon a telemedicine encounter”;

On page nine, subdivision 10.2.1., by striking out the words “Shall not engage” and inserting in lieu thereof the word “Engaging”;

On page nine, subdivision 10.2.1., by inserting a period after the words “this rule”;

On page nine, subdivision 10.2.1., by striking out the words “or they” and inserting in lieu thereof the words “A registered nurse or advance practice registered nurse who engages in professional misconduct”;

And,

On page nine, subsection 11.2., by striking out the words “the following” and inserting in lieu thereof the word “that”.

§64-9-20. Secretary of State.

(a) The legislative rule filed in the State Register on May 10, 2021, authorized under the authority of §3-2-11 of this code, relating to the Secretary of State (Voter Registration at the Division of Motor Vehicles, 153 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on May 10, 2021, authorized under the authority of §3-2-23a of this code, relating to the Secretary of State (Voter Registration List Maintenance by the Secretary of State, 153 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §3-2-12 of this code, modified by the Secretary of State to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on December 29, 2021, relating to the Secretary of State (Combined Voter Registration and Driver Licensing Fund, 153 CSR 25), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §39A-3-3 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 29, 2021, relating to the Secretary of State (Use of Digital Signatures, 153 CSR 30), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §3-8-2c of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 29, 2021, relating to the Secretary of State (Regulation of Political Party Headquarters Finances, 153 CSR 43), is authorized.

(f) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §39-4-37 and §39-4-38 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 29, 2021, relating to the Secretary of State (Standards and Guidelines for Electronic Notarization, Remote Online Notarization, and Remote Ink Notarization, 153 CSR 45), is authorized.

(g) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §39A-4-4 of this code, relating to the Secretary of State (Real Property Electronic Recording Standards and Regulations, 153 CSR 48), is authorized with amendments set forth below:

On page 2, section 3.1, by striking out the words “as amended from time to time”;

On page 3, subdivision 3.3.1, by striking out the words “as amended from time to time”;

And,

On page 3, subdivision 3.3.2, by striking out the words “as amended from time to time”.

§64-9-21. West Virginia Board of Social Work Examiners.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-30-6 of this code, modified by the West Virginia Board of Social Work Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the West Virginia Board of Social Work Examiners (Qualifications for the Profession of Social Work, 25 CSR 01), is authorized.

(b) The Legislature directs the West Virginia Board of Social Work Examiners to amend the legislative rule filed in the State Register on May 12, 2020, authorized under the authority of §30-30-6 of this code, relating to the West Virginia Board of Social Work Examiners (Fee Schedule, 25 CSR 03) with the amendments set forth below:

On page two, subdivision 3.1.2., by striking out “fifty dollars (\$50)”, and inserting in lieu thereof “\$45”;

On page two, subdivision 3.2.1., by striking out “(\$100)”, and inserting in lieu thereof “\$90”;

On page two, subdivision 3.2.2., following the words “biennial license renewal is” by striking out “eighty-five dollars (\$85)”, and inserting in lieu thereof “\$76”;

On page two, subdivision 3.2.2., following the words “provisional license renewal is” by striking “ninety dollars (\$90)”, and inserting in lieu thereof “\$80”;

On page two, subdivision 3.2.3., by striking out “fifty dollars (\$50)”, and inserting in lieu thereof “\$45”;

On page two, subdivision 3.2.4., by striking out “one hundred fifteen dollars (\$115)”, and inserting in lieu thereof “\$104”;

On page two, subdivision 3.2.5., by striking out “twenty-five dollars (\$25)”, and inserting in lieu thereof “\$23”;

On page two, subdivision 3.2.6., by striking out “fifty dollars (\$50)”, and inserting in lieu thereof “\$45”;

On page two, subdivision 3.2.7., by striking out “thirty dollars (\$30)”, and inserting in lieu thereof “\$27”;

On page two, subdivision 3.2.8., by striking out “one hundred dollars (\$100)”, and inserting in lieu thereof “\$90”;

On page two, subdivision 3.2.9., by striking out “fifty-five dollars (\$55)”, and inserting in lieu thereof “\$50”;

On page two, subdivision 3.2.10., by striking out “twenty-five dollars (\$25)”, and inserting in lieu thereof “\$23”;

On page three, subdivision 3.4.1., by striking out “one hundred dollars (\$100)”, and inserting in lieu thereof “\$90”;

On page three, subdivision 3.4.2., by striking out “sixty dollars (\$60)”, and inserting in lieu thereof “\$54”;

And,

On page three, subdivision 3.5.1., by striking out “one hundred dollars (\$100)”, and inserting in lieu thereof “\$90”.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §30-30-6 of this code, modified by the West Virginia Board of Social Work Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the West Virginia Board of Social Work Examiners (Continuing Education for Social Workers and Providers, 25 CSR 05), is authorized.

§64-9-22. West Virginia Board of Examiners for Speech-Language Pathology and Audiology.

The legislative rule filed in the State Register on June 9, 2021, authorized under the authority of §30-32-7 of this code, modified by the West Virginia Board of Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the West Virginia Board of Speech-Language Pathology and Audiology (Licensure of Speech-Pathology and Audiology, 29 CSR 01), is authorized.

§64-9-23. State Treasurer.

(a) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §12-4-11 of this code, relating to the Treasurer (Substitute Checks-Exceptional Items Fund, 112 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on May 6, 2021, authorized under the authority of §12-2-2 of this code, relating to the Treasurer (Procedures for Deposit of Moneys with the State Treasurer's Office by State Agencies, 112 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on May 6, 2021, authorized under the authority of §12-1-2 of this code, relating to the Treasurer (Selection of State Depositories for Disbursement Accounts Through Competitive Bidding, 112 CSR 06), is authorized.

(d) The legislative rule filed in the State Register on May 7, 2021, authorized under the authority of §12-1-2 of this code, relating to the Treasurer (Selection of State Depositories for Receipt Accounts, 112 CSR 07), is authorized.

(e) The legislative rule filed in the State Register on May 7, 2021, authorized under the authority of §12-3-1 of this code, relating to the Treasurer (Procedures for Processing Payments from the State Treasury, 112 CSR 08), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §12-6A-7 of this code, relating to the Treasurer (Reporting Debt, 112 CSR 10), is authorized.

(g) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §12-3A-6 of this code, relating to the Treasurer (Procedure for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, 112 CSR 12), is authorized.

(h) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §12-3A-6 of this code, relating to the Treasurer (Procedures for Providing Services to Political Subdivisions, 112 CSR 13), is authorized.

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CHAPTER 172

(Com. Sub. for H. B. 4114 - By Delegate Foster)

[Passed February 18, 2022; in effect from passage.]

[Approved by the Governor on March 2, 2022.]

AN ACT to amend and reenact §64-2-1 *et. seq.* of the Code of West Virginia, 1931, as amended, all relating generally, to authorizing certain agencies of the Department of Administration to promulgate legislative rules; authorizing the rules as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Ethics Commission to promulgate a legislative rule relating to use of office for private gain, including nepotism; authorizing the Division of Personnel to promulgate a legislative rule relating to the Administrative rule of the West Virginia Division of Personnel; authorizing the Office of Technology to promulgate a legislative rule relating to the Chief Information Officer review; and authorizing the Office of Technology to promulgate a legislative rule relating to cyber reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Ethics Commission.

The legislative rule filed in the State Register on May 12, 2021, authorized under the authority of §6B-2-5 of this code, modified by the Ethics Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Ethics Commission (Use of

Office for Private Gain, Including Nepotism, 158 CSR 06), is authorized with the following amendment:

On page 2, subdivision 3.6.1, after the word “unless” by inserting the words “required by law and”.

§64-2-2. Division of Personnel.

The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §29-6-10 of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Division of Personnel (Administrative Rule of the West Virginia Division of Personnel, 143 CSR 01), is authorized.

§64-2-3. Office of Technology.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §5A-6-4 of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Office of Technology (Chief Information Officer Review , 163 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §5A-6B-3 of this code, modified by the Office of Technology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Office of Technology (Cyber Reporting, 163 CSR 03), is authorized.

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CHAPTER 173

(Com. Sub. for H. B. 4126 - By Delegate Foster)

[Passed March 3, 2022; in effect from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §64-5-1 *et. seq.* of the Code of West Virginia, 1931, as amended, all relating to generally authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended 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 methods and standards for chemical tests for intoxication; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to childhood lead screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to sewage treatment and collection system design standards; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory practitioner licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to maternal risk screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to

expedited partner therapy; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment - opioid treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to syringe services program licensure; authorizing the Health Care Authority to promulgate a legislative rule relating to certificate of need; authorizing the Department of Health and Human Resources and the Insurance Commissioner to promulgate a legislative rule relating to an all-payer claims database- data submission requirements; and authorizing the Department of Health and Human Resources and the Insurance Commissioner to promulgate a legislative rule relating to an all-payer claims database- privacy and security requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2021, relating to the Department of Health and Human Resources (Methods and Standards for Chemical Tests for Intoxication, 64 CSR 10), is authorized.

(b) The legislative rule filed in the State Register on July 23, 2021, authorized under the authority of §16-5B-8 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2021, relating to the Department of Health and Human Resources (Hospital Licensure, 64 CSR 12), is authorized with the following amendment:

On page 22, subdivision 7.3.11, by striking the words “as prescribed by the attending practitioner” and inserting the words, “as recommended by a qualified dietician;”.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-35-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2021, relating to the Department of Health and Human Resources (Childhood Lead Screening, 64 CSR 42), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2021, relating to the Department of Health and Human Resources (Food Manufacturing Facilities, 64 CSR 43), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2021, relating to the Department of Health and Human Resources (Sewage Treatment and Collection System Design Standards, 64 CSR 47), is authorized.

(f) The legislative rule filed in the State Register on September 10, 2021, authorized under the authority of §16-4C-6 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2021, relating to the Department of Health and Human Resources (Emergency Medical Services, 64 CSR 48), is authorized.

(g) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §64-5-1 of this code, modified by the Department of Health and Human Resources to

meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Department of Health and Human Resources (Clinical Laboratory Practitioner Licensure and Certification, 64 CSR 57), is authorized.

(h) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §60A-11-3 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2021, relating to the Department of Health and Human Resources (Clandestine Drug Laboratory Remediation, 64 CSR 92), is authorized with the amendments set forth below:

On page four, after the section caption, by adding the words “Licensed technicians shall:”;

On page four, Subsection 5.3., by striking out the words “and ceiling” and inserting in lieu thereof the words “ceiling, and HVAC unit, vent, and return”;

On page five, subdivision 7.1.2., by striking out the words “the residential property owner shall”;

On page six, subdivision 7.1.4. by striking out all of subdivision 7.1.4. and inserting in lieu thereof a new subdivision 7.1.4. to read as follows:

“7.1.4. When analytical testing shows a level of contamination of greater than 1.0 ug/100 cm², contract within 60 days a licensed clandestine drug lab remediation contractor to either remediate or demolish the residential property in accordance with this rule.”;

On page six, subsection 9.1., after the word “commissioner”, by inserting the words “within 10 days of receipt of the initial analytical results”;

On page seven, paragraph 9.2.1.i. after the semicolon, by striking out the word “and”;

On page seven, paragraph 9.1.2.j. by striking out the words “must be”;

On page seven, after paragraph 9.1.2.j., by adding the following paragraphs:

“9.1.2.k. A general listing of items to be removed from the residential property for disposal;

9.1.2.l. Items requiring special handling for disposal; and

9.1.2.m. Any obvious safety hazards.”

And,

On page twelve, subdivision 12.8.6., by striking out the word “three” and inserting in lieu thereof the word “one”.

(i) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-4E-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2021, relating to the Department of Health and Human Resources (Maternal Risk Screening, 64 CSR 97), is authorized.

(j) The legislative rule filed in the State Register on May 10, 2021, authorized under the authority of §16-4F-5 of this code, relating to the Department of Health and Human Resources (Expedited Partner Therapy, 64 CSR 103), is authorized.

(k) The legislative rule filed in the State Register on May 10, 2021, authorized under the authority of §16-5Y-13 of this code, relating to the Department of Health and Human Resources (Medication-Assisted Treatment - Opioid Treatment Programs, 69 CSR 11), is authorized.

(l) The legislative rule filed in the State Register on August 27, 2021, authorized under the authority of §16-64-7 of this code, relating to the Department of Health and Human Resources (Syringe Services Program Licensure, 69 CSR 17), is authorized.

§64-5-2. Health Care Authority.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §16-2D-4 of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2021, relating to the Health Care Authority (Certificate of Need, 65 CSR 32), is authorized with the following amendment:

On page 4, by striking paragraph 2.1.j.9, in its entirety, and renumbering the remaining paragraphs.

§64-5-3. Department of Health and Human Resources and Insurance Commission.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §33-4A-8 of this code, modified by the Department of Health and Human Resources and Insurance Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 27, 2021, relating to the Department of Health and Human Resources and Insurance Commission (All Payer Claims Database - Data Submission Requirements, 114A CSR 01), is authorized with the amendments set forth below:

On page 3, subsection 2.20. by striking out the word “procedural” and inserting in lieu thereof the word “legislative”;

And

On page 5, subsection 4.2. by striking out the word “procedural” and inserting in lieu thereof the word “legislative”

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §33-4A-4 of this code, relating to the Department of Health and Human Resources and Insurance Commission (All-Payer Claims Database Program’s Privacy and Security Requirements, 114A CSR 02), is authorized.



CHAPTER 174

(Com. Sub. for H. B. 4141 - By Delegate Foster)

[Passed March 9, 2022; in effect from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §64-6-1 *et. seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Homeland Security to promulgate legislative rules; authorizing the rules as filed and modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Governor's Committee on Crime, Delinquency and Corrections to promulgate a legislative rule relating to law enforcement training and certification standards; relating to authorizing the Fire Commission to promulgate a legislative rule relating to the Fire Code; relating to authorizing the Fire Commission to promulgate a legislative rule relating to the State Building Code; relating to authorizing the Fire Commission to promulgate a legislative rule relating to volunteer fire department equipment and training grant funding disbursement; relating to authorizing the Fire Commission to promulgate a legislative rule relating to specialized membership; relating to authorizing the Fire Commission to promulgate a legislative rule relating to junior firefighters; relating to authorizing the Fire Commission to promulgate a legislative rule relating to the certification of fire chiefs; relating to authorizing the Fire Commission to promulgate a legislative rule relating to the use of aqueous film-forming foam (AFFF) for fire training program purposes; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to the regulation of fireworks and related explosive materials; and relating to authorizing the State Police to promulgate a legislative rule relating to career progression.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
HOMELAND SECURITY TO PROMULGATE
LEGISLATIVE RULES.**

**§64-6-1. Governor’s Committee on Crime, Delinquency and
Corrections.**

The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §30-29-3 of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2021, relating to the Governor’s Committee Crime, Delinquency and Correction (Law Enforcement Training and Certification Standards, 149 CSR 02), is authorized.

§64-6-2. Fire Commission.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15A-11-3 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 7, 2022, relating to the Fire Commission (Fire Code, 87 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15A-11-11 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 7, 2022, relating to the Fire Commission (State Building Code, 87 CSR 04), is authorized with the amendment set forth below:

On page 5, paragraph 4.1.f.1, by striking out everything after the word “shall” and inserting in lieu thereof: “have an air leakage rate not exceeding five air changes per hour in Climate Zones 3 through 8.”

(c) The legislative rule filed in the State Register on June 23, 2021, authorized under the authority of §15A-11-11 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Fire Commission (Volunteer Fire Department Equipment and Training Grant Funding Disbursement, 87 CSR 10), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15A-11-8 of this code, relating to the Fire Commission (Specialized Membership, 87 CSR 11), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15A-11-8 of this code, relating to the Fire Commission (Junior Firefighters, 87 CSR 12), is authorized.

(f) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15A-11-8 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2021, relating to the Fire Commission (Certification of Fire Chiefs, 87 CSR 13), is authorized.

(g) The legislative rule filed in the State Register on July 27, 2021, authorized under the authority of §29-3-5g of this code, relating to the Fire Commission (Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes, 87 CSR 14), is authorized.

§64-6-3. Fire Marshal.

The legislative rule filed in the State Register on July 28, 2021, authorized under the authority of §29-3E-8 of this code, relating to the Fire Marshal (Regulation of Fireworks and Related Explosive Materials, 103 CSR 04), is authorized.

§64-6-4. State Police.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §15-2-5 of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2022, relating to the State Police (Career Progression, 81 CSR 03), is authorized.



CHAPTER 175

(Com. Sub. for H. B. 4242 - By Delegate Foster)

[Passed March 8, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §64-10-1 *et. seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee; authorizing the Division of Labor to promulgate a legislative rule relating to child labor; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the safety of those employed in and around surface mines in West Virginia; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the first-aid training of shaft and slope employees; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards, and procedures; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to public shooting ranges; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the commercial sale of wildlife; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping, and fishing licenses.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF
COMMERCE TO PROMULGATE LEGISLATIVE
RULES.**

§64-10-1. Division of Labor.

The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §21-6-11 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2021, relating to the Division of Labor (Child Labor, 42 CSR 09), is authorized.

§64-10-2. Office of Miners' Health, Safety and Training.

(a) The legislative rule filed in the State Register on June 11, 2021, authorized under the authority of §22A-1-42 of this code, modified by the Office of Miners' Health, Safety And Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Office of Miners' Health, Safety And Training (Rule Governing the Safety of Those Employed in and Around Surface Mines in West Virginia, 56 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on June 11, 2021, authorized under the authority of §22A-7-6 of this code, relating to the Office of Miners' Health, Safety and Training (Rule Governing First-Aid Training of Shaft and Slope Employees, 56 CSR 11), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §22A-1A-2 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2021, relating to the Office Miners' Health, Safety and Training (Substance Abuse Screening, Standards and Procedures, 56 CSR 19), is authorized.

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2021, relating to the Division of Natural Resources (Revocation of Hunting and Fishing Licenses, 58 CSR 23), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-7-22 of this code, relating to the Division of Natural Resources (Special Motorboating Regulations, 58 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-3-2 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2021, relating to the Division of Natural Resources (Public Shooting Ranges, 58 CSR 38), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-1-7 of this code, relating to the Division of Natural Resources (General Hunting, 58 CSR 49), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-2-11 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 29, 2021, relating to the Division of Natural Resources (Commercial Sale of Wildlife, 58 CSR 63), is authorized with the amendment set forth below:

On page 5, section 8.1, by striking out subsection 8.1 in its entirety and inserting in lieu thereof a new subsection 8.1 to read as follows:

“§58-63-8. Penalties.

8.1. Any person accused of violating any provision of this rule may, in the discretion of the Director, be referred to the county prosecutor in the county of the alleged offense for potential prosecution of a misdemeanor or felony. If the county prosecutor determines that a referred violation of this rule meets the act and state of mind requirements for criminal liability under West Virginia law, upon conviction thereof, the violator may be punished by a fine of up to a \$500 or up to 30 days of incarceration in the county jail, or a combination of fine and incarceration. As applicable, the violation may, in the discretion of the county prosecutor, be prosecuted pursuant to and sentenced by a court in accordance with W.Va. Code Chapter 61: *Provided*, That convictions for violations of this rule may only be subject to incarceration if the rule violation convicted of posed a substantial risk to life or public safety, or in fact caused actual substantial harm resulting from the violation.”

(f) The legislative rule filed in the State Register on July 30, 2021, authorized under the authority of §20-2B-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2021, relating to the Division of Natural Resources (Lifetime Hunting, Trapping, and Fishing Licenses, 58 CSR 67), is authorized.

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CHAPTER 176

(Com. Sub. for S. B. 6 - By Senators Trump, Nelson, Takubo, and Azinger)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §31B-3-303 of the Code of West Virginia, 1931, as amended, relating to the applicability of “corporate veil piercing” analysis to impose personal liability on a member or manager of a limited liability company; clarifying that members or managers of a limited liability company are not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts; establishing the intent and policy of the Legislature to modify the applicability of “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to certain claims against a limited liability company; clarifying circumstances in which members of a limited liability company may be held liable in their capacity as members for debts, obligations, or liabilities of the company; establishing criteria required for court to apply “corporate veil piercing analysis” in certain claims asserted against a limited liability company; providing for liability of non-human members of a limited liability company under doctrine of joint enterprise liability; providing for liability of a member of a limited liability company as a tortfeasor; authorizing a creditor of a limited liability company to seek “clawback” from a member of limited liability company under certain circumstances; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY.

§31B-3-303. Liability of members and managers.

(a) Except as otherwise provided in subsection (c) of this section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager nor for fines, fees or penalties individually assessed against another member or manager for acts unrelated to the business of the limited liability company. It is the intent and policy of the Legislature to modify the applicability of the “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to any claim against a limited liability company arising after the effective date of the reenactment of this section during the regular session of the Legislature, 2022.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) A provision to that effect is contained in the articles of organization, and a member so liable has consented in writing to the adoption of the provision or to be bound by the provision;

(2) The member against whom liability is asserted has personally guaranteed the liability or obligation of the limited liability company in writing;

(3) There is any tax liability of the limited liability company, which the law of the state or of the United States imposes liability upon the member;

(4) The member commits actual or constructive fraud which causes injury to an individual or entity.

(d) The “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) shall apply to a claim asserted against a limited liability company for the purpose of determining personal liability of all or specified members or managers only if (1) the company is not adequately capitalized for the reasonable risks of the corporate undertaking and (2) the company does not carry liability insurance coverage for the primary risks of the business, with minimum limits of \$100,000 liability insurance, or such higher amount as may be specifically required by law.

(e) *Enterprise liability.* — In circumstances where the members of a limited liability company are, in whole or in part, corporations, limited liability companies, or other entities which are not human beings, then, if a jury shall determine that the liability of a limited liability company sounding in tort arose as part of the activities of a joint enterprise, those entities which are part of the joint enterprise with the limited liability company may be liable for the liability of the limited liability company which arose as part of the business operations of the joint enterprise, not as a “piercing of the veil”, but instead under the doctrine of joint enterprise liability.

(f) *Member as tortfeasor.* — Nothing in this section may immunize or shield a member of a limited liability company, solely because he or she is a member of a limited liability company, from liability for his or her own tortious conduct that proximately causes injury to another party while the member is acting on behalf of the limited liability company. In such circumstance, the liability of a member is not through “veil piercing”, but rather primary, as against any tortfeasor.

(g) *Clawback authority.* — If a member is proved to have committed any of the following acts, then a creditor of the limited liability company whose judgment the limited liability company cannot satisfy may seek clawback from the member under this subsection: *Provided,* That the limited liability company’s judgment creditor may proceed in the shoes of the limited liability company to clawback funds from the member in order to reimburse the limited liability company for either the amount of the judgment against the limited liability company or the amount transferred from the limited liability company to the member in bad faith, whichever is less. The wrongful acts which will justify clawback, but not “veil piercing”, are:

- (1) Conflicted exchange;
- (2) Insolvency distribution; or
- (3) Siphoning of funds.

(h) *Definitions.* — As used in this section:

(1) “Conflicted exchange” means a transfer of money or other property from a limited liability company to a member of the limited liability company, or to any other organization in which the member has a material financial interest, in exchange for services, goods, or other tangible or intangible property of less than reasonable equivalent value.

(2) “Insolvency distribution” means a transfer of money or other property from a limited liability company to a member of that limited liability company, or to any other organization in which the member has a material financial interest, in respect of the member’s ownership interest, that renders the limited liability company insolvent.

(3) “Insolvent” means, with respect to a limited liability company, that the limited liability company is unable to pay its debts in the ordinary course of business. Claims that are unusual in nature or amount, including tort claims in claims for consequential damages, are not to be considered claims in the ordinary course of business for the purposes of this section.

(4) “Siphoning of funds” means whether the manager or majority member has siphoned funds from the limited liability company in violation of the articles of organization, the operating agreement, or this article.

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CHAPTER 177

**(Com. Sub. for H. B. 3220 - By Delegates Pack, Keaton,
Mallow, Conley, Forsht, Longanacre, Haynes, Kimble,
Burkhammer, and Hanna)**

[Passed February 21, 2022; in effect July 1, 2022.]

[Approved by the Governor on March 2, 2022.]

AN ACT to amend and reenact §6B-3-10 of the Code of West Virginia, 1931, as amended, relating to required disclosure of information from state agencies, municipalities, counties, or school districts that have contracted for lobbying services; requiring certain information relating to, and copy of, lobbying contract be furnished to Ethics Commission; mandating annual reporting of information to Ethics Commission relating to lobbying activity pursuant to contract; and establishing effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LOBBYISTS.

§6B-3-10. Provisions may be adopted by local governments; disclosures by state agencies, municipalities, counties, and school districts relating to lobbying activities.

(a) An incorporated municipality may enact lobbyist regulation provisions substantially similar to the provisions of this article which may be modified to the extent necessary to make the provisions relevant to that jurisdiction and which may be further modified to the extent deemed necessary and appropriate by and for that jurisdiction.

(b) Beginning on July 1, 2022, every state agency, municipality, county, and school district in the state that contracts for lobbying services shall disclose, and when applicable provide

copies of, the following information to the West Virginia Ethics Commission:

(1) Contract details, including, but not limited to, the identities of the parties to the contract, the date on which the contract becomes or became effective, any applicable extension dates, payment and reimbursement terms, and duration;

(2) A copy of the contract for lobbying services;

(3) All costs to be paid or reimbursed, or already paid or reimbursed, for lobbying services associated with or related to the contract for lobbying services, including itemized expenses such as dinners, meals, or events; and

(4) The identities of any individuals or entities engaging in activities pursuant to the contract for lobbying services that may require the individual or entity to register as a lobbyist.

(c) On July 1, 2023, and on July 1 of each year thereafter, every state agency, municipality, county, and school district in the state that has contracted for lobbying services in the preceding year shall report to the Ethics Commission all information required by the provisions of subsection (b) of this section.

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CHAPTER 178

(Com. Sub. for H. B. 4377 - By Delegates Rohrbach, D. Jeffries, Pack, Reed, Worrell, Bates, Rowan, G. Ward, Miller, Criss and Pinson)

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto three new sections, designated §27-5-1b and §27-5-3a; to amend and reenact §27-5-2, §27-5-3, §27-5-4 and §27-5-10 of said code and to amend and reenact §61-7A-2, §61-7A-4 and §61-7A-5 of said code, all relating generally to involuntary commitment; directing participation by certain groups and entities in a study of the feasibility of developing alternatives to law enforcement transportation of patients; requiring an audit process for mental hygiene services; clarifying conditions for which involuntary commitment is inappropriate; authorizing video conferencing for hearings and evaluations; establishing time limits for completion tasks necessary to the commitment process; requiring reimbursement for transportation costs to the appropriate law enforcement agency; establishing state policy that a person committed for what is determined to be a physical condition is not considered to have been committed for a mental illness or addiction and not a basis for firearms disqualification, professional licensure, or employment purposes; requiring the entry of an order when a mistaken commitment is discovered; clarifying the distinction between hospitalizations for evaluation from those for treatment; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**§27-5-1b. Pilot projects and other initiatives.**

(a) *Duties of the Department of Health and Human Resources.* —The Secretary shall, in collaboration with designees of the Supreme Court of Appeals, the Sheriff’s Association, the Prosecuting Attorney’s Association, the Public Defender Services, the Behavioral Health Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness Assessment Advisory Board, undertake an evaluation of the utilization of alternative transportation providers and the development of standards that define the role, scope, regulation, and training necessary for the safe and effective utilization of alternative transportation providers and shall further identify potential financial sources for the payment of alternative transportation providers. Recommendations regarding such evaluation shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature requests the Supreme Court of Appeals cooperate with the listed parties and undertake this evaluation.

(b) *Civil Involuntary Commitment Audits.* — The secretary shall establish a process to conduct retrospective quarterly audits of applications and licensed examiner forms prepared by certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this code. The process shall determine whether the licensed examiner forms prepared by certifiers are clinically justified and consistent with the requirements of this code and, if not, develop corrective actions to redress identified issues. The Legislature requests the Supreme Court of Appeals participate in this process with the secretary. The process and the findings thereof shall be confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code.

(i) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* — Each mental health center shall make available as necessary a qualified and competent licensed person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 *et seq.* of this code. Evaluations shall

be conducted in person, unless an in-person evaluation would create a substantial delay to the resolution of the matter, and then the evaluation may be conducted by videoconference. Each mental health center that performs these evaluations shall exercise reasonable diligence in performing the evaluations and communicating with the state hospital to provide all reasonable and necessary information to facilitate a prompt and orderly admission to the state hospital of any person who is or is likely to be involuntarily committed to such hospital. Each mental health center that performs these evaluations shall explain the involuntary commitment process to the applicant and the person proposed to be committed and further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and the likely risks and benefits of commitment.

(k) Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, mental health facilities, law enforcement, and the Department of Health and Human Resources may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement an involuntary commitment process. Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative transportation provider as provided in subsection (a) of this section.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined has a substance use disorder as defined by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and

certification by a physician, psychologist, licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be a basis for involuntary commitment to a state hospital.

(b) Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services necessary to treat the individual's mental illness or substance use.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides, or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial

delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the evaluation be held within a reasonable period of time not to exceed two hours and shall provide for the appointment of counsel for the individual: *Provided, however*, That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and

behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by this subsection the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing unless the individual or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

The individual shall be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others. Any such order entered shall be provided to the state hospital to which the individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: use videoconferencing and telephonic technology; permit persons hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others

and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement

may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

The commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is acting in a manner consistent with the standard of care establishes that the commitment or treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the department and the comprehensive community mental health center or licensed behavioral health provider.

(i) If the certifying professional determines that an individual requires involuntary hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he

or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) *Admission to a mental health facility for examination.* —An individual shall be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code. Upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or has a substance use disorder and, because of the mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained and treated: *Provided*, That the opinions offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine shall be within his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination.* — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of this code is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification.* — A certification under this section shall include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available and that the risks and benefits were explained as required by §27-5-1(i) of this code.

(e) *Notice requirements.* — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Three-day time limitation for examination and certification at mental health facility or state hospital.* — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than three days, excluding Sundays and

holidays, unless, within the three-day period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is not suffering from a physical ailment manifesting behaviors which mimic mental illness but is mentally ill or has a substance use disorder and is likely to injure himself, herself, or others and requires continued commitment and treatment. If the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) *Twenty-day time limitation for institution of final commitment proceedings.* — If, in the opinion of the examining physician, the patient is mentally ill or has a substance use disorder and because of the mental illness or substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within 20 calendar days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within the 20-day period absent good cause, the individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) *Thirty-five day time limitation for conclusion of all proceedings.* — If all proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 35 days from the date of filing the Application for Involuntary Custody for Mental Health Examination, the individual shall be immediately released.

§27-5-3a. Legal effect of commitment after determined not to be based on mental illness or addiction.

(a) In the event that a person is involuntarily hospitalized, and it is determined after the entry of the order that the behavior which led to the entry of the order of involuntary hospitalization was

caused by a physical condition or disorder rather than mental illness or addiction, the hospitalization shall not serve to make him or her a proscribed person under state laws relating to firearms possession or to negatively affect a person's professional licensure, employment, employability, or parental rights. Furthermore, while it is clear that it is the government of the United States and not the government of West Virginia, which has authority under 18 U.S.C. 922(g)(4), to determine whether a person has been "committed to a mental institution" the Legislature notes that "federal courts often look to state law to help determine whether a commitment has occurred." *United States v. Vertz*, 40 F. App'x 69 (6th Cir. 2002). Under such principles of interpretation, it is the express intent of the legislature to make clear that in circumstances under which there is a judicial determination that a person's involuntary hospitalization was necessitated and ordered as a result of a physical condition or disorder, the legislature does not deem this to be a "commitment," under state law, and the Legislature's determination that such an involuntary hospitalization is not a "commitment" should be viewed by the government of the United States as consistent with the provisions of the amendments to the NICS Improvement Amendments Act of 2007, Public Law 110-180, Tit. 1, Sec 101(c)(1), 121 Stat. 2559, 2562-63 (2008).

(b) Consistent with subsection (a) of this section, whenever a mental hygiene commissioner, magistrate, or circuit judge is made aware that the circumstances addressed in subsection (a) of this section have occurred, the mental hygiene commissioner, magistrate, or circuit judge shall enter an order finding that the person was not suffering from a mental illness or addiction and not committed therefor.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a

county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 et al. of this code shall be held by the circuit court of the county that has jurisdiction over the person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found. Notwithstanding anything any provision of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 *et seq.* of this code shall be commenced only upon the filing of a Certificate of the Licensed Certifier at the mental health facility where the person is currently committed.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder. Except for persons sought to be

committed as provided in §27-6A-1 *et seq.* of this code, the applicant shall state in detail the recent overt acts upon which the clinical opinion is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others and requires continued commitment and treatment, and should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the certificate shall state in detail the recent overt acts on which the conclusion is based,

including facts that less restrictive interventions and placements were considered but are not appropriate and available. The applicant shall further file with his or her application the names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, psychologist, advanced nurse practitioner, or physician assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, and except when a Certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

(2) If the designated physician, psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination.

The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, psychologist, nurse practitioner, or physician assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. —

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) If the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) Duties of counsel representing individual; payment of counsel representing indigent. —

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where

an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following based upon clear and convincing evidence:

(A) Whether the individual is mentally ill or has a substance use disorder;

(B) Whether, as a result of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and requires continued commitment and treatment;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists that is appropriate and available in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(1) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.* —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the department and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment and treatment. The chief

medical officer shall provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable, that the individual requires commitment and treatment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual continues to meet commitment criteria and the need for ongoing commitment and treatment. The court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if applicable, may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment and treatment. The court may hold any hearing that it considers appropriate.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in substantial remission;

(B) Whether the individual has the independent ability to manage safely the risk factors resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others without continued commitment and treatment;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual is capable of surviving safely in freedom by himself or herself or with the help of willing and responsible family members, guardian, or friends; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

(3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) If the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(m) *Dismissal of proceedings.* — If the individual is discharged as provided in subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* —

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health and Human Resources.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall immediately make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall immediately, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission. —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

(3) Effective July 1, 2022, the Department of Health and Human Resources shall reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement agency for the actual costs related to transporting a patient who has been involuntary committed.

§27-5-10. Transportation for the mentally ill or persons with substance use disorder.

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.* of this code, the sheriff shall provide immediate transportation to or from the appropriate mental health facility or state hospital as described in

§27-5-19(d) of this code: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual's hospitalization, for the interested person to arrange for the individual's transportation to the mental health facility or state hospital if the sheriff determines that those means are suitable given the individual's condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal governments may enter into written agreements by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, "certified municipal law-enforcement officer" means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq.* of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff, or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual.

§61-7A-2. Definitions.

As used in this article and as the terms are deemed to mean in 18 U. S. C. § 922(g) and §61-7-7 of this code as each exists as of January 31, 2008:

(1) “A person adjudicated as a mental defective” means a person who has been determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point where he or she has been found to be incompetent to stand trial due to mental illness or insanity, has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has been determined to be unable to handle his or her own affairs due to mental illness or insanity. A child under fourteen years of age is not considered “a person adjudicated as a mental defective” for purposes of this article.

(2) “Committed to a mental institution” means to have been involuntarily committed for treatment pursuant to the provisions of §27-5-4(1) of this code. Children under 14 years of age are not considered “committed to a mental institution” for purposes of this article. “Committed to a mental institution” does not mean voluntary admission for mental health treatment.

(3) “Mental institution” means any facility or part of a facility used for the treatment of persons committed for treatment of mental illness.

§61-7A-4. Confidentiality; limits on use of registry information.

(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Health and Human Resources, the circuit clerks, and the Administrator of the Supreme Court of Appeals may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. §922, that a person: (i) Has been involuntarily committed to a mental institution pursuant to §27-5-4(1); (ii) has been adjudicated as a mental defective ; or (iii) has regained the

ability to possess a firearm by order of a circuit court in a proceeding under section five of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person's name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person's change in status.

§61-7A-5. Petition to regain right to possess firearms.

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of §61-7-7 or by provisions of federal law by virtue solely of having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to §27-5-4(1) of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(b) Petitioners prohibited from possession of firearms due to a mental health disability, must include in the petition for relief from disability:

(1) A listing of facilities and location addresses of all prior mental health treatment received by petitioner;

(2) An authorization, signed by the petitioner, for release of mental health records to the prosecuting attorney of the county; and

(3) A verified certificate of mental health examination by a licensed psychologist or psychiatrist occurring within thirty days prior to filing of the petition which supports that the petitioner is competent and not likely to act in a manner dangerous to public safety.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred in this state, and only give the relief specifically requested in the petition.

(d) In determining whether to grant the petition, the court shall receive and consider at a minimum evidence:

(1) Concerning the circumstances regarding the firearms disabilities imposed by 18 U.S.C. §922(g)(4);

(2) The petitioner's record which must include the petitioner's mental health and criminal history records; and

(3) The petitioner's reputation developed through character witness statements, testimony, or other character evidence.

(e) If the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibilities concomitant with the possession of a firearm, will not be likely to act in a manner dangerous to public safety, and that granting the relief will not be contrary to public interest, the court may enter an order allowing the petitioner to possess a firearm. If the order denies petitioner's ability to possess a firearm, the petitioner may appeal the denial, which appeal is to include the record of the circuit court rendering the decision.

(f) All proceedings for relief to regain firearm or ammunition rights shall be reported or recorded and maintained for review.

(g) The prosecuting attorney or one of his or her assistants shall represent the state in all proceedings for relief to regain firearm rights and provide the court the petitioner's criminal history records.

(h) The written petition, certificate, mental health or substance abuse treatment records and any papers or documents containing substance abuse or mental health information of the petitioner, filed with the circuit court, are confidential. These documents may not be open to inspection by any person other than the prosecuting attorney or one of his or her assistants only for purposes of representing the state in and during these proceedings and by the

petitioner and his or her counsel. No other person may inspect these documents, except upon authorization of the petitioner or his or her legal representative or by order of the court, and these records may not be published except upon the authorization of the petitioner or his or her legal representative.

(i) The circuit clerk of each county shall provide the Superintendent of the West Virginia State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of Appeals, or his or her designee, with a certified copy of any order entered pursuant to the provisions of this section which removes a petitioner's prohibition to possess firearms. If the order restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed from the central state mental health registry and the superintendent or administrator shall forthwith inform the Federal Bureau of Investigation, the United States Attorney General, or other federal entity operating the National Instant Criminal Background Check System of the court action.

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CHAPTER 179

(Com. Sub. for S. B. 650 - By Senator Nelson)

[Passed March 5, 2022; in effect 90 days from passage]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §37B-1-4 of the Code of West Virginia, 1931, as amended, relating generally to altering the applicability of the Cotenancy Modernization and Majority Protection Act; eliminating the pre-condition for applicability of the act which requires seven or more royalty owners; and correcting internal citations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. MINERAL DEVELOPMENT BY A MAJORITY OF COTENANTS.

§37B-1-4. Lawful use and development by cotenants; election of interests; reporting and remitting of interests of unknown or unlocatable cotenants; establishment of terms and provisions for development; and merging of surface and oil and gas.

(a) If an operator or owner makes or has made reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and royalty owners vested with at least three fourths of the right to develop, operate, and produce oil, natural gas, or their constituents consent to the lawful use or development of the oil or natural gas mineral property, the operator's or owner's use or development of the oil or natural gas mineral property is permissible, is not waste, and is not trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors, or assigns are not liable for damages for waste or trespass due to the lawful use or development and shall pay the

nonconsenting cotenants in accordance with subsections (b), (c), and (e) of this section, reserve the amounts specified in subsection (d) and (e) of this section for the benefit of unknown or unlocatable interest owners, and report and remit the reserved interests as provided in subsection (d) of this section.

(b) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

(1) A pro rata share of production royalty, paid on the gross proceeds received at the first point of sale to an unaffiliated third-party purchaser and free of post-production expenses, equal to the highest royalty percentage paid to his or her consenting cotenants in the same mineral property, under a bona fide, arms-length lease transaction and lease bonus and delay rental payments or other non-royalty mineral payments, calculated on a weighted-average net mineral acre basis; or

(2) To participate in the development and receive his or her pro rata share of the revenue and cost equal to his or her share of production attributable to the tract or tracts being developed according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding royalty reserved in any lease, assignments thereof, or agreements relating thereto, after the market value of such nonconsenting cotenant's share of production, exclusive of such royalty and overriding royalty, equals double the share of such costs payable or charged to the interest of such nonconsenting cotenant.

(c) A nonconsenting cotenant shall have 45 days following the operator's written delivery of its best and final lease offer in which to make his or her election for either a production royalty or a revenue share as specified in subsection (b) of this section. If the nonconsenting cotenant fails to deliver a written election to the operator prior to the expiration of the 45-day period, he or she shall be deemed to have made the election set forth in subdivision (1), subsection (b) of this section. Within 30 days after a nonconsenting cotenant has chosen or is deemed to have chosen the production royalty option, the nonconsenting cotenant shall have the right to appeal to the commission regarding the issue of whether there has

been compliance with subdivision (1) of subsection (b) of this section, to verify the highest royalty paid in the same mineral property and the value for the lease bonus and delay rental payments: *Provided*, That the operations upon the parcel may continue during the proceedings.

(d) Unknown or unlocatable interest owners are deemed to have made the election provided by subdivision (1), subsection (b) of this section and are only entitled to receive the amount provided by that subdivision. Within 120 days from the date upon which an amount is reserved for an unknown or unlocatable interest owner pursuant to subsection (a) of this section, the consenting cotenants and their lessees, operators, agents, contractors, or assigns shall make a report to the State Treasurer as the unclaimed property administrator and each calendar quarter, thereafter, concerning each reserved interest for each unknown or unlocatable interest owner and shall concurrently remit the amount reserved, in accordance with the provisions of §37B-2-1 *et seq.* and §36-8-1 *et seq.* of this code and as determined by the State Treasurer. The quarterly report and remittances shall be submitted by the first day of the month following each calendar quarter.

(e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting cotenant and any unknown or unlocatable interest owner who elects or is deemed to elect a production royalty under subdivision (1), subsection (b) of this section is subject to and shall benefit from the other terms and provisions defined by the lease executed by a consenting cotenant which contains terms and provisions most favorable to the nonconsenting cotenant or the unknown or unlocatable interest owner: *Provided*, That nonconsenting cotenants and unknown or unlocatable interest owners shall not be subject to or liable under any warranty of title, jurisdictional or choice of law provisions, arbitration provisions, injection well provisions, disposal well provisions, and storage provisions: *Provided, however*, That consenting cotenants and their lessees, operators, agents, contractors, or assigns shall only develop the specifically targeted stratigraphic formation and 100 feet above and below said formation; nonconsenting cotenants and unknown or unlocatable interest owners will retain all rights to all other formations unless

or until reasonable efforts are made to renegotiate under this section for each additional formation. If a consenting cotenant has made a lease only for the targeted formation, in that case the nonconsenting cotenants and unknown and unlocatable cotenants shall receive the highest royalty, bonus, and delay rental in the lease which was executed for the targeted formation.

(f) Unless otherwise agreed to in writing or defined by this section, a nonconsenting cotenant who elects to participate under subdivision (2), subsection (b) of this section, shall be subject to and shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission in a manner similar to the provisions of §22C-9-7(b)(5)(B) of this code governing deep wells. The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and make effective the provisions of this section and the powers and authority conferred and the duties imposed upon the commission under the provisions of this section. Notwithstanding the determination of participation terms by the commission, an operator may proceed with the development of oil, natural gas, or their constituents pursuant to this section.

(g) After seven years from the date of the first report to the treasurer, a bona fide surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract. To the extent relevant and practical, such action shall follow the provisions of §55-12A-1 *et seq.* of this code. Upon presentation of sufficient proof, a bona fide surface owner shall be entitled to receive a special commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface tract. The surface owner shall only be entitled to their proportionate share of all future proceeds and is not entitled to any of the accrued funds which have been remitted to the treasurer prior to the execution of the special commissioner's deed. The unknown or unlocatable interest owners are not entitled to any amounts paid to the grantees of the special commissioner's deed after delivery of said deed.

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CHAPTER 180

**(S. B. 714 - By Senators Smith, Phillips, Brown, Caputo,
Clements, Hamilton, Jeffries, Nelson, Romano, Swope, and
Sypolt)**

[Passed March 11, 2022; in effect from passage.]

AN ACT to amend and reenact §22A-6-7 of the Code of West Virginia, 1931, as amended, relating to tie votes by the Coal Mine Safety and Technical Review Committee; and providing that the Director of the Office of Miners' Health, Safety, and Training or his or her designee may vote to break the tie.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the Board of Coal Mine Health and Safety.

(a) The State Coal Mine Safety and Technical Review Committee is continued, and commencing July 1, 2010, is a separate independent committee within the Department of Commerce. The purposes of this committee are to:

(1) Assist the Board of Coal Mine Health and Safety in the development of technical data relating to mine safety issues, including related mining technology;

(2) Provide suggestions and technical data to the board and propose rules with general mining industry application;

(3) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific rulemaking pertaining to individual mines and make recommendations to the board concerning such rulemaking; and

(4) Provide a forum for the resolution of technical issues encountered by the board, safety education, and coal advocacy programs.

(b) The committee shall consist of two members who shall be residents of this state and who shall be appointed as hereinafter specified in this section:

(1) The Governor shall appoint one member to represent the viewpoint of the coal operators in this state from a list containing one or more nominees submitted by the major trade association representing coal operators in this state within 30 days of submission of such nominee or nominees.

(2) The Governor shall appoint one member to represent the viewpoint of the working miners of this state from a list containing one or more nominees submitted by the highest ranking official within the major employee organization representing coal mines within this state within 30 days of submission of the nominee or the nominees.

(3) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection shall be initially appointed to serve a term of three years. The members serving on the effective date of this article may continue to serve until their terms expire.

(4) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection may be, but are not required to be, members of the Board of Coal Mine Health and Safety, and shall be compensated on a per diem basis in the same amount as provided in §22A-6-10 of this code, plus all reasonable expenses.

(c) The committee shall meet at least once during each calendar month, or more often as may be necessary.

(d) A quorum of the committee shall require both members and the committee may only act officially by a quorum.

(e) The committee may review any matter relative to mine safety and mining technology and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: *Provided*, That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f) (1) Upon application of a coal mine operator, or on its own motion, the committee shall have the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee shall have authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee may investigate the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the committee shall

provide the results of its investigation to the Board of Coal Mine Health and Safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.

(3) Within 30 days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

(g) The board shall consider all rules proposed by the Coal Mine Safety and Technical Review Committee and adopt or reject, without modification, except as approved by the committee, such rules, dispensing with the preliminary procedures set forth in §22A-6-5(a)(1) through §22A-6-5(a)(7) of this code; and, in addition, with respect to site-specific rules also dispensing with the procedures set forth in §22A-6-4(c)(4) through §22A-6-4(c)(8) of this code.

(h) In performing its functions, the committee shall have access to the services of the coal mine Health and Safety Administrator appointed under §22A-6-6 of this code. The director shall make clerical support and assistance available in order that the committee may carry out its duties. Upon the request of both members of the committee, the Health and Safety Administrator shall draft proposed rules and reports or make investigations.

(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the Board of Coal Mine Health and Safety to act in accordance with §22A-6-1 through §22A-6-6 and §22A-6-8 through §22A-6-10 of this code.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners' Health, Safety, and Training.

(k) Notwithstanding any provision of this section or code to the contrary, if an issue to be decided by the committee ends in a tie vote of the committee members, the Director of the Office of Miners' Health, Safety, and Training, or his or her designee, may vote to break the tie.

CHAPTER 181

(Com. Sub. for S. B. 505 - By Senators Azinger and Nelson)

[Passed March 9, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §32A-2-1, §32A-2-2, §32A-2-3, §32A-2-4, §32A-2-8, §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-24, and §32A-2-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding two new sections thereto, designated §32A-2-8a and §32A-2-8b, all relating to the licensure and regulation of money transmitters; updating definitions; eliminating outdated provisions; clarifying the financial institution exemption; permitting the Commissioner of Financial Institutions to participate in the multistate licensing and examination process and to conduct examinations; updating net worth requirements to use a sliding scale; providing information requirements for a change in control and updating the change in control process; specifying requirements for individuals in control of a licensee or applicant; requiring permissible investments to match outstanding obligations; and updating the due process procedure to eliminate the two-step process for revocations and suspensions while preserving the order and hearing requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

(a) “Acting in concert” means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(b) “Average daily money transmission liability” means the amount of the licensee’s outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability, the given period of time shall be the quarters ending March 31, June 30, September 30, and December 31.

(c) “Check” means any check, traveler’s check, draft, money order, or other instrument for the transmission or payment of money whether or not the instrument is negotiable. “Check” does not include a credit card voucher or a letter of credit.

(d) “Closed loop stored value” means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(e) “Commissioner” means the Commissioner of Financial Institutions of this state.

(f) “Control” means:

(1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting interests of a licensee or person in control of a licensee;

(B) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable presumption of control:

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(B) A person presumed to exercise a controlling influence as defined in this section can rebut the presumption of control if the person is a passive investor.

(3) For the purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares such person's home.

(g) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but it does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: *Provided*, That they are not reportable as currency exchange transactions under federal laws and regulations.

(h) "Currency exchange, transportation, transmission business" means a person who is engaging in currency exchange, currency transportation, or currency transmission as a service or for profit.

(i) "Currency transmission" or "money transmission" means (1) engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency; or (2) payment of money or other value that substitutes for money by wire, facsimile, or other electronic means, or through the use of a

financial institution, financial intermediary, the Federal Reserve system, or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products' cards which are intended for general acceptance and used in commercial or consumer transactions. It also includes payroll processing services. It does not include the provision solely of online or telecommunications services or network access.

(j) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(k) "Key individual" or "principal" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(l) "Licensee" means a person licensed by the commissioner under this article.

(m) "Money" or "currency" means a medium of exchange that is authorized or adopted by the United States or a foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(n) "Money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether the instrument is signed by the seller, the purchaser, remitter, or some other person.

(o) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(p) “Nationwide Multistate Licensing System and Registry” or “NMLS” means the system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the financial services industries.

(q) “Outstanding money transmission obligations” shall mean:

(1) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee or escheated in accordance with applicable unclaimed property laws; or

(2) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable unclaimed property laws.

(3) For purposes of this subsection, “in the United States” shall include, to the extent applicable, a person in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a United States military installation that is located in a foreign country.

(r) “Passive investor” means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have the power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(4) Either:

(A) Attests to subdivisions (1), (2), and (3) of this subsection in a form prescribed by the commissioner or

(B) Commits to the passivity characteristics of subdivisions (1), (2), and (3) of this subsection in a written document.

(s) “Payment instrument” means a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission of payment of money or monetary value, whether or not negotiable and does not include stored value or any instrument that: (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value, or (2) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(t) “Payroll processing services” means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, making payment of payroll taxes to state and federal agencies, making payments relating to employee benefit plans, or making distributions of other authorized deductions from wages and salaries: *Provided*, That it does not include an employer performing payroll processing services on its own behalf or on behalf of an affiliate or a professional employment organization subject to regulation under other applicable state law.

(u) “Person” means any individual, partnership, association, joint stock association, limited liability company, trust, or corporation.

(v) “Stored value” means monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The

term includes, but is not limited to, “prepaid access” as defined by 31 C.F.R. § 1010.100, as amended or recodified from time to time. Notwithstanding the foregoing, the term “stored value” does not include a payment instrument, closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(w) “Tangible net worth” means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

§32A-2-2. License required.

Except as provided by §32A-2-3 of this code, a person may not engage in the business of currency exchange, transportation, or transmission in this state without a license issued under this article. For purposes of this article, a person is considered to be engaging in those businesses in this state if he or she makes available, from a location inside or outside this state, an Internet website West Virginia citizens may access in order to enter into those transactions by electronic means.

§32A-2-3. Exemptions.

(a) The following are exempt from the provisions of this article:

(1) Banks, trust companies, foreign bank agencies, credit unions, savings banks, and savings and loan associations authorized to do business in the state and which qualify as federally insured depository institutions, whether organized under the laws of this state, any other state, or the United States;

(2) The United States and any department or agency of the United States;

(3) The United States Postal Service;

(4) This state and any political subdivision of this state;

(5) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality of the United States, or any state or any political subdivisions of a state;

(6) Persons engaged solely in the business of currency transportation who operate an armored car service in this state pursuant to licensure under §30-18-1 *et seq.* of this code: *Provided*, That the net worth of the licensee exceeds \$5 million. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency, or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons seeking an exemption under this subdivision are not exempt from the provisions of this article if they also engage in currency exchange or currency transmission;

(7) Persons engaged in the business of currency transportation whose activities are limited exclusively to providing services to federally insured depository institutions, or to any federal, state, or local governmental entities;

(8) Persons engaged solely in the business of removing currency from vending machines providing goods or services if the machines are not used for gambling purposes or to convey any gambling ticket, token, or other device used in a game of chance;

(9) The State Regulatory Registry, LLC, which administers the Nationwide Multistate Licensing System and Registry on behalf of states and federal banking regulators;

(10) The North American Securities Administrators Association and any subsidiaries, which administer the Electronic Filing Depository system on behalf of state securities regulators; and

(11)(A) Persons operating a payment system that provides processing, clearing, or settlement services between or among persons who are all excluded by this section in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers;

(B) Contracted service providers of an entity set forth in §32A-2-3(a)(1) of this code that provide processing, clearing, or settlement services in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers; or

(C) Persons facilitating payment for goods or services (not including currency transmission or money transmission itself) pursuant to a contract with the payee and either payment to the person or persons facilitating the payment processing satisfies the payor's obligation to the payee or that obligation is extinguished.

(b) Any person who holds and maintains a valid license under this article may engage in the business of money transmission or currency exchange at one or more locations through or by means of an authorized delegate or delegates as set forth in §32A-2-27 of this code, as the licensee may designate and appoint from time to time. No such authorized delegate is required to obtain a separate license under this article, but the use of sub-delegates is prohibited, and the authorized delegate may only conduct business on behalf of its licensee.

(c) The issuance and sale of closed loop stored value cards or similar prepaid products which are intended to purchase items only from the issuer or seller of the closed loop stored value card is exempt from the provisions of this article.

(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of §30-18-1 *et seq.* of this code.

§32A-2-4. License application, issuance, and renewal.

(a) An applicant for a license shall submit an application to the commissioner on a form prescribed by the commissioner. The

commissioner may direct an applicant to file a license application through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

(b) Each application shall be accompanied by a nonrefundable application fee and a license fee. If the application is approved, the application fee is the license fee for the first year of licensure.

(c) The commissioner shall issue a license if the commissioner finds that the applicant meets the requirements of this article and the rules adopted under this article. The commissioner shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, unless the commissioner extends the period for good cause. All licenses issued under this article expire on December 31 of the year issued, unless sooner suspended or revoked, and are subject to renewal for the following year.

(d) The licensee at each office it owns and operates in West Virginia shall prominently display, or maintain available for inspection, a copy of the license authorizing the conduct of a currency exchange business if the location offers and provides such services. Where the currency exchange business is conducted through a licensee's authorized delegates in this state, each authorized delegate location offering such services shall maintain available for inspection proof of their appointment by the licensee to conduct such business.

(e) As a condition for renewal of a license, the licensee must submit to the commissioner an application for renewal on a form prescribed by the commissioner and an annual license renewal fee. The commissioner may direct an applicant to file a license renewal application through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

(f) A license issued under this article may not be transferred or assigned.

(g) An applicant for a license who is not located in this state shall file an irrevocable consent, duly acknowledged, that suits and

actions may be commenced against the applicant in the courts of this state by service of process upon a person located within the state designated to accept service, or by service upon the Secretary of State, as well as by service as set forth in this chapter.

(h) The commissioner is authorized to participate in the multistate supervisory process, including any multistate investigatory, examination, and licensing process, established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof, for all licensees that hold licenses in this state and other states.

§32A-2-8. Qualifications for license or renewal of license.

(a) The commissioner may issue a license to an applicant only upon first determining that the financial condition, business experience, and character and general fitness of an applicant are such that the issuance of the license is in the public interest: *Provided*, That the commissioner shall apply §32A-2-8(f) and §32A-2-8(g) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(b) An applicant for a license shall agree in writing to comply with the currency reporting and record-keeping requirements of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R. Chapter X and any other relevant federal law.

(c) A person is not eligible for a license or shall surrender an existing license if, during the previous five years:

(1) The person or a principal of the person, of a business:

(A) Has been convicted of a felony or a crime involving fraud or deceit under the laws of this state, any other state, or the United States;

(B) Has been convicted of a crime under the laws of another country that involves fraud or deceit or would be a felony if committed in the United States; or

(C) Has been convicted under a state or federal law relating to currency exchange or transmission or any state or federal monetary instrument reporting requirement; or

(2) The person, a principal of the person, or the spouse of the person or a principal of the person has been convicted of an offense under a state or federal law relating to drug trafficking, money laundering, or a reporting requirement of the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*, as amended.

(d) The commissioner will review the application to determine whether the applicant:

(1) Has recklessly failed to file or evaded the obligation to file a currency transaction report as required by 31 U.S.C. §5313 during the previous three years;

(2) Has recklessly accepted currency for exchange, transport, or transmission during the previous three years in which a portion of the currency was derived from an illegal transaction or activity;

(3) Will conduct its authorized business within the bounds of state and federal law, including, but not limited to, §31D-15-1501 of this code;

(4) Warrants the trust of the community;

(5) Has and will maintain at all times a minimum tangible net worth of the greater of \$100,000 or three percent of total assets for the first \$100 million, two percent of additional assets for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion, computed according to United States generally accepted accounting principles as shown by the most recent audited financial statement filed with and satisfactory to the commissioner, except that an applicant for a license or renewal of a license may not be required by this article to maintain a tangible net worth of more than \$1 million, computed according to generally accepted accounting principles; and

(6) Does not owe delinquent taxes, fines, or fees to any local or state taxing authority or governmental agency, department, or other political subdivision of this state.

(e) A person is not eligible for a license, and a person who holds a license shall surrender the license to the commissioner, if the person or a principal of the person has at any time been convicted of:

(1) A felony involving the laundering of money that is the product of or proceeds from criminal activity under chapter 61 of this code, or a similar provision of the laws of another state or the United States; or

(2) A felony violation of 31 U.S.C. §5313 or 5324, or a rule adopted under those sections.

(f) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(g) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(h) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

(i) Before approving an application for a license of an applicant who has less than one year's experience in the proposed business governed by this article as a regulated entity in another state, or whose license has been suspended or revoked by another state, the commissioner may, in his or her discretion, conduct an on-site investigation of an applicant at the sole expense of the applicant and may require the applicant to pay a nonrefundable payment of the anticipated expenses for conducting the investigation. Failure to make the payment or cooperate with the investigation is grounds for denying the application.

§32A-2-8a. Information requirements for certain individuals and change in control.

(a) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last 10 years;

(2) Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:

(A) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case this requirement shall be waived;

(B) Information related to any criminal convictions or pending charges; and

(C) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(b) If the individual has resided outside of the United States at any time in the last 10 years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) Not be affiliated with or have an interest with the individual it is researching.

(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:

(A) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm

to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(B) Criminal records information for the past 10 years, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(C) Employment history;

(D) Media history, including an electronic search of national and local publications, wire services, and business applications; and

(E) Financial services-related regulatory history, including, but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

(c) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(d) A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed by the commissioner.

(e) Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner without using NMLS.

(f) The application required by this section shall include information required for any new key individuals that have not previously completed the requirements for a licensee.

(g) When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application shall be considered complete and:

(1) The commissioner shall approve or deny the application within 90 days after the completion date; or

(2) If the application is not approved or denied within 90 days after the completion date, the application is deemed approved, and the person, or group of persons acting in concert, are not prohibited from acquiring control.

(3) The commissioner may extend the application period for good cause.

(h) A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(i) When an application is filed and considered complete, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions for the change in control have been fulfilled:

(1) The requirements of subsections (d) and (f) of this section have been met, as applicable; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control, and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in

the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner is authorized to accept the investigation results of a lead investigative state if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If the division is a lead investigative state, the commissioner is authorized to investigate the applicant and the time frames established by agreement through the multistate licensing process.

(k) The commissioner shall issue a formal written notice of the denial of an application to acquire control within 30 days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied under this section may appeal the denial using the procedures set forth in §32A-2-6 of this code.

(l) The requirements of subsections (c) and (d) of this section do not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;

(4) A person that is otherwise exempt under this article;

(5) A person that the commissioner determines is not subject to subsection (c) of this section based on the public interest;

(6) A public offering of securities of a licensee or a person in control of a licensee; or

(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section in cooperation with the licensee shall notify the commissioner within 15 days after the acquisition of control.

(n) Streamlined acquisition of control:

(1) The requirements of subsections (c) and (d) of this section do not apply to a person that has complied with and received approval to engage in money transmission under this article or was identified as a person in control in a prior application filed with and approved by the commissioner or by an MSB accredited state pursuant to a multistate licensing process, *Provided, That*:

(A) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(B) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by an MSB accredited state if such rating was given;

(C) The licensee to be acquired is projected to meet the requirements of net worth, surety bond, and permissible investments after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of net worth, surety bond, and permissible investments after the acquisition of control is completed;

(D) The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(E) The person provides notice of the acquisition in cooperation with the licensee and attests to the requirements in this subsection in a form and in a medium prescribed by the commissioner.

(2) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice is deemed approved.

(o) Before filing an application for approval to acquire control of a licensee, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of this section.

§32A-2-8b. Permissible Investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.

(b) Except for the permissible investments that are set forth in subsection (e) of this section, the commissioner, with respect to any licensee, may limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of the investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the

purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) Upon the establishment of a statutory trust in accordance with subsection (c) of this section or when any funds are drawn on a letter of credit pursuant to subdivision (4) of subsection (e) of this section, the Commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established hereunder shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) Types of permissible investments are as follows:

(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents;

(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount;

(5) One hundred percent of the surety bond provided pursuant to §32A-2-10 of this code that exceeds the average daily money transmission liability in this state; and

(6) Any other permissible investments determined by the commissioner to be acceptable. Permissible investments pursuant to this subdivision shall be published on the commissioner's website and updated at least annually. Licensees may propose that the commissioner place certain investments on the list of permissible investments at the commissioner's discretion.

§32A-2-10. Bond.

(a) A person who is licensed under this article shall post a bond with a qualified surety company doing business in this state that is acceptable to the commissioner. The bond shall be in the amount of \$100,000 for a licensee which issues or sells checks or money orders, or which engages in currency exchange; or \$300,000 for a licensee which engages in receiving money for transmission by wire, facsimile, or electronic transfer, or which engages in currency transportation. A licensee which engages in multiple types of these

activities shall post the higher amount. A merchant obtaining a license solely to engage in the check cashing business not incidental to the main business of the merchant as required by §32A-3-1 *et seq.* of this code shall post a bond of \$100,000. The bond required by this subsection shall be increased at the time of license renewal by one percent of the annual volume of business the licensee conducts in this state exceeding \$10 million rounded to the nearest thousand, as reported by the licensee: *Provided*, That in no event shall the bond exceed \$1 million.

(b) No cash deposit or pledge of cash equivalent in instruments or securities may be accepted in lieu of the bond required by subsection (a) of this section.

(c) A bond posted by a licensee shall be conditioned upon compliance with the provisions of this article and any rules thereunder for as long as the person holds the license. The deposit or bond, as the case may be, shall be made to the State of West Virginia for the benefit and protection of any claimant against the applicant or licensee with respect to the receipt, handling, transmission, and payment of money by the licensee or authorized delegate in connection with the licensed operations in this state. A claimant damaged by a breach of the conditions of the bond or deposit shall, upon the assent of the commissioner, have a right of action against the bond or deposit for damages suffered thereby and may bring suit directly thereon, or the commissioner may bring suit on behalf of the claimant. The aggregate liability of the surety in no event shall exceed the principal sum of the bond.

(d) A penalty fee under §32A-2-5(a)(5) of this code, expenses under §32A-2-11 of this code, or a civil penalty under §32A-2-19 of this code may be paid out of and collected from the proceeds of a bond under this section.

(e) After receiving a license, the licensee shall maintain the required bond until five years after it ceases to do business in this state unless all outstanding transactions are cleared or covered by the provisions of §36-8-1 *et seq.* of this code pertaining to the distribution of unclaimed property which have become operative and are adhered to by the licensee. Notwithstanding this provision,

however, the commissioner may permit the bond to be reduced following cessation of business in the state to the extent the amount of the licensee's checks/payment instruments outstanding in this state are reduced.

(f) If the commissioner at any time reasonably determines that the required bond or deposit is insecure, deficient in amount, or exhausted, in whole or in part, he or she may in writing require the filing of a new or supplemental bond in order to secure compliance with this article and may demand compliance with the requirement within 30 days following service on the licensee. The total amount of the bonds required of the licensee may not, however, exceed the \$1 million set forth in subsection (a) of this section.

§32A-2-11. Examination and fraudulently structured transactions.

(a) Each licensee is subject to a periodic examination of the licensee's business records by the commissioner at the expense of the licensee. For the purpose of carrying out this article, the commissioner may examine all books, records, papers, or other objects that the commissioner determines are necessary for conducting a complete examination and may also examine under oath any person associated with the license holder, including an officer, director, or employee of the licensee or authorized delegate. Unless it will interfere with the commissioner's duties under this article, reasonable notice shall be given to the licensee and any authorized delegate before any on-site examination visit. If a person required by the commissioner to submit to an examination refuses to permit the examination or to answer any question authorized by this article, the commissioner may suspend the person's license until the examination is completed.

(b) The licensee shall bear the reasonable and necessary per diem and travel expense cost of any on-site examination made pursuant to this section.

(c) A person, for the purpose of evading a reporting or record-keeping requirement of 31 U.S.C. §5313, or 31 C.F.R. Chapter X,

or by this article, or a rule authorized under this article, may not with respect to a transaction with a licensee:

(1) Cause or attempt to cause the licensee to:

(A) Not maintain a record or file a report required by a law listed by this subsection; or

(B) Maintain a record or file a report required by a law listed by this subsection that contains a material omission or misstatement of fact; or

(2) Fraudulently structure the transaction.

(d) For the purposes of this article, a person fraudulently structures a transaction if the person conducts or attempts to conduct a transaction in any amount of currency with a licensee in a manner having the purpose of evading a recordkeeping or reporting requirement of this article, or of a law, or rule listed by subsection (c) of this section, including the division of a single amount of currency into smaller amounts or the conduct of a transaction or series of transactions in amounts equal to or less than the reporting or record-keeping threshold of a law, or rule listed by subsection (c) of this section.

(e) A transaction is not required to exceed a recordkeeping or reporting threshold of a single licensee on a single day to be a fraudulently structured transaction.

(f) The commissioner may conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government and may accept the examination report of another state agency or an agency of another state or of the federal government.

§32A-2-13. Notification requirements.

(a) A licensee shall notify the commissioner of any change in its principal place of business, or its headquarters office if different from its principal place of business, within 15 days after the date of the change.

(b) A licensee shall notify the commissioner of any of the following significant developments within 15 days after gaining actual notice of its occurrence:

(1) The filing of bankruptcy or for reorganization under the bankruptcy laws;

(2) The institution of any enforcement action including, but not limited to, a license revocation or suspension against the licensee by any other state or federal regulator;

(3) A felony indictment related to money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the licensee's or authorized delegate's officers, directors, or principals;

(4) A felony conviction or plea related to the money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the licensee's or authorized delegate's officers, directors, or principals; and

(5) Any change in its business activities.

(c) A licensee shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of a licensee at least 60 days prior to the announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.

(d) The commissioner may direct that the reports required by this section and any other reports, data, or information deemed necessary by the commissioner be filed directly with the Division

of Financial Institutions on a date to be determined by the commissioner or through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

§32A-2-24. Confidential information.

(a) Reports of investigation and examination, together with related documents and financial information not normally available to the public that is submitted in confidence by a person regulated under this article, including, but not limited to, that person's evaluation of the expected outcome of pending litigation, are confidential and may not be disclosed to the public by the commissioner or employees of the Division of Financial Institutions, and are not subject to the state's freedom of information act. The commissioner may release information if:

(1) The commissioner finds that immediate and irreparable harm is threatened to the licensee's customers or potential customers or the general public;

(2) The licensee consents before the release;

(3) The commissioner finds that release of the information is required in connection with a hearing under this article, in which event information may be related to the parties of that hearing; or

(4) The commissioner finds that the release is reasonably necessary for the protection of the public and in the interest of justice, in which event information may be distributed to representatives of an agency, department, or instrumentality of this state, any other state, or the federal government.

(b) Nothing in this section prevents release to the public of any list of licensees or aggregated financial data for the licensees, prevents disclosure of information the presiding officer considers relevant to the proper adjudication or administration of justice at public administrative or judicial hearings, or prevents disclosure of information relevant to supporting the issuance of any administrative or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

(a) A license may not be revoked or suspended except after notice and opportunity for hearing on that action. The commissioner may issue to a person licensed under this article an order to revoke a license or to suspend a license for a period not in excess of six months. The order shall provide notice of opportunity for a hearing, inform that any request for hearing must be filed within 30 days of service of a copy of the order revoking or suspending the license, and set forth how the recipient may request such a hearing. The hearing shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of this code. The commissioner may appoint a hearing examiner to preside at the hearing and make a recommended decision. The commissioner may revoke or suspend the license if he or she finds that:

(1) The licensee has knowingly or repeatedly violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(2) The licensee has failed to remit its required renewal fees;

(3) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made;

(4) The licensee does not have available the net worth required by §32A-2-8 of this code, and after 10 days' written notice from the commissioner, fails to take steps that the commissioner determines are necessary to remedy the deficiency; or

(5) The licensee has failed or refused to keep the bond or other security required by §32A-2-10 of this code in full force and effect.

(b) No revocation or suspension of a license under this article is lawful unless prior notice is given to the licensee of the facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the commissioner finds that probable cause for revocation of a license exists and that enforcement of this article to prevent imminent harm to public welfare requires immediate suspension of the license pending investigation, the commissioner may, after a hearing upon five days' written notice, enter an order suspending the license for not more than 30 days.

(d) Nothing in this section limits the authority of the commissioner to take action against a licensee or person under other sections of this article.

(e) Whenever the commissioner revokes or suspends a license, an order to that effect shall be entered and the commissioner shall forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order the commissioner shall mail by registered or certified mail, or shall provide for personal delivery to the licensee, a copy of the order and the findings supporting the order.

(f) Any person holding a license under this article may relinquish the license by notifying the commissioner in writing of its relinquishment, but any relinquishment does not affect a person's liability for acts previously committed.

(g) No revocation, suspension, or relinquishment of a license impairs or affects the obligation of any preexisting lawful contract between the licensee and any person.

(h) The commissioner may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.

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CHAPTER 182

**(Com. Sub. for H. B. 2177 - By Delegates Phillips, Hott,
McGeehan and Hansen)**

[Passed March 9, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §17B-2-1 of the Code of West Virginia, 1931, as amended, relating to identification cards without a photograph; authorizing the Division of Motor Vehicles to issue identification cards without a photograph; setting forth requirements for a form supplied by the division; and specifying requirements for applicants of an identification card without a photograph to obtain such a license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) (1) No person, except those hereinafter expressly exempted, may drive a motor vehicle upon a street or highway in this state or upon a subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by a county, municipality, or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law, or rule. Licenses shall be issued in different colors for those drivers under age 18, those drivers age 18 to 21, and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) The following drivers' licenses classifications are hereby established:

(1) A Class A, B, or C license shall be issued to those persons 18 years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter 17E of this code and the federal Motor Carrier Safety and Improvement Act of 1999 subsequent rules, and have paid the required fee.

(2) A Class D license shall be issued to those persons 18 years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter 17E of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term "chauffeur's license" is used in this code, it means the Class A, B, C, or D license described in this section or chapter 17E of this code or federal law or rule: *Provided*, That anyone not required to be licensed under the provisions of chapter 17E of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in §17A-10-1 of this code, with a gross vehicle weight rating of less than 8,001 pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to persons who have qualified for a driver's license under the provisions of this chapter and who are not required to obtain a Class A, B, C, or D license and who have paid the required fee. The Class E license may be

endorsed under §17B-2-7b of this code for motorcycle operation. The Class E or G license for a person under the age of 18 may also be endorsed with the appropriate graduated driver license level in accordance with §17B-2-3a of this code.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee but who do not possess a Class A, B, C, D, or E driver's license.

(5) A Class G driver's license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of §17B-2B-1 *et seq.* of this code.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, an organ donor, deaf or hard-of-hearing, as having any other handicap or disability, or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the United States, according to criteria established by the division, if the licensee requests this information on the license. An honorably discharged veteran may be issued a replacement license without charge if the request is made before the expiration date of the current license and the only purpose for receiving the replacement license is to get the veterans designation placed on the license.

(e) No person, except those hereinafter expressly exempted, may drive a motorcycle on a street or highway in this state or on a subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under §17A-2-17b of this code for motorcycle operation, or a valid motorcycle instruction permit.

(f) (1) An identification card may be issued to a person who:

(A) Is a resident of this state in accordance with §17A-3-1a of this code;

(B) Has reached the age of two years or, for good cause shown, under the age of two;

(C) Has paid the required fee of \$5 per year. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year: *Provided, however*, That no fees or charges, including renewal fees, are required if the applicant:

(i) Is 65 years or older;

(ii) Is legally blind; or

(iii) Will be at least 18 years of age at the next general, municipal, or special election and intends to use this identification card as a form of identification for voting; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form supplied by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of 16. The division may issue an identification card without a photograph pursuant to subdivision (4) of this subsection. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her 21st birthday expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her 21st birthday expires 30 days after the licensee's 21st birthday.

(C) Every identification card issued to persons under the age of 16 shall be issued for a period of two years and expire on the last day of the month in which the applicant's birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended, or revoked under the provisions of this code.

(4) Notwithstanding the provisions of this article to the contrary, the division may issue an identification card without a photograph to an applicant who under oath or affirmation affirms, subject to the laws of perjury and on a form supplied by the division, that the applicant is a member of a recognized religious sect that has established tenets and teachings due to which the applicant is conscientiously opposed to posing for a photograph. The form supplied by the division pursuant to this subdivision shall advise the applicant that an identification card without a photograph may not be acceptable for all identification purposes.

(g) For any person over the age of 50 years who wishes to obtain a driver's license or identification card under the provisions of this section:

(1) A raised seal or stamp on the birth certificate or certified copy of the birth certificate is not required if the issuing jurisdiction does not require one; and

(2) If documents are lacking to prove all changes of name in the history of any such applicant, applicants renewing a driver's license or identification card under the provisions of this section may complete a Name Variance Approval Document as instituted by the division, so long as they can provide:

(A) Proof of identity;

(B) Proof of residency; and

(C) A valid Social Security number.

(3) The division may waive any documents necessary to prove a match between names, so long as the division determines the person is not attempting to:

(A) Change his or her identity;

(B) Assume another person's identity; or

(C) Commit fraud.

(h) A person over the age of 70 years, or who is on Social Security Disability, who wishes to obtain or renew a driver's license or identification card under the provisions of this section, may not be required to supply a copy of a birth certificate if they can provide:

(1) Proof of identity;

(2) Proof of residency;

(3) A valid Social Security number; and

(4) One of the following identifying items:

(A) A form of military identification, including a DD214 or equivalent;

(B) A U.S. passport, whether valid or expired;

(C) School records, including a yearbook;

(D) A religious document, that in the judgment of the division is sufficient and authentic to reflect that the person was born in the United States; or

(E) An expired driver's license, employment identification card, or other reliable identification card with a recognizable photograph of the person.

(i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not

more than \$500 and, upon a second or subsequent conviction, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.

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CHAPTER 183

**(Com. Sub. for H. B. 2733 - By Delegates Longanacre,
Wamsley, Nestor, Mandt, Dean, Phillips, Conley, Mallow,
Forsht, Ferrell, and Hamrick)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to authorizing special registration plates and establishing fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer, or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: *Provided*, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with the number two.

(c) The division may not issue, permit to be issued, or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture, and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: *Provided*, That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office.

Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of \$15 for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the Army National Guard or Air National Guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the National Guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state's Army or Air National Guard, or retired members of any reserve unit of the United States armed forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.

(C) A surviving spouse may continue to use his or her deceased spouse's National Guard forces license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-1-1 *et seq.* of this code regarding the orderly distribution of the plates: *Provided*, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through 2,000.

(C) An annual fee of \$15 shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse's disabled veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Purple Heart medal license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in

addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of \$15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organization's logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire

Marshal's assistants, the State Fire Administrator, and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and

licensure of motor vehicles, and payment of all required fees. The firefighter certification department, section, or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subdivision.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words "Wild Wonderful" as a slogan.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps League members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps League member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this

section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged Marine Corps League license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries, or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia

wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of \$15 for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of \$15, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle, as defined in §17A-10-3a of this code, a special registration plate designed by the commissioner. An annual fee of \$15, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of \$25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of the Division of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal special registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War, or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with

an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans' registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant's fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.

(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase, or expression which evokes patriotic pride or recognition. The division shall also issue registration plates with the words “In God We Trust”:

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of the Division of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the license plates designated by this subdivision.

(24) Special license plates bearing the American flag and the logo “9/11/01”:

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement

and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands, and health, as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state's elementary and secondary schools and in the state's institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any

number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Nemesis Shrine to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received the U.S. Army Combat Infantryman Badge, Combat Action Badge, or Combat Medical Badge; the U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard Combat Action Ribbon; or the U.S. Air Force Combat Action Medal as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received the U.S. Army Combat Infantryman Badge, Combat Action Badge, or Combat Medical Badge; the U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard Combat Action Ribbon; or the U.S. Air Force Combat Action Medal.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Knights of Columbus to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2007.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any

number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of \$25 shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least 100 completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the democratic executive committee to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans' special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$15, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(35) The division may issue special registration plates to members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as retired from the armed services of the United States.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's retired military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating

association with or support for Fairmont State University as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia, and the division may issue special beekeeper pollinator registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner. Upon appropriate application, the division shall issue a special registration plate displaying a pollinator species or advocating its protection as prescribed and designated by the commissioner.

(B) The division shall charge a special initial application fee of \$10 for each plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children's education-related

theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(41) The division may issue special registration plates to applicants supporting law-enforcement officers, to retired members of the West Virginia State Police, and to survivors of

wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words “Back the Blue”. Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of \$15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(C) Registration plates issued pursuant to this subdivision to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse’s special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(D) Upon appropriate application, the division may issue special registration plates designed by the commissioner for any number of vehicles titled in the name of the qualified applicant who offers sufficient proof of being a retired member of the West Virginia State Police. The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(42) The division may issue a special registration plate for persons who are Native-Americans and residents of this state:

(A) Upon appropriate application, the division shall issue to an applicant who is a Native-American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native-American.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(44) The division may issue special registration plates recognizing and honoring breast cancer survivors. The division may also issue special registration plates to support a cure for childhood cancer:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant. Upon appropriate application, the division may also issue a special registration plate designed by the commissioner to support a cure for childhood cancer, such plate to incorporate somewhere in the design the gold ribbon emblem with “WV Kids Cancer Crusaders” below or next to the emblem and “Cure Childhood Cancer” at the bottom of the plate, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(46) The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(48) The division may issue special registration plates supporting organ donation and adoption as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports, and honors organ and tissue donors and includes the words “Donate Life”, and the division may issue a special registration plate designed by the commissioner which supports and encourages adoption and includes the words “Choose Life”.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol, or insignia combined with the words “SHARE THE ROAD” designed to promote bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry, as well as other professions, as set forth in this subdivision as follows:

(A)(i) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority.

(ii) The division may issue registration plates with the words "Friends of Coal".

(iii) The division may issue special registration plates recognizing the occupation of linemen, showing appreciation for workers who construct and maintain utility lines, and depicting a scene or other apt reference to the occupation of linemen, whether in words or pictures, at the discretion of the commissioner.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts, and to present and former members of the Civil Air Patrol as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader, or in the Civil Air Patrol, as applicable. The special registration plates for the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with, or support for, the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being satisfied, the division may issue special registration plates for Class A and Class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision:

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:

(i) The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered, or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education, or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief, or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization's lettering, logo, image, or message to be placed on the registration plate, if created, may not be obscene, offensive, or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested, and the organization making the application, meet all the requirements set forth in this subdivision. The application shall also include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 persons and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of \$25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision if:

(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least 100 persons complete an application and deposit with the organization a check to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: *Provided, however*, That the provisions of this subdivision are not applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which membership or affiliation with a particular organization is not required until at least 250 registrants complete an application and deposit a fee with the division to cover the first year's basic registration fee, one-time design and manufacturing fee, and additional annual fee, if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration

of a special plate until at least two years have passed since the effective date of the original authorization.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: *Provided*, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability

insurance as required by §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers, and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production, and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement, and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(j) The division shall, upon request of a qualifying applicant, exempt one nonexempt military special registration plate per qualifying applicant from all registration fees. For purposes of this subsection:

(1) “Exempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, a special registration plate issued to one of the following:

(A) A disabled veteran pursuant to §17A-3-14(c)(6), §17A-10-8(4), or §17A-10-8(5) of this code;

(B) A recipient of the Purple Heart medal pursuant to §17A-3-14(c)(7) of this code;

(C) A survivor of the attack on Pearl Harbor pursuant to §17A-3-14(c)(8) of this code;

(D) A former prisoner of war pursuant to §17A-10-8(6) of this code; or

(E) A recipient of the Congressional Medal of Honor pursuant to §17A-10-8(7) of this code.

(2) “Nonexempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are not exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, special registration plate issued to one of the following:

(A) A member of the National Guard forces pursuant to §17A-3-14(c)(3) of this code;

(B) An honorably discharged veteran pursuant to §17A-3-14(c)(5) or §17A-3-14(c)(21) of this code;

(C) An honorably discharged Marine Corps League member pursuant to §17A-3-14(c)(13) of this code;

(D) A member of a military organization pursuant to §17A-3-14(c)(14) of this code;

(E) A recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-14(c)(20) of this code;

(F) A recipient of the Combat Infantry Badge or the Combat Medic Badge pursuant to §17A-3-14(c)(29) of this code;

(G) An honorably discharged female veteran pursuant to §17A-3-14(c)(33) of this code;

(H) A person retired from any branch of the armed services of the United States pursuant to §17A-3-14(c)(36) of this code; or

(I) A member of the 82nd Airborne Division Association pursuant to §17A-3-14(c)(40) of this code.

(3) “Qualifying applicant” means an applicant who qualifies for an exempt military special registration plate, and who also qualifies for a nonexempt military special registration plate, who requests that the division issue one such nonexempt military special registration plate instead of such exempt military special registration plate in order to have such nonexempt military special registration plate be exempt from the payment of registration fees.

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CHAPTER 184

(Com. Sub. for H. B. 4345 - By Delegates Linville, Young and Hamrick)

(By Request of the Division of Motor Vehicles)

[Passed March 7, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §17A-3-13 of the Code of West Virginia, 1931, as amended, relating to motor vehicle registration cards by establishing electronic or mobile registration cards; removing the requirement that physical registration cards be signed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-13. Registration card to be carried and exhibited on demand.

Every registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the division. Carrying and displaying an electronic or mobile registration card issued by the division satisfies the provisions of this section.

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CHAPTER 185

**(H. B. 4535 - By Delegates Summers, Foster, Paynter,
Thompson, Honaker and Crouse)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to motor vehicle licensing; modifying requirements for a graduated driver's license; granting Division of Motor Vehicles authority to restrict and revoke a driver's license for certain reasons; allowing any person whose driver's license is suspended, restricted, or revoked after hearing with the Commissioner of the Division of Motor Vehicles to seek judicial review; removing requirement to deny a license or instruction permit to any person under 18 who does not meet one of certain academic related requirements; removing provisions pertaining to the provision of a driver's eligibility certificate; and replacing suspension of license with requiring restriction of license to driving for work or medical purposes or educational or religious pursuits whenever a student at least 15 but less than 17 years of age withdraws from school or fails to maintain satisfactory academic progress.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSE.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver's license

in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* — The division may not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by §17B-2-6 of this code, which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code; and

(D) Pays a fee of \$7.50, which permits the applicant one attempt at the written knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the

fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable: *Provided*, That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit under §17B-2-6 of this code. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days. However, after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) The permit holder is under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;

(C) All occupants use safety belts in accordance with §17C-15-49 of this code;

(D) The permit holder is operating the vehicle without any measurable blood alcohol content, in accordance with §17C-5-2(h) of this code; and

(E) The permit holder maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(d) *Level two intermediate driver's license.* — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* — The division may not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in §17B-2-6 of this code;

(B) Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph may be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

(F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first. A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;

(B) The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants of the vehicle use safety belts in accordance with §17C-15-49 of this code;

(D) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than 20 years old, unless these passengers are family members of the licensee;

(E) The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;

(F) The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(G) Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under §17B-2-3a(d)(2)(G) of this code; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor

vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer, unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's license in accordance with §17B-2-5, §17B-2-6 and §17B-2-7 of this code.

(e) *Level three, full Class E license.* — The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

- (1) Has reached the age of 17 years;
- (2) Presents a completed application as prescribed by §17B-2-6 of this code;
- (3) Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;
- (4) Has completed any driver improvement program required under §17B-2-3a(d)(2)(G) of this code; and
- (5) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the

Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code.

(f) A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend, restrict, or revoke license; hearing.

(a) The division is hereby authorized to suspend, restrict, or revoke the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;

(2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) Is an habitually reckless or negligent driver of a motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;

(7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as required by §50-3-2a of this code or §8-10-2a of this code;

(8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article;

(9) Is under the age of 17 and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, as provided in §18-8-11 of this code; or

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in §48A-5A-1 *et seq.* of this code and the Child Support Enforcement Division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

(b) The driver's license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been made;

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

(3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section and the division has received a court order restoring the license or a certification by the Child Support Enforcement Division that the licensee is complying

with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending, or restricting the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his or her request shall afford him or her an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his or her duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension, or restriction or, good cause appearing therefor, may extend the suspension, or restriction of such license or revoke such license. The provisions of this subsection providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section. Any person whose driver's license is suspended, restricted, or revoked after hearing with the commissioner may seek judicial review of the final order or decision in accordance with §29A-5-4 of this code.

(e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon completion of an approved defensive driving course, deduct three points from a licensee's point accumulation provided the licensee has not reached 14 points. If a licensee has been notified of a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the licensee may submit proof of completion of an approved defensive driving course to deduct three points and rescind the pending license suspension: *Provided*, That the licensee submits proof of prior completion of the course and payment of the reinstatement

fee in accordance with section nine, article three of this chapter to the division prior to the effective date of the suspension.

CHAPTER 18. EDUCATION.

ARTICLE 18. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

(a) Whenever a student at least 15 but less than 17 years of age, except as provided in subsection (e) of this section, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license to operate a motor vehicle will be restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's withdrawal from school was due to a circumstance or circumstances beyond the control of the student. If restricted, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains 17 years of age.

(b) Whenever a student at least 15 but less than 17 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection (a) of this section to notify the Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license

will be restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once the restriction is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains 17 years of age.

(c) Upon written request of a student, within 10 days of receipt of a notice of restriction as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

(d) For the purposes of this section:

(1) "Withdrawal" is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this code.

(2) "Satisfactory academic progress" means the attaining and maintaining of grades sufficient to allow for graduation and course work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

(3) "Circumstances outside the control of the student" shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

(e) Whenever the withdrawal from school of the student, the student's failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student's failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no notice shall be sent to the Division of Motor Vehicles to restrict the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for restriction of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

(f) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.



CHAPTER 186

**(Com. Sub. for H. B. 4560 - By Delegates Criss, Householder,
Queen, Barrett, Skaff, Riley, Bates, Westfall, and Lovejoy)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17A-6A-2, §17A-6A-3, §17A-6A-5, §17A-6A-8a, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, §17A-6A-15a, §17A-6A-15c, and §17A-6A-18 of the Code of West Virginia, 1931, as amended, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; expanding stated purpose of article; defining terms; clarifying behaviors which do not constitute good cause for a dealer to be sanctioned; addressing compensation for certain dealer actions; clarifying prohibited practices of a manufacturer and distributor; modifying provisions related to dealer successorship or change in executive management; addressing payment to dealers for diagnostic work; clarifying limits of manufacturers and distributors indemnification of dealers; addressing severability; establishing prohibitions against misuse of dealer data; clarifying responsibilities of and restrictions on dealers, manufacturers, distributors and third parties; acknowledging that manufacturer performance standards take local market circumstances into account; and adding to the list of parties subject to West Virginia law; clarifying governing law; amending terms related to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; increasing the notice period for dealers where a manufacturer or distributor does not approve a

successor dealer or executive manager; clarifying provision related to determination of distance between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; clarifying indemnity practices; identifying unlawful practices; and clarifying manufacturer performance standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS, AND MANUFACTURERS.

§17A-6A-2. Governing law.

(a) In accord with the settled public policy of this state to protect the rights of its citizens, each franchise or agreement between a manufacturer or distributor and a dealer or dealership which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the State of West Virginia, regardless of the state in which it was made or executed and of any provision in the franchise or agreement to the contrary. The public policy of this state is to protect the rights of its citizens and each new motor vehicle dealer for any agreement governed by this article.

(b) The provisions of this article apply only to any franchises and agreements entered into, continued, modified, or renewed subsequent to the effective date of this article.

§17A-6A-3. Definitions.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) “Dealer agreement” means the franchise, agreement, or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the operation and business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale of new

motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

(2) “Designated family member” means the spouse, child, grandchild, parent, brother, or sister of a new motor vehicle dealer who is entitled to inherit the dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer’s property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if a document is filed.

(3) “Distributor” means any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident, or nonresident, or who controls any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

(4) “Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) “Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle

dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) “Factory representative” means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) “Good faith” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) “Manufacturer” means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative and, in the case of a school bus, truck tractor, road tractor, or truck as defined in §17A-1-1 of this code, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains, or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch, or representative.

(9) “Motor vehicle” means that term as defined in §17A-1-1 of this code, including a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of in said section, but not including a farm tractor or farm equipment. The term “motor vehicle” also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck tractor, road tractor, or truck.

(10) “New motor vehicle” means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or

has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) “New motor vehicle dealer” means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of said vehicles, warranty work, and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) “The operation and business of a new motor vehicle dealer or dealership” includes selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do not apply to over the air updates.

(13) “Person” means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(14) “Proposed new motor vehicle dealer” means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. “Proposed motor vehicle dealer” does not include a person whose dealer agreement is being renewed or continued.

(15) “Relevant market area” means the area located within a 20 air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement, or commitment letter concerning the establishment of the proposed new motor vehicle dealership.

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone does not constitute good cause for the termination, cancellation,

nonrenewal, or discontinuance of a dealer agreement under §17A-6A-4 of this code.

(1) A change in ownership of the new motor vehicle dealer's dealership. This section does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent which may not be unreasonably or untimely withheld.

(2) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided*, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

(4) The fact that the new motor vehicle dealer designates as an executive manager or sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter: *Provided*, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent, which may not be unreasonably or untimely withheld or refused in a manner inconsistent with §17A-6A-11 of this code.

(5) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.

§17A-6A-8a. Compensation to dealers for service rendered.

(a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

(1) Specify in writing to each of its motor vehicle dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

(2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent, or representative thereof;

(3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for diagnostic time necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch and the new motor vehicle dealer about the time allowance for the performance of the diagnosis, work, or service, the new motor vehicle dealer shall submit a written request for modification of the time allowance. A manufacturer, distributor, or wholesaler, factory branch or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a new motor vehicle dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the

manufacturer, distributor, or wholesaler, factory branch or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a customer whose vehicle was subjected to an over the air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor and performed at the dealership to satisfy the customer.

(b) In no event may:

(1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor time or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

(2) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(3) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts

covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose of calculating both the labor rate and parts mark-up, or submit separate sets of repair orders for a labor rate and parts mark-up calculation.

(e) The retail rate customarily charged by the dealer for labor rate must be established using the same process as provided under subsection (d) of this section and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair, which request shall not be unreasonably denied by the manufacturer.

(f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for customer repairs;

(2) Parts sold at wholesale;

(3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

(4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(5) Tires; and

(6) Vehicle reconditioning.

(g) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect 30 days following the manufacturer's approval. A manufacturer or distributor must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) fraudulent or inaccurate; (2) not established in accordance with this section; or (3) the submitted parts markup rate or labor rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after submission. If the average parts markup rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position if the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the new motor vehicle dealer's rate submission, propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after submission. If the new motor vehicle dealer does not agree with the manufacturer's proposed average percentage parts markup or labor rate, the new motor vehicle dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after receipt of that proposal by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish by a preponderance of the evidence that the new motor vehicle dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles.

(h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections (d), (e) and (f) of this section and may not obligate any vehicle

dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

(i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (d) and (e) of this section.

(j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in, §17A-1-1 of this code with a gross vehicle weight in excess of 26,001 pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid \$50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or O. E. M. supplier makes the dealer stop working on a vehicle while the manufacturer, distributor, and/or O. E. M. supplier decides how it wants the dealer to proceed with the repairs.

(k) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. A claim which has been approved and paid may not be charged back to the dealer

unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonable substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. An otherwise valid reimbursement claims may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer shall have 30 days to respond to any audit by a manufacturer or distributor.

(l) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitutes the dealer's sole responsibility for product liability as between the dealer and manufacturer and, except for a loss caused by the dealer's failure to adhere to the obligations, a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician;

(2) At the request of the new motor vehicle dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the new motor vehicle dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the new motor vehicle dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a new motor vehicle dealer, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a new motor vehicle dealer, or otherwise take retaliatory action against a new motor vehicle dealer based on any new motor vehicle dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

§17A-6A-10. Prohibited practices.

(a) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

(1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the new motor vehicle dealer;

(4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(6) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility or image requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by

reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(7) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

(8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a motor vehicle dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

(9) Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs or franchisor image elements completed within the preceding 15 years that were required and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within 15 years preceding the program shall be determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or

other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 15 year period. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of such program, nor to a modification that is not a modification of a material term or condition of such program;

(10) Condition the award, sale, transfer, relocation, or renewal of a franchise or dealer agreement or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation; and

(11) Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

(A) In this section, “captive finance source” means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor or distributor branch.

(B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions, or requirements in subdivisions (1) through (10), inclusive, of this subsection in order for any such dealer to sell to any captive finance source any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer’s customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive program

payable to the consumer or the dealer and offered by or through any captive finance source as to that incentive program.

(C) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(D) It is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

(b) A manufacturer or distributor may not do any of the following:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. A manufacturer or distributor may not penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(2) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating an upgraded version of the same model. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

(3) Require as a prerequisite to receiving a model or series of vehicles that a new motor vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or

image remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(4) Use motor vehicles in transit but not yet in the new motor vehicle dealer's physical possession in any sales effective or efficiency formula to the detriment of the new motor vehicle dealer;

(5) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

(6) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

(7) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of \$5 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(A) The addition to a motor vehicle required or optional equipment pursuant to state or federal law;

(B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(8) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(10) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; and

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show that more than two automobile manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(13) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(A) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(14) The 12 month period may be extended for an additional 12 months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12 month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its

dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

(A) Has made a significant investment in the dealership, subject to loss;

(B) Has an ownership interest in the dealership; and

(C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(16) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the 60 days is consent;

(18) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(19) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the automobile dealer. A chargeback not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the chargeback. An otherwise valid reimbursement claims may not be denied once properly submitted in accordance with material and reasonable manufacturer

guidelines unless the factory can show that the claim was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the claim consistent with the manufacturer's written reasonable and material guidelines. This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

(20) Unreasonably restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

(A) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer's assets where the dealer owner receives consideration, terms and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than 50 percent of the dealer's ownership;

(B) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer's owners to one of the following:

(i) A designated family member of one or more of the dealer owners;

(ii) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

(iii) A partnership or corporation controlled by a designated family member of one of the dealers; or

(iv) A trust established or to be established for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or to provide

for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principle owner or owners;

(C) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute that the manufacturer evaluate, process, or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party;

(D) Except as otherwise provided in this section, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal, or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(22) Make any material or unreasonable change in any franchise agreement, including, but not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written notice by certified mail of the change at least 60 days prior to the effective date of the change, and shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or

distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court. If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities;

(23) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

(24) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

(25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

(26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer;

(27) Require or coerce any new motor vehicle dealer to sell, offer to sell, or sell exclusively extended service contract, maintenance plan, or similar product, including gap or other products, offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

(A) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(B) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(C) By measuring the dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

(D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

(E) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(F) Require a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided*, That such approval may not be unreasonably

withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

(c) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

(d) Except as may otherwise be provided in this article, a manufacturer or franchisor may not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail customer, offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a retail customer or consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer or franchisor.

(e) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is be unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a new motor vehicle dealer for offer, sale, or lease to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential buyer or lessor of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for the initiation, update, change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the new motor vehicle dealer that the information is available on a website or by other digital means.

(g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a new motor vehicle dealer sells a new motor vehicle.

(h) Notwithstanding the terms of any franchise or agreement, or the terms of any program or policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any new motor vehicle dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation or request to purchase or lease received by the manufacturer or distributor from a resident of this state to the franchised dealer authorized to sell that make and model which is designated by the customer, or if none is designated, to its franchised dealer authorized to sell that make and model located in closest proximity to the customer's location: *Provided*, That if the customer does not purchase or lease the vehicle from that dealer within 10 days of the vehicle being received by the dealer, or if the customer requests that the transaction be assigned to another dealer, then the manufacturer or

distributor may assign the transaction to another franchised dealer authorized to sell that make and model;

(2) Prohibit or unreasonably interfere with a new motor vehicle dealer negotiating the final purchase price of the vehicle with a retail customer that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or unreasonably interfere with a new motor vehicle dealer offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer for the retail customer that has reserved the purchase or lease of a vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or unreasonably interfere with a new motor vehicle dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection (GAP) agreement, or any other vehicle-related products and services offered by the dealer with a retail customer that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or captive finance source shall not be required to finance the product or service;

(5) Prohibit or unreasonably interfere with a new motor vehicle dealer directly negotiating the trade-in value the customer will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value to negotiated with a retail customer that has reserved to purchase or lease a vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a franchised dealer

located in this state in order to satisfy a retail customer's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in this section;

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a customer or potential customer to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a vehicle through the manufacturer or distributor received from the customer that is a resident of this state if the customer designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the customer's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(8) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any new motor vehicle dealer in this state, offer new motor vehicles through a subscription directly to a retail customer or consumer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a new motor vehicle dealer for retail sales to a customer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any new motor vehicle dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a motor vehicle to a retail customer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a new motor vehicle dealer which is available for retail customers.

§17A-6A-11. Motor vehicle dealer successorship or change in executive management.

(1) Any designated family member of a new motor vehicle dealer may succeed the dealer in the ownership or operation, or be a designated executive manager of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to, or be designated as the executive manager of, the dealership within 120 days after the dealer's death or incapacity or designation of a successor or executive manager, and agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers or executive managers. A manufacturer or distributor may refuse to honor the designation or change with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable, and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer's written and reasonable standards and financial qualifications for appointment as the dealer or executive manager.

(2) The manufacturer or distributor may request from a designated family member any information or application reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession or designation, the manufacturer or distributor may, within 45 days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership or the appointment of an executive manager in the operation of the dealership, or within forty-five days after the receipt of the requested personal and financial data,

serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subdivision (3) of this section shall state the specific factual and legal grounds for the refusal to approve the succession or designation of an executive manager.

(5) If notice of refusal is not served within the 45 days provided for in subdivision (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

(7) If the manufacturer challenges the succession in ownership or executive manager designation, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person or new motor vehicle dealer seeking succession of ownership or executive manager designation files a civil action within 180 days of the manufacturer's refusal to approve or the one year qualifying period set forth in subdivision (1) of this section, whichever is longer, no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow succession based upon the designated person's insolvency or conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the new motor vehicle dealer establishes that the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

(1) As used in this section, “relocate” and “relocation” do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or if an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller’s last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 60 days after receiving the notice provided in subdivision (2) of this section, or within 60 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer: *Provided*, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor

vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(A) The permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

(B) The effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(C) Whether it is injurious or beneficial to the public welfare;

(D) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(E) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(F) The growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(G) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

§17A-6A-13. Obligations regarding warranties.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, diagnostic time as applicable, work and service, and the time allowance for the performance of the work, diagnostic time as applicable, and service in a manner in compliance with §17A-6A-8a of this code.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section §17A-6A-8a of this code shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers, all-terrain vehicles, utility terrain vehicles, and snowmobiles, the compensation of a dealer for warranty parts is the greater of the dealer's cost of acquiring the part plus 30 percent or the manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel trailers, fold-down camping trailers, and motorhomes, the compensation of a dealer's cost for warranty parts is not less than the dealer's cost of acquiring the part plus 20 percent.

(3) A manufacturer or distributor may not do any of the following:

(A) Fail to perform any warranty obligation;

(B) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(C) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall or the manufacturer's or distributor's warranty obligation as provided under §17A-6A-8a of this code.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent, or unsubstantiated claim, subject to the requirements of §17A-6A-8a of this code.

(5) The manufacturer shall accept the return of any new and unused part, component, or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to the dealer for the part, component, or accessory if the dealer returns the part and makes a claim for the return of the part within one year of the dealer's receipt of the part, component, or accessory and provides reasonable documentation, to include any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

§17A-6A-15. Indemnity.

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs, and attorney's fees, arising out of complaints, claims, or actions to the extent such complaints, claims, or actions relate to the manufacture, assembly, or design of a new motor vehicle, manufacturer's warranty obligations excluding dealer negligence, or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by

the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim, or action.

§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; unlawful activities; indemnification of dealer.

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide its customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer performance, for analytics, or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible, and to the extent the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer or data systems vendor may not prohibit a dealer from providing a means to regularly and continually monitor, or conduct an audit of, the specific data accessed from or written to the dealer's data systems and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder. These provisions do not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer, vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor,

distributor branch, dealer, or data systems vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer, or data systems vendor, may not provide access to customer or dealership information maintained in a dealer data systems used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's prior express written consent and agreement, revocable by the dealer upon 10 business days written notice, to provide the access.

(d) Upon a written request from a motor vehicle dealer, the manufacturer, factory branch, distributor, distributor branch, dealer, or data systems vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch or dealer data systems vendor shall provide to the dealer a written list of all specific third parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom any data obtained from the dealer has actually been provided within the 12 month period prior to date of dealer's written request. If requested by the dealer, the list shall further describe the scope and specific fields of the data provided. The consent does not change the person's obligations to comply with the terms of this section and any additional state or federal laws, and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

(e) A manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of or through any dealer, or data systems vendor, having electronic access to customer or motor vehicle dealer data in a dealership data system used by a motor vehicle dealer located in this state shall provide notice in a reasonable timely manner to the dealer of any security breach of dealership or customer data obtained through the access.

(f) A manufacturer or distributor or a third party acting on behalf of a manufacturer or distributor may not require a dealer to provide any customer information: Any individual who is not a customer of such manufacturer's or distributor's own vehicle makes; for any purpose other than for reasonable marketing purposes on behalf of that dealer, market research, consumer surveys, market analysis, or dealership performance analysis; if sharing that information would not be permissible under local, state, or federal law; except to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes; that is general customer information or other information related to the dealer, unless the requested information can be provided in a manner consistent with dealer's current privacy policies and Gramm-Leach-Bliley Act privacy notice, a dealer may not be required to amend that notice to accommodate data sharing with the manufacturer or distributor.

(g) As used in this section:

(1) "Authorized Integrator" means any third party with whom a dealer has entered into a written contract to perform a specific function for a dealer that permits the third party to access protected dealer data and/or to write data to a dealer data system to carry out the specified function (the "authorized integrator contract").

(2) "Dealer" means a new motor vehicle dealer as defined by §17A-6A-3(11) of this code and any authorized dealer personnel.

(3) "Dealer data system" means any software, hardware, or firmware used by a dealer in its business operations to store, process, or maintain protected dealer data.

(4) "Dealer data systems vendor" means any dealer management system provider, customer relationship management system provider, or other vendor that permissibly stores protected dealer data pursuant to a written contract with the dealer ("dealer data systems vendor contract").

(5) “Data access overcharge” means any charge to a dealer or authorized integrator for integration beyond reimbursement for any direct costs incurred by the dealer data systems vendor for such Integration. If a dealer data systems vendor chooses to seek reimbursement from any dealer or authorized integrator for such direct costs, the direct costs must be disclosed to the dealer, and justified by documentary evidence of the costs associated with such Integration or it will be considered a data access overcharge.

(6) “Integration” means access to protected dealer data in a dealer’s dealer data system by an authorized integrator, or an authorized integrator writing data to a dealer’s dealer data system. Integration does not require access to any copyrighted material but must allow for access to all protected dealer data. Integration may be accomplished by any commercially reasonable means that do not violate this section, but all dealer data vendors must include an option to integrate via a secure open application programming interface (API), which must be made available to dealers and authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure access to dealers and authorized Integrators as an API.

(7) “Prior express written consent” means written consent provided by the dealer that is contained in a document separate from any other consent, contract, franchise agreement, or other writing that specifically outlines the dealer’s consent for the authorized Integrator to obtain the dealer data, as well as the scope and duration of that consent. This consent may be unilaterally revoked by the dealer: (A) without cause, upon 30 days’ notice, and (B) immediately for cause.

(8) “Protected dealer data” means any of the following data that is stored in a dealer data system:

(A) Personal, financial, or other data pertaining to a consumer, or a consumer’s vehicle that is provided to a dealer by a consumer or otherwise obtained by a dealer: *Provided*, That this subdivision does not give a new motor vehicle dealer any ownership or rights

to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to its customers; or

(B) Any other data regarding a dealer's business operations in that dealer's dealer data system:

(9) "Secure open API" means an application programming interface that allows authorized integrators to integrate with dealer data systems remotely and securely. The APIs must be "open" in that all required information to Integrate via the API (software development toolkit and any other necessary technical or other information) must be made available by a dealer data systems vendor to any authorized integrator upon request by a dealer. The secure open API must include all relevant endpoints to allow for access to all protected dealer data, or as are needed to integrate with protected dealer data, and must provide granularity and control necessary for dealers and authorized integrators to Integrate the data necessary under the authorized integrator contract. "Open" does not mean that the API must be available publicly or at no cost to an authorized integrator, however no data access overcharge may be assessed in connection with a secure open API.

(10) "Third party" includes service providers, vendors, including dealer data systems vendors and authorized integrators, and any other individual or entity other than the dealer. Third party does not include any manufacturer, factory branch, distributor, distributor branch or governmental entity acting pursuant to federal, state, or local law, or any third party acting pursuant to a valid court order.

(h) Prohibited Action

1. A third party may not:

(A) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of a dealer;

(B) Take any action, by contract, by technical means, or otherwise, that would prohibit or limit a dealer's ability to protect,

store, copy, share, or use any protected dealer data. This includes, but is not limited to:

(i) Imposing any data access overcharges or other restrictions of any kind on the dealer or any authorized integrator for integration;

(ii) Prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating with that dealer's dealer data system;

(iii) Place unreasonable restrictions on integration by any authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of unreasonable restrictions include, but are not limited to:

(I) Unreasonable restrictions on the scope or nature of the data shared with an authorized integrator;

(II) Unreasonable restrictions on the ability of the authorized integrator to write data to a dealer data system;

(III) Unreasonable restrictions or conditions on a third party accessing or sharing protected dealer data, or writing data to a dealer data system; and

(IV) Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator;

(iv) Prohibiting or limiting a dealer's ability to store, copy, securely share or use protected dealer data outside the dealer data system in any manner and for any reason; or

(v) Permitting access to or accessing protected dealer data without express written consent by the dealer.

(i) Nothing in this section shall be interpreted to prevent any dealer or third party from discharging its obligations as a service provider under an agreement or otherwise under federal, state, or

local law to protect and secure protected dealer data, or to otherwise limit those responsibilities.

(j) A dealer data systems vendor or authorized integrator is not responsible for any action taken directly by the dealer, or for any action it takes in appropriately following the written instructions of the dealer, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(k) A dealer is not responsible for any action taken directly by any of its dealer data systems vendors or authorized integrators, or for any action it takes in appropriately following the written instructions of any of its dealer data systems vendors or authorized integrators, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data systems vendor or authorized integrator.

(l) Additional responsibilities and restrictions

(1) All dealer data systems vendors must adopt and make available a standardized Integration framework (use of the STAR Standards or a standard compatible with the STAR standards shall be deemed to be in compliance with this requirement) and allow for integration via secure open APIs to authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure Integration to dealers and authorized integrators as a secure open API.

(2) All dealer data systems vendors and authorized integrators:

(A) May Integrate, or otherwise access, use, store, or share protected dealer data, only as outlined in, and to the extent permitted by their dealer data systems vendor contract or authorized integrator contract;

(B) Must make any dealer data systems vendor contract or authorized integrator contract terminable upon no more than 90 days notice from the dealer;

(C) Must, upon notice of the dealer's intent to terminate its dealer data systems vendor contract or authorized integrator contract, in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data systems vendor or authorized integrator. This includes, but is not limited to:

(i) Providing unrestricted access to all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data systems vendor or authorized integrator can access and use; and

(ii) Deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(iii) Providing a dealer, upon request, with a listing of all entities with whom it is sharing or has shared protected dealer data, or with whom it has allowed access to protected dealer data; and

(iv) Allowing a dealer to audit the dealer data systems vendor or authorized integrator's access to and use of any protected dealer data.

(m) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or dealer, data systems vendor shall fully indemnify, defend, and hold harmless any dealer or manufacturer, factory branch, distributor or distributor branch from all damages, attorney fees, and costs, other costs and expenses incurred by the dealer from complaints, claims, or actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer data systems vendors, or any third party for its

willful, negligent, or impermissible use or disclosure of dealer data or customer data or other sensitive information in the dealer's data system. The indemnification includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil, or administrative actions.

(n) The rights conferred on motor vehicle dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

(o) This section applies to contracts entered into after the effective date of this section.

(p) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(q) A manufacturer, factory branch, distributor, distributor branch, dealer, data management computer systems vendor, or any third party acting on behalf of itself, or through a manufacturer, factory branch, distributor, distributor branch, or dealer data management computer system vendor shall not take an act prejudicial against a new motor vehicle dealer because of a new motor vehicle dealer exercising its rights under this section.

§17A-6A-15c. Manufacturer performance standards; uniform application; prohibited practices.

A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

(1) A performance standard, sales objective, or program for measuring dealer performance used by a manufacturer, distributor, or factory branch in determining a dealer's compliance with the dealer agreement shall be reasonable and based on accurate

information, including, but not limited to, the dealer's specific local market circumstances and geographical characteristics. A manufacturer, distributor, or factory branch may not impose unreasonable restrictions on a dealer relative to compliance with a sales performance standard or sales objective.

(2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer's performance requirement or sales goal or objective, which shall include a reasonable and general explanation of the methodology, criteria, and calculations used.

(3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective, or program for measuring dealership performance complies with this article.

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions, or requirements of any franchise agreement, contract, or other agreement of any kind between a new motor vehicle dealer and a manufacturer or distributor captive finance source, dealer management system, or any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or dealer management system, the provisions of this code apply to all such agreements and contracts listed in this section or governed by the article. Any provisions in the agreements and contracts which violate the terms of this section are null and void.

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CHAPTER 187

**(Com. Sub. for H. B. 4563 - By Delegates Ellington, Howell,
Hamrick, Statler, Householder, Smith, Gearheart, Toney,
Rohrbach, Steele, and Foster)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6-15a, relating to authorizing auto mechanics to make application for access to the Division of Motor Vehicles' electronic temporary plate issuance system in order to access temporary plates to be used to operate or move a vehicle upon the highways and streets of this state solely for the purposes of diagnosing mechanical or functional problems of a vehicle or testing a vehicle being repaired or serviced; setting forth application, renewal, and plate fees; requiring the Commissioner of the Division of Motor Vehicles to determine whether applicants are qualified; requiring the display of proof of insurance upon any vehicles bearing a temporary registration plate; setting forth definitions; and authorizing the Commissioner of the Division of Motor Vehicles to terminate an auto mechanic's access to the electronic temporary plate issuance system upon a finding that an auto mechanic's use of that system is in violation of law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

**§17A-6-15a. Temporary registration plates for auto mechanics;
fees.**

(a) Notwithstanding any of the other provisions of this article, an auto mechanic may make application for access to the division's electronic temporary plate issuance system established in §17A-6-15 for an auto mechanic temporary registration plate or plates as developed by the Division of Motor Vehicles. The auto mechanic temporary registration plate may be used to operate or move a vehicle upon the highways and streets of this state solely for the purposes of diagnosing mechanical or functional problems of a vehicle or testing a vehicle being repaired or serviced that is in the possession or bailment of the mechanic or his or her employer for repairs or diagnosis of a malfunction, conducted in the ordinary course of the business of the auto mechanic, if such vehicle does not have a valid registration plate physically displayed or available for display.

(b) An auto mechanic may make application upon a form prescribed by the commissioner for access to the electronic temporary plate issuance system. The application fee is \$100. The applicant shall submit all necessary information required by the commissioner. The commissioner shall determine whether the applicant is a bona fide person or business eligible to access the electronic temporary registration plate system and does, as a regular incident to, or in the regular course of its business perform repairs, services, tests or diagnoses malfunctions of motor vehicles, and has need to operate motor vehicles which may not be properly registered, upon the highways and streets of this state in the performance of such activities.

(c) Upon the commissioner's approval, the qualified auto mechanic will be given access to the electronic temporary plate issuance system for one year which access may be renewed annually upon proper application and payment of a \$100 renewal fee. The auto mechanic temporary registration plate fees shall be the same amount and format as those fees required of dealers participating in the electronic temporary plate issuance system. Each auto mechanic temporary registration plate shall expire at 11:59 pm on the date of issuance.

(d) The mechanic must furnish a certificate of insurance to the commissioner showing coverage as required in §17D-1-1 *et seq.* of

this code on vehicles displaying the auto mechanic temporary registration plates while being operated.

(e) For purposes of this section, “auto mechanic” or “mechanic” means a person, including an individual or an entity that is registered to do business in this state that performs repairs, services, diagnoses malfunctions of, or performs mechanical services to motor vehicles.

(f) If any auto mechanic using the electronic temporary plate issuance system violates the provisions of this section, the commissioner shall have the authority to immediately terminate said auto mechanic’s access to the electronic temporary plate issuance system.

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CHAPTER 188

(Com. Sub. for H. B. 4668 - By Delegates Capito and Fast)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17C-15-50 of the Code of West Virginia, 1931, as amended, relating to air bag fraud; prohibiting counterfeit and nonfunctional air bags; establishing penalties for prohibited activities related to air bag fraud; specifying the applicability of the section; and creating exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§17C-15-50. Air bag fraud; counterfeit and nonfunctional air bags prohibited; penalties; applicability; exceptions.

(a) For purposes of this section:

(1) “Air bag” means an inflatable occupant supplemental restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring, designed to activate in a motor vehicle in the event of a crash to mitigate injury or ejection and that meets the federal motor vehicle safety standards set forth in 49 C.F.R. 571.208 for the make, model, and model year of the motor vehicle.

(2) “Counterfeit air bag” means an air bag or component of an air bag displaying a mark identically or substantially similar to the genuine mark of a motor vehicle manufacturer or supplier of parts to a motor vehicle manufacturer, without the authorization of the motor vehicle manufacturer or supplier, respectively.

(3) “Disable” means to deliberately disconnect or otherwise render inoperable and includes the failure to replace a previously deployed airbag with a functional airbag.

(4) “Nonfunctional air bag” means any of the following:

(A) A replacement air bag that has been previously deployed or damaged;

(B) A replacement air bag that has an electric fault that is detected by the vehicle’s air bag diagnostic system when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;

(C) A counterfeit air bag, air bag cover, or some other object that is installed in a motor vehicle in order to mislead or deceive an owner or operator of the motor vehicle into believing that a functional air bag has been installed; or

(D) An air bag subject to the prohibitions of 49 U.S.C. §30120(j).

(b) A person who does any of the following is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or confined in a regional jail for not more than one year, or both fined and confined: *Provided*, That if the violation results in the serious bodily injury or death of any person, the person in violation of this section is guilty of a felony, and, upon conviction thereof, shall be fined not less than \$2,500 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned:

(1) Knowingly import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle;

(2) Knowingly sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning air bag; or

(3) Knowingly sell, lease, trade or transfer a motor vehicle if the person knows that a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make model, and year of the motor vehicle has been installed as part of the motor vehicle's inflatable restraint system.

(c) This section does not apply to an owner or employee of a motor vehicle dealership or the owner of a vehicle who, before the sale of the vehicle, does not have knowledge that the vehicle's air bag, or another component of the vehicle's supplemental restraint system, is counterfeit or nonfunctioning.

(d) Nothing in this section shall be construed as to limit the liability in a civil action of any person who violates the provisions of this section.

(e) Nothing in this section shall be construed as to create a duty that, before the sale of a vehicle, an owner or employee of a motor vehicle dealership or the owner of a vehicle inspect a vehicle in possession of the dealership or owner to determine whether the air bag, or another component of the vehicle's supplemental restraint system is counterfeit or nonfunctional.

(f) The provisions of this section do not apply where:

(1) An individual who disables an airbag in a passenger vehicle owned by him or her and which is used exclusively for his or her personal use;

(2) An individual renders assistance in disabling an airbag in a passenger vehicle which is used exclusively for personal use; and

(3) An individual sells a passenger vehicle used exclusively for his or her personal use with an airbag he or she knows to be disabled, and the individual selling the passenger vehicle discloses in writing to the buyer that the airbag of the vehicle is disabled.

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CHAPTER 189

**(Com. Sub. for H. B. 4675 - By Delegates Riley, Linville,
Booth, Reed, Barrett, Espinosa, Criss, Hardy, Fast, Keaton
and Pack)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-24-1 and §17C-24-2, all relating to autonomous delivery vehicles; authorizing operation of low-speed autonomous delivery vehicle on certain streets and roads; authorizing operation of low-speed autonomous delivery vehicle on streets or roads with posted speed limit of up to a specified number of miles per hour under specified conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. AUTONOMOUS VEHICLES AND DEVICES

§17C-24-1. Definitions.

“Mobile carrier” means an electrically powered device that:

(1) Is operated on sidewalks and crosswalks and is intended primarily for transporting

Property;

(2) Weighs less than 100 pounds, excluding cargo;

(3) Has a maximum speed of 12.5 miles per hour; and

(4) Is equipped with a technology to transport personal property with the active monitoring of a property owner and primarily designed to remain within 25 feet of the property owner.

“Personal delivery device” means an electrically powered device that:

(1) Is operated on sidewalks, and crosswalks and roadways and is intended primarily for transporting goods and cargo;

(2) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person;

(3) A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle; and

(4) A mobile carrier is not considered a personal delivery device.

§17C-24-2. Rules for personal delivery devices and mobile carriers.

(a) A personal delivery device or mobile carrier may operate on sidewalks and crosswalks. A personal delivery device or mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device or mobile carrier shall not unreasonably interfere with pedestrians or traffic, and shall yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(b) Personal delivery devices and mobile carriers shall:

(1) Obey all official traffic and pedestrian control signals and devices;

(2) For personal delivery devices, include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator; and

(3) Be equipped with a braking system that, when active or engaged, enables the personal delivery device or mobile carrier to come to a controlled stop.

(c) Mobile carriers shall not:

(1) Operate on a public highway except to the extent necessary to cross a crosswalk;

(2) Operate on a sidewalk or crosswalk unless the mobile carrier owner is actively controlling or monitoring the navigation and remains within 25 feet of the mobile carrier;

(3) Transport hazardous materials as defined in RSA 259:40;
or

(4) Transport persons or animals.

(d) Personal delivery devices shall not:

(1) Operate at speeds in excess of 12 mph on sidewalks;

(2) Operate at speeds in excess of 20 mph on roadways;

(3) Operate unless the navigation and operation is being monitored or controlled by an operator; or

(4) Transport hazardous materials that are regulated under the Hazardous Materials Transportation Authorization Act of 1994 (49 United States Code Sections 5101 through 5128) and must be placarded under 49 Code of Federal Regulations Sections 172.500 through 172.560.

(e) A local authority may not regulate the operation of a personal delivery device on a highway or sidewalk in a manner that is inconsistent with this article, including, but not limited to, restricting the hours or zones of operation.

(f) A person who owns and operates a personal delivery device in this state shall maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least \$100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

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CHAPTER 190

**(Com. Sub. for H. B. 4787 - By Delegates Capito, Linville,
Fast and Pack)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia Code, 1931, as amended, by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, and §17H-1-15, all relating to establishing the Fully Autonomous Vehicle Act; defining terms; providing for construction of the act; providing requirements for the operation of fully autonomous vehicles without a human driver and with a human driver; providing for the operation of on-demand autonomous vehicle networks; providing for the operation of fully autonomous commercial and motor vehicle carriers; providing for the platooning of fully autonomous vehicles; providing for licensing, titling, registration, and insurance requirements of fully autonomous vehicles; providing for control and regulation of fully autonomous vehicles; providing for equipment standards for fully autonomous vehicles; and providing duties following a crash involving fully autonomous vehicles.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17H. FULLY AUTONOMOUS VEHICLE ACT.

ARTICLE 1. FULLY AUTONOMOUS VEHICLES.

§17H-1-1 Short Title.

This article may be cited as the “Fully Autonomous Vehicle Act”.

§17H-1-2 Statement of intent and purpose.

The Legislature finds that continuing advances in technology have improved and are expected to continue to improve the safety and operation of fully autonomous vehicles such that these vehicles should be legally permitted to be operated in West Virginia pursuant to the provisions of this act.

§17H-1-3 Definitions.

The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

“Automated driving system” or “ADS” means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

“Dynamic driving task” or “DDT” means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, and including without limitation:

- (1) Lateral vehicle motion control via steering;
- (2) Longitudinal motion control via acceleration and deceleration;
- (3) Monitoring the driver environment via object and event detection, recognition, classification, and response preparation;
- (4) Object and event response execution;
- (5) Maneuver planning; and
- (6) Enhanced conspicuity via lighting, signaling, and gesturing.

“DDT fallback” means the response by the person or human driver to either perform the DDT or achieve a minimal risk condition after occurrence of a DDT performance-relevant system

failure or upon operational design domain exit, or the response by an automated driving system to achieve minimal risk condition given the same circumstances.

“Fully autonomous vehicle” means a motor vehicle equipped with an automated driving system (ADS) designed to function without a human driver as a level 4 or 5 system under SAE J3016.

“Human driver” means a natural person in the vehicle with a valid license to operate a motor vehicle who controls all or part of the dynamic driving task (DDT).

“Minimal risk condition” means a condition in which a person, human driver, or an ADS may bring a vehicle after performing the DDT fallback in order to reduce the risk of a crash when a given trip cannot or should not be completed.

“On-demand autonomous vehicle network” means a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with fully autonomous vehicles for purposes of transporting passengers or goods, including for-hire transportation and transportation of goods or passengers for compensation.

“Operational design domain” or “ODD” means operating conditions under which a given ADS is specifically designed to function, including, but not limited to, environmental, geographical, and time-of-day restrictions, and/or the requisite presence or absence of certain traffic or roadway characteristics.

“Person” means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any legal or commercial entity.

“Platooning” means a situation when no more than three fully autonomous vehicles are traveling in concert, pursuant to a pre-determined written travel plan that identifies the vehicles and proposed route.

“Request to intervene” means notification by an ADS to a human driver, that the human driver should promptly begin or resume performance of part or all of the DDT.

“SAE J3016” means the *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* published by the Society of Automotive Engineers (SAE) International in April, 2021.

§17H-1-4 Construction.

Nothing in this article shall be construed to:

(1) Prohibit a human driver from operating a fully autonomous vehicle to control all or part of the DDT;

(2) Prohibit a fully autonomous vehicle from operating without a human driver; or

(3) Prohibit a person from operating a vehicle with ADS that is not a fully autonomous vehicle on the public roads of this state.

§17H-1-5 Operation of fully autonomous vehicles without a human driver.

(a) A person may operate a fully autonomous vehicle on the public roads of this state without a human driver provided that the ADS is engaged and the vehicle meets the following conditions:

(1) If a failure of the ADS occurs which renders the system unable to perform the entire dynamic driving task (DDT) relevant to its intended operational design domain, the fully autonomous vehicle will achieve a minimal risk condition;

(2) The fully autonomous vehicle is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state when reasonable to do so, unless an exemption has been granted by the Department of Transportation; and

(3) When required by federal law, the vehicle bears the required manufacturer’s certification label indicating that at the

time of its manufacture it has been certified to be in compliance with all applicable Federal Motor Vehicle Safety Standards, including reference to any exemption granted by the National Highway Traffic Safety Administration.

(b) Prior to operating a fully autonomous vehicle on the public roads of this state without a human driver, a person as defined in this article shall submit a law enforcement interaction plan to the department that describes:

(1) How to communicate with a fleet support specialist who is available during the times the vehicle is in operation;

(2) How to safely remove the fully autonomous vehicle from the roadway and steps to safely tow the vehicle;

(3) How to recognize whether the fully autonomous vehicle is in autonomous mode; and

(4) Any additional information the manufacturer or owner deems necessary regarding hazardous conditions or public safety risks associated with the operation of the fully autonomous vehicle.

§17H-1-6. Operation of a fully autonomous motor vehicle with an ADS by a human driver.

(a) A person may operate a motor vehicle equipped with an ADS capable of performing the entire dynamic driving task (DDT) if:

(1) The ADS will issue a request to intervene whenever the ADS is not capable of performing the entire DDT, with the expectation that the person will respond appropriately to the request; and

(2) The ADS is capable of being operated in compliance with the applicable provisions of this article, unless an exemption has been granted by the Department of Transportation or the National Highway Traffic Safety Administration.

(b) Nothing in this article prohibits or restricts a human driver from operating a fully autonomous vehicle equipped with controls that allow for the human driver to control all or part of the DDT.

§17H-1-7 Operation of fully autonomous commercial and motor carrier vehicles.

(a) A fully autonomous vehicle that is also a commercial vehicle under West Virginia law may operate pursuant to state laws governing the operation of commercial motor vehicles, except that any provision that by its nature reasonably applies only to a human driver does not apply to a vehicle operating with the ADS engaged.

(b) A fully autonomous vehicle that is also a motor carrier vehicle requiring a commercial driver's license pursuant to federal or state law may operate pursuant to Federal and State laws governing commercial drivers and the operation of commercial motor vehicles, except any provision which by its nature reasonably applies only to a human driver shall not apply to a fully autonomous vehicle operating with the ADS engaged. This section shall not apply to a school bus.

§17H-1-8 Operation of an on-demand autonomous motor vehicle network.

An on-demand autonomous motor vehicle network shall be permitted to operate pursuant to State laws governing the operation of transportation network companies, taxis, or any other ground transportation for-hire of passengers, with the exception that any provision of such laws that reasonably applies only to a human driver would not apply to the operation of fully autonomous vehicles with the ADS engaged on an on-demand autonomous vehicle network.

§17H-1-9 Licensing, titling, and registration.

(a) When an automated driving system (ADS) installed on a motor vehicle is engaged:

(1) The ADS is considered the driver or operator for the purpose of assessing compliance with applicable traffic or motor

vehicle laws and shall be considered to satisfy electronically all physical acts required by a driver or operator of the vehicle; and

(2) The ADS is considered to be licensed to operate the vehicle.

(b) A fully autonomous vehicle shall be properly registered in accordance with the laws of this state. If a fully autonomous vehicle is registered in this state, the vehicle shall be identified on the registration as a fully autonomous vehicle. The requirements under this article relating to exhibiting a driver's license and registration card are satisfied if the license and vehicle registration card are in the fully autonomous vehicle physically or electronically, and available for inspection by a police officer.

§17H-1-10 Insurance.

Before operating a fully autonomous motor vehicle on public roads in this state without a human driver, a person shall submit proof of financial responsibility satisfactory to the Department of Motor Vehicles that the fully autonomous vehicle is covered by insurance or proof of self-insurance that satisfy the applicable laws of this state.

§17H-1-11 Control.

(a) Unless otherwise provided in this article and notwithstanding any other provision of this code, fully autonomous vehicles and automated driving systems are governed exclusively by this article. The Department of Transportation is the sole and exclusive state agency that may implement the provisions of this article.

(b) No state agency, political subdivision, municipality, or local entity may prohibit the operation of fully autonomous vehicles, ADS, or on-demand autonomous vehicle networks, or otherwise enact or keep in force rules or ordinances that would impose taxes, fees, or other requirements (including performance standards), specific to the operation of fully autonomous vehicles, ADS, or on-demand autonomous vehicle networks in addition to the requirements of this act.

§17H-1-12 Platooning.

(a) *General rule.* The department shall be the lead state agency on fully autonomous vehicle platooning under this section.

(b) *Platoon restrictions.* A platoon shall observe the following restrictions:

(1) A maximum of three vehicles shall be in a platoon;

(2) Vehicles in a platoon shall travel only on limited access highways or interstate highways, unless otherwise permitted by the Department or the West Virginia Division of Highways;

(3) The department or the West Virginia Division of Highways, as applicable under subdivision (2) of this subsection, may restrict movement under this section for operational or safety reasons, including, but not limited to, emergency conditions; and

(4) Consistent with applicable federal and state laws, the lead vehicle in a platoon may operate with a driver and non-lead vehicles may operate with an ADS engaged, with or without a driver.

(c) *Plan for general platoon operations.* A person may operate a platoon on a highway of this state if the person files and reviews a plan for general platoon operations with the department. The department shall review the plan in consultation with the State Police and the Division of Highways, as applicable. If the plan is not rejected by the department within 30 days after receipt of the plan, the person may operate the platoon.

(d) *Non-lead vehicles.* Non-lead vehicles in a platoon are not subject to violations of this code relating to following too closely.

(e) *Visual identifiers required.* Each vehicle in a platoon must be marked with a visual identifier. The department, after consultation with the State Police and the Division of Highways shall establish the criteria and placement of the visual identifier.

§17H-1-13 Fully autonomous vehicles not exempt from state laws pertaining to ownership.

Unless expressly stated in this section, fully autonomous vehicles, whether traveling individually or in a platoon, are not exempt from any other laws or rules applicable to the ownership and operation of any non-fully autonomous vehicle in this state.

§17H-1-14 Duties following crashes involving fully autonomous vehicles.

In the event of a crash:

(1) The fully autonomous vehicle shall remain at the scene of the accident when required by State law consistent with its capability under §17H-1-5; and

(2) The owner of the highly automated motor vehicle, or a person on behalf of the vehicle owner, shall promptly report any crashes or collisions consistent with §17C-4-1, *et seq.* of this code.

§17H-1-15 Fully autonomous vehicle equipment standards.

A fully autonomous vehicle that is designed to be operated exclusively by an ADS for all trips is not subject to motor vehicle equipment laws or rules of this state that:

(1) Relate to or support motor vehicle operation by a human driver seated in the vehicle; and

(2) Are not relevant for an ADS.

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CHAPTER 191

**(Com. Sub. for H. B. 4797 - By Delegates Toney, Booth,
Hansen and Hamrick)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-30-1, relating to the Electric Vehicle Infrastructure Development Plan for National Electric Vehicle Infrastructure Formula Program funds.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 30. ELECTRIC VEHICLE ECONOMIC
DEVELOPMENT PLAN.**

**§17-30-1. Department of Transportation to develop electric
vehicle plan.**

The Department of Transportation shall create an Electric Vehicle Infrastructure Development Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds. The plan shall take a wholistic approach, considering the future charging infrastructure needs of school systems, public transportation, counties and municipalities, and other public and private users. The Department shall share this plan and report with the interim Joint Committee of Government and Finance by July 1, 2022.

CHAPTER 192

(S. B. 436 - By Senator Trump)

[Passed February 9, 2022; in effect 90 days from passage.]
[Approved by the Governor on February 18, 2022.]

AN ACT to amend and reenact §20-3-6 of the Code of West Virginia, 1931, as amended, relating to correcting an incorrect code citation in regard to the enforcement authority of the State Fire Marshal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-6. Failure of person to extinguish fire started or used by him or her; throwing lighted material on forest land; enforcement by State Fire Marshal; penalties.

(a) Any person who, by himself or herself, or by his or her employees, agents or guides, or as an employee, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adjacent to or in any forest land in this state, shall, before leaving the fire for any period of time, totally extinguish the same.

(b) A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or lighted material on any forest land, private road, public highway or railroad right-of-way within this state.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, the State Fire Marshal shall enforce this section as provided in §15A-10-1 *et seq.* of this code.

(d) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to one or more of the following penalties: (1) Fined not less than \$100 nor more than \$2,000; (2) confined in the county or regional jail not less than 10 days nor more than 200 days; or (3) sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than 32 hours nor more than 64 hours.

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CHAPTER 193

**(Com. Sub. for S. B. 508 - By Senators Hamilton, Stover,
Martin, Sypolt, Lindsay, and Beach)**

[Passed March 9, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §20-2-60 of the Code of West Virginia, 1931, as amended, relating to requiring daylight fluorescent orange attire for deer hunters hunting with a muzzleloader; creating misdemeanor offense for violation; and penalty.

Be it enacted by the Legislature of West Virginia:

§20-2-60. Required attire for deer hunters; exemption; penalty.

Any person who hunts deer on public lands or the lands of another during the period designated for firearms hunting of deer or muzzleloader hunting of deer shall wear a daylight fluorescent orange outer garment over at least 400 square inches of his or her person: *Provided*, That persons engaged in agricultural occupations shall be exempt from the provisions of this section while hunting deer on their own property. Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$5 nor more than \$50.

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CHAPTER 194

**(Com. Sub. for H. B. 4408 - By Delegates Dean, Paynter,
Phillips, J. Jeffries, Cooper, Miller and Ferrell)**

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to the authority of the Division of Natural Resource to enter into certain contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.

(a) Notwithstanding any other provision of this code to the contrary, in addition to all other powers and authority vested in the director, he or she may:

(1) Enter into contracts with third parties for the financing, construction, and operation of new recreational, lodging, and ancillary facilities at all state parks and state forests under the jurisdiction of the Division of Natural Resources except for Watoga State Park. The contracts may allow and recognize both direct and subsidiary investment arrangements. The term of the contracts may not exceed a period of 40 years, at which time the full title to the recreational facilities shall vest in the state, except as otherwise provided in this section;

(2) Enter into contracts with third parties for the construction, but not the operation, of cabins at any state park or forest. Upon completion of the construction of the cabins, full title to the cabins

shall immediately vest in the state and the cabins shall be operated by the parks and recreation section;

(3) Authorize the construction of at least five cabins by any single third party in state parks and state forests which do not offer the facilities on the effective date of this subsection; and

(4) Propose emergency and legislative rules, in accordance with §29A-3-1 *et seq.* of this code, that set the conditions upon which the director may enter into a contract with a single third party proposing to construct cabins.

(b) Any contract entered into pursuant to this section shall be approved prior to execution by the Secretary of the Department of Commerce, the Secretary of the Department of Tourism, and the Secretary of the Department of Economic Development.

(c) A contract may provide for renewal for the purpose of permitting continued operation of the facilities at the option of the director for a term or terms not to exceed 10 years.

(d) The director shall provide prior electronic notice of any contract, extension, and renewal entered into pursuant to this section to the Joint Committee on Government and Finance.

(e) Any vendor which is contracted with pursuant to this section may not employ or contract with the individual who holds the position of director when the contract is executed for a period of one year following the individual's separation from the position of director.

(f) Prior to initiating a contract for new recreational, lodging, and ancillary facilities at all state parks and state forests under the jurisdiction of the Division of Natural resources, the director shall conduct a public hearing to be held at a reasonable time and place within the county in which the facility is located. Notice of the time, place and purpose of the public hearing shall be provided as a Class II legal advertisement in accordance with §59-3-2 of this code which notice shall be given at least for the first publication 20 days in advance of the hearing.

(g) *Stonewall Jackson Lake State Park.* —

(1) With respect to the financing, construction, and operation of lodging at Stonewall Jackson Lake State Park, in addition to the lodging in existence as of July 1, 2008, contracts entered into pursuant to this section may grant, convey, or provide for commercially reasonable lodging usage and related rights and privileges all on terms and conditions as the director may deem appropriate, desirable or necessary to attract private investment for the construction of additional lodging units.

(2) No contracts may be entered into prior to the preparation of lodging unit development plans and standard lodging unit contract documents in a form and at a level of detail acceptable to the United States Army Corps of Engineers and the director, and subsequent to the presentation of the lodging unit development plans and standard lodging unit contract documents to the Joint Committee on Government and Finance for review and comment.

(3) At a minimum, the lodging unit development plans and standard lodging unit contracts shall comply with the following requirements:

(A) That no more than 100 additional lodging units may be constructed, in addition to the lodging in existence as of July 1, 2008;

(B) That lodging unit contracts, with respect to any additional lodging units that may be financed, constructed or operated pursuant to the provision of this section, shall generally conform to the contracts entered into by federal agencies or the National Park Service with private parties regarding privately financed property that is constructed, developed or operated on public lands administered by federal agencies or the National Park Service, subject to modification and adaptation by the director as the director deems appropriate, suitable and relevant to any lodging units to be constructed at Stonewall Jackson Lake State Park.

(C) That a party granted rights and privileges under lodging unit contracts awarded under the provisions of this subsection shall

have the right to renew his or her or its lodging unit contract for successive terms not to extend beyond the termination date of the state's lease with the United States Army Corps of Engineers; or, in the event that the state's lease with the United States Army Corps of Engineers is extended beyond the termination date of the lease as of July 1, 2007, not to exceed five 10-year extensions or renewals beyond the termination date of the lease between the state and the United States Army Corps of Engineers in effect as of July 1, 2007: *Provided*, That the party extended the renewal rights is in compliance with all material rights, duties and obligations arising under his or her or its contract and all relevant and applicable provisions of federal, state and local laws, rules, regulations, contracts or agreements at the time of renewal: *Provided, however*, That if the director makes an affirmative determination that further renewals beyond the time periods set forth in this subsection are in the best interest of the state and Stonewall Jackson Lake State Park, giving due consideration to financial, operational and other considerations deemed relevant and material by the director, that the director may authorize further renewals;

(D) That all rights and privileges arising under a lodging unit contract shall be transferred to the state or the state's designee upon the expiration or termination of the contract, upon the terms and conditions as each contract may provide or as may otherwise be agreed upon between the parties;

(E) That the state is not obligated for any costs, expenses, fees, or other charges associated with the development of the additional lodging units under this subsection or the operation and maintenance of the additional lodging units over time, including, but not limited to, costs associated with infrastructure improvements associated with development or operation of the additional lodging units. In his or her discretion, the director may engage professionals to assist the state in connection with its review and oversight of development of the additional lodging units;

(F) That at any time following the initial term and first renewal period of any lodging unit contract entered into with a private party with respect to an additional lodging unit that is constructed under

this section, the state shall have the right and option, in its sole discretion, to purchase a lodging unit or lodging units in accordance with the provisions of this subsection and any and all contracts that may be entered into from time to time under this section;

(G) That the state may elect to purchase a lodging unit from a private party. If the private party is paid the fair value of the private party's residual rights and privileges under the lodging unit contract, the residual rights and privileges to be valued generally in accordance with the valuation standards set forth in the National Park Service's standard contract provisions, or other relevant federal agency standards applicable to similar or like contract rights and provisions as may be in existence at the time of transfer, all as the same may be considered relevant and appropriate by the director, and all in the exercise of the director's reasonable discretion. Nothing in this section is intended or may be construed to impose an obligation on the state to purchase, buy, buy out or otherwise acquire or pay for any lodging unit under this section, or to limit the right and ability of a private party to donate or contribute his or her or its interest in and to any lodging unit constructed under this section to the state or any charitable foundation that may be established and operating from time to time to support the continued operation and development of Stonewall Jackson Lake State Park;

(H) That the state has no obligation whatsoever to purchase, buy, buy out or otherwise acquire or pay for any lodging unit that is developed or constructed under this section; and

(I) The director may review and approve the form and content of all contracts that may be entered into pursuant to this subsection in connection with the development, operation, and maintenance of additional lodging units at Stonewall Jackson Lake State Park.

(h) Any facilities constructed under the authority granted under this section must be in accordance with the purpose, powers, and duties of the Section of Parks and Recreation as provided by §20-5-3 of this code.

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CHAPTER 195

(Com. Sub. for H. B. 4583 - By Delegate Criss)

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §39B-1-106 of the Code of West Virginia, 1931, as amended, relating to declaring that neither being detained, including being incarcerated in a penal system, nor being outside the United States and unable to return, creates an inference of incapacity to execute a power of attorney.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§39B-1-106. Validity of power of attorney.

(a) A power of attorney executed in this state on or after the effective date of this act is valid if its execution complies with §39B-1-105 of this code.

(b) A power of attorney executed in this state before the effective date of this act is valid if its execution complied with the law of this state that existed at the time of execution.

(c) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to §39B-1-107 of this code; or

(2) The requirements for a military power of attorney pursuant to 10 U. S. C. §1044b.

(d) Except as otherwise provided by statute other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

(e) Notwithstanding the provisions of §39B-1-102 of this code, the fact that a person is either detained, including being incarcerated in a penal system, or is outside the United States and unable to return, does not create an inference that the person lacks the capacity to execute a power of attorney.

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CHAPTER 196

(Com. Sub. for S. B. 138 - By Senator Takubo)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §30-3-5 of the Code of West Virginia, 1931, as amended, relating to West Virginia Board of Medicine composition; decreasing the number of board members; and removing a podiatric position from the board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.

The West Virginia Board of Medicine has assumed, carried on, and succeeded to all the duties, rights, powers, obligations, and liabilities heretofore belonging to or exercised by the Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates, permits, and other acts and undertakings of the Medical Licensing Board of West Virginia as heretofore constituted have continued as those of the West Virginia Board of Medicine until they expired or were amended, altered, or revoked. The board remains the sole authority for the issuance of licenses to practice medicine and surgery, to practice podiatry, and to practice as physician assistants in this state under the supervision of physicians licensed under this article. The board shall continue to be a regulatory and disciplinary body for the practice of medicine and surgery, the practice of podiatry, and for physician assistants in this state.

The board shall consist of 15 members. One member shall be the state health officer ex officio, with the right to vote as a member of the board. The other 14 members shall be appointed by the Governor, with the advice and consent of the Senate. Eight of the members shall be appointed from among individuals holding the degree of doctor of medicine, and one shall hold the degree of doctor of podiatric medicine. Two members shall be physician assistants licensed by the board. Each of these members must be duly licensed to practice his or her profession in this state on the date of appointment and must have been licensed and actively practicing that profession for at least five years immediately preceding the date of appointment. Three lay members shall be appointed to represent health care consumers. Neither the lay members nor any person of the lay members' immediate families shall be a provider of or be employed by a provider of health care services. The state health officer's term shall continue for the period that he or she holds office as state health officer. Each other member of the board shall be appointed to serve a term of five years: *Provided*, That the members of the Board of Medicine holding appointments on the effective date of this section shall continue to serve as members of the Board of Medicine until the expiration of their term unless sooner removed. Each term shall begin on October 1 of the applicable year and a member may not be appointed to more than two consecutive full terms on the board.

A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state health officer, who holds any public office or public employment under the federal government or under the government of this state or any political subdivision thereof.

In making appointments to the board, the Governor shall, so far as practicable, select the members from different geographical sections of the state. When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or

gross immorality: *Provided*, That the expiration, surrender, or revocation of the professional license by the board of a member of the board shall cause the membership to immediately and automatically terminate.

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CHAPTER 197

**(S. B. 213 - By Senators Takubo, Baldwin, Lindsay, and
Plymale)**

[Passed March 8, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-31A-1, §30-31A-2, §30-31A-3, §30-31A-4, §30-31A-5, §30-31A-6, §30-31A-7, §30-31A-8, §30-31A-9, §30-31A-10, §30-31A-11, §30-31A-12, §30-31A-13, §30-31A-14, and §30-31A-15, all relating to establishing a licensed professional counseling compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31A. LICENSED PROFESSIONAL COUNSELING COMPACT.

§30-31A-1. Purpose.

The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services and the practice of professional counseling occurs in the state where the client is located at the time of counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

(1) Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;

(2) Enhance the states' ability to protect the public's health and safety;

(3) Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors;

(4) Support spouses of relocating active-duty military personnel;

(5) Enhance the exchange of licensure, investigative, and disciplinary information among member states;

(6) Allow for the use of telehealth technology to facilitate increased access to professional counseling services;

(7) Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;

(8) Invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;

(9) Eliminate the necessity for licenses in multiple states; and

(10) Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

§30-31A-2. Definitions.

As used in this compact, and except as otherwise provided, the following definitions shall apply:

(1) "Active-duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active-duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C. 1211;

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is

imposed by a licensing board or other authority against a licensed professional counselor, including actions against an individual's license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action;

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners;

(4) "Continuing competence or education" means a requirement, as a condition of license, renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work;

(5) "Counseling Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the compact;

(6) "Current significant investigative information" means:

(A) Investigative information that a licensing board has reason to believe is not groundless, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law; and, if proved true, would indicate more than a minor infraction; or

(B) Investigative information that indicates the licensed professional counselor represents an immediate threat to public health and safety, regardless of whether the licensed professional counselor has been notified and had an opportunity to respond;

(7) "Data system" means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigative, privilege to practice, and adverse action information;

(8) "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by

the licensee and said adverse action has been reported to the National Practitioners Data Bank (NPDB);

(9) “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board;

(10) “Executive committee” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission;

(11) “Home state” means the member state that is the licensee’s primary state of residence;

(12) “Impaired practitioner” means an individual who has a condition or conditions that may impair his or her ability to practice as a licensed professional counselor without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairment;

(13) “Investigative information” means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation;

(14) “Jurisprudence requirement” if required by the member state, means the assessment of an individual’s knowledge of the laws and rules governing the practice of professional counseling in a state;

(15) “Licensed professional counselor” means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions;

(16) “Licensee” means an individual who currently holds an authorization from the state to practice as a licensed professional counselor;

(17) “Licensing board” means the agency of a state, or equivalent, that is responsible for the licensing and regulation of licensed professional counselors;

(18) “Member state” means a state that has enacted the compact;

(19) “Privilege to practice” means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state;

(20) “Professional counseling” means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor;

(21) “Remote state” means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice;

(22) “Rule” means a regulation promulgated by the commission that has the force of law;

(23) “Single-state license” means a licensed professional counselor license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state;

(24) “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of professional counseling;

(25) “Telehealth” means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions; and

(26) “Unencumbered license” means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

§30-31A-3. State participation in the compact.

(a) To participate in the compact, a state shall currently:

(1) License and regulate licensed professional counselors;

(2) Require licensees to pass a nationally recognized exam approved by the commission;

(3) Require licensees to have a 60 semester-hour (or 90 quarter-hour) master's degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the following topic areas:

(A) Professional counseling orientation and ethical practice;

(B) Social and cultural diversity;

(C) Human growth and development;

(D) Career development;

(E) Counseling and helping relationships;

(F) Group counseling and group work;

(G) Diagnosis and treatment; assessment and testing;

(H) Research and program evaluation; and

(I) Other areas as determined by the commission.

(4) Require licensees to complete a supervised postgraduate professional experience as defined by the commission;

(5) Have a mechanism in place for receiving and investigating complaints about licensees.

(b) A member state shall:

(1) Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;

(2) Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(3) Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

(A) A member state shall fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

(B) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(4) Comply with rules of the commission;

(5) Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

(6) Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules; and

(7) Provide for the attendance of the state's commissioner to the counseling compact commission meetings.

(c) Member states may charge a fee for granting the privilege to practice.

(d) Individuals not residing in a member state shall continue to be able to apply for a member state's single state licensure as provided under the laws of each member state. However, the single state licensure granted to these individuals may not be recognized

as granting a privilege to practice professional counseling in any other member state.

(e) Nothing in this compact may affect the requirements established by a member state for the issuance of a single state license.

(f) A licensure issued to a licensed professional counselor by a home state to a resident in that state shall be recognized by each member state as authorizing a licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

§30-31A-4. Privilege to practice.

(a) To exercise the privilege to practice under the terms and provisions of the compact, the licensee shall:

(1) Hold a license in the home state;

(2) Have a valid United State Social Security Number or National Practitioner Identifier;

(3) Be eligible for a privilege to practice in any member state in accordance with §30-31A-4(d), §30-31A-4(g), and §30-31A-4(h) of this code;

(4) Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years;

(5) Notify the commission that the licensee is seeking the privilege to practice within a remote state or states;

(6) Pay any applicable fees, including any state fee, for the privilege to practice;

(7) Meet any continuing competence or education requirements established by the home state;

(8) Meet any jurisprudence requirements established by the remote state or states in which the licensee is seeking a privilege to practice; and

(9) Report to the commission adverse action, encumbrance, or restriction on license taken by any non-member state within 30 days from the date of the action is taken.

(b) The privilege to practice is valid until the expiration date of the home state license. The licensee must comply with the requirements of §30-31A-4(a) of this code to maintain the privilege to practice in the remote state.

(c) A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

(d) A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.

(e) If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until the following occur:

(1) The home state license is no longer encumbered; and

(2) Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

(f) Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of §30-31A-4(a) of this code to obtain a privilege to practice in any remote state.

(g) If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until the following occur:

(1) The specific period for which the privilege to practice was removed has ended;

(2) All fines have been paid; and

(3) Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

(h) Once the requirements of §30-31A-4(g) of this code have been met, the licensee shall meet the requirements in §30-31A-4(a) of this code to obtain a privilege to practice in a remote state.

§30-31A-5. Obtaining a new home state license based on a privilege to practice.

(a) A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

(b) If a licensed professional counselor changes primary state of residence by moving between two member states:

(1) The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.

(2) Upon receipt of an application for obtaining a new home state license by virtue of privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in §30-31A-4 of this code via the data system, without need for primary source verification except for:

(A) A Federal Bureau of Investigation fingerprint based criminal background check if not previously performed or updated pursuant to the applicable rules adopted by the commission in accordance with Public Law 92-544;

(B) Other criminal background check as required by the new home state; and

(C) Completion of any requisite jurisprudence requirements of the new home state.

(3) The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(4) Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in §30-31A-4 of this code, the new home state shall apply its requirements for issuing a new single-state license.

(5) The licensed professional counselor shall pay all applicable fees to the new home state in order to be issued a new home state license.

(c) If a licensed professional counselor changes primary state of residence by moving from a member state to a non-member state, or from a non-member state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.

(d) Nothing in this compact may interfere with a licensee's ability to hold a single-state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state license.

(e) Nothing in this compact may affect the requirements established by a member state for the issuance of a single-state license.

§30-31A-6. Active-duty military personnel or their spouses.

Active-duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. After designating a home state, the individual shall only change his or her home state through application for licensure in the new state, or through the process described in §30-31A-5 of this code.

§30-31A-7. Compact privilege to practice telehealth.

(a) Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with §30-31A-3 of this code and under the rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

(b) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

§30-31A-8. Adverse actions.

(a) In addition to the other powers conferred by state law, a remote state may, in accordance with existing state due process law:

(1) Take adverse action against a licensed professional counselor's privilege to practice within that member state; and

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(3) Only the home state may take adverse action against a licensed professional counselor's license issued by the home state.

(b) For purposes of taking adverse action, the home state shall give the same priority and effect to the reported conduct received from a member state as it would if the conduct had occurred within

the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(c) The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the investigations. The home state may take appropriate action or actions and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.

(d) A member state, if otherwise permitted by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of cases resulting from any adverse action taken against that licensed professional counselor.

(e) A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

(f) Joint investigations. —

(1) In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(2) Member states shall share any investigative, litigation, or compliance materials in furtherance or any joint or individual investigation initiated under the compact.

(g) If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor shall include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.

(h) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(i) Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

§30-31A-9. Establishment of counseling compact commission.

(a) The compact member states hereby create and establish a joint public agency known as the counseling compact commission:

(1) The commission is an instrumentality of the compact states.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(b) Membership, voting, and meetings. —

(1) Each member state shall have and be limited to one delegate selected by that member state's licensing board.

(2) The delegate shall be either:

(A) A current member of the licensing board at the time of appointment, who is a licensed professional counselor or public member; or

(B) An administrator of the licensing board.

(3) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(4) The member state licensing board shall fill any vacancy occurring on the commission within 60 days.

(5) Each delegate shall be entitled to one vote relating to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(6) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(7) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(8) The commission shall by rule establish a term of office for delegates and may by rule establish term limits.

(c) The commission may:

(1) Establish the fiscal year of the commission;

(2) Establish bylaws;

(3) Maintain its financial records in accordance with the bylaws;

(4) Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(5) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(6) Bring and prosecute legal proceedings or actions in the name of the commission: *Provided*, That the standing of any state licensing board to sue or be sued under applicable law may not be affected;

(7) Purchase and maintain insurance and bonds;

(8) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(9) Hire employees, elect, or appoint officers, fix compensation, define duties, grant these individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(10) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of the same: *Provided*, That at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(11) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed: *Provided*, That at all times the commission shall avoid any appearance of impropriety;

(12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(13) Establish a budget and make expenditures;

(14) Borrow money;

(15) Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(16) Provide and receive information from, and cooperate with, law-enforcement agencies;

(17) Establish and elect and executive committee; and

(18) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with

the state regulation of professional counseling licensure and practice.

(d) The executive committee. —

(1) The executive committee may act on behalf of the commission according to the terms of this compact.

(2) The executive committee shall be composed of up to 11 members:

(A) Seven voting members who are elected by the commission from the current membership of the commission;

(B) Up to four ex-officio, nonvoting members from four recognized national professional counselor organizations;

(C) The ex-officio members will be selected by their respective organizations.

(3) The commission may remove any member of the executive committee as provided in bylaws.

(4) The executive committee shall meet at least annually;

(5) The executive committee may:

(A) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice;

(B) Ensure compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

(E) Monitor compact compliance of member states and provide compliance reports to the commission;

(F) Establish additional committees as necessary; and

(G) Other duties as provided in rules or bylaws.

(e) Meetings of the commission. —

(1) All meetings shall be open to the public, and public notice of the meetings shall be given in the same manner as required under the rule-making provisions in §30-31A-11 of this code.

(2) The commission or the executive committee or other committees of the commission may convene in a closed, non-public meeting if the commission or executive committee or other committees of the commission must discuss:

(A) Non-compliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practice or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation;

(D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(E) Accusing any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigative records compiled for law-enforcement purposes;

(I) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or

other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(J) Matters specifically exempted from disclosure by federal or member state statute.

(3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(4) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(f) Financing of the commission. —

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. This aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(4) The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(g) Qualified immunity, defense, and indemnification. —

(1) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claims for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: *Provided*, That nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That nothing herein may be construed to prohibit that person from retaining his or her own counsel: *Provided, however*, That the actual or alleged

act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

§30-31A-10. Data System.

(a) The commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(b) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

- (1) Identifying information;
- (2) Licensure data;
- (3) Adverse actions against a license or privilege to practice;
- (4) Non-confidential information related to alternative program participation;
- (5) Any denial of application for licensure, and the reason or reasons for such denial;
- (6) Current significant investigative information; and

(7) Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(c) Investigative information pertaining to a licensee in any member state will only be available to other member states.

(d) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(e) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

§30-31A-11. Rulemaking.

(a) The commission shall promulgate reasonable rules to achieve the purposes of the compact. Notwithstanding the foregoing, if the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(b) The commission shall exercise its rule-making powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then the rule shall have no further force and effect in any member state.

(d) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(e) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) On the website of each member state professional counseling licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(f) The notice of proposed rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(g) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(h) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons;

(2) A state or federal governmental subdivision or agency; or

(3) An association or organization having at least 25 members.

(I) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings will be recorded. A copy of the recording will be available on request.

(4) Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(j) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rules without a public hearing.

(l) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(m) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without

prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- (1) Meet an imminent threat to public health, safety, or welfare;
- (2) Prevent a loss of commission or member state funds;
- (3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
- (4) Protect public health and safety.

(n) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

§30-31A-12. Oversight, dispute resolution, and enforcement.

(a) Oversight. —

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(3) The commission may receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(b) Default, technical assistance, and termination. —

(1) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(A) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

(B) Provide remedial training and specific technical assistance regarding the default.

(c) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(f) The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(g) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(h) Dispute resolution. —

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(i) Enforcement. —

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

§30-31A-13. Date of implementation of the counseling compact commission and associated rules, withdrawal, and amendment.

(a) The compact shall come into effect on the date on which the compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rule-making powers necessary to the implementation and administration of the compact.

(b) Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall be the full force and effect of law on the day the compact become law in that state.

(c) Any member state may withdraw from this compact by enacting a statute repealing the same.

(1) A member state's withdrawal may not take effect until six months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this compact may be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

(e) This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

§30-31A-14. Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

§30-31A-15. Binding effect of compact and other laws.

(a) A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.

(b) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(c) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict: *Provided*, That any rule or bylaw promulgated by the Counseling Compact Commission shall not alter, amend, abolish, or contravene, the scope of practice or standard of care in the state of West Virginia for licensed professional counselors.

(d) Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding upon member states.

(e) All permissible agreements between the commission and the member states are binding in accordance with their terms.

(f) If any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

●

CHAPTER 198

(Revised Com. Sub. for S. B. 221 - By Senators Takubo and Plymale)

[Passed February 25, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 8, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-28A-1, §30-28A-2, §30-28A-3, §30-28A-4, §30-28A-5, §30-28A-6, §30-28A-7, §30-28A-8, §30-28A-9, §30-28A-10, §30-28A-11, §30-28A-12, §30-28A-13, and §30-28A-14, all relating to establishing an occupational therapy compact; providing for the purpose in creating the compact; providing for definitions relating to the compact; establishing guidelines for state participation in the compact; creating a compact privilege; creating a means to obtain a state home license through the compact; defining active duty military personnel and their spouses for purposes of the compact; defining adverse actions; establishing the Occupational Therapy Compact Commission; creating a data system; providing for rulemaking; providing for oversight, dispute resolution, and enforcement; creating a date of implementation of the interstate commission for occupational therapy practice and associated rules, withdrawal, and amendment; providing for the construction and severability of the compact; and establishing the binding effect of the compact and other laws.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28A. WEST VIRGINIA OCCUPATIONAL THERAPY COMPACT.

§30-28A-1. Purpose.

The purpose of this compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

(a) Increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;

(b) Enhance the states' ability to protect the public's health and safety;

(c) Encourage the cooperation of member states in regulating multi-state occupational therapy practice;

(d) Support spouses of relocating military members;

(e) Enhance the exchange of licensure, investigative, and disciplinary information between member states;

(f) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(g) Facilitate the use of telehealth technology in order to increase access to occupational therapy services.

§30-28A-2. Definitions.

As used in this compact, and except as otherwise provided, the following definitions shall apply:

“Active-duty military” means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active-duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C. 1211;

“Adverse action” means any administrative, civil, equitable, or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against an individual’s license or compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee’s practice;

“Alternative program” means a non-disciplinary monitoring process approved by an occupational therapy licensing board;

“Compact privilege” means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter;

“Continuing competence or education” means a requirement, as a condition of license renewal, to provide evidence of completion of, educational and professional activities relevant to practice or area of work;

“Current significant investigative information” means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction;

“Data system” means a repository of information about licensees, including, but not limited to, license status, investigative information, compact privileges, and adverse actions;

“Encumbered license” means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the National Practitioners Data Bank (NPDB);

“Executive committee” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission;

“Home state” means the member state that is the licensee’s primary state of residence;

“Impaired practitioner” means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions;

“Investigative information” means information, records, or documents received or generated by an occupational therapy licensing board pursuant to an investigation;

“Jurisprudence requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of occupational therapy in a state;

“Licensee” means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant;

“Member state” means a state that has enacted the compact;

“Occupational therapist” means an individual who is licensed by a state to practice occupational therapy;

“Occupational therapy assistant” means an individual who is licensed by a state to assist in the practice of occupational therapy;

“Occupational therapy”, “occupational therapy practice”, and the “practice of occupational therapy” mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the member state’s statutes and regulations;

“Occupational Therapy Compact Commission” or “commission” means the national administrative body whose membership consists of all states that have enacted the compact;

“Occupational therapy licensing board” or “licensing board” means the agency of a state that is authorized to license and

regulate occupational therapists and occupational therapy assistants;

“Primary state of residence” means the state (also known as the home state) in which an occupational therapist or occupational therapy assistant who is not active-duty military declares a primary residence for legal purposes as verified by: driver’s license, federal income tax return, lease, deed, mortgage, or voter registration or other verifying documentation as further defined by commission rules;

“Remote state” means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege;

“Rule” means a regulation promulgated by the commission that has the force of law;

“State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy;

“Single-state license” means an occupational therapist or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in any other member state; and

“Telehealth” means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, and consultation.

§30-28A-3. State participation in the compact.

(a) To participate in the compact, a member state shall:

(1) License occupational therapists and occupational therapy assistants;

(2) Participate fully in the commission’s data system, including, but not limited to, using the commission’s unique identifier as defined in the rules of the commission;

(3) Have a mechanism in place for receiving and investigating complaints about licensees;

(4) Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(5) Implement or utilize procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

(A) A member state shall, within a time frame established by the commission, require a criminal background check for a licensee seeking or applying for a compact privilege whose primary state of residence is that member state, by receiving the results of the Federal Bureau of Investigation criminal records search, and shall use the results in making licensure decisions;

(B) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544;

(6) Comply with the rules of the commission;

(7) Utilize only a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(8) Have continuing competence or education requirements as a condition for license renewal.

(b) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(c) Member states may charge a fee for granting a compact privilege.

(d) A member state shall provide for the state's delegate to attend all Occupational Therapy Compact Commission meetings.

(e) Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state: *Provided*, That the single-state license granted to these individuals shall not be recognized as granting the compact privilege in any other member state.

(f) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

§30-28A-4. Compact privilege.

(a) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

(1) Hold a license in the home state;

(2) Have a valid United States Social Security number or national practitioner identification number;

(3) Have no encumbrance on any state license;

(4) Be eligible for a compact privilege in any member state in accordance with §30-28A-4(d), §30-28A-4(f), §30-28A-4(g), and §30-28A-4(h) of this code;

(5) Have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege, and two years have elapsed from the date of such completion;

(6) Notify the commission that the licensee is seeking the compact privilege within a remote state or states;

(7) Pay any applicable fees, including any state fee for the compact privilege;

(8) Complete a criminal background check in accordance with §30-28A-3(a)(5) of this code;

(A) The licensee shall be responsible for the payment of any fee associated with the completion of a criminal background check;

(9) Meet any jurisprudence requirements established by the remote state or states in which the licensee is seeking a compact privilege; and

(10) Report to the commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

(b) The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of §30-28A-4(a) of this code to maintain the compact privileges in the remote state.

(c) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(d) Occupational therapy assistants practicing in a remote state shall be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

(e) A licensee providing occupational therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(f) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(1) The home state license is no longer encumbered; and

(2) Two years have elapsed from the date on which the home state license is no longer encumbered in accordance with §30-28A-4(f)(1) of this code.

(g) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of §30-28A-4(a) of this code to obtain a compact privilege in any remote state.

(h) If a licensee's compact privilege in any remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

(1) The specific period of time for which the compact privilege was removed has ended;

(2) All fines have been paid and all conditions have been met;

(3) Two years have elapsed from the date of completing requirements for §30-28A-4(h)(1) and §30-28A-4(h)(2) of this code; and

(4) The compact privileges are reinstated by the commission, and the compact data system is updated to reflect reinstatement.

(i) If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges shall be restored through the data system.

(j) Once the requirements of §30-28A-4(h) of this code have been met, the licensee must meet the requirements in §30-28A-4(a) of this code to obtain a compact privilege in a remote state.

§30-28A-5. Obtaining a new home state license by virtue of compact privilege.

(a) An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

(b) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two member states:

(1) The occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission; and

(2) Upon receipt of an application for obtaining a new home state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in §30-28A-4 of this code via the data system, without need for primary source verification except for:

(A) An FBI fingerprint based criminal background check if not previously performed or updated pursuant to the applicable rules adopted by the commission in accordance with Public Law 92-544;

(B) Other criminal background check as required by the new home state; and

(C) Submission of any requisite jurisprudence requirements of the new home state.

(3) The former home state shall convert the former home state license into a compact privilege once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.

(4) Notwithstanding any other provision of this compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in §30-28A-4 of this code, the new home state shall apply its requirements for issuing a new single-state license.

(5) The occupational therapist or occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home state license.

(c) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a non-member state, or from a non-member state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.

(d) Nothing in this compact shall interfere with a licensee's ability to hold a single-state license in multiple states: *Provided*, That for the purposes of this compact, a licensee shall have only one home state license.

(e) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

§30-28A-6. Active-duty military personnel or their spouses.

Active-duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state or through the process set forth in §30-28A-5 of this code.

§30-28A-7. Adverse actions.

(a) A home state shall have exclusive power to impose adverse action against an occupational therapist's or occupational therapist assistant's license issued by the home state.

(b) In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

(1) Take adverse action against an occupational therapist's or occupational therapy assistant's compact privilege within that member state; and

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceeding pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(c) For purposes of taking adverse action, the home state shall give the same priority and effect to the reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(d) The home state shall complete any pending investigations of occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, shall also have the authority to take appropriate action or actions and shall promptly report the conclusions of the investigations to the Occupational Therapy Compact Commission data system. The Occupational Therapy Compact Commission data system administrator shall promptly notify the new home state of any adverse actions.

(e) A member state, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

(f) A member state may take adverse action based on the factual findings of the remote state: *Provided*, That the member state follows its own procedures for taking the adverse action.

(g) *Joint investigations.* —

(1) In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(2) Member states shall share any investigative, litigation, or compliance materials in furtherance, or any joint or individual investigation initiated under the compact.

(h) If an adverse action is taken by the home state against an occupational therapist's or occupational therapy assistant's license, the occupational therapist's or occupational therapy assistant's compact privilege in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an occupational therapist's or occupational therapy assistant's license shall include a statement that the occupational therapist's or occupational therapy assistant's compact privilege is deactivated in all member states during the pendency of the order.

(i) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(j) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

§30-28A-8. Establishment of the Occupational Therapy Compact Commission.

(a) The compact member states hereby create and establish a joint public agency known as the Occupational Therapy Compact Commission.

(1) The commission is an instrumentality of the compact states.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the

commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) *Membership, voting, and meetings.* —

(1) Each member state shall have, and be limited to, one delegate selected by that member state's licensing board.

(2) The delegate shall be either:

(A) A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

(B) An administrator of the licensing board.

(3) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(4) The member state board shall fill any vacancy occurring in the commission within 90 days.

(5) Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(6) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(7) The commission shall establish by rule a term of office for delegates.

(c) The commission shall have the following power and duties:

(1) Establish a code of ethics for the commission;

(2) Establish the fiscal year of the commission;

(3) Establish bylaws;

(4) Maintain its financial records in accordance with the bylaws;

(5) Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(6) Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

(7) Bring and prosecute legal proceedings or actions in the name of the commission: *Provided*, That the standing of any state occupational therapy licensing board to sue or be sued under applicable law shall not be affected;

(8) Purchase and maintain insurance and bonds;

(9) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(10) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(11) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same: *Provided*, That at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(12) Lease, purchase, accept appropriate gifts, or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed: *Provided*, That at all times the commission shall avoid any appearance of impropriety;

(13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(14) Establish a budget and make expenditures;

(15) Borrow money;

(16) Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(17) Provide and receive information from, and cooperate with, law-enforcement agencies;

(18) Establish and elect an executive committee; and

(19) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(d) *The executive committee.* —

The executive committee shall have the power to act on behalf of the commission according to the terms of this compact.

(1) The executive committee shall be composed of nine members:

(A) Seven voting members who are elected by the commission from the current membership of the commission;

(B) One ex-officio, nonvoting member from a recognized national occupational therapy professional association; and

(C) One ex-officio, nonvoting member from a recognized national occupational therapy certification organization.

(2) The ex-officio members will be selected by their respective organizations.

(3) The commission may remove any member of the executive committee as provided in bylaws.

(4) The executive committee shall meet at least annually.

(5) The executive committee shall have the following duties and responsibilities:

(A) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privileges;

(B) Ensure compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

(E) Monitor compact compliance of member states and provide compliance reports to the commission;

(F) Establish additional committees as necessary; and

(G) Perform other duties as provided in rules or bylaws.

(e) *Meetings of the commission.* —

(1) All meetings shall be open to the public, and public notice of the meetings shall be given in the same manner as required under the rulemaking provisions set forth in §30-28A-10 of this code.

(2) The commission or the executive committee or other committees of the commission may convene in a closed, non-

public meeting if the commission or executive committee or other committees of the commission must discuss:

(A) Non-compliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practice or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation;

(D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(E) Accusing any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigative records compiled for law enforcement purposes;

(I) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(J) Matters specifically exempted from disclosure by federal or member state statute.

(3) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(4) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(f) *Financing of the commission.* —

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. This aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(4) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member state, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report

of the audit shall be included in and become part of the annual report of the commission.

(g) *Qualified immunity, defense, and indemnification.* —

(1) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claims for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That nothing herein shall be construed to prohibit that person from retaining his or her own counsel: *Provided, however*, That the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*,

That the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

§30-28A-9. Data system.

(a) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensees in member states.

(b) A member state shall submit a uniform data set, utilizing a unique identifier, to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Adverse actions against a license or compact privilege;

(4) Non-confidential information related to alternative program participation;

(5) Any denial of application for licensure, and the reason or reasons for such denial;

(6) Other information that may facilitate the administration of this compact, as determined by rules of the commission; and

(7) Current significant investigative information.

(c) Current significant investigative information and other investigative information pertaining to a licensee in any member state will only be available to other member states.

(d) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(e) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

§30-28A-10. Rulemaking.

(a) The commission shall exercise its rule-making powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(c) If a majority of the legislatures of the member states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(d) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(e) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) On the website of each member states' occupational therapy licensing board or other publicly accessible platform, or the publication in which each state would otherwise publish proposed rules.

(f) The notice of proposed rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(g) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments which shall be made available to the public.

(h) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons;

(2) A state or federal governmental subdivision or agency; or

(3) An association or organization having at least 25 members.

(i) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated

member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings will be recorded. A copy of the recording will be made available on request.

(4) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(j) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(k) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rules without a public hearing.

(l) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(m) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing: *Provided*, That the usual rule-making procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of commission or member state funds;

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) Protect public health and safety.

(n) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

§30-28A-11. Oversight, dispute resolution, and enforcement.

(a) *Oversight.* —

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purpose and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(3) The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or

order void as to the commission, this compact, or promulgated rules.

(b) *Default, technical assistance, and termination.* —

(1) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(A) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

(B) Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(4) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(c) *Dispute resolution.* —

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) *Enforcement.* —

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

§30-28A-12. Date of implementation of the interstate commission for occupational therapy practice and associated rules, withdrawal, and amendment.

(a) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The

provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(b) Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact become law in that state.

(c) Any member state may withdraw from this compact by enacting a statute repealing the same.

(1) A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this compact shall be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative agreement between a member state and a non-member state that does not conflict with the provisions of this compact.

(e) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

§30-28A-13. Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or

of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

§30-28A-14. Binding effect of compact and other laws.

(a) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(b) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(c) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict: *Provided*, That any rule or bylaw promulgated by the Occupational Therapy Compact Commission shall not alter, amend, abolish, or contravene, the scope of practice or standard of care in the State of West Virginia for occupational therapists and occupational therapy assistants.

(d) Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon member states.

(e) All agreements between the commission and the member states are binding in accordance with their terms.

(f) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

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CHAPTER 199

**(S. B. 427 - By Senators Takubo, Lindsay, Phillips, Baldwin,
Maynard, and Romano)**

[Passed March 8, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-19, relating to permitting West Virginia Board of Medicine investigators to carry a concealed weapon; establishing procedures and criteria for allowing investigators to carry a concealed weapon; and limiting liability for good faith acts or omissions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-19. West Virginia Board of Medicine investigators' authority to carry concealed weapon.

(a) Notwithstanding any provision of this code to the contrary, the board may allow, consistent with this section, an investigator employed or contracted by the board to carry a concealed firearm while performing his or her official duties.

(b) An investigator employed by the board or contracted by the board may carry a concealed firearm while performing his or her official duties solely for the purposes of defense of self or others if the investigator has:

- (1) Obtained approval by a majority vote of the board;
- (2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 *et seq.* of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending an entry level law-enforcement certification course provided at the West Virginia State Police Academy. The investigator must thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The board may reimburse the investigator for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency, nor an employee of the state acting in an official capacity may be held personally liable for an act of an investigator employed by the board if the act or omission was done in good faith while the investigator was performing official duties on behalf of the board.

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CHAPTER 200

**(Com. Sub. for S. B. 518 - By Senators Blair (Mr. President)
and Baldwin)**

(By Request of The Executive)

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to repeal §30-7-1a, §30-7-15e, and §30-7-20 of the Code of West Virginia, 1931, as amended, and to amend and reenact §30-7-3, §30-7-4, §30-7-6, §30-7-7, §30-7-8, §30-7-8a, §30-7-20, all relating to the practice of registered nursing; updating the board membership; updating the board's powers; updating licensure requirements; updating the requirements for temporary permits; providing license requirements for license renewal; reconstituting the nursing shortage study commission; and removing outdated provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1a. Eligibility for licensure by meeting requirements which existed prior to the legislative enactments during the 2012 legislative session.

[Repealed].

§30-7-3. Board of examiners for registered professional nurses.

(a) The West Virginia Board of Examiners for Registered Professional Nurses is renamed the West Virginia Board of Registered Nurses effective July 1, 2022. The members of the West

Virginia Board of Examiners for Registered Professional Nurses shall remain as members until the new appointments are made.

(b) By July 1, 2022, the Governor, by and with the advice and consent of the Senate, shall appoint a new board as follows:

(1) One person licensed as an advanced practice registered professional nurse by the board;

(2) One person who is certified as a dialysis technician by the board;

(3) Four persons licensed as a registered professional nurse by the board and meet the following requirements:

(A) One registered professional nurse, who provides direct patient care in a long-term care facility, home health or hospice;

(B) Two registered professional nurses, who provide direct patient care in a hospital setting or acute care setting; and,

(C) One registered professional nurse, who teaches nursing; and,

(4) One citizen member who is not licensed under the provisions of this chapter and who has never performed any services as a health care professional.

(c) Organizations that represent nurses may submit to the Governor recommendations for the appointment of the licensed board members.

(d) The appointment term is four years. A member may not serve more than two consecutive terms. A member may continue to serve until his or her successor has been appointed and qualified.

(e) Each member of the board shall be a resident of this state during the appointment term.

(f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(g) The Governor may remove any member from the board for neglect of duty, incompetency, or official misconduct.

(h) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is disciplined in any jurisdiction.

(i) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(j) The board shall elect one of its members as president and one member as secretary who shall serve at the will and pleasure of the board.

(k) A member of the board is entitled to receive compensation and expense reimbursement in accordance with §30-1-1 *et seq.* of this code.

(l) A simple majority of the membership serving on the board at a given time is a quorum for the transaction of business.

(m) The board shall hold at least two meetings annually. Other meetings shall be held at the call of the president or upon the written request of four members, at the time and place as designated in the call or request.

(n) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(o) A board member, when acting in good faith and without malice, shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members.

§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.

(a) The board has all the powers and duties set forth in this article, in §30-1-1 *et seq.* of this code and elsewhere in law, including the ability to:

- (1) Hold meetings;
- (2) Establish procedures for submitting, approving, and rejecting applications for a license and permit;
- (3) Determine the qualifications of an applicant for a license and permit;
- (4) Establish the fees charged under the provisions of this article;
- (5) Issue, renew, restrict, deny, suspend, revoke, or reinstate a license and permit;
- (6) Prepare, conduct, administer, and grade written, oral, or written and oral examinations for a license;
- (7) Contract with third parties to administer the examinations required under the provisions of this article;
- (8) Maintain records of the examinations the board, or a third party, administers, including the number of persons taking the examination and the pass and fail rate;
- (9) Maintain an office and hire, discharge, establish the job requirements, and fix the compensation of employees, and contract with persons necessary to enforce the provisions of this article;
- (10) Employ investigators, attorneys, hearing examiners, consultants, and other employees as may be necessary who are exempt from the classified service and who serve at the will and pleasure of the board;
- (11) Delegate hiring of employees to the executive director;
- (12) Investigate alleged violations of the provisions of this article and legislative rules, orders, and final decisions of the board;
- (13) Conduct disciplinary hearings of persons regulated by the board;
- (14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(18) Public meeting minutes to its website within 14 days of a meeting;

(19) Propose rules in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article;

(20) Sue and be sued in its official name as an agency of this state;

(21) Approve a nursing school;

(22) Establish a nurse health program;

(23) Implement the provisions of the enhanced nurse licensure compact in accordance with §30-7B-1 *et seq.* of this code;

(24) Coordinate with and assist the Center for Nursing in accordance with §30-7B-1 *et seq.* of this code; and

(25) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

(b) All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund shall revert to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the General Funds of this state.

§30-7-6. License to practice registered professional nursing.

(a) The board may issue a license to practice registered nursing to an applicant who meets the following requirements:

(1) Is at least 18 years of age;

(2) Has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency;

(3) Has completed a nursing education program;

(4) Has passed an examination approved by the board;

(5) Has paid the application fee specified by rule;

(6) Has completed a criminal background check, as required by §30-1D-1 *et seq.* of this code; and

(7) Is not an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code, unless an applicant in an active recovery process, which may be evidenced by participation in a Nurse Health Program, structured aftercare, or a 12-step program or other similar group or process, may be considered.

(b) A license to practice registered professional nursing issued by the board shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license shall renew the license.

§30-7-7. License to practice advanced practice registered nursing.

(a) The board may issue an advanced practice registered nurse license to an applicant who meets the following requirements:

(1) Is at least 18 years of age;

(2) Is currently certified by a national certification organization, approved by the board, in one or more of the following nationally recognized advanced practice registered nursing roles: Certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist, or certified nurse practitioner;

(3) Has paid the application fee specified by legislative rule; and

(4) Is not an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code, unless an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a Nurse Health Program, structured aftercare, or a 12-step program or other similar group or process, may be considered.

(b) An advanced practice registered nurse license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered an advanced practice registered nurse license issued under this section: *Provided*, That a person holding an advanced practice registered nurse license shall renew the license.

(c) An applicant, who is licensed in another jurisdiction as an advanced practice registered nurse, is eligible to apply for licensure.

(d) By virtue of being a licensed advanced practice registered nurse that person is also licensed as a registered professional nurse. The board may not charge an additional fee for registered professional nurse license

§30-7-8. License renewal.

(a) Persons regulated by this article shall annually or biennially, renew his or her board authorization by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a board authorization and shall charge a late fee for any renewal not paid by the due date.

(c) The board may deny an application for renewal for any reason which would justify the denial of an original application.

§30-7-8a. Temporary permits.

The board may issue a temporary permit to a person applying for a license under this article.

§30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.

[Repealed.]

§30-7-18. Nursing shortage study commission.

(a) A nursing shortage study commission shall be created by the board. The board shall appoint 9 members to the commission. The board shall appoint:

(1) One individual who is on the board;

(2) Two individuals that are employed as registered professional nurses in a hospital and who work primarily providing direct patient care;

(3) Two registered professional nurses who work as long-term care nurses, one of whom works in a nursing home and one of whom works for a home health agency, both of whom work primarily providing direct patient care;

(4) One nursing administrator;

(5) The Chancellor of the Higher Education Policy Commission;

(6) The West Virginia Nurses' Association President; and

(7) The Executive Director of the Center for Nursing.

(b) Members of the commission are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. Five of the appointed members is a quorum for the purpose of conducting business. The board shall meet at least monthly. The board shall designate a chair, who is not a public official. The commission shall conduct all meetings in accordance with the open meeting law pursuant to §6-9A-1 *et seq.* of this code.

(c) The commission shall:

(1) Study the nursing shortage in West Virginia and ways to alleviate it, including, but not limited to:

(A) Evaluating mechanisms currently available in the state and elsewhere intended to enhance education, recruitment, and retention of nurses in the workforce and to improve quality of care;

(B) Assessing the impact of shortages in nursing personnel on access to, and the delivery of, quality patient care;

(C) Developing recommendations on strategies to reverse the growing shortage of qualified nursing personnel in the state, including:

(i) Determining what changes are needed to existing programs, current scholarship programs and funding mechanisms to better reflect and accommodate the changing health care delivery environment and to improve quality of care to meet the needs of patients;

(ii) Facilitating career advancement within nursing;

(iii) Identifying more accurately specific shortage areas in a more timely manner;

(iv) Attracting middle and high school students into nursing as a career; and

(v) Projecting a more positive and professional image of nursing.

(2) Report its findings and recommendation to the Joint Committee on Health by December 1, 2022.

(3) Terminate January 1, 2023.

§30-7-20. Pilot program.

[Repealed.]

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CHAPTER 201

(S. B. 570 - By Senators Stollings, Takubo, Baldwin, Beach, Boley, Brown, Caputo, Clements, Grady, Jeffries, Karnes, Lindsay, Maynard, Phillips, Plymale, Roberts, Smith, Stover, Sypolt, Tarr, Trump, Weld, Woelfel, Woodrum, Hamilton, Swope, and Nelson)

[Passed March 11, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §30-29-5a of the Code of West Virginia, 1931, as amended, relating to criminal justice training for law-enforcement officers and correction officers regarding individuals with Alzheimer's and dementias; development of course instruction; defining terms; providing for training in appropriate interactions with individuals with Alzheimer's and dementias; and authorizing the Law-Enforcement Professional Standards Subcommittee to develop guidelines for law-enforcement and correction officer response to individuals experiencing Alzheimer's and dementias who are victims or witnesses to a crime, or suspected or convicted of a crime.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5a. Criminal justice training regarding individuals with autism spectrum disorders; Alzheimer's and dementia.

(a) The Law-Enforcement Professional Standards Subcommittee shall establish within the basic training curriculum, a course for law-enforcement training programs for the training of law-enforcement officers and correction officers in appropriate

interactions with individuals with autism spectrum disorders, Alzheimer's and related dementias and shall develop guidelines for law enforcement response to individuals on the autism spectrum, experience Alzheimer's and related dementias who are victims or witnesses to a crime, or suspected or convicted of a crime.

(b) The course of instruction and the guidelines relating to autism spectrum disorders shall be developed and delivered by the West Virginia Autism Training Center, located at Marshall University. This course of instruction may stress positive responses to such individuals, de-escalate potentially dangerous situations, provide an understanding of the different manner in which such individuals process sensory stimuli and language, social communication, and language difficulties likely to affect interaction, and appropriate methods of interrogation. Training instructors shall always include adults with autism spectrum disorders and/or a parent or primary caretaker of an individual diagnosed with autism spectrum disorder.

(c) The training course of instruction relating to Alzheimer's and dementia shall consist of two hours and be based on evidence-informed research into the identification of persons with Alzheimer's and other dementias, risks such as wandering or elder abuse, and the best practices for law-enforcement officers interacting with such persons. The training course of instruction may be delivered by any qualified entity, organization, or person approved by the Law-Enforcement Professional Standards Subcommittee.

(d) As used in this section:

(1) "Agency" means the ability to make independent decisions and act in one's own best interests;

(2) "Alzheimer's" means a medical condition diagnosis of the most common type of dementia which is a gradually progressive type of brain disorder that causes problems with memory, thinking, and behavior.

(3) “Autism spectrum disorder” means a developmental disability characterized by persistent and significant deficits in social communication, social interaction, communication, and behavior, and may include the diagnosis of pervasive developmental disorder, not otherwise specified, autistic disorder, and Asperger’s Syndrome as defined in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association;

(4) Related “dementias” means a major neurocognitive disorder resulting in the loss of cognitive functioning, thinking, remembering, and reasoning to such an extent that it interferes with a person’s daily life and activities, including, but not limited to, inability to control emotions, and change of personalities.

(5) “Law-enforcement officer” means any officer of any West Virginia law-enforcement agency, or any state institution of higher education as defined in §30-29-1(6) of this code; and

(6) “Training instructors” means professional experts, autistic adults, and/or the family member or primary caregiver of an autistic individual who deliver instruction and information.

(e) The autism spectrum disorder course of basic training for law-enforcement officers and correction officers may include at least three hours of instruction in the procedures and techniques described in this subsection:

(1) The nature and manifestation of autism spectrum disorders;

(2) Appropriate techniques for interviewing or interrogating an individual on the autism spectrum, including techniques to ensure the legality of statements made, and techniques to protect the rights of the interviewee;

(3) Techniques for locating an individual on the autism spectrum who runs away and is in danger, and returning the individual while causing as little stress as possible to the individual;

(4) Techniques for recognizing an autistic individual’s agency while identifying potential abusive or coercive situations;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the autistic individual;

(6) Techniques for differentiating between an individual on the autism spectrum from an individual who is belligerent, uncooperative, or otherwise displaying traits similar to the characteristics of an autistic individual;

(7) Procedures to identify and address challenges related to the safety and well-being of autistic individuals in a correctional facility; and

(8) The impact of interaction with law-enforcement officers or correction officers on autistic individuals.

(f) The Alzheimer's and related dementias course of basic training for law-enforcement officers and correction officers may include at least two hours of instruction in the procedures and techniques described in this subsection:

(1) Dementia, psychiatric, and behavioral symptoms;

(2) Communication issues, including how to communicate respectfully and effectively with the individual who has dementia in order to determine the most appropriate response and effective communication techniques to enhance collaboration with caregivers;

(3) Techniques for understanding and approaching behavioral symptoms and identify alternatives to physical restraints;

(4) Identifying and reporting incidents of abuse, neglect, and exploitation to Adult Protective Services (APS) at West Virginia Department of Health and Human Services;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the individual with Alzheimer's or related dementias;

(6) Protocols for contacting caregivers when a person with dementia is found wandering or during emergency or crisis situations;

(7) Local caregiving resources that are available for people living with dementia; and

(8) The impact of interaction with law-enforcement officers or correction officers on Alzheimer's and dementia individuals.

(g) All law-enforcement recruits may receive the course of basic training for law-enforcement officers, established in this section, as part of their required certification process. The course of basic training for law-enforcement officers may be taught as part of the "crisis intervention and conflict resolution" and "people with special needs" components of the training.

(h) All correction officer recruits may receive the course of basic training for correction officers, established in this section, as part of their required certification process.

(i) The Commissioner of the Division of Corrections and Rehabilitation periodically may include within the in-service training curriculum a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.

(j) The Law-Enforcement Professional Standards Subcommittee periodically may include within its in-service training curriculum, a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.

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CHAPTER 202

(Com. Sub. for S. B. 585 - By Senators Takubo and Stollings)

[Passed March 10, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-11c, relating to administrative licenses; and granting rule-making authority related thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11c. Administrative medicine license.

(a) For purposes of this section:

(1) “Administrative medicine” means administration or management related to the practice of medicine or to the delivery of health care services using the medical knowledge, skill, and judgment of a licensed physician that may affect the health of the public or medical research, excluding clinical trials on humans. Administrative medicine does not include the authority to practice clinical medicine; examine, care for, or treat patients; prescribe medications, including controlled substances; or direct or delegate medical acts or prescriptive authority to others.

(2) “Administrative medicine license” means a medical license restricted to the practice of administrative medicine. A physician with an administrative medicine license may manage the integration of clinical medicine, strategy, operations, and other business activities related to the delivery of health care services, advise organizations, both public and private, on health care

matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and perform other similar duties that do not require or involve direct patient care.

(3) “Clinical medicine” includes, but is not limited to:

(A) Direct involvement in patient evaluation, diagnosis, and treatment;

(B) Prescribing, administering, or dispensing any medication;

(C) Delegating medical acts, service, or prescriptive authority; and

(D) Supervision of physicians and/or podiatric physicians who practice clinical medicine, physician assistants who render medical services in collaboration with physicians, or the clinical practice of any other medical professional.

(b) The board may issue an administrative medicine license to a physician who:

(1) Files a complete application;

(2) Pays the applicable fee;

(3) Meets all qualifications and criteria for licensure set forth in §30-3-10 of this code and the board’s legislative rules; and

(4) Demonstrates competency to practice administrative medicine.

(c) Administrative medicine licensees may not practice clinical medicine.

(d) A physician applying to renew an administrative medicine license must pay the same fees and meet the same requirements for renewing an active status license, including submission of certification of participation in and successful completion of a minimum of 50 hours of continuing medical education satisfactory to the board during the preceding two-year period.

(e) The board may deny an application for an administrative medicine and may discipline an administrative medicine licensee who, after a hearing, has been adjudged by the board as unqualified due to any reason set forth in §30-3-14 of this code or the board's rules and pursuant to the processes set forth therein.

(f) The board shall propose emergency rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

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CHAPTER 203

(S. B. 603 - By Senator Takubo)

[Passed March 8, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to prohibiting licensure or renewal of licensure when the applicant or licensee has certain unresolved disciplinary proceedings pending in another jurisdiction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) A person seeking licensure as an allopathic physician shall apply to the board.

(b) A license may be granted to an applicant who has graduated and received the degree of doctor of medicine or its equivalent from a school of medicine located within the United States, the Commonwealth of Puerto Rico, or Canada, and is approved by the Liaison Committee on Medical Education or by the board, and who:

- (1) Submits a complete application;
- (2) Pays the applicable fees;
- (3) Demonstrates to the board's satisfaction that the applicant:
 - (A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery;

(D) Has successfully completed:

(i) A minimum of one year of graduate clinical training in a program is approved by the Accreditation Council for Graduate Medical Education; or

(ii) A graduate medical education residency program outside of the United States and a minimum of one year of fellowship training in the United States in a clinical field related to the applicant's residency training which was completed:

(I) At an institution that sponsors or operates a residency program in the same clinical field or a related clinical field approved by the Accreditation Council for Graduate Medical Education; or

(II) At a time when accreditation was not available for the fellowship's clinical field and the board has determined that the training was similar to accredited training due to objective standards, including, but not limited to, the presence of other accredited programs at the sponsoring institution during the applicant's clinical training at the fellowship location; and

(E) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(c) A license may be granted to an applicant who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico, and Canada, who:

- (1) Submits a complete application;
- (2) Pays the applicable fees;
- (3) Demonstrates to the board's satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of medicine and surgery;

(C) Has, within 10 consecutive years, passed all component parts of the United States Medical Licensing Examination or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice medicine and surgery;

(D) Has successfully completed:

(i) A minimum of two years of graduate clinical training approved by the Accreditation Council for Graduate Medical Education;

(ii) A minimum of one year of graduate clinical training approved by the Accreditation Council for Graduate Medical Education or one year of fellowship training which comports with the requirements of subparagraph (iii) of this paragraph and the applicant holds a current certification by a member board of the American Board of Medical Specialties; or

(iii) A graduate medical education residency program outside of the United States and a minimum of two years of fellowship training in the United States in a clinical field related to the applicant's residency training which was completed:

(I) At an institution that sponsors or operates a residency program in the same clinical field or a related clinical field approved by the Accreditation Council for Graduate Medical Education; or

(II) At a time when accreditation was not available for the fellowship's clinical field and the board has determined that the training was similar to accredited training due to objective standards, including, but not limited to, the presence of other accredited programs at the sponsoring institution during the applicant's clinical training at the fellowship location;

(E) Holds a valid ECFMG certificate issued by the Educational Commission for Foreign Medical Graduates or:

(i) Holds a full, unrestricted, and unconditional license to practice medicine and surgery under the laws of another state, the District of Columbia, Canada, or the Commonwealth of Puerto Rico;

(ii) Has been engaged in the practice of medicine on a full-time professional basis within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and

(iii) Is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline reportable to the National Practitioner Data Bank by a medical licensing board in any jurisdiction;

(F) Can communicate in the English language; and

(G) Meets any other criteria for licensure set forth in this article or in rules promulgated by the board pursuant to §30-3-7 of this code and in accordance with §29A-3-1 *et seq.* of this code.

(d) A person seeking licensure as a podiatrist shall apply to the board. A license may be granted to an applicant who:

(1) Submits a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that the applicant:

(A) Is of good moral character;

(B) Is physically and mentally capable of engaging in the practice of podiatric medicine and surgery;

(C) Has graduated and received the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine approved by the Council of Podiatric Medical Education or by the board;

(D) Has, within 10 consecutive years, passed all component parts of the American Podiatric Medical Licensing Examination, or any prior examination or examination series approved by the board which relates to a national standard, is administered in the English language, and is designed to ascertain an applicant's fitness to practice podiatric medicine;

(E) Has successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the United States armed forces or three years' private podiatric clinical experience in lieu of this requirement; and

(F) Meets any other reasonable criteria for licensure set forth in this article or in legislative rules promulgated by the board.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant's education, training, and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board; and

(5) That orders denying applications for a restricted license under this subsection are not appealable.

(f) The board may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) Personal interviews by board members of all applicants are not required. An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(h) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: *Provided*, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June 11, 1965: *Provided, however*, That all persons licensed to practice chiropody prior to June 11, 1965, are permitted to use the term “chiropody-podiatry” and shall have the rights, privileges, and responsibilities of a podiatrist set out in this article.

(i) The board shall not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

(j) The board shall not issue an initial license, reinstate, or reactivate a license, to any individual whose license has been revoked, suspended, surrendered, or deactivated in another state

based upon conduct which is substantially equivalent to an act of unprofessional conduct prohibited by §30-3-14(c) of this code or the board's legislative rules, until reinstatement of his or her license in that state.

(k) The board need not reject a candidate for a nonmaterial technical or administrative error or omission in the application process that is unrelated to the candidate's professional qualifications as long as there is sufficient information available to the board to determine the eligibility and qualifications of the candidate for licensure.

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CHAPTER 204

**(Com. Sub. for S. B. 606 - By Senators Weld, Woelfel,
Takubo, Stollings, and Plymale)**

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended, relating to reporting requirements under the West Virginia Medical Practice Act; imposing a duty on persons licensed or authorized by the West Virginia Board of Medicine to report certain incidents to the Board; providing reporting deadlines; providing failure to report constitutes unprofessional conduct and grounds for disciplinary action; providing exception to reporting requirement for certain physicians; providing for immunity from civil liability for reports in good-faith and without fraud or malice; providing reports made in bad-faith, fraudulently, or maliciously constitute unprofessional conduct and grounds for disciplinary action; modifying grounds for denial of application and discipline; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law-enforcement authorities; rulemaking.

(a) (1) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy, and others.

(2) The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies, or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability, have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) (1) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. If copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the requested information and the comments shall be considered by the board.

(2) The chief executive officer of every hospital shall, within 60 days after the completion of the hospital's formal disciplinary procedure and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or

terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

(3) Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within 60 days after the completion of any formal peer review process and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol abuse within 60 days after completion of a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, “managed care organization” means a plan that establishes, operates, or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

(4) Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude, or drug or alcohol abuse shall report in writing to the board within 60

days of a final decision the name of the member, together with all pertinent information relating to the action.

(5) Any person licensed or authorized by the board to provide health care services to patients in this state shall submit a written report to the board of any of the following incidents the person reasonably believes to have occurred involving a person licensed or authorized by the board to provide health care services to patients in this state:

(A) Exercising influence within a provider-physician relationship for the purpose of engaging a patient in sexual activity;

(B) Engaging in sexual misconduct with a patient;

(C) Violating established medical or professional protocols regarding transferring controlled substances or prescribing controlled substances;

(D) Engaging in conduct which jeopardizes patient safety; or

(E) Other gross misconduct.

All reports required by this subdivision shall be submitted to the board within 30 days of the reportable incident, or if the licensee or other authorized person with a duty to report gained knowledge of the incident after it occurred, within 30 days of the licensee or other authorized person's knowledge of the incident. Failure of a licensee or other authorized person to report any such incidents to the board constitutes unprofessional conduct and is grounds for disciplinary action by the board. A physician who is licensed by the board and who obtains responsive information exclusively while functioning as the executive director or employee of a board-approved professional health program shall only be required to report in conformity with §30-3-9(h) of this code.

(6) Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to a physician or podiatrist in this state, including the state Board of Risk and

Insurance Management, shall submit to the board the following information within 30 days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: the name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

(7) Within 30 days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

(8) Within 30 days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed, and the final judgment and sentence of the court.

(9) Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society, or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a

civil penalty of not less than \$1,000 nor more than \$10,000 against the violator. The board shall notify any person so assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action, the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence shall be clear and convincing before the board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

(10) Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

(11) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

(12) The filing of a report with the board pursuant to any provision of this article, any investigation by the board, or any disposition of a case by the board does not preclude any action by a hospital, other health care facility, or professional society comprised primarily of physicians or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or podiatrist.

(13) Any person who reports pursuant to this subsection, in good-faith and without fraud or malice, is immune from civil liability. Reports made in bad-faith, fraudulently, or maliciously constitute unprofessional conduct and, if made by persons licensed or authorized to practice by the board, are grounds for disciplinary action pursuant to § 30-3-14(c) of this code.

(c) The board may deny an application for a license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing, or attempting to renew a license or other authorization to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation, or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude, or directly relates to the practice of medicine. Any plea of *nolo contendere* is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring, or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving, or paying directly or indirectly a payment, rebate, refund, commission, credit, or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication, or any other medical goods, services, or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which

the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;

As used in this subdivision, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity or engaging in other sexual misconduct;

(9) Making a deceptive, untrue, or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation, or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results, and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;

(13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good-faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice. A physician who discharges his or her

professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate, or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that

he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding; or

(22) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board or failing to comply with any reporting requirement set forth in §30-3-14(b) of this code.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing, or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug-related felony conviction, upon completion of any sentence of confinement, parole, probation, or other court-ordered supervision, and full satisfaction of any fines, judgments, or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions, or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant

knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions, or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within 90 days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in §30-3-14(e) of this code, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently

and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq.* of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: *Provided*, That the board may not be required to furnish or produce

any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within 20 days of the date of service of the written notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses, with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any of the grounds set forth in §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit, or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for any period of time, including for the life of the licensee, that the board may find to be reasonable and necessary according to evidence presented in a hearing before the board or its designee;

(5) Require him or her to submit to care, counseling, or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than \$1,000 nor more than \$10,000.

(k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within 15 days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to this article has the right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code: *Provided*, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending, or limiting his or her license while any appeal is pending. Within 60 days, the board shall report its final action regarding restriction, limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation, or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization, or person, including the board, any member of the board, its agents or employees, and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation, or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this code. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at the hearing, including the record of the final action taken: *Provided*, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital, or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board

shall obtain a list from the West Virginia State Bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation may not be considered a proceeding open to the public, and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

(s) A physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this code.

(t) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commitment of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting required under federal law for reporting actions relating to health care providers to the United States Department of Health and Human Services.

(u) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code which define sexual misconduct and identify prohibited professional misconduct, including sexual misconduct, for which an application may be denied and/or a license or other authorization to practice may be subject to disciplinary action by the board pursuant to this section.

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CHAPTER 205

(H. B. 2325 - By Delegate Foster)

[Passed February 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on February 21, 2022.]

AN ACT to amend and reenact §30-27-10 of the Code of West Virginia, 1931, as amended, relating to removing the requirement of continuing education for barbers and cosmetologists.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-10. Professional license and certificate renewal requirements.

(a) A professional licensee and certificate holder shall annually on or before January 1, renew his or her professional license or certificate by completing a form prescribed by the board, paying the renewal fee, and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license or certificate, and a late fee for any renewal not paid by the due date.

(c) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license or certificate.

(d) The board shall recognize reciprocity for military barbers for the purpose of the state examination for barbers.

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CHAPTER 206

(H. B. 4024 - By Delegates Espinosa, Steele, Foster, Clark, Maynor, Ellington, and Young)

[Passed February 14, 2022; in effect ninety days from passage.]
[Approved by the Governor on February 23, 2022.]

AN ACT to amend §30-27-8a and §30-27-8b of the Code of West Virginia, 1931, as amended, all relating to creating a cosmetology apprenticeship program that allows companies to train an apprentice, in whole or in part, for practical real-world experience; and providing that such apprenticeships shall count towards certification as if the apprentice had completed beauty school and satisfied other necessary requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-8a. Barber and cosmetologist apprentice.

(a) The board may establish an apprenticeship program to become a barber or cosmetologist. A barber or cosmetologist apprentice shall work at all times under the direct supervision of a licensed barber or cosmetologist and any permit issued by the board to work as a barber or cosmetologist apprentice does not allow a person to practice individually as a barber or cosmetologist.

(b) An applicant for a barber or cosmetologist apprenticeship shall present satisfactory evidence that he or she:

- (1) Is at least sixteen years of age;
- (2) Is of good moral character;

(3) Is in high school or has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;

(4) Has paid the applicable fee;

(5) Has a certificate of health from a licensed physician;

(6) Is a citizen of the United States or is eligible for employment in the United States; and

(7) Has fulfilled any other requirement specified by the board.

(c) An applicant for a sponsor of a barber or cosmetologist apprentice shall present satisfactory evidence that he or she:

(1) Is licensed as a barber or cosmetologist under the provisions of this article;

(2) Has paid the applicable fee; and

(3) Has fulfilled any other requirement specified by the board.

(d) A sponsor of a barber or cosmetologist apprentice shall be a current licensed barber or cosmetologist with at least five years’ experience and has worked in a shop for the last five years.

(e) The board may propose emergency rules and rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.*, to implement the provisions of this section, including:

(1) The requirements for:

(A) The barber or cosmetologist apprenticeship program;

(B) The barber or cosmetologist apprentice permit; and

(C) A licensed barber or cosmetologist to sponsor a barber or cosmetologist apprentice;

(2) Procedures for an examination;

(3) A fee schedule; and

(4) Any other rules necessary to effectuate the provisions of this section.

§30-27-8b. Certifications.

(a) The board shall issue a certification to an applicant who obtains training at a licensed school or continuing education provider, in West Virginia, in the following area:

Waxing Specialist.—

An applicant for a waxing specialist shall present satisfactory evidence that he or she:

(A) Is at least eighteen years of age;

(B) Is of good moral character;

(C) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;

(D) Has paid the applicable fee;

(E) Has a certificate of health from a licensed physician;

(F) Is a citizen of the United States or is eligible for employment in the United States;

(G) Has completed a one hundred-hour class that consists of: Professional requirements, safety and health, skin structure, disorders and diseases, removal of superfluous hair and twenty-five hours on the clinic floor, supervised, for a total of one hundred twenty-five hours;

(H) If not currently licensed, must take the West Virginia state law test; and

(I) Has fulfilled any other requirement specified by the board.

(b) The board shall issue to any barber the fifteen hundred clock-hour level licensure who has previously completed a twelve

hundred clock-hour training program, and who subsequently completes a three hundred clock-hour certification program in chemical services.

(c) A cosmetologist who obtains the necessary hours of training in an apprenticeship program outlined in §30-27-8a of this code shall be issued the necessary certification as if the apprentice had completed beauty school, so long as the apprentice has completed the necessary requirements outlined in that section. The apprenticeship program established by the board may allow individuals to participate in beauty school to the extent necessary to obtain any other classroom instruction or technical training that is not otherwise provided in the apprenticeship.

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CHAPTER 207

(Com. Sub. for H. B. 4285 - By Delegates Steele, Foster and Booth)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §30-38-10, §30-38-11, and §30-38-17 of the Code of West Virginia, 1931, as amended, all relating to real estate appraiser licensing board requirements; prohibiting board members from participating in any decision regarding disciplinary action concerning real estate appraiser activity in which member has participated, testified, been engaged to testify, or otherwise has conflict of interest; requiring board provide applicants written statement when applicant's request for license is denied; requiring board send written statement within 15 calendar days of its decision to deny an applicant's license or renewal request; setting forth content and mailing requirements for board's written statement; requiring board offer guidance on certain issues relating to nonconformity with Uniform Standards of Professional Appraisal Practice when submitted to the board; providing 60 days for applicant to cure any nonconformity to appraisal practice standards; revising process for adoption of uniform standards of appraisal practice; and making other technical modifications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-10. Civil liability for board members; liability limitations of professionals reporting to board; disqualification of board members from disciplinary proceedings or actions.

(a) Members of the board will be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as board members.

(b) Any person licensed or certified by this board who reports or otherwise provides evidence of violations of this article or the board's rules by another person engaging in real estate appraisal activity to the board, is not liable for making the report if it is made without malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

(c) No member of the board may participate in or vote on a disciplinary proceeding or action concerning a real estate appraisal activity in which he or she has previously participated or in which he or she has given testimony or been engaged to give testimony, or in which the board member has a conflict of interest. In any such instance, the board member shall recuse himself or herself from the proceeding or action.

§30-38-11. Applications for license or certification; renewals.

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, on a form as the board may prescribe.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board's rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state-licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her license or certification expired.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

(i)(1) If the board denies issuance of a renewal of a license or certification, or denies an initial license or certification application, the board shall provide a written statement to the applicant for an initial license or certification, or applicant for a renewal of a license

or certification, clearly describing the deficiencies of the application for his or her license or certificate.

(2) The board shall provide this statement to an initial applicant or a renewal applicant within 15 calendar days of its decision to deny licensure or certification. The board may send its statement through the United States mail, electronic mail service, or both, to ensure it reaches the applicant or renewal applicant.

(3) If the basis for the denial is due to submitted appraisals failing to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the board shall provide written guidance to the applicant describing, in detail, each aspect of each submitted appraisal that does not conform to USPAP and the corrective action necessary to remedy nonconformity. The board shall provide 60 days to the applicant to remedy any nonconformity. The applicant shall resubmit any corrected appraisals on or before the 60th day and the board shall reevaluate the appraisals only pertaining to any nonconformity. If the nonconformity or nonconformities are remedied and resubmitted on or before the 60th day, the board shall accept the appraisal for purposes of issuing a license.

§30-38-17. Standards of professional appraisal practice.

Each real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation.

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CHAPTER 208

**(H. B. 4288 - By Delegates Steele, Foster, Rohrbach, D.
Jeffries, Wamsley, Pushkin and Fleischauer)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §30-36-10 of the Code of West Virginia, 1931, as amended, relating to expanding the practice of auricular acudetox to professions approved by the board; and making other technical modifications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

(a) To qualify for a license, an applicant shall:

(1) Be free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(2) Be at least 18 years of age;

(3) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training, or demonstrated experience:

(A) Graduation from a course of training of at least 1,800 hours, including 300 clinical hours, that is:

(i) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

(ii) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

(B) Achievement of a passing score on an examination that is:

(i) Given by the national commission for the certification of acupuncturists; or

(ii) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

(C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(D) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least 500 patient visits per year; and

(4) Achievement of any other qualifications that the board establishes in rules.

(b) Notwithstanding any other provisions of this code to the contrary, to qualify for a certificate as an auricular detoxification specialist, an applicant shall:

(1) Be at least 18 years old;

(2) Be authorized in this state to engage in any of the following:

(A) Physician assistant, pursuant to §30-3E-1 *et seq.* of this code;

(B) Dentist, pursuant to §30-4-1 *et seq.* of this code;

(C) Registered professional nurse, pursuant to §30-7-1 *et seq.* of this code;

- (D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this code;
 - (E) Psychologist, pursuant to §30-21-1 *et seq.* of this code;
 - (F) Occupational therapist, pursuant to §30-28-1 *et seq.* of this code;
 - (G) Social worker, pursuant to §30-30-1 *et seq.* of this code;
 - (H) Professional counselor, pursuant to §30-31-1 *et seq.* of this code;
 - (I) Emergency medical services provider, pursuant to §16-4C-1 *et seq.* of this code;
 - (J) Corrections medical providers, pursuant to §15A-1-1 *et seq.* of this code; or
 - (K) Any other profession the board determines is eligible to engage in the practice of auricular acudetox.
- (3) Provide evidence of successful completion of a board-approved auricular acudetox program;
 - (4) Submit a completed application as prescribed by the board; and
 - (5) Submit the appropriate fees as provided for by legislative rule.
- (c) A certificate may be issued to a retired or inactive professional as described in §30-36-10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder and the last three years of professional activity were performed in good standing: *Provided, however*, That a person who holds a certificate or its equivalent in another jurisdiction as an auricular detoxification specialist may be approved by the board to practice auricular acudetox during a public health emergency or state of emergency for a duration to be provided for in legislative rules of the board.

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CHAPTER 209

(Com. Sub. for H. B. 4324 - By Delegate Rohrbach)

[Passed March 8, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §30-5-4 and §30-5-19 of the Code of West Virginia, 1931, as amended, all relating to collaborative pharmacy practice; defining terms; setting forth requirements for different practice settings; prohibiting certain practices; removing board approval of specified items; updating the terms of collaborative practice agreements; providing for a practice notification; and providing for the procedure for the practice notification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-4. Definitions.

As used in this article:

“Ambulatory health care facility” includes any facility defined in §16-5B-1 *et seq.* of this code, that also has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care.

“Active Ingredients” means chemicals, substances, or other components of articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals or for use as nutritional supplements.

“Administer” means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means.

“Board” means the West Virginia Board of Pharmacy.

“Board authorization” means a license, registration, or permit issued under this article.

“Chain Pharmacy Warehouse” means a permanent physical location for drugs or devices that acts as a central warehouse and performs intracompany sales and transfers of prescription drugs or devices to chain pharmacies, which are members of the same affiliated group, under common ownership and control.

“Charitable clinic pharmacy” means a clinic or facility organized as a not-for-profit corporation that has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care and dispenses its prescriptions free of charge to appropriately screened and qualified indigent patients.

“Collaborative pharmacy practice” is that practice of pharmacist care where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist or pharmacists may perform certain patient care functions authorized by the physician or physicians under certain specified conditions and limitations.

“Collaborative pharmacy practice agreement” is a written and signed agreement, which is a physician directed approach, that is entered into between an individual physician or physician group, or for a medical provider in training where the agreement is signed by the supervising physician or chairperson of the medical department where the medical provider in training is practicing, and an individual pharmacist or pharmacists that provides for collaborative pharmacy practice for the purpose of drug therapy management of a patient.

“Common Carrier” means any person or entity who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs for compensation.

“Component” means any active ingredient or added substance intended for use in the compounding of a drug product, including those that may not appear in such product.

“Compounding” means:

(A) The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(i) As the result of a practitioner’s prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice for sale or dispensing; or

(ii) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; and

(B) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

“Deliver” or “delivery” means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

“Device” means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, “Caution: Federal or state law requires dispensing by or on the order of a physician.”

“Digital Signature” means an electronic signature based upon cryptographic methods of originator authentication, and computed by using a set of rules and a set of parameters so that the identity of the signer and the integrity of the data can be verified.

“Dispense” or “dispensing” means the interpretation, evaluation, and implementation of a prescription drug order,

including the preparation, verification, and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

“Distribute” or “Distribution” means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a drug, whether by passage of title, physical movement, or both. The term does not include:

(A) To dispense or administer;

(B) (i) Delivering or offering to deliver a drug by a common carrier in the usual course of business as a common carrier; or providing a drug sample to a patient by a practitioner licensed to prescribe such drug;

(ii) A health care professional acting at the direction and under the supervision of a practitioner; or the pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner and that received such sample in accordance with the Prescription Drug Marketing Act and regulations to administer or dispense;

(iii) Intracompany sales.

“Drop shipment” means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug or by that manufacturer's colicensed product partner, that manufacturer's third-party logistics provider, that manufacturer's exclusive distributor, or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities whereby:

(A) The wholesale distributor takes title to but not physical possession of such prescription drug;

(B) The wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug; and

(C) The pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer or from that manufacturer's colicensed product partner, that manufacturer's third-party logistics provider, that manufacturer's exclusive distributor, or from an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities.

“Drug” means:

(A) Articles recognized as drugs by the United States Food and Drug Administration, or in any official compendium, or supplement;

(B) An article, designated by the board, for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

(D) Articles intended for use as a component of any articles specified in paragraph (A), (B), or (C) of this subdivision.

“Drug regimen review” includes, but is not limited to, the following activities:

(A) Evaluation of the prescription drug orders and if available, patient records for:

(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

(B) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(C) Evaluation of the prescription drug for interactions or adverse effects which may include, but are not limited to, any of the following:

- (i) Drug-drug;
- (ii) Drug-food;
- (iii) Drug-disease; and
- (iv) Adverse drug reactions.

(D) Evaluation of the prescription drug orders and if available, patient records for proper use, including overuse and underuse and optimum therapeutic outcomes.

“Drug therapy management” means the review of drug therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a physician regarding adjustment of the regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management is limited to:

(A) Implementing, modifying, and managing drug therapy according to the terms of the collaborative pharmacy practice agreement;

(B) Collecting and reviewing patient histories;

(C) Performing patient evaluations that are mutually agreed upon in the collaborative agreement;

(D) Ordering screening laboratory tests that are dose related and specific to the patient’s medication or are protocol driven and are also specifically set out in the collaborative pharmacy practice agreement between the pharmacist and physician.

“Electronic data intermediary” means an entity that provides the infrastructure to connect a computer system, hand-held electronic device, or other electronic device used by a prescribing

practitioner with a computer system or other electronic device used by a pharmacy to facilitate the secure transmission of:

- (A) An electronic prescription order;
- (B) A refill authorization request;
- (C) A communication; or
- (D) Other patient care information.

“E-prescribing” means the transmission, using electronic media, of prescription or prescription-related information between a practitioner, pharmacist, pharmacy benefit manager, or health plan as defined in 45 CFR §160.103, either directly or through an electronic data intermediary. E-prescribing includes, but is not limited to, two-way transmissions between the point of care and the pharmacist. E-prescribing may also be referenced by the terms “electronic prescription” or “electronic order”.

“Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

“Electronic transmission” means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

“Emergency medical reasons” include, but are not limited to, transfers of a prescription drug by one pharmacy to another pharmacy to alleviate a temporary shortage of a prescription drug; sales to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners of prescription drugs for use in the treatment of acutely ill or injured persons; and provision of minimal emergency supplies of prescription drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained.

“Exclusive distributor” means an entity that:

(A) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; and

(B) Is licensed as a wholesale distributor under this article.

"FDA" means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services.

"Health care entity" means a person that provides diagnostic, medical, pharmacist care, surgical, dental treatment, or rehabilitative care but does not include a wholesale distributor.

"Health information" means any information, whether oral or recorded in a form or medium, that:

(A) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and

(B) Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual.

"Health care system" means an organization of people, institutions, and resources that deliver health care services to meet the health needs of a target population.

"HIPAA" is the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

"Immediate container" means a container and does not include package liners.

"Individually identifiable health information" is information that is a subset of health information, including demographic information collected from an individual and is created or received

by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“Intracompany sales” means any transaction between a division, subsidiary, parent, or affiliated or related company under the common ownership and control of a corporate or other legal business entity.

“Label” means a display of written, printed, or graphic matter upon the immediate container of any drug or device.

“Labeling” means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device.

“Long-Term care facility” means a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients.

“Mail-order pharmacy” means a pharmacy, regardless of its location, which dispenses greater than 25 percent of its prescription drugs via the mail or other delivery services.

“Manufacturer” means any person who is engaged in manufacturing, preparing, propagating, processing, packaging, repackaging, or labeling of a prescription drug, whether within or outside this state.

“Manufacturing” means the production, preparation, propagation, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its contents and the promotion and marketing of the drugs or devices. Manufacturing

also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

“Medical order” means a lawful order of a practitioner that may or may not include a prescription drug order.

“Medication therapy management” is a distinct service or group of services that optimize medication therapeutic outcomes for individual patients. Medication therapy management services are independent of, but can occur in conjunction with, the provision of a medication or a medical device. Medication therapy management encompasses a broad range of professional activities and responsibilities within the licensed pharmacist’s scope of practice.

These services may include the following, according to the individual needs of the patient:

(A) Performing or obtaining necessary assessments of the patient’s health status pertinent to medication therapy management;

(B) Optimize medication use, performing medication therapy, and formulating recommendations for patient medication care plans;

(C) Developing therapeutic recommendations, to resolve medication related problems;

(D) Monitoring and evaluating the patient’s response to medication therapy, including safety and effectiveness;

(E) Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events;

(F) Documenting the care delivered and communicating essential information to the patient’s primary care providers;

(G) Providing verbal education and training designed to enhance patient understanding and appropriate use of his or her medications;

(H) Providing information, support services, and resources designed to enhance patient adherence with his or her medication therapeutic regimens;

(I) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient; and

(J) Such other patient care services as may be allowed by law.

“Misbranded” means a drug or device that has a label that is false or misleading in any particular manner; or the label does not bear the name and address of the manufacturer, packer, or distributor and does not have an accurate statement of the quantities of the active ingredients in the case of a drug; or the label does not show an accurate monograph for prescription drugs.

“Nonprescription drug” means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

“Normal distribution channel” means a chain of custody for a prescription drug that goes directly or by drop shipment, from a manufacturer of the prescription drug, the manufacturer’s third-party logistics provider, or the manufacturer’s exclusive distributor to:

(A) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(B) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse’s intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(C) A chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(D) A pharmacy or to other designated persons authorized by law to dispense or administer such prescription drug to a patient; or

(E) As prescribed by the board's legislative rules.

"Patient counseling" means the communication by the pharmacist of information, as prescribed further in the rules of the board, to the patient to improve therapy by aiding in the proper use of drugs and devices.

"Pedigree" means a statement or record in written form or electronic form, approved by the board, that records each wholesale distribution of any given prescription drug (excluding veterinary prescription drugs), which leaves the normal distribution channel.

"Person" means an individual, corporation, partnership, association, or any other legal entity, including government.

"Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care.

"Pharmacist Care" means the provision by a pharmacist of patient care activities, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination, or reduction of a patient's symptoms, or arresting or slowing of a disease process and as provided for in section ten.

"Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and legislative rules pertinent to the practice of pharmacist care and the distribution of drugs and who is personally in full charge of the pharmacy and pharmacy personnel.

“Pharmacist’s scope of practice pursuant to the collaborative pharmacy practice agreement” means those duties and limitations of duties placed upon the pharmacist by the collaborating physician.

“Pharmacy” means any place within this state where drugs are dispensed and pharmacist care is provided and any place outside of this state where drugs are dispensed and pharmacist care is provided to residents of this state.

“Pharmacy Intern” or “Intern” means an individual who is currently licensed to engage in the practice of pharmacist care while under the supervision of a pharmacist.

“Pharmacy related primary care” means the pharmacist’s activities in patient education, health promotion, selection and use of over the counter drugs and appliances and referral or assistance with the prevention and treatment of health related issues and diseases.

“Pharmacy Technician” means a person registered with the board to practice certain tasks related to the practice of pharmacist care as permitted by the board.

“Physician” means an individual currently licensed, in good standing and without restrictions, as an allopathic physician by the West Virginia Board of Medicine or an osteopathic physician by the West Virginia Board of Osteopathic Medicine.

“Practice notification” means a written notice to the appropriate licensing board that an individual physician or physician group or a medical provider in training where the agreement is signed by the supervising physician or chairperson of the medical department where the medical provider in training is practicing, and an individual pharmacist or pharmacists will practice in collaboration.

“Practice of telepharmacy” means the provision of pharmacist care by properly licensed pharmacists located within United States jurisdictions through the use of telecommunications or other

technologies to patients or their agents at a different location that are located within United States jurisdictions.

“Practitioner” means an individual authorized by a jurisdiction of the United States to prescribe drugs in the course of professional practices, as allowed by law.

“Prescription drug” means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal Food, Drug and Cosmetic Act.

“Prescription or prescription drug order” means a lawful order from a practitioner for a drug or device for a specific patient, including orders derived from collaborative pharmacy practice, where a valid patient-practitioner relationship exists, that is communicated to a pharmacist in a pharmacy.

“Product Labeling” means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.

“Repackage” means changing the container, wrapper, quantity, or product labeling of a drug or device to further the distribution of the drug or device.

“Repackager” means a person who repackages.

“Therapeutic equivalence” mean drug products classified as therapeutically equivalent can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product which contain the same active ingredient(s); dosage form and route of administration; and strength.

“Third-party logistics provider” means a person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition. A third-party logistics provider shall be licensed as a

wholesale distributor under this article and, in order to be considered part of the normal distribution channel, shall also be an authorized distributor of record.

“Valid patient-practitioner relationship” means the following have been established:

(A) A patient has a medical complaint;

(B) A medical history has been taken;

(C) A face-to-face physical examination adequate to establish the medical complaint has been performed by the prescribing practitioner or in the instances of telemedicine through telemedicine practice approved by the appropriate practitioner board; and

(D) Some logical connection exists between the medical complaint, the medical history, and the physical examination and the drug prescribed.

“Wholesale distribution” and “wholesale distributions” mean distribution of prescription drugs, including directly or through the use of a third-party logistics provider or any other situation in which title, ownership, or control over the prescription drug remains with one person or entity but the prescription drug is brought into this state by another person or entity on his, her, or its behalf, to persons other than a consumer or patient, but does not include:

(A) Intracompany sales, as defined in this section;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of

1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this article, “common control” means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase or trade a drug for “emergency medical reasons” for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12 consecutive month period;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers’ representatives or distributors’ representatives, if the distribution is permitted under federal law [21 U. S. C. 353(d)];

(H) Drug returns by a pharmacy or chain drug warehouse to wholesale drug distributor or the drug’s manufacturer; or

(J) The sale, purchase, or trade of blood and blood components intended for transfusion.

“Wholesale drug distributor” or “wholesale distributor” means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription

drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

§30-5-19. Collaborative pharmacy practice agreement and practice notification.

(a) A pharmacist engaging in collaborative pharmacy practice shall have on file at his or her place of practice the collaborative pharmacy practice agreement. The existence and subsequent termination of the agreement and any additional information the rules may require concerning the agreement, including the agreement itself, shall be made available to the appropriate licensing board for review upon request. The agreement may allow the pharmacist, within the pharmacist's scope of practice pursuant to the collaborative pharmacy practice agreement, to conduct drug therapy management activities approved by the collaborating physician. The collaborative pharmacy practice agreement shall be a voluntary process, which is a physician directed approach after informed consent of the patient and noted in the patient's medical record, that is entered into between an individual physician or physician group and an individual pharmacist or pharmacists. A pharmacist may not diagnose.

(b) A collaborative pharmacy practice agreement may authorize a pharmacist to provide drug therapy management. In instances where drug therapy is discontinued, the pharmacist shall notify the treating physician of the discontinuance in the time frame and in the manner established by joint legislative rules. Each protocol developed, pursuant to the collaborative pharmacy practice agreement, shall contain detailed direction concerning the services that the pharmacists may perform for that patient. The protocol shall include, but need not be limited to:

(1) The specific drug or drugs to be managed by the pharmacist;

(2) The terms and conditions under which drug therapy may be implemented, modified, or discontinued;

(3) The conditions and events upon which the pharmacist is required to notify the physician;

(4) The laboratory tests that may be ordered in accordance with drug therapy management; and

(5) The mutually agreed upon patient evaluations the pharmacist may conduct.

(c) All activities performed by the pharmacist in conjunction with the protocol shall be documented in the patient's medical record. The pharmacists shall report at least every 30 days to the physician regarding the patient's drug therapy management. The collaborative pharmacy practice agreement and protocols shall be available for inspection by the board, the West Virginia Board of Medicine, or the West Virginia Board of Osteopathic Medicine, depending on the licensing board of the participating physician. A copy of the protocol shall be filed in the patient's medical record.

(d) Collaborative pharmacy agreements may not include the management of controlled substances.

(e) A collaborative pharmacy practice agreement, meeting the requirements herein established and in accordance with joint rules, shall be allowed in the hospital setting, the nursing home setting, the medical school setting and the hospital, community pharmacy setting and ambulatory care clinics. The pharmacist shall be employed by or under contract to provide services to the hospital, community pharmacy, nursing home, ambulatory care clinic, or medical school, or hold a faculty appointment with one of the schools of pharmacy or medicine in this state.

(f) Notwithstanding any other provision to the contrary, a pharmacist or group of pharmacists may practice in collaboration with physicians in any practice setting, including but not limited to

a health care system, pursuant to a practice notification which has been filed with the appropriate board: *Provided*, That a pharmacist who is currently in collaboration with physicians pursuant to a practice agreement which was approved prior to June 1, 2023, may continue to practice under that agreement until the practice agreement terminates or until June 1, 2024.

(g) The practice notification shall be filed with the appropriate licensing board and becomes effective immediately upon filing. The board retains jurisdiction to investigate any complaints filed regarding a practice notification with respect to their respective license holders.

(h) Nothing pertaining to collaborative pharmacy practice shall be interpreted to permit a pharmacist to accept delegation of a physician's authority outside the limits included in the appropriate board's statute and rules.

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CHAPTER 210

(Com. Sub. for H. B. 4333 - By Delegates Steele and Foster)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-26-21; to amend and reenact §30-32-5 and §30-32-7 of said code; and to amend said code by adding thereto a new section, designated §30-32-10a, all relating to sunseting the Board of Hearing-Aid Dealers and Fitters; directing wind up and termination of board; continuing licensure and regulation of hearing aid dealers and fitters under board until date of termination, with certain exception; permitting mail order or online sales of hearing aids; transferring licensure and regulation of hearing aid dealers and fitters to West Virginia Board of Examiners for Speech-Language Pathology and Audiology upon termination of Board of Hearing-Aid Dealers and Fitters; revising composition of Board of Examiners for Speech-Language Pathology and Audiology; providing for rules of Board of Hearing-Aid Dealers and Fitters in effect at board's termination to remain in effect until amended or repealed by Board of Examiners for Speech-Language Pathology and Audiology; establishing process and qualifications for licensure of hearing aid dealers and fitters by Board of Examiners for Speech-Language Pathology and Audiology upon termination or sunset of Board of Hearing-Aid Dealers and Fitters; and authorizing advertising and sale of hearing aids by mail upon effective date of legislation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

§30-26-21. Sunset and transfer of duties provision; effective date.

(a) The State Board of Hearing-Aid Dealers and Fitters established in this article shall terminate on June 30, 2023, unless continued by the Legislature. Pursuant to §4-10-12 and §4-10-13 of this code, the board shall commence all necessary activities pertinent to the wind-up of all board-related activities. Notwithstanding the termination of the board, the regulation and licensure of hearing aid fitters engaged in the practice of dealing in or fitting of hearing aids under §30-26-1 *et seq.* of this code shall continue with the exception of §30-26-17(6) of this code.

(b) Upon termination of the board, the West Virginia Board of Examiners for Speech-Language Pathology and Audiology shall supervise, regulate, and control the practice of dealing in or fitting of hearing aids in this state. Notwithstanding any other provision of code, hearing aids, mean any wearable device or instrument intended to aid, improve, or compensate for defective or impaired human hearing, may be advertised for mail-order sale in any advertising medium and sold by mail-order sale to any person in this state upon the effective date of this legislation.

ARTICLE 32. SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-5. Board of Examiners for Speech-Language Pathology and Audiology.

(a) The West Virginia Board of Examiners for Speech-Language Pathology and Audiology is continued. The members of the board in office on July 1, 2013, may, unless sooner removed, continue to serve until their respective terms expire or until their successors have been appointed and qualified.

(b) The board consists of the following members appointed by the Governor by and with the advice and consent of the Senate:

(1) Three persons who are licensed speech-language pathologists;

(2) Two persons who are licensed audiologists;

(3) One person who is a licensed hearing aid fitter; and

(4) One citizen member who is not licensed or registered under this article.

(c) The terms are for three years. No member may serve for more than two consecutive terms.

(d) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for at least three years.

(e) Each member of the board must be a resident of this state during the appointment term.

(f) No board member may serve as an officer of the West Virginia Speech Language and Hearing Association concurrently with his or her service on the board.

(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(h) The Governor may remove any member from the board for neglect of duty, incompetency, or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license or registration to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson and one of its members as secretary-treasurer who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with §30-1-1 *et seq.* of this code.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of four members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(p) Board members are immune from civil liability for the performance of their official duties so long as they act in good faith.

§30-32-7. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and registrations;

(2) Requirements, qualifications and designation of third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;

(3) Procedures for the issuance and renewal of a license, registration and provisional license;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees and registrants;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or registrant;

(8) Requirements for reinstatement of revoked licenses and registrations;

(9) Guidelines for telepractice;

(10) Rules to define the role of the speech-language pathology assistant or audiology assistant, including, but not limited to:

(A) The supervision requirements of licensees;

(B) The ratio of assistants to licensees;

(C) The scope of duties and restrictions of responsibilities of assistants;

(D) The frequency, duration and documentation of supervision required under the provisions of this article; and

(E) The quantity and content of pre-service and in-service instruction.

(11) Professional conduct and ethical standards of practice; and

(12) Any other rules necessary to effectuate the provisions of this article.

(b) The board may promulgate emergency rules in accordance with §29A-3-15 of this code to establish requirements and procedures for telepractice in accordance with the provisions of this article, including the scope of duties and restrictions of assistants in telepractice.

(c) All rules in effect on January 1, 2013 shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

(d) All rules in effect upon the sunset or termination of the Board of Hearing Aid Dealers and Fitters shall remain in effect

until those rules are amended or repealed by the Board of Examiners of Speech Language Pathology and Audiology in accordance with the provisions of §29A-3-1 of this code.

§30-32-10a. Application for licensure; qualification for licensure; examination.

(a) Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

(1) Is a resident of this state;

(2) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code

(3) Is 18 years of age or older;

(4) Has an education equivalent to a four-year course in an accredited high school; and

(5) Is free of chronic infectious or contagious diseases.

(b) The board, after first determining that the applicant is qualified and eligible to take the examination, shall notify the applicant that he or she has fulfilled all of the qualifications and eligibility requirements as required and shall advise him or her of the date, time, and place for him or her to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article. The board may promulgate rules relating to the frequency of examinations and other such related topics pursuant to §29A-3-1 of this code.

(c) Before obtaining a license to engage in the practice of dealing in or fitting of hearing- aids, an applicant must meet the following requirements:

(1) The applicant must pass the International Licensing Examination for Hearing Healthcare Professionals, prepared by the International Hearing Society, or an equivalent examination selected by the board.

(2) The applicant must pass a practical examination, which shall be a nationally recognized test selected by the board, or a test designed by the board to test the applicant's proficiency in the following techniques as they pertain to the fitting of hearing aids:

(A) Pure tone audiometry, including air conduction testing;

(B) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and

(C) Masking when indicated and effective masking.

(3) The applicant must pass an examination, which shall be developed by the board, to test an applicant's competency in the following subjects:

(A) Ability to counsel the person or family who will receive the hearing aid relative to the care and use of the instrument;

(B) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped children and adults in the area being served;

(C) Knowledge and understanding of the grounds for revocation, suspension, or probation of a license as outlined in this article or in rule; and

(D) Knowledge and understanding of criminal offenses relating to the profession.

(d) The board may promulgate rules to implement the requirements of this section, including emergency rules promulgated pursuant to the provisions of §29A-3-1 of this code.

(e) The provisions of this section will take effect upon the sunset or termination of the Board of Hearing Aid Dealers and Fitters, which in no event will be later than July 1, 2023.

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CHAPTER 211

**(Com. Sub. for H. B. 4369 - By Delegates Rohrbach, Reed,
Summers, Tully, D. Jeffries, Pack, G. Ward, Bates, Jennings,
Worrell, and Forsht)**

[Passed February 21, 2022; in effect from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend and reenact §30-21A-3 of the Code of West Virginia, 1931, as amended, relating to updating the telepsychology compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. PSYCHOLOGY COMPACT.

§30-21A-3. Compact privilege to practice telepsychology.

(a) Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with this section, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

(b) To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State shall:

(1) Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(A) Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

(B) A foreign college or university considered to be equivalent to §30-21A-3(b)(1)(A) of this code above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

(2) Hold a graduate degree in psychology that meets the following criteria:

(A) The program, wherever it may be administratively housed, shall be clearly identified and labeled as a psychology program. Such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(B) The psychology program shall stand as a recognizable, coherent, organizational entity within the institution;

(C) There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(D) The program shall consist of an integrated, organized sequence of study;

(E) There shall be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(F) The designated director of the program shall be a psychologist and a member of the core faculty;

(G) The program shall have an identifiable body of students who are matriculated in that program for a degree;

(H) The program shall include supervised practicum, internship, or field training appropriate to the practice of psychology;

(I) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and

a minimum of one academic year of full-time graduate study for master's degree;

(J) The program includes an acceptable residency as defined by the rules of the commission.

(3) Possess a current, full, and unrestricted license to practice psychology in a Home State which is a Compact State;

(4) Have no history of adverse action that violate the rules of the commission;

(5) Have no criminal record history reported on an Identity History Summary that violates the rules of the commission;

(6) Possess a current, active E.Passport;

(7) Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background, and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the commission; and

(8) Meet other criteria as defined by the rules of the commission.

(c) The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

(d) A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the commission.

(e) If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefore the psychologist may not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

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CHAPTER 212

**(Com. Sub. for H. B. 4570 - By Delegates Hamrick, Howell,
Paynter, Dean, and Pack)**

[Passed March 10, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-10-24 of this code, all relating to telehealth services; defining terms; establishing requirements for the practice of telehealth; establishing requirements to form a veterinarian-client-patient relationship; providing for renewal of registration; establishing standard of care; and requiring telehealth providers provide certain information for patients.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. VETERINARIANS.

§30-10- 24. Telehealth practice.

(a) For purposes of this section, these terms have the following meaning:

(1) “Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a registered veterinary care professional located in any other state or commonwealth of the United States.

(2) “Personal examination” is a face to face, in person, examination of the patient.

(3) “Registration” means an authorization to practice veterinary medicine in the State of West Virginia pursuant to §30-10-1 *et seq.* of this code, which authorization is limited

to providing interstate telehealth services within the registrant's scope of practice.

(4) "Registrant" means an individual who holds a valid registration with the board.

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a veterinary care professional to provide veterinary care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; maintenance of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, email messages, or facsimile transmissions.

(6) Veterinary care professional means the official authorization by the board to engage in the practice of veterinary medicine.

(b) Telehealth Practice.

(1) The practice of veterinary medicine occurs where the patient is located at the time telehealth services are provided.

(2) To provide veterinary care in the State of West Virginia via interstate telehealth services, an individual not otherwise licensed by the board must first apply for and obtain registration with the board using the application materials provided by the board and paying a fee of \$300.

(3) To obtain registration with the board, an individual must be a licensed veterinarian in good standing in all other states in which he or she is licensed and not currently under investigation or subject to an administrative complaint.

(4) A registration with the board is subject to annual renewal on or before December 31 including, but not limited to, the renewal fee of \$250 and the submission of at least three patient records of West Virginia patients, if applicable.

(5) A veterinarian-client-patient relationship is required for providing veterinary care in the State of West Virginia via telehealth services. The veterinary care professional shall perform an in person exam within the 12 months prior, and at least every 12 months thereafter, or the telehealth service shall no longer be available to the patient. Such relationship exists when:

(A) A veterinarian assumes responsibility for medical judgments regarding the health of an animal and the client who is the owner or owner's advocate of the animal consents to the veterinarian's treatment plan; and

(B) A veterinarian, through personal examination of an animal or a representative sample of a herd or flock, obtains sufficient information to make at least a general or preliminary diagnosis of the medical condition of the animal, herd or flock, which diagnosis is expanded through medically appropriate visits to the premises where the animal, herd or flock is kept,

(C) In the event of an imminent, life-threatening emergency veterinary care may be provided in this State via telehealth services without an existing veterinarian-client-patient relationship or an in-person visit within 12 months.

(6) The standard of care for providing veterinary care in the State of West Virginia via telehealth services by a registrant or licensed veterinarian shall be the same as for in-person care. Such standard of care shall require that a veterinarian-client-patient relationship first exist before telehealth services are provided and that a patient visit a veterinarian licensed in another jurisdiction or licensed by the board, in-person and within 12 months of using the initial telemedicine service, or the telemedicine service shall no longer be available to the patient. Only in the event of an imminent, life-threatening emergency may veterinary care be provided in this state via telehealth services without an existing veterinarian-client-patient relationship or without an in-person visit within 12 months.

(7) A provider of telehealth services must ensure that the client is aware of the veterinarian's identity, location, and license number and licensure status and should provide to the client a clear mechanism to:

(A) Access, supplement, and amend client-provided contact information and health information about the patient;

(B) Register complaints with the board;

(C) Provide consent for the use of telehealth; and

(D) Patient medical records must meet the requirements as specified in the Standards of Practice Rules.

(8) A registrant shall not prescribe any controlled substance listed in Schedule II of the Uniform Controlled Substance Act via interstate telehealth services.

(9) By registering to provide interstate telehealth services to patients in this state, a registrant is subject to:

(A) The laws, rules, and regulations regarding the practice of veterinary medicine in this state, including the state judicial system and all rules and standards of professional conduct contained within §30-10-1 *et seq.* of this code and the rules promulgated thereunder;

(B) The standard of care for providing veterinary care in the State of West Virginia via telehealth services by a registrant or licensed veterinarian shall be the same as for in-person care; and

(C) The jurisdiction of the board, including, but not limited to, the board's complaint, investigation, and hearing processes.

(10) A registrant shall notify the board within 30 days of any restrictions placed upon, or actions taken against, his or her license to practice in any other state or jurisdiction.

(11) A registration with the board does not authorize a veterinary care professional to practice from a physical location within the State of West Virginia without first obtaining appropriate facility registration.

(12) A person currently licensed by the board is not subject to registration but shall practice telehealth in accordance with the provisions of §30-10-1 *et seq.* and the rules promulgated thereunder.

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CHAPTER 213

**(Com. Sub. for H. B. 4634 - By Delegates Espinosa, Foster,
Steele, Martin, Jennings, Horst, Burkhammer, Holstein, and
Howell)**

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-17-8, §21-17-9, §21-17-10, §21-17-11, and §21-17-12; to amend said code by adding thereto a new article, designated §29-33-1, §29-33-2, §29-33-3, §29-33-4, §29-33-5, §29-33-6, §29-33-7, §29-33-8, §29-33-9, §29-33-10, §29-33-11, and §29-33-12; all relating to occupational licensing or other authorization to practice; providing for definitions; providing for an application method for persons with a valid license in another state to be licensed in this state; providing that a person applying for licensure in this state has worked in the licensed occupation for at least one year; providing for other criteria a person must satisfy when applying for licensure in this state; establishing that an applicant seeking licensure in this state not have ever had a license revoked or suspended in another state; providing that an applicant seeking licensure in this state not have any pending investigations or disciplinary proceedings in another state; providing that the boards in every state where a person is licensed hold the applicant in good standing for licensure in this state; providing that an applicant pay all applicable fees; providing that an applicant meet all state bonding requirements for licensure in this state; providing for an application fee that may be assessed by the board; providing for 60 days for a board to take action on a completed application; providing for an appeal mechanism for a person to appeal any decision of a board relating to occupational licensure; providing for state law

preemption against any township, municipality, county, or other government to regulate occupational licensure; providing for certain exempted professions; and providing for rulemaking authority to any board affected to carry out the provisions of the article.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 17. REVIEW AND CREDENTIAL ACKNOWLEDGEMENT PROCEDURES ACT.

§21-17-1. Applicability and short title.

The provisions of this article apply to all professions requiring an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter. This article may be known and cited as the “RECAP Act.”

§21-17-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Board” means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

“Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is

illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than West Virginia.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§21-17-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice and with education, experience, and examination requirements for licensure or authorization to practice similar to those of this state, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the state where he or she holds a valid license or other authorization to practice for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) The person is in good standing with the board in every other state where he or she holds a valid license;

(5) The person has established residency as a West Virginia resident as defined by §11-21-7(a) of this code;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person's work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person's work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meets all applicable bonding requirements in this state.

(b) If West Virginia requires an occupational license to lawfully work in a profession, and another state does not issue an occupational license for the same profession and instead issues another authorization to practice, West Virginia shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

(c) Any person issued a license under this article must comply with all relevant continuing education requirements to renew a license established by the board and any other rule promulgated by the board as provided by §21-17-8 of this code.

§21-17-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person

upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but West Virginia uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation and has acquired experience demonstrating knowledge and proficiency in the occupation similar to that which may be achieved through compliance with the education and examination requirements to practice in this state, as determined by the board;

(3) The person has taken and passed any required national examinations to lawfully practice the occupation or use a title in connection with an occupation in another state; and

(4) The person satisfies §21-17-3(a)(5), §21-17-3(a)(6), and §21-17-3(a)(10) of this code.

§21-17-5. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant West Virginia laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass such examination for original licensure.

§21-17-6. Decision.

The board will provide the person with a written decision issuing or denying a license within 60 days after receiving a complete application.

§21-17-7. Appeal.

(a) The person may appeal the board's decision to a court of general jurisdiction in the county where the person resides.

(b) The person may appeal the board's:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§21-17-8. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§21-17-9. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in West Virginia. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents West Virginia from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents West Virginia from recognizing occupational credentials issued by a foreign province, foreign country, international organization, or other entity.

§21-17-10. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board. Any application for renewing a

license after obtaining a license under this article shall comply with the board's established renewal procedures and fee schedule.

§21-17-11. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§21-17-12. Rulemaking.

Boards affected by these provisions may promulgate rules pursuant to §29A-3-1 *et seq.* of this code to carry out the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 33. REVIEW AND CREDENTIAL ACKNOWLEDGEMENT PROCEDURES ACT.

§29-33-1. Applicability.

The provisions of this article apply to all professions requiring an occupational license or other authorization to practice or perform a specific occupation in this state regulated by this chapter. This article may be known and cited as the "RECAP Act."

§29-33-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

"Board" means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

"Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not

themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational license.

“Occupational license” is a nontransferable authorization in law for an individual to perform or practice a lawful occupation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform or practice the occupation.

“Other authorization to practice” is a nontransferable acknowledgment, other than a license, by a state government or board that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in a lawful occupation.

“Other state” or “another state” means any United States territory or state in the United States other than West Virginia.

“Scope of practice” means the procedures, actions, processes, and work that a person may perform under an occupational license or other authorization to practice issued in this state.

§29-33-3. Occupational license or other authorization to practice.

(a) Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

(1) The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice and with education, experience, and examination requirements for licensure or authorization to practice similar to those of this state, as determined by the board in this state;

(2) The person has held the occupational license or other authorization to practice in the state where he or she holds a valid license or other authorization to practice for at least one year;

(3) The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

(4) The person is in good standing with the board in every other state where he or she holds a valid license;

(5) The person has established residency as a West Virginia resident as defined by §11-21-7(a) of this code;

(6) The person does not have a disqualifying criminal record as determined by the board in this state;

(7) The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person's work in the occupation;

(8) The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person's work in the occupation in another state;

(9) The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

(10) The person pays all applicable fees and meets all applicable bonding requirements in this state.

(b) If West Virginia requires an occupational license to lawfully work in a profession, and another state does not issue an occupational license for the same profession and instead issues another authorization to practice, West Virginia shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

(c) Any person issued a license under this article must comply with all relevant continuing education requirements to renew a license established by the board and any other rule promulgated by the board as required in §29-33-8 of this code.

§29-33-4. Work experience.

Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

(1) The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

(2) The person worked for at least two years in the lawful occupation and has acquired experience demonstrating knowledge and proficiency in the occupation similar to that which may be achieved through compliance with the education and examination requirements to practice of this state, as determined by the board;

(3) The person has taken and passed any required national examinations to lawfully practice the occupation or use a title in connection with an occupation in another state; and

(4) The person satisfies §29-33-3(a)(5), §29-33-3(a)(6), and §29-33-3(a)(10) of this code.

§29-33-5. State law examination.

A board may require a person to pass a jurisprudential examination specific to relevant West Virginia laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass such examination for original licensure.

§29-33-6. Decision.

The board will provide the person with a written decision issuing or denying a license within 60 days after receiving a complete application.

§29-33-7. Appeal.

(a) The person may appeal the board's decision to a court of general jurisdiction in the county where the person resides.

(b) The person may appeal the board's:

(1) Denial of an occupational license or other authorization to practice;

(2) Determination of the occupation;

(3) Determination of the similarity of the scope of practice of the occupational license or other authorization to practice; or

(4) Other determinations under this article.

§29-33-8. State laws and jurisdiction.

A person who obtains an occupational license or other authorization to practice pursuant to this article is subject to:

(1) The laws regulating the occupation in this state; and

(2) The jurisdiction of the board in this state.

§29-33-9. Limitations.

(a) An occupational license or other authorization to practice issued pursuant to this article is valid only in West Virginia. It does not make the person eligible to work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.

(b) Nothing in this article prevents West Virginia from entering into a licensing compact or reciprocity agreement with another state, foreign province, or foreign country.

(c) Nothing in this article prevents West Virginia from recognizing occupational credentials issued by a foreign province, foreign country, international organization, or other entity.

§29-33-10. Cost for application.

The board may charge a fee to the person to recoup its costs. The fee may not exceed the cost of an application for original licensure charged by the board. Any application for renewing a license after obtaining a license under this article shall comply with the board's established renewal procedures and fee schedule.

§29-33-11. Preemption.

This article preempts laws by township, municipal, county, and other governments in the state which regulate occupational licenses and other authorization to practice.

§29-33-12. Rulemaking.

Boards affected by these provisions may promulgate rules pursuant to §29A-3-1 *et seq.* of this code to carry out the provisions of this article.

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CHAPTER 214

(H. B. 4647 - By Delegates Steele and Foster)

[Passed March 9, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §30-6-3, §30-6-8, §30-6-9, §30-6-15, §30-6-16, §30-6-17, §30-6-19, and §30-6-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-6-22b, all relating to the Board of Funeral Service Examiners; permitting alkaline hydrolysis; clarifying terms; removing apprenticeship restrictions on applicants; clarifying apprenticeship course requirements; clarifying examination requirements; eliminating the requirement for board to provide continuing education; providing for a biennial funeral establishment renewal inspection; providing for certification of alkaline hydrolysis; providing for rules for alkaline hydrolysis; and clarifying recognition of licensees in charge of funeral establishments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

“Alkaline hydrolysis” means the reduction of a dead human body to essential elements through a water-based dissolution process using alkaline chemicals, heat, agitation, and pressure to accelerate natural decomposition; the processing of hydrolyzed remains after removal from the alkaline hydrolysis vessel; placement of the processed remains in a hydrolyzed remains

container; and release of the hydrolyzed remains to an appropriate party. Alkaline hydrolysis is a form of final disposition.

“Apprentice” means a person who is preparing to become a licensed funeral director or a funeral service licensee and is learning the practice of embalming, funeral directing, or cremation under the direct supervision and personal instruction of a duly licensed funeral service licensee.

“Authorized representative” means a person legally authorized or entitled to order the cremation or burial of the deceased, as established by rule. An authorized representative may include in the following order of precedence:

(a) The deceased, who has expressed his or her wishes regarding the disposal of their remains through a last will and testament, an advance directive, or preneed funeral contract, as defined in §45-14-2 of this code;

(b) The surviving spouse of the deceased, unless a petition to dissolve the marriage was pending at the time of decedent’s death;

(c) An individual previously designated by the deceased as the person with the right to control disposition of the deceased’s remains in a writing signed and notarized by the deceased: *Provided*, That no person may be designated to serve in such capacity for more than one nonrelative at any one time;

(d) The deceased’s next of kin;

(e) A court order;

(f) A public official who is charged with arranging the final disposition of an indigent deceased; or

(g) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science.

“Board” means the West Virginia Board of Funeral Service Examiners.

“Certificate” means a certification by the board to be a crematory operator.

“Courtesy card holder” means a person who only practices funeral directing periodically in West Virginia and is a licensed embalmer and funeral director in a state which borders West Virginia.

“Cremated remains” or “cremains” means all human remains, including foreign matter cremated with the human, recovered after the completion of cremation.

“Cremation” means the mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments and then further reduced by additional pulverization, burning, or re-cremating when necessary.

“Crematory” means a licensed place of business where a deceased human body is reduced to ashes and bone fragments.

“Crematory operator” means a person certified by the board to operate a crematory.

“Crematory operator in charge” means a certified crematory operator who accepts responsibility for the operation of a crematory.

“Deceased” means a dead human being for which a death certificate is required.

“Embalmer” means a person licensed to practice embalming.

“Embalming” means the practice of introducing chemical substances, fluids, or gases used for the purpose of preservation or disinfection into the vascular system or hollow organs of a dead human body by arterial or hypodermic injection for the restoration of the physical appearance of a deceased.

“Funeral” means a service, ceremony, or rites performed for the deceased with a body present.

“Funeral directing” means the business of engaging in the following:

(a) The shelter, custody, or care of a deceased;

(b) The arranging or supervising of a funeral or memorial service for a deceased; and

(c) The maintenance of a funeral establishment for the preparation, care, or disposition of a deceased.

“Funeral director” means a person licensed to practice funeral directing.

“Funeral establishment” means a licensed place of business devoted to the care, preparation, and arrangements for the transporting, embalming, funeral, burial, or other disposition of a deceased. A funeral establishment can include a licensed crematory.

“Funeral service licensee” means a person licensed after July 1, 2003, to practice embalming and funeral directing.

“License” means a license, which is not transferable or assignable, to:

(a) Practice embalming and funeral directing; and,

(b) Operate a crematory or a funeral establishment.

“Licensee” means a person holding a license issued under the provisions of this article.

“Licensee in charge” means a licensed embalmer and funeral director who accepts responsibility for the operation of a funeral establishment.

“Memorial service” means a service, ceremony, or rites performed for the deceased without a body present.

“Mortuary” means a licensed place of business devoted solely to the shelter, care, and embalming of the deceased.

“Person” means an individual, partnership, association, corporation, not-for-profit organization, or any other organization.

“Registration” means a registration issued by the board to be an apprentice to learn the practice of embalming, funeral directing, or cremation.

“State” means the State of West Virginia.

§30-6-8. Embalmer license requirements.

The board shall issue a license to practice embalming to an applicant who:

(a) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(b) Is 18 years of age or over;

(c) Is a citizen of the United States or is eligible for employment in the United States;

(d) Has a high school diploma or its equivalent;

(e) Has completed one of the following education requirements, as evidenced by a transcript submitted to the board for evaluation:

(1)(A) Has an associate degree from an accredited college or university; or

(2) Has successfully completed at least 60 semester hours or 90 quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study; and

(3) Has graduated from a school of mortuary science, accredited by the American Board of Funeral Service Education, Inc., which requires as a prerequisite to graduation the completion of a course of study of not less than 12 months; or

(B) Has a bachelor degree in mortuary science from an accredited college or university;

(f) Has completed a one-year apprenticeship, under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, which apprenticeship consisted of:

(1) Diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment; and

(2) The apprentice taking an active part in:

(A) The operation of embalming not less than 35 dead human bodies; and

(B) Conducting not less than 35 funeral services;

(g) Passes, with an average score of not less than 75 percent, the following examinations:

(1) The International Conference of Funeral Service Examining Boards examination at a testing site provided by the national conference, which passage is a condition precedent to taking the state law examination;

(2) The West Virginia Laws, Rules, and Regulations Examination, administered by the International Conference of Funeral Service Examining Boards; and

(3) Any other examination required by the board; and

(h) Has paid all the appropriate fees.

A license to practice embalming issued by the board prior to July 1, 2012, shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this article.

§30-6-9. Funeral director license requirements.

(a) The board shall issue a license to practice funeral directing to an applicant who meets the following requirements:

(1) Completed a bachelor's degree from an accredited institution; and

(2) Completed a two-year apprenticeship under the supervision of a licensee in charge or an active licensed funeral director; and

(3) Has paid all the appropriate fees.

(b) The two-year apprenticeship must consist of the following work:

(1) Diligent attention to the work in the course, or regular and steady employment, and not as a side issue to another employment;

(2) Conducting not less than 35 disposition arrangements for individuals;

(3) Conducting not less than 35 funeral and/or memorial services; and

(4) Passes with an average score of not less than 75 percent, the West Virginia Laws, Rules, and Regulations Examination.

(c) A license to practice funeral directing issued by the board prior to July 1, 2002, shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license issued prior to July 1, 2022, must renew the license pursuant to the provisions of this article.

§30-6-15. Continuing education.

(a) Hours of continuing education may be obtained by attending and participating in board-approved programs, meetings, seminars, or activities. It is the responsibility of each licensee to finance his or her costs of continuing education.

(b) Compliance with the requirements of continuing education, as specified by the board, is a prerequisite for license renewal.

§30-6-16. Inspector and inspection requirements.

(a) All inspectors employed by the board to inspect funeral establishments and crematories, pursuant to the provisions of this article, shall have a West Virginia embalmer's license and a West Virginia funeral director's license.

(b) Each inspector shall inspect a specific region, as designated by the board. Any person being employed as an inspector is prohibited from inspecting in the region in which he or she practices. If there is only one inspector, a board member, who is not from the region where the inspector practices, is authorized to inspect the facilities in the region where the inspector practices.

(c) All inspections shall be conducted in a manner so as not to interfere with the conduct of business within the funeral establishment or crematory. The board has the authority to enter, at all reasonable hours, for the purpose of inspecting the premises in which the business of embalming, funeral directing, or cremating is conducted.

(d) All of an inspector's expenses, per diem, and compensation shall be paid out of the receipts of the board, but the allowances shall at no time exceed the receipts of the board.

(e) The board is authorized to set fees for inspections: *Provided*, That there shall be no fee for a biennial inspection, based on the funeral establishment's renewal date.

§30-6-17. Apprenticeship.

(a) After July 1, 2022, the board shall issue a registration to be an apprentice funeral service licensee to an applicant who meets the following requirements:

(1) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(2) Is 18 years of age or over;

(3) Is a citizen of the United States or be eligible for employment in the United States;

(4) Has a high school diploma or its equivalent;

(5) The required 60 semester hours or 90 quarter hours of college or university credits and mortuary school can be completed prior to, during, or after the apprenticeship; and

(6) Has paid the appropriate fees.

(b) Any person that commences an apprenticeship prior to January 1, 2003, may continue to serve such apprenticeship and is not subject to the requirements set forth in this section, but is subject to board approval.

(c) The board may set the requirements for an apprenticeship, including the manner in which it shall be served and the length of time, which shall not be more than one year for a funeral service licensee and shall not be more than two years for a funeral director.

(d) No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his or her license at the same time.

§30-6-19. Funeral establishment to be managed by a licensee in charge; license displayed.

(a) Every separate funeral establishment in this state offering the services set forth in this article shall be operated under the supervision and management of a licensee in charge who is licensed as a funeral director in this state who shall hold an active:

(1) Funeral Service licensee's license in the State of West Virginia;

(2) Embalmers license in the State of West Virginia;

(3) Crematory Operator certificate in the State of West Virginia; and

(4) Pre-Need license in the State of West Virginia.

(b) Each separate funeral establishment in this state offering the services set forth in this article shall have its own license, which license shall be prominently displayed within the funeral establishment.

(c) All funeral establishments shall display in all advertising the name of the licensee in charge of the establishment.

(d) All funeral establishments shall prominently display within the funeral establishment the license of the licensee in charge.

(e) A licensee in charge shall supervise each separate establishment.

(f) Effective July 1, 2022, the board shall allow up to two years to complete the requirements under this section for the licensee in charge.

§30-6-20. Crematory license requirements.

(a) Every crematory shall be licensed in West Virginia. The board shall issue a crematory license to an applicant who meets the following requirements:

(1) The place of business has been approved by the board as having met all the requirements and qualifications to be a crematory as are required by this article;

(2) The crematory conforms with all local building codes;

(3) The crematory meets all applicable environmental standards;

(4) Notify the board, in writing, at least 30 days before the proposed opening date so there can be an inspection of the crematory;

(5) Show proof that the crematory passed the inspection;

(6) Have a certified crematory operator in charge;

(7) Pay all the appropriate fees; and

(8) Complete such other requirements as specified by the board.

(b) All crematory licenses must be renewed biennially, by a staggered schedule, upon or before July 1, and pay a renewal fee.

(c) Each crematory license shall be valid for only one crematory to be located at a specific street address. There shall be a separate license issued and a separate fee assessed to operate additional crematories by the same applicant.

(d) A holder of a crematory license that fails to pay fees for either the principal crematory or additional crematories by July 1, of the renewal year is subject to a penalty, a reinstatement fee for each crematory, and the required renewal fee.

(e) The holder of a crematory license who ceases to operate the crematory at the location specified in the application shall, within 20 days thereafter, surrender the crematory license to the board and the license shall be canceled by the board. In the event of the death of an individual who was the holder of a crematory license, it shall be the duty of the holder's personal representative to surrender the crematory license within 120 days of qualifying as the personal representative.

(f) A holder of a certificate to operate a crematory whose certificate to operate has been revoked or a holder of a crematory license whose license has been revoked shall not operate, either directly or indirectly, or hold any interest in any crematory or funeral establishment: *Provided*, That a holder of a crematory license whose license has been revoked is not prohibited from leasing any property owned by him or her for use as a crematory, so long as the property owner does not participate in the control or profit of the crematory except as lessor of the premises for a fixed rental not dependent upon earnings.

(g) Failure to comply with any of these provisions shall be grounds for revocation of a crematory license.

(h) All persons that operate crematories shall by January 1, 2003, register with the board. By July 1, 2003, all persons that operate crematories shall obtain a crematory license, pursuant to the provisions of this section.

(i) All crematory licenses must be renewed biennially upon or before July 1.

(j) After July 1, 2003, all licensed crematories must have a certified crematory operator in charge.

(k) If a certified crematory operator in charge ceases to be employed by a crematory, then the holder of the crematory license shall notify the board within 30 days of the cessation. Within 30 days after such notification, the holder of a crematory license shall execute a new application for a crematory license specifying the name of the new certified crematory operator in charge. A crematory is prohibited from operating more than 30 days without a certified crematory operator in charge.

§30-6-22b. Certification for alkaline hydrolysis of human remains.

(a) No person, funeral establishment, corporation, partnership, joint venture, voluntary organization, or other entity shall hydrolyze human remains without first obtaining a certificate from the board.

(b) Except as otherwise provided by this article, a certificate for the hydrolysis of human remains shall have the same requirements and fees as for the licensing of crematories under this article. The alkaline hydrolysis of human remains shall be conducted in compliance with all requirements for cremation.

(c) The board shall have the same powers to regulate, enforce, discipline, and inspect alkaline hydrolysis certificate holders and the practice of alkaline hydrolysis that have been granted under this article for the regulation, enforcement, discipline, and inspection of crematories and the practice of cremation.

(d) Any solid remains or residue remaining after alkaline hydrolysis shall be treated and disposed of as cremated remains under this article. Disposal of liquid waste shall be subject to all applicable health and environmental laws and regulations.

(e) Human remains shall be hydrolyzed in an alkaline hydrolysis container and may not be required to be hydrolyzed in a casket.

(f) Unless specified otherwise by the manufacturer of the equipment used for alkaline hydrolysis, human remains may be hydrolyzed without first removing a pacemaker or defibrillator. Any other potentially hazardous implanted device or material shall be handled in accordance with applicable state laws and regulations.

(g) The board shall promulgate legislative rules necessary to define the education and requirements for the certification to perform alkaline hydrolysis.

CHAPTER 215

**(Com. Sub. for H. B. 3223 - By Delegates Pack, Mandt and
Crouse)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §5-6-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §7-3-19; and to amend said code by adding thereto a new section, designated †§8-12-22, all relating to prohibiting the dedication or naming any state, county, or municipal building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 6. STATE BUILDINGS.

§5-6-4. Powers of commission.

- (a) The commission has the power:
- (1) To sue and be sued, plead, and be impleaded;
 - (2) To have a seal and alter the same at pleasure;

†NOTE: Sections 22 and 23 existed in code. Therefore, this has been redesignated as Section 24 for the code.

(3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of personal property for its corporate purposes;

(5) To make bylaws for the management and regulation of its affairs;

(6) With the consent of the Attorney General of the State of West Virginia, to use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

(7) To appoint officers, agents and employees and fix their compensation;

(8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

(9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;

(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the State of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to the consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia Alcohol Beverage Control Commissioner, and equip and furnish the office space; and to acquire or construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under

the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the Division of Corrections or the regional jail and correctional facilities authority; and to formulate and program plans for the orderly and timely capital improvement of all of the hospitals and institutions and the state Capitol buildings; and to construct a building or buildings in Kanawha County to be used as a general headquarters by the division of public safety to accommodate that division's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the Division of Natural Resources; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agreements with holders of bonds previously issued, to change the systems, complexes of buildings and projects from time to time, in order to facilitate the issuance and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests in the real property necessary or convenient to accomplish the purposes of this subdivision. The rights and powers set forth in this subdivision shall not be construed as in derogation of any rights and powers now vested in the West Virginia Alcohol Beverage Control Commissioner, the Department of Health and Human Resources, the Division of Corrections, or the Division of Natural Resources;

(11) To maintain, construct, remove, and operate a project authorized under this article;

(12) To charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as provided in this article: *Provided*, That on and after the effective date of the amendments to this section, to charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired, maintained or improved, in whole or in part, with the

proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as in this section provided, or with any funds available to the state building commission, including, but not limited to, all buildings and property owned by the State of West Virginia or by the state building commission, but no rentals shall be charged to the Governor, Attorney General, Secretary of State, State Auditor, State Treasurer, the Legislature and the members of the Legislature, the Supreme Court of Appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable bonds;

(14) To accept and expend any gift, grant, or contribution of money to, or for the benefit of, the commission, from the State of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings, and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects;

(17) To issue revenue bonds in accordance with the applicable provisions of this article for the purposes set forth in §5-6-11a of this code; and

(18) To do all things necessary or convenient to carry out the powers given in this article.

(19) The power and authority granted to the state building commission pursuant to this section and §5-6-7, §5-6-8, and §5-6-11a of this code to initiate, acquire, construct, finance or develop projects; to issue revenue bonds; or to exercise the power of eminent domain with respect to any project, shall terminate on the effective date of this section: *Provided*, That nothing herein shall be construed to affect the validity of any act of the state building

commission prior to the effective date of this section or to impair the rights of bondholders with respect to bonds or other evidence of indebtedness issued prior to the effective date of this section. Following the effective date of this section, the secretary of administration may exercise any power expressly granted pursuant to this article with respect to any project or facility previously constructed or acquired, any existing contractual obligations, and any outstanding bonded indebtedness. Refunding bonds for any outstanding bonded indebtedness are authorized, subject to the provisions of article two-e, chapter thirteen of this code. The West Virginia economic development authority provided for in §31-15-1 *et seq.* of this code is designated to act as the governing body whose authorizations and determinations are required for the purpose of refunding bonds.

(b) Notwithstanding any provision of this code to the contrary, the commission may not cause or permit to be caused the dedication or naming of any state building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-19. Dedication to or naming county property for office holder prohibited.

Notwithstanding any provision of this code to the contrary, county commissions may not cause or permit to be caused the dedication or naming of any county building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

†§8-12-22. Dedication to or naming municipal property for office holder prohibited.

Notwithstanding any provision of this code to the contrary, no municipalities or governing bodies of municipalities may cause or permit to be caused the dedication or naming of any municipal owned building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

†NOTE: Sections 22 and 23 existed in code. Therefore, this has been redesignated as Section 24 for the code.

●

CHAPTER 216

(S. B. 531 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; to take effect July 1, 2022]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-4-2 of said code; and to amend and reenact §18A-4-8a of said code, all relating to increasing annual salaries of certain employees of the state; increasing the salaries of members of the West Virginia State Police and certain personnel thereof; increasing annual salaries of public school teachers; increasing annual salaries of school service personnel; and providing an effective date for these increases.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system state; salaries; exclusion from wage and hour laws, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: (1) The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; (2) the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; and

(3) the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII. The promotion of individuals in the forensic laboratory shall include the classifications of Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV, based on the Forensic Lab Career Progression System.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list. A written manual shall also be provided to individuals within the forensic laboratory governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation of promotion or reclassification of those individuals.

(d) Effective July 1, 2022, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training	\$48,524
Cadet Trooper After Training	55,784
Trooper Second Year	56,796
Trooper Third Year	57,179
Senior Trooper	57,578

Trooper First Class	58,184
Corporal	58,790
Sergeant	63,091
First Sergeant	65,242
Second Lieutenant	67,392
First Lieutenant	69,543
Captain	71,694
Major	73,844
Lieutenant Colonel	75,995

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT SPECIALIST
CLASSIFICATION

I	\$56,796
II	57,578
III	58,184
IV	58,790
V	63,091
VI	65,242
VII	67,392
VIII	69,543

Effective July 1, 2022, designated individuals within the forensic laboratory shall receive annual base salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

EVIDENCE CUSTODIAN

I	\$45,650
II	47,978
III	51,639
IV	54,666

FORENSIC TECHNICIAN

I	\$47,850
II	49,544
III	53,426

FORENSIC SCIENTIST

I	\$55,050
II	57,234
III	59,338
IV	61,737
V	65,263
VI	69,063

FORENSIC SCIENTIST SUPERVISOR

I	\$71,762
II	75,326
III	79,104
IV	83,108

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of \$500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative. The forensic laboratory employees whose salaries are fixed and specified pursuant to this section, shall receive, and are entitled to, an increase in salary over that set forth in §15-2-5(d) of this code, in accordance with §15-2-7(h) of this code.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour laws. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour laws prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour laws, and in addition to their salaries and increases for length of service, members who have completed basic

training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed \$200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of \$5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) For school year 2022-2023, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

Years Exp.	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. 15	M.A. M.A.	M.A. 15	M.A. 30	M.A. 45	Doc- torate
0	34,297	34,986	35,252	36,695	37,456	39,223	39,984	40,745	41,506	42,541
1	34,625	35,314	35,580	37,213	37,974	39,742	40,503	41,263	42,024	43,059
2	34,954	35,642	35,908	37,732	38,493	40,260	41,021	41,782	42,543	43,578
3	35,282	35,970	36,236	38,251	39,011	40,779	41,540	42,300	43,061	44,096
4	35,854	36,542	36,808	39,013	39,774	41,542	42,303	43,063	43,824	44,859
5	36,182	36,870	37,136	39,532	40,293	42,060	42,821	43,582	44,343	45,378
6	36,510	37,198	37,464	40,050	40,811	42,579	43,340	44,100	44,861	45,896
7	36,838	37,527	37,792	40,569	41,330	43,097	43,858	44,619	45,380	46,415
8	37,166	37,855	38,121	41,087	41,848	43,616	44,377	45,137	45,898	46,933
9	37,494	38,183	38,449	41,606	42,367	44,134	44,895	45,656	46,417	47,452
10	37,823	38,511	38,777	42,126	42,886	44,654	45,415	46,176	46,936	47,971
11	38,151	38,839	39,105	42,644	43,405	45,173	45,933	46,694	47,455	48,490

12	38,479	39,167	39,433	43,163	43,923	45,691	46,452	47,213	47,973	49,008
13	38,807	39,495	39,761	43,681	44,442	46,210	46,970	47,731	48,492	49,527
14	39,135	39,823	40,089	44,200	44,960	46,728	47,489	48,250	49,010	50,045
15	39,463	40,151	40,417	44,718	45,479	47,247	48,007	48,768	49,529	50,564
16	39,791	40,479	40,745	45,237	45,997	47,765	48,526	49,287	50,047	51,082
17	40,119	40,808	41,073	45,755	46,516	48,284	49,045	49,805	50,566	51,601
18	40,447	41,136	41,402	46,274	47,035	48,802	49,563	50,324	51,085	52,120
19	40,775	41,464	41,730	46,792	47,553	49,321	50,082	50,842	51,603	52,638
20	41,103	41,792	42,058	47,311	48,072	49,839	50,600	51,361	52,122	53,157
21	41,432	42,120	42,386	47,829	48,590	50,358	51,119	51,879	52,640	53,675
22	41,760	42,448	42,714	48,348	49,109	50,876	51,637	52,398	53,159	54,194
23	42,088	42,776	43,042	48,867	49,627	51,395	52,156	52,916	53,677	54,712
24	42,416	43,104	43,370	49,385	50,146	51,914	52,674	53,435	54,196	55,231
25	42,744	43,432	43,698	49,904	50,664	52,432	53,193	53,954	54,714	55,749
26	43,072	43,760	44,026	50,422	51,183	52,951	53,711	54,472	55,233	56,268
27	43,400	44,088	44,354	50,941	51,701	53,469	54,230	54,991	55,751	56,786
28	43,728	44,417	44,682	51,459	52,220	53,988	54,748	55,509	56,270	57,305
29	44,056	44,745	45,011	51,978	52,738	54,506	55,267	56,028	56,788	57,823
30	44,384	45,073	45,339	52,496	53,257	55,025	55,785	56,546	57,307	58,342
31	44,713	45,401	45,667	53,015	53,776	55,543	56,304	57,065	57,825	58,860
32	45,041	45,729	45,995	53,533	54,294	56,062	56,823	57,583	58,344	59,379
33	45,369	46,057	46,323	54,052	54,813	56,580	57,341	58,102	58,863	59,898
34	45,697	46,385	46,651	54,570	55,331	57,099	57,860	58,620	59,381	60,416
35	46,025	46,713	46,979	55,089	55,850	57,617	58,378	59,139	59,900	60,935

(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective July 1, 2019, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (b) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(d) Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher, as defined by the State Superintendent, shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(e) In accordance with §18A-4-5 of this code, each teacher shall be paid the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For "4th Class" at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For "3rd Class" at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For “2nd Class” at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For “A.B.” at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For “A.B. + 15” at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For “M.A.” at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For “M.A. + 15” at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For “M.A. + 30” at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For “M.A. + 45” at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For “Doctorate” at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) Effective July 1, 2022, the minimum monthly pay for each service employee shall be as follows:

(1) For school year 2022-2023, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	2,007	2,028	2,070	2,123	2,176	2,239	2,271	2,344
1	2,039	2,061	2,102	2,155	2,209	2,272	2,303	2,377
2	2,072	2,093	2,135	2,188	2,241	2,304	2,336	2,409
3	2,104	2,126	2,168	2,221	2,274	2,337	2,369	2,442
4	2,137	2,159	2,200	2,253	2,306	2,370	2,401	2,476
5	2,170	2,191	2,233	2,286	2,339	2,402	2,434	2,508
6	2,202	2,224	2,267	2,319	2,372	2,435	2,467	2,541
7	2,236	2,256	2,299	2,351	2,404	2,468	2,499	2,574
8	2,269	2,289	2,332	2,384	2,437	2,500	2,532	2,606
9	2,301	2,322	2,365	2,418	2,470	2,533	2,564	2,639
10	2,334	2,355	2,397	2,450	2,502	2,567	2,598	2,672
11	2,367	2,388	2,430	2,483	2,535	2,599	2,631	2,704
12	2,399	2,421	2,462	2,516	2,569	2,632	2,663	2,737
13	2,432	2,453	2,495	2,548	2,601	2,664	2,696	2,770
14	2,465	2,486	2,528	2,581	2,634	2,697	2,729	2,802
15	2,497	2,519	2,560	2,613	2,666	2,730	2,761	2,835

16	2,530	2,551	2,593	2,646	2,699	2,762	2,794	2,868
17	2,562	2,584	2,627	2,679	2,732	2,795	2,827	2,901
18	2,595	2,617	2,659	2,711	2,764	2,828	2,859	2,934
19	2,629	2,649	2,692	2,744	2,797	2,860	2,892	2,966
20	2,661	2,682	2,725	2,778	2,830	2,893	2,925	3,000
21	2,694	2,714	2,757	2,810	2,862	2,926	2,957	3,034
22	2,727	2,748	2,790	2,843	2,895	2,959	2,991	3,066
23	2,759	2,781	2,823	2,876	2,929	2,993	3,025	3,100
24	2,792	2,813	2,855	2,908	2,961	3,027	3,058	3,134
25	2,825	2,846	2,888	2,941	2,995	3,059	3,092	3,166
26	2,857	2,879	2,920	2,975	3,029	3,093	3,124	3,200
27	2,890	2,911	2,953	3,007	3,061	3,125	3,158	3,233
28	2,923	2,944	2,987	3,041	3,095	3,159	3,192	3,267
29	2,955	2,978	3,020	3,073	3,128	3,193	3,224	3,301
30	2,989	3,010	3,054	3,107	3,161	3,225	3,258	3,334
31	3,022	3,044	3,088	3,141	3,195	3,259	3,292	3,367
32	3,056	3,077	3,120	3,174	3,227	3,293	3,324	3,401
33	3,090	3,110	3,154	3,208	3,261	3,325	3,358	3,434
34	3,122	3,144	3,188	3,242	3,295	3,359	3,392	3,467
35	3,156	3,178	3,220	3,274	3,327	3,393	3,425	3,501
36	3,190	3,211	3,254	3,308	3,362	3,426	3,459	3,533
37	3,222	3,245	3,288	3,342	3,396	3,460	3,492	3,567
38	3,256	3,277	3,320	3,374	3,428	3,493	3,525	3,601
39	3,290	3,311	3,354	3,408	3,462	3,526	3,559	3,633
40	3,322	3,345	3,387	3,441	3,496	3,560	3,592	3,667

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE.....	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D
Aide V – Temporary Authorization	E
Aide V	F
Aide VI – Temporary Authorization	E
Aide VI	F
Audiovisual Technician	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F

Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Early Childhood Classroom Assistant Teacher I	E
Early Childhood Classroom Assistant Teacher II	E
Early Childhood Classroom Assistant Teacher III	F
Educational Sign Language Interpreter I	F
Educational Sign Language Interpreter II	G
Electrician I	F
Electrician II	G
Electronic Technician I	F

Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Licensed Practical Nurse	F
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic	F

Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	G
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Sign Support Specialist	E
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D

Warehouse Clerk C

Watchman B

Welder F

WVEIS Data Entry and Administrative Clerk B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) Each service person is paid a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of

a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however,* That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the

direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, “under the direct supervision of a certified professional person” means that certified professional person is present, with and accompanying the aide.

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CHAPTER 217

**(H. B. 2631 - By Delegates Hott, D. Kelly, Graves, B. Ward,
Westfall, Dean, Paynter, Hamrick, Phillips, Mandt and Pritt)**

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §20-1-7e of the Code of West Virginia, 1931, as amended, relating to allowing off duty Natural Resources Police Officers to contract to work for a private person or entity during off duty hours if work does not violate Division of Natural Resources law or rules regarding location or nature; expanding authority of chief natural resources police office to enter contract for certain services with quasi-public entities; and requiring Division of Natural Resources contracts with public and private entities for certain services provide liability immunity for Natural Resources Police Officers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1e. Natural resources police officers failure to perform duties; penalty; providing extraordinary law enforcement or security services by contract.

(a) Any natural resources police officer who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the regulations of the chief natural resources police officer and the provisions of this section, is guilty of a misdemeanor and, upon conviction thereof,

shall be fined not less than \$25 nor more than \$200, or confined in jail for not more than four months, or both fined and confined.

(b) Notwithstanding any other provision of this section to the contrary, the chief natural resources police officer may contract with the public, quasi-public, military or private entities to provide extraordinary law enforcement or security services by the Division of Natural Resources when it is determined by the chief natural resources police officer to be in the public interest. The chief natural resources police officer may assign personnel, equipment or facilities, and the division shall be reimbursed for the wages, overtime wages, benefits and costs of providing the contract services as negotiated between the parties. The compensation paid to natural resources police officers by virtue of contracts provided in this section shall be paid from a special account and are excluded from any formulation used to calculate an employee's benefits. All requests for obtaining extraordinary law enforcement or security services shall be made to the chief natural resources police officer in writing and shall explain the funding source and the authority for making the request. No officer of the division is required to accept any assignment made pursuant to this subsection. Every officer assigned to duty hereunder shall be paid according to the hours and overtime hours actually worked notwithstanding that officer's status as exempt personnel under the "Federal Labor Standards Act" or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of the officer is required, neither the division nor any of its officers or other personnel are liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the Division of Natural Resources or a Natural Resources Police Officer under this section shall also agree as part of that contract to hold harmless and indemnify the state, Division of Natural Resources and its personnel from any liability arising out of employment under that contract.

The director is authorized to propose legislative rules, subject to approval by the Legislature, in accordance with chapter twenty-nine-a of this code relating to the implementation of contracts

entered into pursuant to this subsection: *Provided*, That the rules expressly prohibit private employment of officers in circumstances involving labor disputes. Notwithstanding any provision to this article to the contrary, an officer or member may contract to work for a private person or entity during his or her off duty hours: *Provided, however*, That any such contract work may not be a type prohibited by this code or the rules of the agency on locations and nature of security services provided.

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CHAPTER 218

(Com. Sub. for H. B. 4059 - By Delegates Rohrbach, D. Jeffries, Summers, Pack, G. Ward, Worrell, Rowan, Forsht, Mallow, and Jennings)

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to exemptions from classified service; clarifying that all new Department of Health and Human Resources' Deputy Commissioners are policy-making positions exempt from civil service; and exempting persons employed as attorneys from the civil service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE SYSTEM.

***§29-6-4. Classified-exempt service; additions to classified service; exemptions.**

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on July 1, 1992, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the written consent of the State Personnel Board and the appointing authority concerned, add to the list of positions in the classified service, but the additions may not

***NOTE:** This section was also amended by H. B. 4286 (Chapter 219), which passed prior to this act.

include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

- (1) All judges, officers, and employees of the judiciary;
- (2) All members, officers, and employees of the Legislature;
- (3) All officers elected by popular vote and employees of the officer;
- (4) All secretaries of departments and employees within the office of a secretary;
- (5) Members of boards and commissions and heads of departments appointed by the Governor or heads of departments selected by commissions or boards when expressly exempt by law or board order;
- (6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the Governor or Legislature;
- (7) All policy-making positions, which includes newly hired Deputy Commissioners within the Department of Health and Human Resources;
- (8) Patients or inmates employed in state institutions;
- (9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof, an executive department, or by authority of the Governor;
- (10) All employees of the office of the Governor, including all employees assigned to the executive mansion;
- (11) Part-time professional personnel engaged in professional services without administrative duties;

(12) Temporary employees;

(13) Members and employees of the board of trustees and board of directors or their successor agencies;

(14) Uniformed personnel of the State Police;

(15) Temporary employees in the state forests, parks, and recreational areas; and

(16) Any person hired as an attorney beginning July 1, 2022.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the Governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the Governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the Governor including all employees assigned to the executive mansion, as well as any persons appointed by the Governor to fill policy-making positions, in that those offices or positions are confidential in character and require their holders to act as advisors to the Governor or the Governor's appointees, to formulate and implement the policies and goals of the Governor or the Governor's appointees, or to help the Governor or the Governor's appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

(e) All county road supervisor positions are covered under the classified service effective July 1, 1999. A person employed as a county road supervisor on the effective date of this section is not required to take or pass a qualifying or competitive examination upon, or as a condition of, becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed, or terminated in his or her employment must be severed, removed, or terminated as if the person was a classified service employee.

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CHAPTER 219

(H. B. 4286 - By Delegates Steele and Foster)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to exempting persons employed as attorneys from the civil service system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE SYSTEM.

***§29-6-4. Classified-exempt service; additions to classified service; exemptions.**

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on July 1, 1992, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the written consent of the State Personnel Board and the appointing authority concerned, add to the list of positions in the classified service, but the additions may not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

(1) All judges, officers, and employees of the judiciary;

***NOTE:** This section was also amended by H. B. 4059 (Chapter 218), which passed subsequent to this act.

- (2) All members, officers, and employees of the Legislature;
- (3) All officers elected by popular vote and employees of the officer;
- (4) All secretaries of departments and employees within the office of a secretary;
- (5) Members of boards and commissions and heads of departments appointed by the Governor or heads of departments selected by commissions or boards when expressly exempt by law or board order;
- (6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the Governor or Legislature;
- (7) All policy-making positions;
- (8) Patients or inmates employed in state institutions;
- (9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof, an executive department, or by authority of the Governor;
- (10) All employees of the office of the Governor, including all employees assigned to the executive mansion;
- (11) Part-time professional personnel engaged in professional services without administrative duties;
- (12) Temporary employees;
- (13) Members and employees of the board of trustees and board of directors or their successor agencies;
- (14) Uniformed personnel of the State Police;
- (15) Temporary employees in the state forests, parks, and recreational areas; and

(16) Any person hired as an attorney beginning July 1, 2022.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the Governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the Governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the Governor including all employees assigned to the executive mansion, as well as any persons appointed by the Governor to fill policy-making positions, in that those offices or positions are confidential in character and require their holders to act as advisors to the Governor or the Governor's appointees, to formulate and implement the policies and goals of the Governor or the Governor's appointees, or to help the Governor or the Governor's appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

(e) All county road supervisor positions are covered under the classified service effective July 1, 1999. A person employed as a county road supervisor on the effective date of this section is not required to take or pass a qualifying or competitive examination upon, or as a condition of, becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed, or terminated in his or her employment must be severed, removed, or terminated as if the person was a classified service employee.

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CHAPTER 220

**(Com. Sub. for H. B. 4565 - By Delegates Statler, Ellington,
Summers, G. Ward, Toney, and Queen)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §5-10B-2 and §5-10B-3a of the Code of West Virginia, 1931, as amended; to amend §18-25-1 of said code; and to amend §18A-4-12 of said code; all relating generally to government employees deferred compensation plans; providing definitions; exempting certain employees from the requirement of automatic enrollment into certain plans; and removing outdated language to align with federal law.

Be it enacted by the Legislature of West Virginia:

**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 10B. GOVERNMENT EMPLOYEES DEFERRED
COMPENSATION PLANS.**

§5-10B-2. Definitions.

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) “Board” means the Consolidated Public Retirement Board provided for in §5-10-1 *et seq.*

(b) “Deferred compensation” means the income and earnings on that income an employee may legally defer for personal income tax purposes pursuant to the Internal Revenue Code until distribution.

(c) “Deferred compensation plan” or “plan” means a trust whereby the state employer or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(d) “Deferred compensation trust fund” or “trust” means the fund in which deferred amounts and investment income of participating employees are held.

(e) “Eligible employer” means counties, municipalities or political subdivisions of those governmental bodies which meet the definition of “state” as described in Internal Revenue Code Section 457 (e)(1), but which do not meet the definition of “state employer” as used in this article.

(f) “Employee” means any person, whether appointed, elected or under contract, providing services for the state employer or public employer for which compensation is paid.

(g) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(h) “Investment product” means any fixed or variable rate annuity, life insurance contract, savings account, certificate of deposit, money market account, bond, mutual fund or any other form of investment not prohibited under the Internal Revenue Code and authorized by the state employer or the public employer for the purpose of receiving funds under a plan.

(i) “State employer” means the State of West Virginia, which includes every state board, commission, agency and instrumentality.

(j) “Temporary employee” means a state employee who entered into a written agreement with his or her employer, prior to his or her first day of employment, specifying that his or her term of employment would be for two years or less in duration.

(k) “Treasurer” means the state Treasurer.

(l) “Vendor” means a private entity that sells investment products or provides goods and services.

§5-10B-3a. Automatic enrollment.

(a) Every state employee commencing work on and after July 1, 2007, shall have a minimum of \$10 per pay period of his or her salary deferred to the state deferred compensation plan unless the state employee provides written notice declining to participate in accordance with the Treasurer’s guidelines: *Provided*, That temporary employees and employees of the Higher Education Policy Commission, the Council for Community and Technical College Education, and the state’s public institutions of higher education are exempt from the requirement in this section.

(b) At any time, a state employee may change the amount that he or she defers each pay period to the state deferred compensation plan or cease participating in the plan. An employee declining participation in the state deferred compensation plan may elect to participate at a later time.

(c) A political subdivision may establish an automatic enrollment program in a deferred compensation plan pursuant to this article. A political subdivision employee may elect to not participate in the deferred compensation plan at any time and to change the contribution amount.

CHAPTER 18. EDUCATION.

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER EMPLOYEES.

§18-25-1. Authority to make tax deferred investments for teachers and other employees.

A county board of education, the Teachers' Retirement Board, the West Virginia Board of Education and the Department of Education and the arts and their agencies may provide by written agreement between the department, any such board or agency and any teacher or other employee to reduce the cash salary payable to the teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of the reduction as premiums on an annuity contract or investments into a custodial account or other investment owned by the teacher or other employee. The annuity contract, custodial account or other investment shall be in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code. The amount of the reduction may not exceed the amount excludable from income under the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teachers or employees salary for all purposes other than federal and state income tax.

The transaction of making the tax deferred investment for a teacher or other employee by a Board of Education, the Teachers' Retirement Board, the West Virginia Board of Education and the Department of Education and the arts and their agencies imposes no liability nor responsibility whatsoever on the boards, department or members thereof except to show that the payments have been remitted for the purposes for which deducted.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-12. Tax deferred investments for teachers and other employees.

For the purpose of this section, when an employee shall have attained the age of eighteen years the said employee may be eligible to participate in the defined group plans.

A county board of education, the Teachers' Retirement Board and the West Virginia Board of Education and their agencies may provide by written agreement between any such board or agency

and any teacher or other employee to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction as premiums on an annuity contract or payments on a custodial account or other investment owned by such teacher or other employee, which annuity contract, custodial account or other investment is in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code. The amount of such reduction shall not exceed the amount excludable from income under the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's or employee's salary for all purposes other than federal and state income tax.

The purchase of such tax deferred investment for a teacher or other employee by a Board of Education, the Teachers' Retirement Board and the West Virginia Board of Education and their agencies shall impose no liability nor responsibility whatsoever on said boards or members thereof except to show that the payments have been remitted for the purposes for which deducted.

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CHAPTER 221

(S. B. 135 - By Senators Weld, Lindsay, Jeffries, and Stollings)

[March 9, 2022; in effect 90 days from passage]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-18-30, relating to the acquisition and disposition of certain real property by an urban development authority; establishing methods of acquisition; requiring on-going maintenance of acquired properties; providing limits on acquisitions; providing for right of first refusal of tax-delinquent properties; and setting a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. SLUM CLEARANCE.

§16-18-30. Acquisition of property.

(a) *Title to be held in its name.* — An urban renewal authority shall hold in its own name all real property it acquires.

(b) *Methods of acquisition.* — An urban renewal authority may acquire real property or interests in real property by any means, upon terms and conditions, and in a manner the urban renewal authority considers proper: *Provided,* That an urban renewal authority may not acquire any interest in oil, gas, or minerals which have been severed from the realty.

(c) *Acquisitions from municipalities or counties.* —

(1) An urban renewal authority may acquire real property by purchase contracts, lease purchase agreements, installment sales

contracts, and land contracts, and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the urban renewal authority and the municipality or county.

(2) A municipality or county may transfer to an urban renewal authority real property and interests in real property of the municipality or county upon terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the urban renewal authority.

(3) A land reuse agency, as defined in §31-18E-3 of this code, located in part or in full within an urban renewal authority jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the urban renewal authority. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(d) *Maintenance.* — An urban renewal authority shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(e) *Prohibition.* —

(1) Subject to the provisions of subdivision (2) of this subsection, an urban renewal authority may not own or hold real property located outside the jurisdictional boundaries of the entities which created the urban renewal authority under §16-18-4(c) of this code.

(2) An urban renewal authority may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(f) *Acquisition of tax-delinquent properties.* —

(1) Notwithstanding any other provision of this code to the contrary, if authorized by the municipality which created an urban renewal authority or otherwise by intergovernmental cooperation

agreement, an urban renewal authority may acquire an interest in tax-delinquent property through the provisions of §11A-1-1 *et seq.* of this code. Notwithstanding the provisions of §11A-3-8 of this code, if no person present at the tax sale bids the amount of the taxes, interest, and charges due on any unredeemed tract or lot, or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the Auditor for disposition pursuant to §11A-3-44 of this code, provide a list of all said real estate within an urban renewal authority's jurisdiction to the urban renewal authority, and the urban renewal authority shall be given an opportunity to purchase the tax lien and pay the taxes, interest, and charges due for any unredeemed tract or lot, or undivided interest therein, as if the urban renewal authority were an individual who purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the municipality which created an urban renewal authority or otherwise by intergovernmental cooperation agreement, the urban renewal authority has the right of first refusal to purchase any tax-delinquent property which is within municipal limits, if it meets one or more of the following criteria:

(A) It has an assessed value of \$25,000 to \$100,000, or less;

(B) There are municipal liens on the property that exceed the amount of back taxes owed in the current tax cycle;

(C) The property has been on the municipality's vacant property registry for 24 consecutive months or longer;

(D) The property was sold at a tax sale within the previous three years, was not redeemed, and no deed was secured by the previous lien purchaser; or

(E) Has been condemned: *Provided*, That the urban renewal authority satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and an urban renewal authority may purchase any qualifying tax-

delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When an urban renewal authority exercises a right of first refusal in accordance with subdivision (2) of this subsection, the urban renewal authority shall, within 15 days of obtaining a tax deed, provide written notice to all owners of real property that are adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to express an interest in purchasing the tax-delinquent property from the urban renewal authority for an amount equal to the amount paid for the property plus expenses incurred by the urban renewal authority: *Provided*, That the urban renewal authority may refuse to sell the property to the adjacent property owner that expressed interest in the tax-delinquent property if that property owner or an entity owned by the property owner or its directors is delinquent on any state and local taxes or municipal fees, liens, or penalties on any of its property.

(4) Effective July 1, 2026, the provisions of subdivisions (2) and (3) of this subsection shall sunset and have no further force and effect.

(5) Prior to January 1, 2026, any urban renewal authority which exercises the authority granted by this subsection may submit to the Joint Committee on Government and Finance a report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection.

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CHAPTER 222

**(Com. Sub. for Com. Sub. for S. B. 181 - By Senators
Woodrum, Baldwin, Lindsay, Stollings, Weld, and Jeffries)**

[Passed March 8, 2022; in effect from passage]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6, and §16-42-7, all relating to creating of the Core Behavioral Health Crisis Services System; designating crisis hotline centers; reimbursing treatment for crisis receiving and stabilization services; establishing the duties and powers of the secretary; providing for timelines for implementation; authorizing rulemaking, including emergency rules; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 42. CORE BEHAVIORAL HEALTH CRISIS SERVICES SYSTEM.

§16-42-1. Definitions.

In this article the following words have the meanings indicated:

“988 Crisis Hotline Center” or “hotline center” means a state-identified center participating in the National Suicide Prevention Lifeline Network to respond to statewide or regional 988 calls.

“Commercial mobile radio service provider” or “CMRS provider” means cellular licensees, broadband personal communications services (PCS) licensees, and specialized mobile radio (SMR) providers, as those terms are defined by the Federal

Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

“Crisis receiving and stabilization services” means facilities providing short-term (under 24 hours) with capacity for diagnosis, initial management, observation, crisis stabilization, and follow-up referral services to all persons in a home-like environment.

“Department” means the West Virginia Department of Health and Human Resources.

“Federal Communications Commission” or “FCC” means the federal governmental agency that regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia, and U.S. territories. An independent U.S. government agency overseen by Congress, the Commission is the United States’ primary authority for communications law, regulation, and technological innovation.

“National Suicide Prevention Lifeline” or “NSPL” means the national network of local crisis centers that provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, seven days a week. Membership as an NSPL center requires nationally recognized certification which includes evidence-based training for all staff and volunteers in the management of calls.

“Peers” means individuals employed on the basis of their personal lived experience of mental illness and/or addiction and recovery who meet the state’s peer certification requirements where applicable.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

“Substance Abuse and Mental Health Services Administration” means the agency within the U.S. Department of

Health and Human Services that leads public health efforts to advance the behavioral health of the nation.

“988 Suicide Prevention and Mental Health Crisis Hotline” means the National Suicide Prevention Lifeline (NSPL) or its successor maintained by the Assistant Secretary for Mental Health and Substance Use under section 520E–3 of the Public Health Service Act.

“Veterans Crisis Line” or “VCL” means Veterans Crisis Line maintained by the Secretary of Veterans Affairs under section 1720F(h) of Title 38, United States Code.

§16-42-2. Designation of crisis hotline centers.

(a) Prior to July 1, 2022, the secretary shall designate a crisis hotline center or centers to provide crisis intervention services and crisis care coordination to individuals accessing the 988 suicide prevention and behavioral health crisis hotline from any jurisdiction within the state 24 hours a day, seven days a week.

(b) Designated hotline center(s) shall:

(1) Have an active agreement with the administrator of the National Suicide Prevention Lifeline (NSPL) for participation within the network;

(2) Meet NSPL requirements and best practices guidelines for operational and clinical standards;

(3) Utilize technology including chat and text that is interoperable between and across crisis and emergency response systems used throughout the state (911, EMS, other non-behavioral health crisis services, etc.);

(4) Have the authority to deploy crisis and outgoing services, and coordinate access to crisis receiving and stabilization services or other local resources as appropriate and according to guidelines and best practices established by the NSPL;

(5) Coordinate access to crisis receiving and stabilization services for individuals accessing the 988 suicide prevention and behavioral health crisis hotline through appropriate information sharing regarding availability of services; and

(6) Provide follow-up services to individuals accessing the 988 suicide prevention and behavioral health crisis hotline consistent with guidance and policies established by the NSPL.

(c) The department shall work in concert with the NSPL and VCL networks for the purposes of ensuring consistency of public messaging about 988 services.

(d) Designated hotline center(s) shall meet the requirements set forth by NSPL for serving high risk and specialized populations as identified by the Substance Abuse and Mental Health Services Administration, including training requirements and policies for transferring such callers to an appropriate specialized center or subnetworks within or external to the NSPL network.

§16-42-3. Reimbursement of treatment for crisis receiving and stabilization services.

(a) Crisis receiving and stabilization services as related to the call shall be reimbursed by the department if the individual for whom services were provided meets the definition of an uninsured person or if the crisis stabilization service is not a covered service by the individual's health coverage.

(b) The department's Bureau for Medical Services shall work with the entity responsible for the development of crisis receiving and stabilization services to explore options for appropriate coding of and payment for crisis management services.

(c) The department shall determine how payment will be made to the provider of service.

(d) The department's Bureau for Behavioral Health shall be responsible for all costs and expenses related to the administration and operation of the Core Behavioral Health Crisis Services System.

§16-42-4. Duties and powers of the secretary.

The secretary at his or her discretion may hire employees, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this article, make and sign any agreements, and may do and perform any acts necessary to accomplish the planning required for implementation or ongoing oversight of this article in coordination with designated hotline center(s), 9-1-1 centers, the state mental health authority, and the National Suicide Prevention Lifeline.

§16-42-5. Time frame for implementation.

The secretary shall establish time frames to accomplish the provisions of this article consistent with the time frames required by the National Suicide Hotline Designation Act of 2020 and the Federal Communication Commission's rules adopted on July 16, 2020.

§16-42-6. Rulemaking.

(a) The secretary may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this article, including, but not limited to, allowing appropriate information sharing and communication between and across crisis and emergency response systems for the purpose of real-time crisis care coordination, deployment of crisis and outgoing services, and linked, flexible services specific to crisis response.

(b) The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency exists requiring the promulgation of emergency rules to preserve the public peace, health, safety, or welfare and to prevent substantial harm to the public interest.

§16-42-7. Annual report.

The secretary shall submit an annual report to the Governor, Legislature, the Substance Abuse and Mental Health Services Administration, and the Federal Communications Commission that includes: The usage of the 988 suicide prevention and behavioral

health crisis hotline and the revenue diverted for the administration and operation of the Core Behavioral Health Crisis Services System.

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CHAPTER 223

(Com. Sub. for Com. Sub. for S. B. 468 - By Senators Rucker, Boley, Grady, Karnes, Maynard, Phillips, Roberts, Smith, Stover, Sypolt, Tarr, Woodrum, Clements, Martin, Azinger and Maroney)

[Passed March 12, 2022; in effect 90 days from passage]
[Approved by the Governor on March 21, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2Q-1, relating to restricting abortion; defining terms; requiring licensed medical professional to provide certain information; requiring Department of Health and Human Resources to make certain information available on website; prohibiting abortion because of a disability; providing exceptions; requiring commissioner to create forms; providing for professional sanctions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY PROTECTION AND EDUCATION ACT.

§16-2Q-1. Abortion may not be performed because of a disability, except in a medical emergency.

(a) As used in this article:

“Abortion” means the same as that term is defined in §16-2F-2 of this code.

“Attempt to perform or induce an abortion” means the same as that term is defined in §16-2M-2 of this code.

“Because of a disability” means on account of the presence or presumed presence of a disability or diagnosis in a fetus including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of atypical gene expressions.

“Commissioner” means the Commissioner of the Bureau for Public Health.

“Licensed medical professional” means a person licensed under Chapter 30 of this code practicing within his or her scope of practice.

“Medical emergency” means the same as that term is defined in §16-2I-1 of this code.

“Nonmedically viable fetus” means the same as that term is defined in §16-2M-2 of this code.

“Reasonable medical judgment” means the same as that term is defined in §16-2M-2 of this code.

(b) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not perform or attempt to perform or induce an abortion, unless the patient acknowledges that the abortion is not being sought because of a disability. The licensed medical professional shall document these facts in the patient’s chart and report such with the commissioner.

(c) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not intentionally perform or attempt to perform or induce an abortion of a fetus, if the abortion is being sought because of a disability.

(d) (1) If a licensed medical professional performs or induces an abortion on a fetus, the licensed medical professional shall, within 15 days of the procedure, cause to be filed with the commissioner, on a form supplied by the commissioner, a report containing the following information:

(A) Date the abortion was performed;

(B) Specific method of abortion used;

(C) A statement from the patient confirming that the reason for the abortion was not because of a disability;

(D) Probable health consequences of the abortion to the patient;

(E) Whether a medical emergency existed; and

(F) Whether the fetus was a nonmedically viable fetus.

(2) The licensed medical professional shall sign the form as his or her attestation under oath that the information stated is true and correct to the best of his or her knowledge.

(3) Reports required and submitted under this section may not contain the name of the patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(g) A licensed medical professional that administers, or causes to be administered, a test for a disability or diagnosis to a fetus shall provide the patient with educational information made available by the bureau as provided in this section, within a reasonable time, if the test result confirms the presence of a disability.

(h) The Bureau for Public Health shall make the following available through the bureau's publicly accessible internet website:

(1) Up-to-date, evidence-based information about any in-utero disability or diagnosis that has been peer reviewed by medical experts and any national disability rights organizations. The information provided shall include the following:

(A) Physical, developmental, educational, and psychosocial outcomes;

(B) Life expectancy;

(C) Clinical course;

(D) Intellectual and functional development;

(E) Treatment options; and

(F) Any other information the bureau deems necessary;

(2) Contact information regarding first call programs and support services, including the following:

(A) Information hotlines specific to any in-utero fetal disabilities or conditions;

(B) Relevant resource centers or clearinghouses;

(C) Information about adoption specific to disabilities;

(D) National and local disability rights organizations; and

(E) Education and support programs.

(i) The information provided in accordance with this section shall conform to the applicable standard or standards provided in the Enhanced National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care as adopted by the United States Department of Health and Human Services and published in the Federal Register on September 24, 2013.

(j) A licensed medical professional who intentionally or recklessly performs or induces an abortion in violation of this section is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(k) A person, not subject to subsection (f) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction, subject to the penalties contained in that section.

(1) A penalty may not be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

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CHAPTER 224

**(Com. Sub. for S. B. 470 - By Senators Maroney, Roberts,
Takubo, Stollings, Woodrum, Phillips, and Rucker)**

[Passed March 9, 2022; in effect 90 days from passage]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §16-30-3, §16-30-4, §16-30-5, §16-30-10, §16-30-13, §16-30-19, §16-30-21, and §16-30-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-30C-5 of said code, all relating to health care decisions; defining terms; renaming the physician orders for scope of treatment as portable orders for scope of treatment and indicating that advanced practice registered nurses and physician assistants may complete them within their scope of practice; revising forms of a living will, medical power of attorney, and combined medical power of attorney and living will; providing clarifying language regarding the effect of signing a living will on the availability of medically-administered food and fluids; requiring oral food and fluids be provided as desired and tolerated; providing reciprocity for portable orders for scope of treatment or similar medical orders validly executed in another state; providing that forms executed prior to effective date of this bill remain in full force and effect; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

For the purposes of this article:

“Actual knowledge” means the possession of information of the person’s wishes communicated to the health care provider orally or in writing by the person, the person’s medical power of attorney representative, the person’s health care surrogate, or other individuals resulting in the health care provider’s personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

“Adult” means a person who is 18 years of age or older, an emancipated minor who has been established as such pursuant to the provisions of §49-4-115 of this code, or a mature minor.

“Advanced nurse practitioner” means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of the West Virginia Board of Examiners for Registered Professional Nurses rule, advanced practice registered nurse, 19 CSR 7, who has a mutually agreed upon association in writing with a physician, and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

“Attending physician” means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

“Capable adult” means an adult who is physically and mentally capable of making health care decisions and who is not considered a protected person pursuant to chapter 44A of this code.

“Close friend” means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person’s health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health, and religious and moral beliefs.

“Death” means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

“Guardian” means a person appointed by a court pursuant to chapter 44A of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

“Health care decision” means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care, and organ or tissue donation.

“Health care facility” means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, or other facility established to administer health care in its ordinary course of business or practice.

“Health care provider” means any licensed physician, dentist, nurse, physician assistant, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

“Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

“Life-prolonging intervention” means any medical procedure or intervention that, when applied to a person, would serve to

artificially prolong the dying process. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term “life-prolonging intervention” does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

“Living will” means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of §16-30-4 of this code.

“Mature minor” means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

“Medical information” or “medical records” means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present, or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

“Medical power of attorney representative” or “representative” means a person, 18 years of age or older, appointed by another person to make health care decisions pursuant to §16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

“Parent” means a person who is another person’s natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

“Person” means an individual, corporation, business trust, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.

“Portable orders for scope of treatment (POST) form” means a standardized form containing orders by a qualified physician, an advanced practice registered nurse, or a physician assistant that details a person’s life-sustaining wishes as provided by §16-30-25 of this code.

“Principal” means a person who has executed a living will, medical power of attorney, or combined medical power of attorney and living will.

“Protected person” means an adult who, pursuant to chapter 44A of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

“Qualified physician” means a physician licensed to practice medicine who has personally examined the person.

“Qualified psychologist” means a psychologist licensed to practice psychology who has personally examined the person.

“Surrogate decision-maker” or “surrogate” means an individual 18 years of age or older who is reasonably available, to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

“Terminal condition” means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

§16-30-4. Executing a living will, medical power of attorney, or combined medical power of attorney and living will.

(a) Any competent adult may execute at any time a living will, medical power of attorney, or combined medical power of attorney and living will. A living will, medical power of attorney, or combined medical power of attorney and living will made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person in the principal’s presence at the principal’s express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least 18 years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public.

(b) In addition, a witness may not be:

(1) The person who signed the living will, medical power of attorney, or combined medical power of attorney and living will on behalf of and at the direction of the principal;

(2) Related to the principal by blood or marriage;

(3) Entitled to any portion of the estate of the principal under any will of the principal or codicil thereto: *Provided*, That the validity of the living will, medical power of attorney, or combined medical power of attorney and living will may not be affected when a witness at the time of witnessing the living will, medical power of attorney, or combined medical power of attorney and living will was unaware of being a named beneficiary of the principal’s will;

(4) Directly financially responsible for the principal’s medical care;

(5) The attending physician; or

(6) The principal's medical power of attorney representative or successor medical power of attorney representative.

(c) The following persons may not serve as a medical power of attorney representative or successor medical power of attorney representative:

(1) A treating health care provider of the principal;

(2) An employee of a treating health care provider not related to the principal;

(3) An operator of a health care facility serving the principal;
or

(4) Any person who is an employee of an operator of a health care facility serving the principal and who is not related to the principal.

(d) It is the responsibility of the principal or his or her representative to provide for notification to his or her attending physician and other health care providers of the existence of the living will, medical power of attorney, or combined medical power of attorney and living will or a revocation of the living will, medical power of attorney, or combined medical power of attorney and living will. An attending physician or other health care provider, when presented with the living will, medical power of attorney, or combined medical power of attorney and living will, or the revocation of a living will, medical power of attorney, or combined medical power of attorney and living will, shall make the living will, medical power of attorney, or combined medical power of attorney and living will, or a copy or revocation of any, a part of the principal's medical records.

(e) At the time of admission to any health care facility, each person shall be advised of the existence and availability of living will, medical power of attorney, and combined medical power of attorney and living will forms and shall be given assistance in completing such forms if the person desires: *Provided*, That under no circumstances may admission to a health care facility be predicated upon a person having completed a living will, medical

power of attorney, or combined medical power of attorney and living will.

(f) The provision of living will, medical power of attorney, or combined medical power of attorney and living will forms substantially in compliance with this article by health care providers, medical practitioners, social workers, social service agencies, senior citizens centers, hospitals, nursing homes, personal care homes, community care facilities, or any other similar person or group, without separate compensation, does not constitute the unauthorized practice of law.

(g) The living will may, but need not, be in the following form and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, the invalidity may not affect other directions of the living will which can be given effect without the invalid direction and to this end the directions in the living will are severable.

STATE OF WEST VIRGINIA

LIVING WILL

The Kind of Medical Treatment I Want and Don't Want

If I Have a Terminal Condition

Living will made this _____ day of _____ (month, year).

I, _____, (*Insert your name*)

being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and unable to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging intervention, it is my desire that my dying may not be prolonged under the following circumstances:

If I am very sick and unable to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition, I direct that life-prolonging intervention that would serve solely to prolong the dying process be withheld or withdrawn. I understand that by signing this document I am agreeing to the REMOVAL or REFUSAL of cardiopulmonary resuscitation (CPR), breathing machine (ventilator), dialysis, and medically administered food and fluids, such as might be provided intravenously or by feeding tube. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids, such as may be provided by spoon or by straw, shall be offered as desired and can be tolerated.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about funeral arrangements, autopsy, mental health treatment, and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

Signed

Address

other specific directions be held to be invalid, such invalidity may not affect other directions of the medical power of attorney which can be given effect without the invalid direction and to this end the directions in the medical power of attorney are severable.

STATE OF WEST VIRGINIA

MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions

For Me When I Can't Make Them for Myself

Dated: _____, 20_____

I, _____,

(Insert your name)

hereby appoint as my representative to act on my behalf to give, withhold, or withdraw informed consent to health care decisions in the event that I am unable to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code, and telephone number of the person you wish to designate as your representative. Please insert only one name.)

If my representative is unable, unwilling, or disqualified to serve, then I appoint as my successor representative:

(Insert the name, address, area code, and telephone number of the person you wish to designate as your successor representative. Please insert only one name.)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse, or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse, or withdraw such treatment or procedures. This authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician, and all legal authorities be bound by the decisions that are made by the representative appointed by this document and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy, and organ donation may be placed

COUNTY OF

I, _____, a Notary Public of said

County, do certify that _____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20____, have this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____

Notary Public

(i) A combined medical power of attorney and living will may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, the invalidity does not affect other directions of the combined medical power of attorney and living will which can be given effect without the invalid direction and to this end the directions in the combined medical power of attorney and living will are severable.

STATE OF WEST VIRGINIA

COMBINED MEDICAL POWER OF ATTORNEY AND LIVING WILL

The Person I Want to Make Health Care Decisions for Me When I Can't Make

Them for Myself and the Kind of Medical Treatment I Want and Don't Want

If I Have a Terminal Condition

Dated: _____, 20_____

I, _____, (*Insert your name*) hereby appoint as my representative to act on my behalf to give, withhold, or withdraw informed consent to health care decisions in the event that I am unable to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code, and telephone number of the person you wish to designate as your representative. Please insert only one name.)

If my representative is unable, unwilling, or disqualified to serve, then I appoint as my successor representative:

(Insert the name, address, area code, and telephone number of the person you wish to designate as your successor representative. Please insert only one name.)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse, or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse, or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-

prolonging interventions, subject to the special directives and limitations as stated below:

1. IN A TERMINAL CONDITION: If I am very sick and unable to communicate my wishes for myself and I am certified by one physician, who has personally examined me, to have a terminal condition, I direct that life-prolonging intervention that would serve solely to prolong the dying process be withheld or withdrawn. Thus, if a physician has determined that I am in a terminal condition, I understand that completing this form would mean that I refuse cardiopulmonary resuscitation (CPR). It also means that I refuse or request the removal of a breathing machine (ventilator), dialysis, and medically administered food and fluids, such as might be provided intravenously or by feeding tube. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids, such as may be provided by spoon or by straw, shall be offered as desired and can be tolerated.

2. OTHER LIVING WILL SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated in this advance directive.

3. NOT IN A TERMINAL CONDITION: MEDICAL POWER OF ATTORNEY SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy and organ donation may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician, and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD, OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

Signature of the Principal

Address of Principal

I did not sign the principal's signature above. I am at least 18 years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, nor legally responsible for the costs of the principal's medical nor other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

Witness _____ DATE _____

Witness _____ DATE _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of said county, do certify that _____, as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the _____ day of _____, 20____, have this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____

Signature of Notary Public

(j) Any and all living will, medical power of attorney, and combined medical power of attorney and living will documents executed pursuant to §16-30-3 and §16-30-4 of this code, before the effective date of the amendments to these sections, remain in full force and effect. This section is effective for a living will, medical power of attorney, or combined medical power of attorney and living will document executed, amended, or adjusted on or after January 1, 2023. Accordingly, all health care facilities and health care providers using a living will, medical power of attorney, or combined medical power of attorney and living will form referenced in §16-30-4 of this code shall update their forms on or before January 1, 2023.

§16-30-5. Applicability and resolving actual conflict between advance directives.

(a) The provisions of this article which directly conflict with the written directives contained in a living will, medical power of attorney, or combined medical power of attorney and living will executed prior to the effective date of this statute may not apply. An expressed directive contained in a living will, medical power of attorney, or combined medical power of attorney and living will by any other means the health care provider determines to be reliable shall be followed.

(b) If there is a conflict between the person's expressed directives, the portable orders for scope of treatment form, and the decisions of the medical power of attorney representative or surrogate, the person's expressed directives shall be followed.

(c) If there is a conflict between two advance directives executed by the person, the one most recently completed takes precedence only to the extent needed to resolve the inconsistency.

(d) If there is a conflict between the decisions of the medical power of attorney representative or surrogate and the person's best interests as determined by the attending physician when the person's wishes are unknown, the attending physician shall attempt to resolve the conflict by consultation with a qualified physician, an ethics committee, or by some other means. If the attending

physician cannot resolve the conflict with the medical power of attorney representative, the attending physician may transfer the care of the person pursuant §16-30-12(b) of this code.

§16-30-10. Reliance on authority of living will; physician orders for scope of treatment form, medical power of attorney representative or surrogate decisionmaker; and protection of health care providers.

(a) A physician, licensed health care professional, health care facility, or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the directions of the medical power of attorney representative in accordance with this article.

(b) A health care provider shall not be subject to civil or criminal liability for surrogate selection or good-faith compliance and reliance upon the directions of the surrogate in accordance with the provisions of this article.

(c) A health care provider, health care facility, or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the orders in a portable orders for scope of treatment form.

(d) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will or combined medical power of attorney and living will made in accordance with this article shall, as a result thereof, be subject to criminal or civil liability.

(e) An attending physician who cannot comply with the living will, medical power of attorney, or combined medical power of attorney and living will of a principal pursuant to this article shall, in conjunction with the medical power of attorney representative, health care surrogate, or other responsible person, effect the transfer of the principal to another physician who will honor the living will, medical power of attorney, or combined medical power

of attorney and living will of the principal. Transfer under these circumstances does not constitute abandonment.

§16-30-13. Interinstitutional transfers.

(a) If a person admitted to any health care facility in this state has been determined to lack capacity and that person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently transferred from one health care facility to another, the receiving health care facility may rely upon the prior determination of incapacity and the activation of the medical power of attorney or selection of a surrogate decisionmaker as valid and continuing until such time as an attending physician, a qualified physician, a qualified psychologist, or advanced nurse practitioner in the receiving facility assesses the person's capacity. Should the reassessment by the attending physician, a qualified physician, a qualified psychologist, or an advanced nurse practitioner at the receiving facility result in a determination of continued incapacity, the receiving facility may rely upon the medical power of attorney representative or surrogate decisionmaker who provided health care decisions at the transferring facility to continue to make all health care decisions at the receiving facility until such time as the person regains capacity.

(b) If a person admitted to any health care facility in this state has been determined to lack capacity and the person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently discharged home in the care of a home health care agency or hospice, the home health care agency or hospice may rely upon the prior determination of incapacity. The home health care agency or hospice may rely upon the medical power of attorney representative or health care surrogate who provided health care decisions at the transferring facility to continue to make all health care decisions until such time as the person regains capacity.

(c) If a person with an order to withhold or withdraw life-prolonging intervention is transferred from one health care facility to another, the existence of such order shall be communicated to the receiving facility prior to the transfer and the written order shall accompany the person to the receiving facility and shall remain effective until a physician at the receiving facility issues admission orders.

(d) If a person with portable orders for scope of treatment form is transferred from one health care facility to another, the health care facility initiating the transfer shall communicate the existence of the portable orders for scope of treatment form to the receiving facility prior to the transfer. The portable orders for scope of treatment form shall accompany the person to the receiving facility and shall remain in effect. The form shall be kept at the beginning of the patient's transfer records unless otherwise specified in the health care facility's policy and procedures. After admission, the portable orders for scope of treatment form shall be reviewed by the attending physician and one of three actions shall be taken:

(1) The portable orders for scope of treatment form shall be continued without change;

(2) The portable orders for scope of treatment form shall be voided and a new form issued; or

(3) The portable orders for scope of treatment form shall be voided without a new form being issued.

§16-30-19. Physician's duty to confirm, communicate, and document terminal condition; medical record identification.

(a) An attending physician who has been notified of the existence of a living will or combined medical power of attorney and living will executed under this article, without delay after the diagnosis of a terminal condition of the principal, shall take steps as needed to provide for confirmation, written certification, and documentation of the principal's terminal condition in the principal's medical record.

(b) Once confirmation, written certification, and documentation of the principal's terminal condition is made, the attending physician shall verbally or in writing inform the principal of his or her condition or the principal's medical power of attorney representative or surrogate, if the principal lacks capacity to comprehend such information and shall document such communication in the principal's medical record.

(c) All inpatient health care facilities shall develop a system to visibly identify a person's chart which contains a living will or medical power of attorney, combined medical power of attorney and living will, or a portable order for scope of treatment as set forth in this article.

§16-30-21. Reciprocity.

A living will medical power of attorney, mental health advance directive, medical orders (portable orders for scope of treatment or do-not-resuscitate card), or similar advance directive or medical orders form executed in another state is validly executed for the purposes of this article if it is executed in compliance with the laws of this state or with the laws of the state where executed.

§16-30-25. Portable orders for scope of treatment form.

(a) The secretary of the Department of Health and Human Resources shall implement the statewide distribution of standardized portable orders for scope of treatment (POST) forms.

(b) Portable orders for scope of treatment forms shall be standardized forms used to reflect orders by a qualified physician, an advanced practice registered nurse, or a physician assistant for medical treatment of a person in accordance with that person's wishes or, if that person's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with that person's best interest. The form shall be bright pink in color to facilitate recognition by emergency medical services personnel and other health care providers and shall be designed to provide for information regarding the care of the patient, including, but not limited to, the following:

(1) The orders of a qualified physician, an advanced practice registered nurse, or a physician assistant regarding cardiopulmonary resuscitation, level of medical intervention in the event of a medical emergency, use of antibiotics, and use of medically administered fluids and nutrition and the basis for the orders;

(2) The signature of the qualified physician, an advanced practice registered nurse, or a physician assistant;

(3) Whether the person has completed an advance directive or had a guardian, medical power of attorney representative, or surrogate appointed;

(4) The signature of the person or his or her guardian, medical power of attorney representative, or surrogate acknowledging agreement with the orders of the qualified physician, an advanced practice registered nurse, or a physician assistant; and

(5) The date, location, and outcome of any review of the portable orders for scope of treatment form.

(c) The portable orders for scope of treatment form shall be kept as the first page in a person's medical record in a health care facility unless otherwise specified in the health care facility's policies and procedures and shall be transferred with the person from one health care facility to another.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.

Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider has actual knowledge, apply:

(1) A do-not-resuscitate order in accordance with the provisions of this article has been issued for that person;

(2) A completed living will or combined medical power of attorney and living will for that person is in effect, pursuant to the provisions of §16-30-1 *et seq.* of this code, and the person is in a terminal condition; or

(3) A completed medical power of attorney for that person is in effect, pursuant to §16-30-1 *et seq.* of this code, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation.

(4) A completed portable orders for scope of treatment form in which a qualified physician has ordered do-not-resuscitate.

Nothing in this article shall require a nursing home, personal care home, hospice, or extended care facility operated in connection with hospitals to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation: *Provided*, That if a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person, representative, or surrogate decision maker prior to admission.

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CHAPTER 225

(Com. Sub. for S. B. 553 - By Senators Sypolt, Azinger, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Phillips, Roberts, Smith, Stover, Swope, Takubo, Tarr, Trump, Weld, Woodrum, Rucker, and Nelson)

[Passed March 8, 2022; in effect from passage]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §16-29B-8, §16-29B-24, and §16-29B-25 of the Code of West Virginia, 1931, as amended, all relating to the powers of the West Virginia Health Care Authority; removing authority to adopt, amend, and repeal policy guidelines; making technical changes; requiring legislative rulemaking regarding the uniform bill; permitting fees for custom data request; and requiring the Secretary of the Department of Health and Human Resources to give notice and file legislative rules when assuming the West Virginia Health Care Authority's data repository powers and duties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-8. Powers generally; budget expenses of the authority.

The authority may:

(1) In cooperation with the secretary, propose legislative rules in accordance with §29A-3-1 *et seq.* of this code;

(2) Hold public hearings, conduct investigations, and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article, and may subpoena witnesses, papers, records, documents, and all other

data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation; and

(3) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to affect the express objectives and purposes of this article.

§16-29B-24. Reports required to be filed; and legislative rulemaking regarding uniform bill database.

(a) A covered facility, within 120 days after the end of its fiscal year, unless granted an extension by the authority, shall file with the authority its annual financial report prepared by an accountant or auditor.

(b) A covered facility, if applicable by legislative rule, shall submit, upon request of the authority, but at least annually:

(1) A statement of charges for all services rendered, except a behavioral health facility shall submit its gross rates for its top 30 services by utilization;

(2) The Health Care Authority financial report, through the uniform reporting system;

(3) The current Uniform Bill form in effect for inpatients. This data is not subject to the provisions of §16-29B-25(f) of this code: *Provided*, That the authority, in cooperation with the secretary, shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during the regular session of the Legislature, 2023. The legislative rule shall include the following:

(A) Procedures for the collection, retention, use, and disclosure of data from the uniform bill database, including provisions and safeguards to protect the privacy, integrity, confidentiality, and availability of any data;

(B) Procedures for the collection of required data elements, required data format, code tables, edit specifications, thresholds required for a submission to be deemed complete, methods for submitting data, and submission schedules;

(C) Fees not to exceed \$50 per custom data request payable by users of the data, if any; and

(D) Repeal of all other existing policies, manuals, and guidelines regarding the submission of uniform bill data promulgated by the authority, as of the effective date of the legislative rule or July 1, 2024, whichever comes first.

(c) The authority may request from a covered facility, except hospitals, the information from §16-29B-24(a) and §16-29B-24(b) of this code from its related organization.

(d) A home health agency shall annually submit a utilization survey.

(e) A covered facility failing to submit a report to the authority shall be notified by the authority and, if the failure continues for 10 days after receipt of the notice, the delinquent facility or organization is subject to a penalty of \$1,000 for each day thereafter the failure continues.

§16-29B-25. Data repository.

(a) The authority shall:

(1) Coordinate and oversee the health data collection of state agencies;

(2) Lead state agencies' efforts to make the best use of emerging technology to affect the expedient and appropriate exchange of health care information and data, including patient records and reports; and

(3) Coordinate database development, analysis, and report to facilitate cost management, review utilization review and quality

assurance efforts by state payor and regulatory agencies, insurers, consumers, providers, and other interested parties.

(b) A state agency collecting health data shall work through the authority to develop an integrated system for the efficient collection, responsible use, and dissemination of data and to facilitate and support the development of statewide health information systems that will allow for the electronic transmittal of all health information and claims processing activities of a state agency within the state, and to coordinate the development and use of electronic health information systems within state government.

(c) The authority shall establish minimum requirements and issue reports relating to information systems of state health programs, including simplifying and standardizing forms and establishing information standards and reports for capitated managed care programs.

(d) The authority shall develop a comprehensive system to collect ambulatory health care data.

(e) The authority may access any health-related database maintained or operated by a state agency for the purposes of fulfilling its duties. The use and dissemination of information from that database shall be subject to the confidentiality provisions applicable to that database.

(f) A report, statement, schedule, or other filing may not contain any medical or individual information personally identifiable to a patient or a consumer of health services, whether directly or indirectly.

(g) A report, statement, schedule, or other filing filed with the authority is open to public inspection and examination during regular hours. A copy shall be made available to the public upon request upon payment of a fee.

(h) The authority may require the production of any records necessary to verify the accuracy of any information set forth in any statement, schedule, or report filed under the provisions of this article.

(i) The authority may provide requested aggregate data to an entity. The authority may charge a fee to an entity to obtain the data collected by the authority. The authority may not charge a fee to a covered entity to obtain the data collected by the authority.

(j) The authority shall provide to the Legislative Oversight Commission on Health and Human Resources Accountability before July 1, 2018, and every other year thereafter, a strategic data collection and analysis plan:

- (1) What entities are submitting data;
- (2) What data is being collected;
- (3) The types of analysis performed on the submitted data;
- (4) A way to reduce duplicative data submissions; and

(5) The current and projected expenses to operate the data collection and analysis program.

(k) The Secretary of the Department of Health and Human Resources may assume the powers and duties provided to the authority in this section, if the secretary determines it is more efficient and cost effective to have direct control over the data repository program. To the extent that the secretary assumes the powers and duties in this section, the secretary shall inform the Legislative Oversight Commission on Health and Human Resources Accountability by July 1, 2023, and on July 1 of each year thereafter, regarding each program for which he or she is exercising such authority and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code within the time limit to be considered by the Legislature during its next regular session. In the event the secretary has already assumed the powers and duties provided to the authority in this section, the secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code within the time limit to be considered by the Legislature during the regular session of the Legislature, 2023.

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CHAPTER 226

(Com. Sub. for Com. Sub. for S. B. 647 - By Senators Grady, Azinger, Boley, Clements, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Sybolt, Takubo, Tarr, Trump, Weld, Woodrum, Hamilton, Nelson, and Lindsay)

[Passed March 11, 2022; in effect 90 days from passage]
[Approved by the Governor on March 21, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-65-1, §16-65-2, §16-65-3, and §16-65-4, all relating to prohibiting discrimination based on an individual's mental or physical disability relating to access to organ transplantation; setting forth legislative findings; defining terms; prohibiting a covered entity from taking certain actions solely on the basis of a qualified individual's mental or physical disability; providing exceptions; providing that it is not medically significant if an individual cannot independently comply with post-transplant medical requirements if the individual has the necessary support system; requiring a covered entity to make reasonable modifications in policies, practices, or procedures; prohibiting a covered entity from denying services; providing an exception; requiring a covered entity to comply with specified federal laws; and providing enforcement mechanisms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 65. NONDISCRIMINATION RELATING TO ACCESS TO ORGAN TRANSPLANTATION.

§16-65-1. Legislative intent.

The Legislature finds that:

(1) A mental or physical disability does not diminish a person's right to health care;

(2) The "Americans with Disabilities Act of 1990" prohibits discrimination against persons with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services;

(3) Individuals with mental and physical disabilities have historically been denied life-saving organ transplants based on assumptions that their lives are less worthy, that they are incapable of complying with post-transplant medical regimens, or that they lack adequate support systems to ensure such compliance;

(4) Although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in Medicare, Medicaid, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and

(5) West Virginia residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

§16-65-2. Definitions.

As used in this article:

"Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation or transfusion.

"Auxiliary aids and services" means an aid or service that is used to provide information to a person with cognitive, intellectual, neurological, or physical disability and is available in a format or manner that allows the person to better understand the information and may include:

(1) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Provision of information in a format that is accessible for individuals with cognitive, neurological, developmental, and/or intellectual disabilities;

(4) Provision of supported decision-making services;

(5) Acquisition or modification of equipment or devices; and

(6) Other similar services and actions.

“Covered entity” means:

(1) Any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers; or

(2) Any entity responsible for matching anatomical gift donors to potential recipients.

“Disability” has the same meaning set forth in the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, at 42 U.S.C. § 12102.

“Organ transplant” means the transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

“Qualified individual” means an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift with or without any of the following:

(1) Individuals or entities available to support and assist the person with an anatomical gift or transplantation;

(2) Auxiliary aids or services; or

(3) Reasonable modifications to the policies or practices of a covered entity.

“Reasonable modifications to policies or practices” may include:

(1) Communication with individuals responsible for supporting an individual with post-surgical and post-transplantation care, including medication; or

(2) Consideration of support networks available to the individual, including family, friends, and home and community-based services, including home and community-based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, in determining whether the individual is able to comply with post-transplant medical requirements.

“Supported decision-making” includes use of a support person or persons in order to assist an individual in making medical decisions, communicate information to the individual, or ascertain an individual’s wishes, including:

(1) Inclusion of the individual’s attorney-in-fact, health care proxy, or any person of the individual’s choice in communications about the individual’s medical care;

(2) Permitting the individual to select a person of his or her choice for the purposes of supporting that individual in communicating, processing information, or making medical decisions;

(3) Provision of auxiliary aids and services to facilitate the individual’s ability to communicate and process health-related information, including use of assistive communication technology;

(4) Provision of information to persons designated by the individual, consistent with the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §1301 *et seq.*, and other applicable laws and regulations governing disclosure of health information;

(5) Provision of health information in a format that is readily understandable by the individual; or

(6) If the individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures to ensure that the individual is included in decisions involving his or her own health care and that medical decisions are in accordance with the individual's own expressed interests.

§16-65-3. Discrimination prohibited.

(a) A covered entity may not, solely on the basis of a qualified individual's mental or physical disability:

(1) Determine a qualified individual ineligible to receive an anatomical gift or organ transplant;

(2) Deny a qualified individual medical and associated services related to organ transplantation, including evaluation, surgery, counseling, post-operative treatment, and services;

(3) Refuse to refer the qualified individual to a transplant center or other related specialist for the purpose of evaluation or receipt of an organ transplant;

(4) Refuse to place a qualified individual on an organ transplant waiting list, or place the individual at a lower-priority position on the list than the position at which he or she would have been placed if not for his or her disability; or

(5) Decline insurance coverage to a qualified individual for any procedure associated with the receipt of the anatomical gift, including post-transplantation care.

(b) Notwithstanding subsection (a) of this section, a covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the physical or mental disability has been found by a physician or surgeon, following an individualized evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift. The provisions of this section shall not be considered to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

(c) If an individual has the necessary support system to assist the individual in complying with post-transplant medical requirements, an individual's inability to independently comply with those requirements shall not be considered to be medically significant for the purposes of subsection (b) of this section.

(d) A covered entity shall make reasonable modifications in policies, practices, or procedures when such modifications are necessary to make services such as transplantation-related counseling, information, coverage, or treatment available to qualified individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the services.

(e) A covered entity shall take steps necessary to ensure that a qualified individual with a disability is not denied services such as transplantation-related counseling, information, coverage, or treatment because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking those steps would fundamentally alter the nature of the services being offered or would result in an undue burden.

(f) A covered entity shall otherwise comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008.

(g) The provisions of this section apply to each part of the organ transplant process.

§16-65-4. Enforcement.

(a) The remedies for violations of this article are the same as those available under Titles II and III of the Americans with Disabilities Act, 42 U.S.C. §§12131-12189.

(b) The court shall accord priority on its calendar and expeditiously proceed with an action brought to seek any remedy authorized by law for purposes of enforcing compliance with the provisions of this article.

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CHAPTER 227

**(Com. Sub. for H. B. 4012 - By Delegates Horst, J. Jeffries,
Steele, Conley, Crouse, Maynor, G. Ward, Worrell, Foster,
Dean, and Nestor)**

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §16-3-4b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-3-4c, all relating to COVID-19 vaccination, generally prohibiting the showing of proof of a COVID-19 vaccination as a condition for entering upon the premises of any state or local governmental official, entity, department, or agency, or as a condition for entering upon the premises of a hospital or enrolling in a state institution of higher education, unless such proof is required by federal law or regulation; clarifying that a covered employer does not include any Medicare or Medicaid-certified facilities which are subject to federal regulations; clarifying that employees of otherwise covered employers who are required to work in Medicare or Medicaid-certified facilities are not subject to the prohibition; exempting from proof of vaccination prohibition students whose academic program requires vaccination against COVID-19; defining terms; and providing that sincerely held religious beliefs are an exemption to immunization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4b. Required exemptions to compulsory immunization against COVID-19 as a condition of employment; effective date.

(a) A covered employer, as defined in this section, that requires as a condition of continued employment or as a condition of hiring an individual for employment, that such person receive a COVID-19 immunization or present documentation of immunization from COVID-19, shall exempt current or prospective employees from such immunization requirements upon the presentation of one of the following certifications:

(1) A certification presented to the covered employer, signed by a licensed physician or a licensed advanced practice registered nurse who has conducted an in-person examination of the employee or prospective employee, stating that the physical condition of the current or prospective employee is such that a COVID-19 immunization is contraindicated; there exists a specific precaution to the mandated vaccine; or the current or prospective employee has developed COVID-19 antibodies from being exposed to the COVID-19 virus, or suffered from and has recovered from the COVID-19 virus; or

(2) A notarized certification executed by the employee or prospective employee that is presented to the covered employer by the current or prospective employee that he or she has sincerely held religious beliefs that prevent the current or prospective employee from taking the COVID-19 immunization.

(b) A covered employer may not be permitted to penalize or discriminate against current or prospective employees for exercising exemption rights provided in this section by practices including, but not limited to, benefits decisions, hiring, firing, or withholding bonuses, pay raises, or promotions.

(c) As used in this section, the following terms shall have the following meaning:

“Covered employer” means:

(1) The State of West Virginia, including any department, division, agency, bureau, board, commission, office, or authority thereof, or any political subdivision of the State of West Virginia including, but not limited to, any county, municipality, or school district;

(2) A business entity, including without limitation any individual, firm, partnership, joint venture, association, corporation, company, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, engaged in any business activity in this state, including for-profit or not-for-profit activity, that has employees;

(3) “Covered employer” does not include any Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section;

(4) “COVID-19” means the same as that term is defined in §55-19-3 of this code; or

(5) “Immunization” means any federally authorized immunization for COVID-19, whether fully approved or approved under an emergency use authorization.

(d) The provisions of this section are inapplicable to employees of covered employers who are required to work in Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section.

(e) Any person or entity harmed by a violation of this section may seek injunctive relief in a court of competent jurisdiction.

(f) The provisions of this section shall become effective immediately.

(g) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the section, and to this end the provisions of this section are declared to be severable.

§16-3-4c. Prohibiting proof of COVID-19 vaccination.

(a) As used in this section:

(1) “COVID-19” has the same definition as provided in §55-19-3 of this code;

(2) “Hospital” has the same definition as provided in §16-5B-1 of this code;

(3) “Immunization” has the same definition as provided in §55-19-3 of this code;

(4) “Proof of vaccination” means physical documentation or digital storage of protected health information related to an individual’s immunization or vaccination against COVID-19; and

(5) “State institution of higher education” has the same meaning as provided in §18B-1-2 of this code.

(b) A state or local governmental official, entity, department, or agency may not require proof of vaccination as a condition of entering the premises of a state or local government entity, or utilizing services provided by a state or local government entity: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, the provisions of this subsection shall not apply: *Provided, however*, That this prohibition does not apply to any local government-owned facility that is leased to a private entity where the local governmental unit primarily serves as a property owner receiving rental payments.

(c) A hospital may not require proof of vaccination as a condition of entering the premises: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, the provisions of this subsection shall not apply.

(d) A state institution of higher education may not require proof of vaccination as a condition of enrollment or for entering the premises: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, or if the academic requirements of a particular program cannot be met without vaccination and proof thereof, the provisions of this subsection shall not apply.

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CHAPTER 228

**(Com. Sub. for H. B. 4113 - By Delegates Rohrbach,
Summers, D. Jeffries, Tully, G. Ward, Bates, Reed, Worrell,
Rowan, and Mallow)**

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §16-1-8, §16-1-13 and §16-1-21 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-1-2, §16-1-3, §16-1-4, §16-1-5, §16-1-6, §16-1-7, §16-1-10, §16-1-11, §16-1-12 and §16-1-14 of said code; and to amend and reenact §16-2-2, §16-2-10, §16-2-11, §16-2-12, §16-2-13 and §16-2-14 of said code; all relating to public health; permitting the secretary to appoint advisory councils; allowing the secretary of the Department of Public Health to propose legislative rules; requiring the commissioner of the Bureau of Public Health to establish a Center for Local Public Health; creating powers for the center; permitting local boards of health to provide immunizations and threat preparedness; and repealing obsolete areas of code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

As used in this article:

- (1) “Basic public health services” means those services that are necessary to protect the health of the public;
- (2) “Bureau” means the Bureau for Public Health in the department;

(3) “Combined local board of health” means one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

(4) “Commissioner” means the commissioner of the bureau, who is the state health officer;

(5) “County board of health” means one form of organization for a local board of health and means a local board of health serving a single county;

(6) “Department” means the West Virginia Department of Health and Human Resources;

(7) “Director” or “director of health” means the state health officer. Administratively within the department, the bureau through its commissioner carries out the public health functions of the department, unless otherwise assigned by the secretary;

(8) “Essential public health services” means the core public health activities necessary to promote health and prevent disease, injury, and disability for the citizens of the state. The services include:

(A) Monitoring health status to identify community health problems;

(B) Diagnosing and investigating health problems and health hazards in the community;

(C) Informing, educating, and empowering people about health issues;

(D) Mobilizing community partnerships to identify and solve health problems;

(E) Developing policies and plans that support individual and community health efforts;

(F) Enforcing laws and rules that protect health and ensure safety;

(G) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

(H) Promoting a competent public health and personal health care workforce;

(I) Evaluating the effectiveness, accessibility, and quality of personal and population-based health services; and

(J) Researching for new insights and innovative solutions to health problems;

(9) “Local board of health”, “local board”, or “board” means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(10) “Local health department” means the staff of the local board of health;

(11) “Local health officer” means the physician with a current West Virginia license to practice medicine who supervises and directs the activities, services, staff, and facilities of the local health department and is appointed by the local board of health with approval by the commissioner;

(12) “Municipal board of health” means one form of organization for a local board of health and means a board of health serving a single municipality;

(13) “Performance-based standards” means generally accepted, objective standards such as rules or guidelines against which public health performance can be measured;

(14) “Potential source of significant contamination” means a facility or activity that stores, uses, or produces substances or compounds with potential for significant contaminating impact if released into the source water of a public water supply;

(15) “Public groundwater supply source” means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine, or other primary source of water supplies which is found underneath the surface of the state;

(16) “Public surface water supply source” means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state;

(17) “Public surface water influenced groundwater supply source” means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area;

(18) “Public water system” means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of 25 individuals per day for at least 60 days per year, or which has at least 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

(B) A public water system does not include a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce;

(19) “Public water utility” means a public water system which is regulated by the West Virginia Public Service Commission pursuant to the provisions of §24-1-1 *et seq.* of this code;

(20) “Secretary” means the secretary of the department.

(21) “Service area” means the territorial jurisdiction of a local board of health;

(22) “Zone of critical concern” for a public surface water supply is a corridor along streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is 1000 feet measured horizontally from each bank of the principal stream and 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§16-1-3. Powers and duties of the secretary.

(a) The secretary may establish a state public health system.

(b) As necessary for the effective, efficient, and economical operation of the system, the secretary may from time to time delegate, assign, transfer, or combine responsibilities or duties to or among employees of the department.

(c) Within the limits of applicable federal law, the secretary may require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

(d) The secretary may appoint advisory councils.

§16-1-4. Proposal of rules by the secretary.

(a) The secretary may propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code that include:

(1) Land usage endangering the public health: *Provided*, That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots, or parcels exceed two acres each in total surface area and which individual tracts, lots, or parcels have an average frontage of not less than 150 feet even though the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to:

(A) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit;

(B) Propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or

(C) Restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply;

(2) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or

public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned;

(4) Safe drinking water, including:

(A) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(B) The minimum requirements for: sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption, or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(C) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(5) Food and drug standards, including cleanliness, proscription of additives, proscription of sale, and other

requirements in accordance with §16-7-1 *et seq.* of this code as are necessary to protect the health of the citizens of this state;

(6) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics. Any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of §16-4C-1 *et seq.* of this code;

(7) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, “bed and breakfast inn” means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(8) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees, and permit fees;

(9) The collection of data on health status, the health system, and the costs of health care;

(10) The distribution of state aid to local health departments and basic public health services funds in accordance with:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density, and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services; and

(E) The provisions of this subdivision are in effect until the performance standard funding formula is created and established by legislative rule.

(b) The secretary shall not review any repair or modernization of equipment at a public pool facility as long as such activity does not change the scope of the facility or its current use and such activity does not exceed \$25,000 in planned cost.

§16-1-5. State health officer; appointment; qualifications; term.

The Commissioner of the Bureau for Public Health is the state health officer and shall be appointed by the secretary. The commissioner shall be licensed under the laws of this state to practice medicine or a person holding a doctorate degree in public health administration. The commissioner serves at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business, vocation, or employment, serving full-time in the duties of the office as prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

(a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau for Public Health and has the following powers and duties:

(1) To supervise and direct the fiscal and administrative matters of the bureau, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the public health laws of this state and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the commissioner by law and as directed by the secretary;

(2) To enforce all laws of this state concerning public health.

(3) To investigate the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression, or control of those conditions; the source of sickness and mortality, the effects of environment, employment, habits, and circumstances of life on the public health.

(4) To inspect and examine food, drink, and drugs offered for sale or public consumption in the manner the commissioner considers necessary to protect the public health and shall report all violations of laws and rules relating to the law to the prosecuting attorney of the county in which the violations occur;

(5) To make complaint or cause proceedings to be instituted against any person, corporation, or other entity for the violation of any public health law before any court or agency, without being required to give security for costs; the action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(6) To promote the provision of essential public health services to citizens of this state;

(7) To monitor the operation and coordination of the local boards of health and local health officers;

(8) To develop and maintain a state plan of operation that sets forth the needs of the state in the areas of public health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds, and authority for achieving the goals and objectives;

(9) To collect data as may be required to foster knowledge on the citizenry's health status, the health system, and costs of health care;

(10) To delegate to any appointee, assistant, or employee any and all powers and duties vested in the commissioner, including, but not limited to, the power to execute contracts and agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the acts of his or her appointees, assistants, and employees;

(11) To transfer any patient or resident between hospitals and facilities and, by agreement with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of Corrections and Rehabilitation;

(12) To make periodic reports to the Governor and to the Legislature relative to specific subject areas of public health, or other matters affecting the public health of the people of the state;

(13) To accept and use for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific purpose shall be used as specified. Any profit which may arise from any gift or devise of any property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be used only as specified by the donor or donors;

(14) To acquire by condemnation or otherwise any interest, right, privilege, land, or improvement and hold title to the land or improvement, for the use or benefit of the state or a state hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or improvement acquired or held by the state, state hospital, or state facility Any condemnation proceedings shall be conducted pursuant to §54-1-1 *et seq.* of this code;

(15) To inspect and enforce rules to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools,

whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(16) To make inspections, conduct hearings, and to enforce the legislative rules concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with the supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the legislative rules concerning the design of chlorination and filtration facilities and swimming pools;

(17) To provide in accordance with this subdivision for a program for the care, treatment, and rehabilitation of the parents of sudden infant death syndrome victims; for the training and employment of personnel to provide the requisite rehabilitation of parents of sudden infant death syndrome victims; for the education of the public concerning sudden infant death syndrome; for the education of police, employees, and volunteers of all emergency services concerning sudden infant death syndrome; and for requesting appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome program;

(18) To establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the commissioner, and to employ employees that may be necessary to properly operate the laboratory. The commissioner may establish branches of the state laboratory within the state that are necessary in the interest of the public health;

(19) To expend, for the purpose of performing the public health duties imposed on the bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and nonprofit health services providers when the commissioner determines it is necessary for the initiation

or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than 90 days in advance of rendition of service or receipt of goods and continuation of health services;

(20) To exercise all other powers delegated to the commissioner by the secretary or by this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the bureau or the commissioner.

(b) The commissioner shall establish within the Bureau for Public Health, a Center for Local Public Health. The center shall:

(1) Enhance the quality and availability of essential public health services throughout the state provided by local boards of health;

(2) Provide technical assistance and consultation to a local board of health agency;

(3) Allocate and distribute funding based upon performance based standards;

(4) Provide technical assistance to the local public health workforce;

(5) Facilitate bi-directional communication;

(6) Establish a uniform state-wide computer system for the reporting of public health data;

(7) Inventory the services provided by a local boards of health;

(8) Support sharing of services between local boards of health;

(9) Create a performance-based evaluation system based on standards established by legislative rule;

(10) Provide a quarterly training to ensure consistency in the application of state laws, legislative rules, and local health department rules; and

(11) Enforce compliance with performance standards.

§16-1-7. Commissioner serving on advisory boards.

(a) The commissioner serves on the following advisory councils, boards, and commissions:

(1) The Advisory Committee on Cancer (Cancer Registry);

(2) The Air Quality Board;

(3) The Appalachian States Low-level Radioactive Waste Commission;

(4) The Child Fatality Review Team;

(5) The Childhood Immunization Advisory Committee;

(6) The Early Intervention Coordinating Council;

(7) The Interagency Council on Osteoporosis;

(8) The Sewage Advisory Board;

(9) The State Emergency Response Commission;

(10) The State Groundwater Coordinating Committee;

(11) The Water Development Authority;

(12) The West Virginia Commission for the Deaf and Hard of Hearing;

(13) The West Virginia Infrastructure and Jobs Development Council; and

(14) Any other advisory council, board, or commission as assigned by the secretary except for business, professional, or occupational licensing boards.

(b) The commissioner may, designate in writing a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as an ex officio member. The appropriately designated representative acts with the full authority of the commissioner in voting, and other business that is properly the duty of any board or commission. The representative serves at the commissioner's will and pleasure.

§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

[Repealed].

§16-1-10. Disposition of permit, license, or registration fees received by the commissioner; report to Auditor; health facility licensing account.

(a) The commissioner shall receive and account for all moneys required to be paid as fees to the bureau for permits, licenses, or registrations, pursuant to the provisions of this code and legislative rules.

(b) Subject to the provisions set forth in §12-2-2 of this code, there is continued in the State Treasury a separate account which shall be designated "the Health Facility Licensing Account." The commissioner shall deposit to the Health Facility Licensing Account all health facility licensing fees and may spend the moneys deposited in the health facility licensing account in accordance with the laws of this state to implement activities of health facility licensing. As part of the annual state budget, the Legislature shall appropriate for health facility licensure all moneys deposited in the Health Facility Licensing Account.

Any remaining balance including accrued interest in the account at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the account, and the moneys

may be spent after appropriation by the Legislature in ensuing fiscal years.

§16-1-11. Disposition of fees for services charged and received by the commissioner; health services fund.

(a) The commissioner may assess and charge reasonable fees for the provision of services provided by the bureau: *Provided*, That no individual may be denied health care services by the bureau because of the inability of the individual to pay for services. The fees shall be deposited into a special revolving fund in the State Treasury designated the "Health Services Fund."

(b) Any balance including accrued interest in the special revolving 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 commissioner for funding health programs in the ensuing fiscal years.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

(a) The commissioner may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and on behalf of this state or any county or municipality of this state, for public health purposes, or for the establishment or construction of public health facilities, whether the work is to be done by the state, or by the county or municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are, or may be, prescribed by the laws of the United States and regulations made thereunder. The commissioner may act as the agent of the state or any of its agencies, or of any county or municipality of this state, upon the request of any agency of the state or of any county or municipality, in accepting, receiving and receipting for the moneys in its behalf, for public health facilities financed either, in whole or in part, by federal moneys.

(b) The state, any agency of the state, or any county or municipality may, designate the commissioner as its agent for the purposes set forth in subsection (a) of this section and the agency, county, or municipality may enter into an agreement with the

commissioner prescribing the terms and conditions of the agency in accordance with federal laws and regulations, and with the laws of this state. The moneys paid over by the United States government shall be retained by the state or paid over to the counties or municipalities under the terms and conditions imposed by the United States government in making the grants.

(c) All moneys accepted for disbursement pursuant to this section shall be deposited by the commissioner in the State Treasury, and unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the state in trust for those purposes. All moneys are hereby appropriated for the purposes for which the moneys were made available and shall be expended in accordance with federal laws and regulations and with the laws of this state. The commissioner may, whether acting for the state or one of its agencies, or as the agency for any county or municipality, when requested by the United States government or any agency or department of the United States government, or when requested by the state, a state agency, or any county or municipality for which the moneys have been made available, disburse the moneys for the designated purposes, but this shall not include any other authorized method of disbursement.

§16-1-13. Hospital services revenue account; health facilities long-range plans.

[Repealed].

§16-1-14. Training of employees.

The commissioner may provide technical and specialized instruction for employees of the bureau.

The commissioner may pay out of federal funds and such state funds as are available to match such federal funds, any required tuition or enrollment fees.

§16-1-21. Creation of Diabetes Action Plan.

[Repealed].

ARTICLE 2. LOCAL BOARDS OF HEALTH.**§16-2-2. Definitions.**

Unless the context used clearly requires a different meaning, as used in this article:

“Appointing authority” means the county commission or municipality, or combination thereof, that authorized the creation or combination of the local board of health, in whatever form it presently exists;

“Basic public health services” means those services that are necessary to protect the health of the public and that a local board of health must provide;

“Bureau” means the Bureau for Public Health in the Department of Health and Human Resources;

“Clinical and categorical programs” means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services, and home health services;

“Combined local board of health” is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

“Commissioner” means the Commissioner of the Bureau for Public Health, who is the state health officer;

“Communicable and reportable disease prevention and control” means disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of communicable and reportable diseases;

“Community health promotion” mean assessing and reporting community health needs to improve health status, facilitating

community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

“County board of health” is one form of organization for a local board of health and means a local board of health serving a single county;

“Department” means the West Virginia Department of Health and Human Resources;

“Enforcement activity” means the implementation or enforcement of applicable state rules, local rules, and local health department rules;

“Enhanced public health services” means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system;

“Environmental health protection” means efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

“Guidance” means providing advice to a person, the public, a business, school board, or governmental entity regarding a public health issue or matter. Guidance is not a health order;

“Health order” means an order issued by the local health officer or local health board to protect the public health of the citizens by directing an individual or a discreet group of individuals to take a specific action to protect the health of the public or stop the spread of a communicable disease;

“Imminent public health emergency” means any immediate acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared;

“Local board of health”, “local board”, or “board” means a board of health serving one or more counties or one or more municipalities or a combination thereof;

“Local health department” means the staff of the local board of health;

“Local health department rule” means a rule issued by the local board of health that has been approved by the appointing authority or was adopted prior to March 4, 2021, or a rule issued by the local board of health that may immediately go into effect because of an imminent public health emergency under §16-2-1(b)(3)(H) of this code;

“Local health officer” means the individual physician with a current West Virginia license to practice medicine or a licensed advanced practice registered nurse that has the ability to independently practice who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health;

“Local rule” means an order adopted by a county commission or an ordinance adopted by a city that properly directs the local health department to implement or enforce the order or ordinance;

“Municipal board of health” is one form of organization for a local board of health and means a board of health serving a single municipality;

“Performance-based standards” means generally accepted, objective standards such as rules or guidelines against which a local health department’s level of performance can be measured;

“Primary care services” means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

“Secretary” means the Secretary of the Department of Health and Human Resources;

“Service area” means the territorial jurisdiction of the local board of health; and

“State Rule” means a state statute, legislative rule promulgated by a state agency, or an order of the secretary relating to public health that is to be enforced by a local health department.

§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson selection, powers and duties.

(a) A local board of health shall meet as often as necessary to orderly and efficiently execute its duties and exercise its powers but, no fewer than six times per year. Members of a local board of health shall attend board meetings in compliance with attendance policies established by its bylaws or rules.

(b) A local board of health shall adopt and may amend bylaws or rules governing the time and place of its regular meetings, procedures, and method of conducting its meetings. A quorum of the board for transacting business is a simple majority of the constituent membership of the board.

(c) A local board of health, pursuant to its bylaws, shall elect from its members a chairperson. The chairperson shall serve for a term of one year and may be reelected for additional terms. The chairperson may, on behalf of the board, sign documents, execute contracts, and otherwise act for and in the name of the board in all matters within its lawful powers and as duly authorized by a majority of the board members.

§16-2-11. Local board of health; powers and duties.

(a) A local board of health created, established, and operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

(A) Community health promotion including assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

(B) Environmental health protection including the promoting and maintaining of clean and safe air, water, food, and facilities, and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

(C) Communicable or reportable disease prevention and control including disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

(D) Immunizations; and

(E) Threat preparedness.

(2) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(3) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules, and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(4) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: *Provided*, That nothing contained in this subsection is intended to conflict with the provisions of §16-1-1 *et seq.* of this code;

(5) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: *Provided*, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(6) Participate in audits, be in compliance with tax procedures required by the state, and annually develop a budget for the next fiscal year;

(7) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws;

(8) Enforce the public health laws of this state and any other laws of this state applicable to the local board; and

(9) Create by rule a fee schedule, as approved by the appointing authority, for those environmental services it provides that are not established by state code.

(b) A local board of health may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical, or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors

providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) (A) Adopt and promulgate and from time to time amend local health department rules consistent with state rules, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease.

(B) The commissioner shall establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provided for, for the purpose of ensuring a consistent interpretation of state rules.

(C) When local health department rules are adopted, promulgated, or amended, the local board of health shall place notice in the State Register and on their organization's web page setting forth a notice of proposed action, including the text of the new local health department rule or the amendment and the date, time, and place for receipt of public comment.

(D) All local health department rules shall be approved, disapproved, or amended and approved by the county commission or appointing authority within 30 days of approval from the local board of health, and any local health department rule on which the appointing authority has taken no action within 30 days shall be void: *Provided*, That a local health department rule issued in response to an imminent public health emergency under the provisions of paragraph (H) of this subdivision may have

immediate force and effect subject to the limitations set forth therein.

(E) All local health department rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing authority within 30 days of approval from the combined local board of health. If one appointing authority approves and another other does not approve a local health department rule from a combined local board health department, the local health department rule is only in effect in the jurisdiction of the appointing authority which approved the local health department rule: *Provided*, That a local health department rule issued in response to an imminent public health emergency under the provisions of paragraph (H) of this subdivision may have immediate force and effect subject to the limitations set forth therein.

(F) An approved local health department rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a separate book as public records.

(G) A local health department rule currently in effect on March 4, 2021, is not subject to approval, unless amended, from the county commission or appointing authority.

(H) If there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before a local health department rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the local health department rules are effective, and any rule on which the appointing authority has taken no action within 30 days shall be void;

(4) Accept, receive, and receipt for money or property from any federal, state, or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

(5) Assess, charge, and collect fees for permits and licenses for the provision of public health services: *Provided*, That permits and licenses required for agricultural activities may not be assessed, charged, or collected: *Provided, however*, That a local board of health may assess, charge, and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes, or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge, and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) A local health department may bill health care service fees to a payor which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the Public Employees Insurance Agency for medical services provided: *Provided further*, That health care service fees billed by a local health department are not subject to commissioner approval and may be at the payor's maximum allowable rate;

(7) Contract for payment with any municipality, county, or board of education, for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and

making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: *Provided*, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this code: *Provided, however*, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction, or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance, or securing of a child in a child safety car seat.

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

(d) If the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.

A local board of health shall appoint a full-time or part-time local health officer. The local health officer shall be a physician or a licensed advanced practice registered nurse with the ability to practice independently currently licensed in this state and knowledgeable in the science of public health. A local health officer serves at the will and pleasure of the local board for a term of one year and is eligible for reappointment at compensation determined by the local board of health.

A local health officer may be removed from office by the commissioner if the local health officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the

commissioner determines a public health emergency exists or if the local health officer fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of communicable or reportable diseases dangerous to the public health. Upon removal, a successor local health officer shall immediately be appointed by the board pursuant to the provisions of this article.

§16-2-13. Local health officer; powers and duties.

(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer and enforce state rules, local rules, and local health department rules within the local board of health's service area.

(b) A local health officer has the following additional powers which may be delegated with the approval of the board:

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board's offices, meeting minutes, and records;

(2) To supervise and direct the activities of the local board's health services, employees and facilities;

(3) To ensure that procedures are established for the receipt of communicable or reportable disease reports and for the transmittal of the reports to the commissioner;

(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and

(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes by an employee of the local board of health.

(c) A local health officer shall perform enforcement activity.

(d) A local health officer may issue guidance.

(e) A local health officer may issue a health order.

§16-2-14. Financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding.

The appointing authorities for local boards of health shall provide financial support for the operation of the local health department. The county commission of any county or the governing body of any municipality in which a local board of health is established, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may levy a county or municipal tax to provide funds for the local board of health: *Provided*, That the tax may not exceed 3 cents on each \$100 of assessed valuation of the taxable property in the levying county or municipality, according to the latest assessment.

The county commission of any county or the governing body of any municipality in which a local board of health is established, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may appropriate and spend money from the county or municipal general funds for public health purposes and to pay the expenses of the operation of the local board of health services and facilities.

The commissioner and the secretary may pay over and contribute to any board of health, the sum or sums of money that may be available from funds included in appropriations made for the department. The commissioner may withhold all or part of any funds until a local board of health submits an acceptable plan to correct deficiencies in the local board's program plan.

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CHAPTER 229

**(Com. Sub. for H. B. 4257 - By Delegates D. Jeffries,
Summers, Rohrbach, Tully, G. Ward, Bates, Jennings,
Worrell, Rowan, Forsht, and Mallow)**

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §16-39-3 and §16-39-8 of the Code of West Virginia, 1931, as amended, all relating to requiring visitation of a patient in a health care facility; defining terms; permitting visitation when the patient is stable following a surgical procedure; permitting visitation of a patient by a member of clergy; and establishing parameters for clergy visitation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 39. PATIENT SAFETY ACT.

§16-39-3. Definitions.

For purposes of this article, the following words and phrases have the following meanings:

“Appropriate authority” means a federal, state, county, or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or any member, officer, agent, representative, or supervisory employee thereof;

“Clergy” means an ordained clergy, such as a rabbi, priest, Islamic cleric, associate pastor, licensed minister, or lay minister serving under the direction of the congregation such as the Roman Catholic Eucharistic ministers;

“Commissioner” means the commissioner of the division of health;

“Direct patient care” means health care that provides for the physical, diagnostic, emotional, or rehabilitational needs of a patient or health care that involves examination, treatment, or preparation for diagnostic tests or procedures.

“Discrimination or retaliation” includes any threat, intimidation, discharge, or any adverse change in a health care worker’s position, location, compensation, benefits, privileges, or terms or conditions of employment that occurs as a result of a health care worker engaging in any action protected by this article.

“Good faith report” means a report of conduct defined in this article as wrongdoing or waste that is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

“Health care entity” includes a health care facility, such as a hospital, clinic, nursing facility, or other provider of health care services.

“Health care facility” means:

(1) A hospital licensed pursuant to §16-5B-1 *et seq.* of this code;

(2) A nursing home licensed pursuant to §16-5C-1 *et seq.* of this code;

(3) An assisted living residence licensed pursuant to §16-5D-1 *et seq.* of this code; and

(4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

“Health care worker” means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor, or independent contractor for the health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is

not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, or any other person who provides direct patient care.

“Patient” means a person living or receiving services as an inpatient at a healthcare facility.

“Public Health State of Emergency” means a federal or state declaration of a state of emergency arising from or relating to a public health crisis.

“Visitor” means any visitor from the patient's family, or hospice visiting a patient in a healthcare facility.

“Waste” means the conduct, act, or omission by a health care entity that results in substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a patient, a health care entity, or any federal or state program.

“Wrongdoing” means a violation of any law, rule, regulation, or generally recognized professional or clinical standard that relates to care, services, or conditions and which potentially endangers one or more patients or workers or the public.

§16-39-8. Visitation of a patient in a health care facility.

(a) During a declared public health state of emergency for a contagious disease, a health care facility shall permit visitation of a patient. If the patient's death is imminent, the health care facility shall allow visitation upon request at any time and frequency. In all other instances, the health care facility shall allow visitation once the patient is stable following a surgical procedure and, not less than once every five days: *Provided*, That visitation permitted by any health care entity may not be inconsistent with any applicable federal law, rule, policy, or guidance in effect for the same emergency.

(b) A visitor shall comply with the applicable procedures established by the health care facility.

(c) The health care facility may deny a visitor entry to the health care facility, may subject a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who does not comply with the applicable procedures established by the health care facility.

(d) A healthcare facility is not liable to a person visiting another person, nor to any other patient or resident of the health care facility, for any civil damages for injury or death resulting from or related to actual or alleged exposure during, or through the performance of, the visitation in compliance with this section, unless the health care facility failed to substantially comply with the applicable health and safety procedures established by the health care facility.

(e) Health care facilities shall provide patients adequate and lawful access to clergy so that patients can practice their religion by receiving clergy visitation at any reasonable time, as long as the visit does not disrupt clinical care: *Provided*, That if the health care facility limits the number of people able to visit the patient, the member of the clergy is not to be considered within that number.

(f) Clergy shall comply with the applicable visitation procedures established by the health care facility.

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CHAPTER 230

**(Com. Sub. for H. B. 4276 - By Delegates Rohrbach, Reed,
Summers, Tully, D. Jeffries, Pack, G. Ward, Bates, Jennings,
Worrell, and Rowan)**

[Passed February 15, 2022; in effect from passage.]
[Approved by the Governor on February 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5DD-1, relating to the collection of data relating to Parkinson's Disease; defining terms; creating a Parkinson's disease registry; providing a notice requirement; allowing for West Virginia University to enter into agreements regarding this data collection; establishing an advisory committee; providing that confidential data shall not be disclosed; and allowing for the maintaining of certain records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5DD. COLLECTION OF DATA RELATING TO PARKINSON'S DISEASE.

§16-5DD-1. Establishing collection guidelines for Parkinson's disease data.

(a) West Virginia University may collect data on the incidence of Parkinson's disease in West Virginia and other epidemiological data as required by this article.

(b) These terms are defined:

“Parkinson's disease” means a chronic and progressive neurologic disorder resulting from deficiency of the neurotransmitter dopamine as the consequence of specific degenerative changes in the area of the brain called the basal

ganglia. It is characterized by tremor at rest, slow movements, muscle rigidity, stooped posture, and unsteady or shuffling gait.

“Parkinsonisms” means related conditions that cause a combination of the movement abnormalities seen in Parkinson’s disease, such as tremor at rest, slow movement, muscle rigidity, impaired speech or muscle stiffness, which often overlap with and can evolve from what appears to be Parkinson’s disease. These include: Multiple System Atrophy (MSA), Dementia with Lewy Bodies (DLB), Corticobasal Degeneration (CBD), and Progressive Supranuclear Palsy (PSP).

(c) The registry and system of collection and dissemination of information shall be under the direction of West Virginia University, who may enter into contracts, grants, or other agreements as are necessary for the conduct of the program.

(d) All patients diagnosed with Parkinson’s disease or related Parkinsonisms, as advised by an Advisory Committee, shall be provided a notice regarding the collection of information and patient data on Parkinson’s disease. Patients who do not wish to participate in the collection of data for purposes of research in this registry shall affirmatively opt-out in writing after an opportunity to review the documents and ask questions. A patient may not be forced to participate in this registry.

(e) (1) West Virginia University shall establish a Parkinson’s Disease Registry Advisory Committee to:

(A) Assist in the development and implementation of the registry which may include a system for the collection and dissemination of information determining the incidence and prevalence of Parkinson’s disease and related Parkinsonisms;

(B) Determine what data shall be collected; and

(C) Generally, advise WVU.

(2) Membership of the committee may include:

(A) Neurologists from WVU, Marshall, and Charleston Area Medical Center;

(B) A movement disorder specialist;

(C) A primary care physician;

(D) A physician informaticist;

(E) Parkinson's disease patients;

(F) Public health staff;

(G) Population health researchers familiar with registries;

(H) Parkinson's disease researchers; and

(I) Anyone else West Virginia University deems necessary.

(f) Parkinson's disease and related Parkinsonisms shall be reported, but the mere incidence of a patient with Parkinson's shall be the sole required information for this registry for any patient who chooses not to participate. For the subset of patients who choose not to participate, further data may not be reported to the registry.

(g) A hospital, facility, physician, surgeon, physician assistant, and nurse practitioners, or other health care provider deemed necessary by West Virginia University diagnosing or providing treatment to Parkinson's disease or Parkinsonism patients, shall report each case of Parkinson's disease and Parkinsonisms to West Virginia University in a format prescribed by the university. West Virginia University may enter into data sharing contracts with data reporting entities and their associated electronic medical record systems vendors to securely and confidentially receive information related to Parkinson's disease testing, diagnosis, and treatment.

(h) West Virginia University may enter into agreements to furnish data collected in this registry to other states' Parkinson's disease registries, federal Parkinson's disease control agencies, local health officers, or health researchers for the study of Parkinson's disease. Before confidential information is disclosed

to those agencies, officers, researchers, or out-of-state registries, the requesting entity shall agree in writing to maintain the confidentiality of the information, and in the case of researchers, shall also do both of the following:

(1) Obtain approval of their committee for the protection of human subjects established in accordance with Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal Regulations; and

(2) Provide documentation to West Virginia University that demonstrates to the university's satisfaction that the entity has established the procedures and ability to maintain the confidentiality of the information.

(i) Except as otherwise provided in this section, all information collected pursuant to this section shall be confidential. For purposes of this section, this information shall be referred to as confidential information.

(j) Notwithstanding any other law, a disclosure authorized by this section shall include only the information necessary for the stated purpose of the requested disclosure, used for the approved purpose, and not be further disclosed.

(k) Provided the security of confidentiality has been documented, the furnishing of confidential information to West Virginia University or its authorized representative in accordance with this section shall not expose any person, agency, or entity furnishing information to liability, and shall not be considered a waiver of any privilege or a violation of a confidential relationship.

(l) West Virginia University shall maintain an accurate record of all persons who are given access to confidential information. The record shall include the name of the person authorizing access; name, title, address, and organizational affiliation of persons given access; dates of access; and, the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the university.

(m) Notwithstanding any other law, the confidential information shall not be available for subpoena, shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding. The confidential information shall not be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason. This subsection does not prohibit the publication by West Virginia University of reports and statistical compilations that do not in any way identify individual cases or individual sources of information. Notwithstanding the restrictions in this subsection, the individual to whom the information pertains shall have access to his or her own information.

(n) This section does not preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with Parkinson's disease to maintain their own facility-based Parkinson's disease registries.

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CHAPTER 231

(Com. Sub. for H. B. 4340 - By Delegates Rohrbach, D. Jeffries, Summers, Reed, Tully, Pack, G. Ward, Bates, Worrell, Rowan, and Jennings)

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §16-19-9, §16-19-14 and §16-19-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-12-3 of said code, all relating to anatomical gifts; clarifying who may make an anatomical gift of decedent's body or part; clarifying the duties of procurement organization with regard to state medical examiner; requiring the state medical examiner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts; authorizing procurement organizations to conduct a test to evaluate the medical suitability of the body part; and authorizing the state's chief medical examiner to enter into agreements with a procurement organization to facilitate the recovery of anatomical gifts.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-9. Who may make anatomical gift of decedent's body or part.

(a) Unless barred by §16-19-7 or §16-19-8 of this code, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available in the order of priority listed:

(1) A person holding a medical power of attorney or another agent of the decedent at the time of death who could have made an anatomical gift under §16-19-4 of this code immediately before the decedent's death;

(2) The spouse of the decedent, unless in the six months prior to the decedent's death the spouse has lived separate and apart from the decedent in a separate place of abode without cohabitation or an action for divorce is pending;

(3) Adult children of the decedent;

(4) The person acting as the guardian of the decedent at the time of death;

(5) An appointed health care surrogate;

(6) Parents of the decedent;

(7) Adult siblings of the decedent;

(8) Adult grandchildren of the decedent;

(9) Grandparents of the decedent;

(10) An adult who exhibited special care and concern for the decedent; or

(11) A person authorized or obligated to dispose of the decedent's body.

(b) If there is more than one member of a class entitled to make an anatomical gift, any member of the class may make the anatomical gift unless he or she, or a person to whom the anatomical gift may pass pursuant to §16-19-11 of this code, knows of an objection by another member of the class. If an objection is known, the majority of the members of the same class must be opposed to the donation in order for the donation to be revoked. In the event of a tie vote, the anatomical gift may proceed despite the objection by a member or members of a class.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to make, or to object to the making, of an anatomical gift.

§16-19-14. Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Division of Motor Vehicles and any donor registry it knows of for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) The Division of Motor Vehicles shall allow a procurement organization reasonable access to information in the division's records to ascertain whether an individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access to records pursuant to this subsection.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the prospective donor expressed a contrary intent.

(d) Unless prohibited by law, at any time after a donor's death, a person to whom a decedent's part passes under §16-19-11 of this code may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in §16-19-9 of this code having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part passes under §16-19-11 of this code are superior to the rights of all others. A person may accept or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under §16-19-11 of this code shall, upon the death of the donor and before embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

(i) Neither the physician or the physician assistant who attends the decedent at death, nor the physician or the physician assistant who determines the time of death, may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

(k) A medical examiner shall cooperate with any procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(l) A part may not be removed from the body of a decedent under a medical examiner's jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for research or education, unless the part is the subject of an anatomical gift.

(m) Upon the request of a procurement organization, the medical examiner shall release to the procurement organization the name, contact information, name of the next of kin, and available medical and social history of a decedent whose body is under the medical examiner's jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release the post-mortem examination results to the procurement organization. The procurement organization may not make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or education.

(n) If a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization, and the organ procurement organization, in consultation with the individual's attending physician or a designee, determines based upon a medical record review and other information supplied by the individual's attending physician or a designee, that the individual may be a prospective donor; and the individual:

(1) Has not indicated in any document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures, or

(2) Has not indicated in any document an intention to deny making or refusing to make an anatomical gift; or

(3) Amended or revoked an anatomical gift in any document, the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a body part that is or may be the subject of an anatomical gift.

(o) Testing and examination conducted pursuant to subsection (n) shall comply with a denial or refusal to make an anatomical gift or any limitation expressed by the individual with respect to the part of the body to donate or a limitation the provision of a ventilator or other life-sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

(1) To evaluate medical suitability for donation and to facilitate the donation process; and

(2) As otherwise required or permitted by law.

(p) A hospital may not withdraw or withhold any measures necessary to maintain the medical suitability of a body part that may be the subject of an anatomical gift until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the applicable persons under this article of the option to make an anatomical gift and has received or been denied authorization to proceed with recovery of the part.

(q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code may conduct any test or examination reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

(r) The provisions of this section may not be construed to preclude a medical examiner from performing an investigation of a decedent under the medical examiner's jurisdiction.

§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.

(a) The medical examiner shall, upon request of a procurement organization, release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is in the custody of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release post-mortem examination results after being

paid in accordance with the fee schedule established in rules to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

(b) The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner which the medical examiner determines may be relevant to the investigation.

(c) A person with any information requested by a medical examiner pursuant to subsection (b) of this section shall provide that information as soon as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d) If the medical examiner determines that a post-mortem examination is not required or that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research or education.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the medical examiner shall consult with the procurement organization about the proposed recovery. After the consultation, the medical examiner may deny the recovery at his or her discretion. The medical examiner may attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part.

(f) If the medical examiner denies recovery of the part, he or she shall:

(1) Provide the procurement organization with a written explanation of the specific reasons for not allowing recovery of the part; and

(2) Include in the medical examiner's records the specific reasons for denying recovery of the part.

(g) If the medical examiner allows recovery of a part, the procurement organization shall, upon request, cause the physician or technician who removes the part to provide the medical examiner with a written report describing the condition of the part, a biopsy, a photograph or any other information, and observations that would assist in the post-mortem examination.

(h) A medical examiner who decides to be present at a removal procedure is entitled to reimbursement for the expenses associated with appearing at the recovery procedure from the procurement organization which requested his or her presence.

(i) A medical examiner performing any of the functions specified in this section shall comply with all applicable provisions of §61-12-1 *et seq.* of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

***§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.**

(a) The Office of Chief Medical Examiner is continued within the Bureau of Public Health in the Department of Health and Human Resources. The office shall be directed by a Chief Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members as needed to fulfill the responsibilities set forth in this article.

(b) All persons employed by the Chief Medical Examiner shall be responsible to him or her and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify the

*NOTE: This section was also amended by H. B. 4559 (Chapter 146), which passed prior to this act.

qualifications required for each position in the Office of Chief Medical Examiner

(c) The chief medical examiner shall be a physician licensed to practice medicine or osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The Chief Medical Examiner shall be appointed by the Commissioner for the Bureau of Public Health to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the commissioner.

(d) The Chief Medical Examiner shall be responsible to the commissioner in all matters except that the chief medical examiner shall operate with independent authority for the purposes of:

(1) The performance of death investigations conducted pursuant to section eight of this article;

(2) The establishment of cause and manner of death; and

(3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

(e) The Chief Medical Examiner, or his or her designee, shall be available at all times for consultation as necessary for carrying out the functions of the Office of the Chief Medical Examiner.

(f) The Chief Medical Examiner shall cooperate with procurement organizations as defined in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. The Chief Medical Examiner may enter into contracts and agreements with a procurement organization when necessary to facilitate the efficient and economical recovery of anatomical gifts, including contracts or agreements authorizing persons approved or assigned by the procurement organization to perform a specific type of duty or duties at the office of the chief medical examiner.

(g) The Secretary of the Department of Health and Human Resources shall propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death;

(4) The training and certification of county medical examiners and coroners; and

(5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose of transplantation, therapy, research, or education.

(h) The Chief Medical Examiner may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the Chief Medical Examiner.

(i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy in accordance with the provisions of this code. The Chief Medical Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(j) The salary of the Chief Medical Examiner and the salaries of all assistants and employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law. The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police, other law-enforcement agencies and other interested groups.

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CHAPTER 232

(Com. Sub. for H. B. 4631 - By Delegates Walker and Rohrbach)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, by adding thereto a new section, designated §16-21-2, relating to establishing an awareness program; directing the Department of Health and Human Resources to create a website; providing contents of electronic brochure; providing contents of website; and providing for consultation with certain health care providers to promote awareness.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. BLOOD DONATIONS.

§16-21-2. Demetry Walker bone marrow and peripheral blood stem donation awareness program.

(a) The Bureau for Public Health shall prepare an online brochure for display on its website. The information shall be derived from the National Marrow Donor Program, which may be downloaded, and utilized by the commissioner for the purposes of §16-21-2(c), and shall be designed to inform patients of the option to become a bone marrow or peripheral blood stem cell donor by registering with the National Marrow Donor Program and to answer common questions about bone marrow and peripheral blood stem cell donations.

(b) The brochure shall describe:

(1) The health benefits to the community from making a bone marrow or peripheral blood stem cell donation through the National Marrow Donor Program;

(2) How to register with the National Marrow Donor Program;

(3) The procedures for making a bone marrow or peripheral blood stem cell donation, including notice that there is no charge to the donor or the donor's family for making the donation;

(4) The circumstances and procedures by which a patient may receive a transfusion of the patient's previously donated blood; and

(5) Any other aspects of bone marrow or National Marrow Donor Program that the bureau deems appropriate.

(c) The bureau shall promote awareness among health care practitioners and the general public about the option to become a bone marrow or peripheral blood stem cell donor. In doing so, the bureau shall consult with the National Marrow Donor Program, and other organizations that are seeking to increase bone marrow and peripheral blood stem cell donation among various ethnic groups within the state in need of these donations.

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CHAPTER 233

**(H. B. 4743 - By Delegates Westfall, Barrett, Householder,
Capito, Steele, Pack, Queen, Bates, Storch, Skaff, and Statler)**

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §16A-6-3 of the Code of West Virginia, 1931, as amended, all relating to security and surveillance requirements of medical cannabis organization facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS

§16A-6-3. Granting of permit

(a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In making a decision under this subsection, the bureau shall determine that:

(1) The applicant will maintain effective control of and prevent diversion of medical cannabis.

(2) The applicant will comply with all applicable laws of this state.

(3) The applicant is ready, willing, and able to properly carry on the activity for which a permit is sought.

(4) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings, and equipment to properly grow, process, or dispense medical cannabis.

(5) It is in the public interest to grant the permit.

(6) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

(7) The applicant is able to implement and maintain security, tracking, recordkeeping, and surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery, transportation, distribution, or the dispensing of medical cannabis as required by the bureau: *Provided*, That the bureau may require that a medical cannabis organization maintain motion activated video surveillance at a dispensary, grower or processor facility and that a medical cannabis organization retain the recordings therefrom onsite or offsite for a period not to exceed 180 days, unless otherwise required for investigative or litigation purposes.

(8) The applicant satisfies any other conditions as determined by the bureau.

(b) Nontransferability. — A permit issued under this chapter shall be nontransferable.

(c) Privilege. — The issuance or renewal of a permit shall be a revocable privilege.

(d) Dispensary location. — The bureau shall consider the following when issuing a dispensary permit:

(1) Geographic location;

(2) Regional population;

(3) The number of patients suffering from serious medical conditions;

(4) The types of serious medical conditions;

(5) Access to public transportation;

(6) Approval by local health departments;

(7) Whether the county has disallowed the location of a grower, processor, or dispensary; and

(8) Any other factor the bureau deems relevant.

(e) Application procedure. — The bureau shall establish a procedure for the fair and objective evaluation of all applications for all medical cannabis organization permits. The evaluations shall score each applicant numerically according to standards set forth in this chapter.

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CHAPTER 234

(S. B. 8 - By Senators Grady, Lindsay, Jeffries, and Phillips)

[Passed January 24, 2022; in effect from passage.]

[Approved by the Governor on February 2, 2022.]

AN ACT to repeal §18-30-6a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §12-9-1, §12-9-2, and §12-9-3; to amend and reenact §18-30-1, §18-30-2, §18-30-3, §18-30-4, §18-30-5, §18-30-6, §18-30-8, §18-30-10, §18-30-11, and §18-30-13 of said code; to amend said code by adding thereto a new section, designated §18-30-3a; and to amend and reenact §18-30A-2, §18-30A-3, §18-30A-5, §18-30A-6, §18-30A-8, and §18-30A-9 of said code, all relating generally to the state's savings and investment programs; continuing the Savings and Investment Program Fulfillment Fund and relocating provisions authorizing said fund to a new article of code; clarifying that moneys in the fund may be used for certain savings and investment programs; updating the West Virginia College Prepaid Tuition and Savings Program Act to reflect the termination of the Prepaid Higher Education Program, Plan, and Trust Fund; eliminating obsolete language related to the Prepaid Tuition Program; providing a short title; defining terms; setting forth legislative findings and rules of statutory construction; continuing the West Virginia College Savings Program; continuing the Board of the College Prepaid Tuition and Savings Program and redesignating the board as the Board of Trustees of the West Virginia College and Jumpstart Savings Programs; clarifying that the board is a public instrumentality of the state and the issuer of interests in the Savings Plan Trust; increasing the number of board members; establishing qualifications of certain board members; establishing the duties and powers of the board with regard to the College Savings Program; authorizing the board to use financial organizations as program depositories and managers and providing

requirements therefor; continuing the College Prepaid Tuition and Savings Program Administrative Account and redesignating said account as the College and Jumpstart Savings Administrative Account; authorizing certain expenditures from the administrative account; providing that the administrative account is a nonappropriated special revenue account; authorizing the board to take action to satisfy outstanding obligations of the Prepaid Tuition Trust Plan arising after the plan's closure; continuing the Prepaid Tuition Plan escrow fund; continuing the board's authority to maintain a certain amount in the escrow fund for up to 10 years; continuing the board's authorization to expend moneys from the escrow fund in certain circumstances; requiring the board to invest the moneys in the escrow fund; providing for closure of escrow fund; setting forth legislative findings and rules of statutory construction related to the Jumpstart Savings Program; defining terms; eliminating the West Virginia Jumpstart Savings Board; requiring the Board of Trustees of the West Virginia College and Jumpstart Savings Program to administer the Jumpstart Savings Program; establishing the powers of the Board of Trustees of the West Virginia College and Jumpstart Savings Programs to implement and administer the Jumpstart Savings Program; authorizing the board to enter into agreements with agencies, subdivisions, or other states regarding programs that are substantially similar to the Jumpstart Savings Program; providing that the Jumpstart Savings Program Trust is a public instrumentality of the state and shall issue interests in said trust to eligible members of the public; eliminating the Jumpstart Savings Expense Fund; providing that fees, charges, and penalties collected by the board in administering the Jumpstart Savings Program shall be deposited in the College and Jumpstart Savings Administrative Account; making Jumpstart Savings Program expenses payable from the administrative account; eliminating inapplicable language relating to selecting financial institutions to provide services for the Jumpstart Savings Program based on existing state purchasing exemption; specifying that the board may enter into a contract with financial institutions to provide services to both the College Savings and Jumpstart

Savings programs; eliminating requirement that board take custody of Jumpstart Savings accounts prior to transferring accounts to a new program manager; and making numerous technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 9. SAVINGS AND INVESTMENT PROGRAM FULFILLMENT FUND.

§12-9-1. Special revenue account continued.

There is continued in the State Treasury the special revenue account, designated the West Virginia Savings and Investment Program Fulfillment Fund, previously authorized by §18-30-6a of this code. The fund shall be administered by the State Treasurer for the purposes described in this article.

§12-9-2. Receipts and expenditures.

(a) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of all moneys in the fund on the effective date of this section, any moneys that may be appropriated to the fund by the Legislature, all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article, and all gifts, grants, bequests, or transfers made to the fund from any source.

(b) The State Treasurer may expend moneys in the West Virginia Savings and Investment Program Fulfillment Fund for costs to implement or administer any savings or investment program with an initial date of operation occurring on or after July 1, 2021, including, but not limited to, the Hope Scholarship Program, established in §18-31-1 *et seq.* of this code, and Jumpstart Savings Program, established in §18-30A-1 *et seq.* of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert

to the General Revenue Fund but shall remain in the fund to be expended as authorized by this article.

§12-9-3. Investment of fund.

The State Treasurer is authorized to invest and reinvest moneys in the fund, and all interest and earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this article.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE SAVINGS PROGRAM ACT.

§18-30-1. Title.

This article is known and cited as the West Virginia College Savings Program Act.

§18-30-2. Legislative findings and purpose.

The Legislature finds and determines that enhancing the accessibility and affordability of education for all citizens of West Virginia will promote a well-educated and financially secure population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and families in planning for future educational expenses by making the tax incentives in 26 U.S.C. § 529 available to West Virginians is one of the proper governmental functions and purposes of the state.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. §529:

“Account” means a savings plan account established in accordance with this article.

“Account owner” means the individual, corporation, association, partnership, trust, or other legal entity who enters into

a savings plan contract and invests money in a savings plan account.

“Beneficiary” means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent, or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

“Board” means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs as provided in §18-30-4 of this code.

“Distribution” means any disbursement from an account in accordance with 26 U.S.C. §529.

“Eligible educational institution” means an institution of higher education or a private or religious primary, middle, or secondary school that qualifies under 26 U.S.C. §529 as an eligible educational institution.

“Jumpstart Savings Expense Fund”, for the purposes of this article, means the College and Jumpstart Savings Administrative Account, established in §18-30-8 of this code.

“Outstanding obligations of the Prepaid Tuition Plan” means the outstanding contract obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition Trust Fund or plan.

“Prepaid Tuition Program” means the Prepaid Higher Education Program and Plan, which was previously established and authorized by this article as reflected in chapter 80, Acts of the Legislature, Regular Session, 1997, and which was closed in 2021.

“Program” means the West Virginia College Savings Program established pursuant to this article and as defined in §18-30-4(a) of this code.

“Qualified education expenses” means expenses treated as “qualified higher education expenses” under 26 U.S.C. §529.

“Savings plan” means the plan that allows account distributions for qualified higher educational expenses and tuition at private or religious primary, middle, and secondary schools.

“Savings plan account” means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions toward qualified higher education expenses and tuition expenses at eligible educational institutions.

“Savings plan contract” means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

“Treasurer” means the West Virginia State Treasurer.

“Tuition” means the quarter, semester, or term charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

§18-30-3a. 2022 Legislative findings; statutory construction.

(a) The Legislature makes the following findings regarding the amendments to this article adopted during the 2022 Regular Session of the Legislature:

(1) Whereas the Prepaid Tuition Program and Plan, administered by the board from 1998 until 2021, was statutorily closed to new accounts in 2001;

(2) Whereas the board initiated a statutorily authorized buyout of all remaining accounts in 2021 and terminated the Prepaid Tuition Program, Plan, and Trust Fund;

(3) Whereas the Jumpstart Savings Act, adopted during the 2021 Regular Session of the Legislature, created a new savings and investment program to become operational on July 1, 2022;

(4) Whereas the Jumpstart Savings Program is structurally similar to the College Savings Program, both programs share the objective of assisting West Virginians to obtain the education and skills that they need for productive and successful livelihoods, and the Jumpstart Savings Act allows state tax rollovers from a SMART529 account into a Jumpstart Savings Account;

(5) Whereas authorizing a single board to administer both the College Savings Program and Jumpstart Savings Program, rather than requiring each program to have a separate board, will significantly reduce management and administrative costs to the state;

(6) Therefore, the Board of Trustees of the College Prepaid Tuition and Savings Program should be continued and re-designated as “the Board of Trustees of the West Virginia College and Jumpstart Savings Programs” and said board should be tasked with administering the College Savings Program, established by this article, and the Jumpstart Savings Program, established by §18-30A-1 *et seq.* of this code.

(b) The Legislature further finds that, whenever possible, this article should be read in *pari materia* and construed in harmony with the Jumpstart Savings Act, located in §18-30A-1 *et seq.* of this code.

(c) The Legislature further finds that interests in the College Savings Program Trust are intended:

(1) To qualify for relevant federal securities law exemptions for public instrumentalities of a State; and

(2) To be exempt from registration under chapter 32 of the West Virginia Code, the Uniform Securities Act.

§18-30-4. The Board of Trustees of the West Virginia College and Jumpstart Savings Programs; members; terms; compensation; proceedings generally.

(a) The West Virginia College Savings Program is continued. The program consists of the savings plan administered according to this article and the requirements of 26 U.S.C. §529.

(b) The Board of Trustees of the College Prepaid Tuition and Savings Program is continued as a public instrumentality of the State of West Virginia: *Provided*, That the Board shall hereafter be known as the Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

(c) The board consists of 11 members and includes the following:

(1) The State Treasurer, or his or her designee;

(2) The State Superintendent of Schools, or his or her designee;

(3) A representative of the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission, appointed by the commission who serves as a voting member of the board;

(4) A representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education, appointed by the council who serves as a voting member of the board; and

(5) Seven other members, appointed by the Governor, with the advice and consent of the Senate, as follows:

(A) Three private citizens with knowledge, skill, and experience in a financial field, who are not employed by, or an officer of, the state or any political subdivision of the state: *Provided*, That reasonable efforts shall be made to appoint one such citizen to the board who holds a designation of Chartered Financial Analyst, offered by the CFA Institute;

(B) Two private citizens, appointed by the Governor, with knowledge, skill, and experience in trade occupations or businesses, to be appointed as follows:

(i) A member representing a labor organization that represents tradespersons in this state; and

(ii) A member representing a business or entity offering trade or skilled labor apprenticeships in this state; and

(C) Two members representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia Independent Colleges and Universities.

(d) Only state residents are eligible for appointment to the board.

(e) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(f) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the College and Jumpstart Savings Administrative Account and are made at the same rate paid to state employees.

(g) The Treasurer may provide support staff and office space for the board.

(h) The Treasurer is the chairperson and presiding officer of the board and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

§18-30-5. Powers of the board to administer the College Savings Program.

(a) The board shall administer the College Savings Program in accordance with this article and 26 U.S.C. §529.

(b) The board shall offer and issue interests in the Savings Plan Trust to eligible members of the public.

(c) The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the program, subject to applicable state and federal law, including, but not limited to, the following:

(1) Adopt and amend bylaws;

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That all expenditures and monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

(3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30-6 of this code;

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;

(5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;

(6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;

(7) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board,

the Board of Treasury Investments, or other professional investing the funds and accounts: *Provided*, That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code;

(8) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this article: *Provided*, That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 90 days of receipt;

(9) Make all necessary and appropriate arrangements with eligible educational institutions in order to fulfill its obligations under the savings plan contracts; and

(10) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code, including emergency rules when necessary.

(d) The power and duties of the board provided in this article are in addition to the powers and duties of the board provided in §18-30A-1 *et seq.* of this code.

§18-30-6. Use of financial organizations as program depositories and managers.

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers, based on the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;

(3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;

(4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;

(5) Hold all accounts for the benefit of the account owner or owners;

(6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;

(7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

(1) Enter into contracts it deems necessary for the implementation of the program, including but not limited to a contract with a financial institution, manager, consultant or other professional to provide services to both the College Savings Program and the Jumpstart Savings Program, established in §18-30A-1 *et seq.* of this code;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of such program depository and manager; and

(3) Terminate or decline to renew a management agreement: *Provided*, That if the board terminates or does not renew a management agreement, the board shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

[Repealed].

§18-30-8. The College and Jumpstart Savings Administrative Account.

(a) There is hereby continued a separate special revenue account within the State Treasury titled the “college prepaid tuition and savings program administrating account”, which shall hereafter be known as the College and Jumpstart Savings Administrative Account. The board shall administer and make expenditures from the account for the purposes of implementing, operating, and maintaining the trust funds, the program created by this article, and the program created by §18-30A-1 *et seq* of this code.

(b) The administrative account shall receive all fees, charges, and penalties collected by the board. Expenditures from the fund are authorized from collections. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund to be expended as authorized by this section.

§18-30-10. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Provide annual statements on the savings plan accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the trust funds and the administrative account, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight commission on education accountability.

(b) All accounts of the board, including the trust funds, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of §5A-2-33 of this code.

§18-30-11. Financial aid eligibility.

The calculations of a beneficiary's eligibility for state student financial aid for higher education may not include or consider the value of distributions available in a savings plan account.

§18-30-13. Remaining obligations of the Prepaid Tuition Program and Escrow Fund.

(a) The Prepaid Tuition Trust Escrow Fund, which was previously authorized by §18-30-6 of this code, is continued in the State Treasury to guarantee payment of outstanding obligations of the Prepaid Tuition Plan arising after the plan's closure. The board is authorized to take any action necessary to satisfy obligations of the Prepaid Tuition Plan arising after the plan's closure.

(b) The Prepaid Tuition Trust Escrow Fund shall consist of any moneys in the fund on the effective date of this section. Up to \$1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund for a period not to exceed 10 years following the closure of the Prepaid Tuition Fund for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the plan's closure: *Provided*, That upon the expiration of 10 years following the date of closure of the Prepaid Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero, whichever occurs first, the account shall be closed and any moneys

remaining in the Prepaid Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue Fund.

(c) The board shall invest the Prepaid Tuition Trust Escrow Fund, in accordance with the provisions of this article, in fixed income securities, and all earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this section.

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-2. Findings.

(a) The Legislature recognizes the importance of cultivating an environment in West Virginia where our tradespersons and entrepreneurs can be successful in their careers and remain in their home state. The Legislature finds that a savings and investment program to assist our citizens who wish to embark on a new trade or establish a new business within this state, is an investment in the future of West Virginia and its hardworking citizens.

(b) The Legislature further finds that, whenever possible, this article should be read in *pari materia* and construed in harmony with the West Virginia College Savings Program Act, §18-30-1 *et seq.* of this code.

(c) The Legislature further finds that interests in the Jumpstart Savings Program Trust are intended:

(1) To qualify for relevant federal securities law exemptions for public instrumentalities of a state; and

(2) To be exempt from registration under Chapter 32 of the West Virginia Code, titled the "Uniform Securities Act."

§18-30A-3. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

(1) “Account owner” means the person who opens and invests money into a Jumpstart Savings Account, as provided in this article.

(2) “Beneficiary” means the person designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed.

(3) The “board” means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs created in §18-30-4 of this code.

(4) “Contribution” means any amount of money deposited into a Jumpstart Savings Account according to the procedures established and required by the board or the Treasurer.

(5) “Deduction” as used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Deduction means and refers to a deduction allowable under the federal income tax code for the purpose of determining federal taxable income or federal adjusted gross income, unless text clearly indicates otherwise.

(6) “Distributee” has the same meaning provided in §11-21-12m of this code.

(7) “Distribution” means any disbursement from an account.

(8) The term “family member”, as used to describe a person’s relationship to a designated beneficiary, includes any of the following:

(A) The spouse of the beneficiary;

(B) A child of the beneficiary or a descendant of the beneficiary’s child;

(C) A brother, sister, stepbrother, or stepsister of the beneficiary;

(D) The father or mother of the beneficiary, or an ancestor of either;

(E) A first cousin of the beneficiary;

(F) A stepfather or stepmother of the beneficiary;

(G) A son or daughter of a brother or sister of the beneficiary;

(H) A brother or sister of the father or mother of the beneficiary;

(I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or

(J) The spouse of any person described in paragraphs (B) through (I) of this subdivision.

(K) Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

(9) “Labor organization” means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(10) The “program” refers to the Jumpstart Savings Program established by this article.

(11) The “Treasurer” refers to the West Virginia State Treasurer or his or her designee.

§18-30A-5. The Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

The West Virginia Jumpstart Savings Program shall be administered by the Board of Trustees of the West Virginia College

and Jumpstart Savings Programs. The board is created in §18-30-4 of this code and is a public instrumentality of the State of West Virginia.

§18-30A-6. Powers of the board to implement and administer the Jumpstart Savings Program.

(a) The board shall implement and administer the Jumpstart Savings Program in accordance with this article and all applicable laws and regulations.

(b) The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the program, subject to applicable state and federal law, including, but not limited to, the following:

(1) Adopt and amend bylaws;

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That all expenditures and monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

(3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30A-9 of this code;

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;

(5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;

(6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the

trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;

(7) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or other professional investing the funds and accounts: *Provided*, That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code;

(8) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this article: *Provided*, That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 90 days of receipt; and

(9) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code, including emergency rules when necessary.

(c) The board may enter into agreements with other states or agencies of, subdivisions of, or residents of those states related to the program or a program that is substantially similar to the Jumpstart Savings Program established by another state.

(d) The power and duties of the board provided in this article are in addition to the powers and duties of the board provided in §18-30-1 *et seq.* of this code.

§18-30A-8. West Virginia Jumpstart Savings Program Trust and Trust Fund created; administrative account.

(a) There is hereby established the Jumpstart Savings Program Trust, a public instrumentality of the State of West Virginia. The

Jumpstart Savings Program Trust shall offer and issue interests in the trust to eligible members of the public.

(b) There is hereby also established a Jumpstart Savings Program Trust Fund Account, titled the Jumpstart Savings Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or any other person for the purpose of managing and investing the trust fund. Assets of the Jumpstart Savings Program Trust are held in trust for account owners and beneficiaries.

(c) The Jumpstart Savings Trust Fund shall receive all moneys from account owners on behalf of beneficiaries or from any other source, public or private. Earnings derived from the investment of the moneys in the Jumpstart Savings Trust Fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the program.

(d) The corpus, assets, and earnings of the Jumpstart Savings Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by, or any obligation of the board on behalf of and for the benefit of the program, does not constitute a debt or obligation of the state but is solely an obligation of the Jumpstart Savings Trust Fund.

(e) All interest derived from the deposit and investment of moneys in the Jumpstart Savings Trust Fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the trust fund may not be credited or transferred to the State General Fund or to any other fund.

(f) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the Jumpstart Savings Trust Fund is subject to taxation by the state or any of its political subdivisions.

(g) Notwithstanding any provision of this code to the contrary, money in the Jumpstart Savings Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.

(h) The College and Jumpstart Savings Administrative Account, established in §18-30-8 of this code, shall receive all fees, charges, and penalties collected by the board. All expenses incurred by the board or the Treasurer in developing and administering the program shall be payable from the College and Jumpstart Savings Administrative Account.

§18-30A-9. Use of financial organizations as program depositories and managers.

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers based on the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;

(3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;

(4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;

(5) Hold all accounts for the benefit of the account owner or owners;

(6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;

(7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

(1) Enter into contracts it deems necessary for the implementation of the program, including, but not limited to, a contract with a financial institution, manager, consultant or other professional to provide services to both the Jumpstart Savings Program, and the College Savings Program, established in §18-30-1 *et seq.* of this code;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of such program depository and manager; and

(3) Terminate or decline to renew a management agreement. If the board terminates or does not renew a management agreement, the board shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.



CHAPTER 235

(Com. Sub. for Com. Sub. for S. B. 262 - By Senators Phillips, Grady, Martin, Maynard, Karnes, Hamilton, and Woodrum)

[Passed March 12, 2022; in effect 90 days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-1C-1, §12-1C-2, §12-1C-3, §12-1C-4, §12-1C-5, §12-1C-6, and §12-1C-7, all relating generally to financial institutions engaged in boycotts of energy companies; defining terms; authorizing the State Treasurer to publish a list of financial institutions engaged in boycotts of energy companies; requiring the Treasurer to publicly post the list and submit the list to certain public officials; requiring the list to contain certain information; requiring the Treasurer to send written notice to a financial institution prior to its inclusion on the list; establishing required content of said written notice; requiring the Treasurer to remove a financial institution from the list if it presents information demonstrating that it is not engaged in a boycott of energy companies; preventing financial institutions from being compelled to produce certain information; setting forth sources of information on which the Treasurer may rely in preparing the list; authorizing the Treasurer to exclude financial institutions on the list from the selection process for state banking contracts; authorizing the Treasurer to refuse to enter into a banking contract with a financial institution on the list; authorizing the Treasurer to require, as a term of a banking contract, an agreement by the financial institution not to engage in a boycott of energy companies; limiting liability for actions taken in compliance with the new article; and exempting the Investment Management Board from the new article.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1C. FINANCIAL INSTITUTIONS ENGAGED IN
BOYCOTTS OF ENERGY COMPANIES.**

§12-1C-1. Definitions.

(a) For the purposes of this article, the following terms shall have the following meanings:

(1) “Banking contract” means a contract entered into by the Treasurer and a financial institution pursuant to this chapter, to provide banking goods or services to a spending unit.

(2) “Boycott of energy companies” means without a reasonable business purpose, refusal to deal with a company, termination of business activities with a company, or another action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(A) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy;

(B) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or

(C) Does business with a company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy.

(3) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exist for the purpose of making profit.

(4) “Financial institution” means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

(5) “Reasonable business purpose” includes any purpose directly related to:

(A) Promoting the financial success or stability of a financial institution;

(B) Mitigating risk to a financial institution;

(C) Complying with legal or regulatory requirements; or

(D) Limiting liability of a financial institution.

(6) “Restricted financial institution” means a financial institution included in the most recently updated restricted financial institution list.

(7) “Restricted financial institution list” means the list of financial institutions prepared, maintained, and published pursuant to this article.

(8) “Treasurer” refers to the West Virginia State Treasurer.

§12-1C-2. Restricted financial institutions list.

(a) The Treasurer is authorized to prepare and maintain a list of financial institutions that are engaged in a boycott of energy companies.

(b) The Treasurer must publicly post the restricted financial institution list on the Treasurer’s website and submit a copy of the list to the Governor, the President of the Senate, and the Speaker of the House of Delegates.

(c) A citation to this article and a brief summary of the purpose of the list must appear at the top of the list, including a statement that inclusion on the list is not an indication of unsafe or unsound

operating conditions of any financial institution nor any risk to consumer deposits.

(d) The Treasurer must update the restricted financial institution list annually, or more often as the Treasurer considers necessary.

§12-1C-3. Notice to financial institutions.

(a) Forty-five days prior to including a financial institution on the restricted financial institution list, the Treasurer must send a written notice to the institution containing the following information:

(1) That the Treasurer has determined that the financial institution is a restricted financial institution;

(2) That the financial institution will be placed on the restricted financial institution list in 45 days unless, within 30 days following the receipt of the written notice, the restricted financial institution demonstrates that it is not engaged in a boycott of energy companies;

(3) That the restricted financial institution list is published on the Treasurer's website; and

(4) That the institution's placement on the list may render the institution ineligible to enter into, or remain in, banking contracts with the State of West Virginia.

(b) Following a restricted financial institution's inclusion on the restricted financial institution list, the Treasurer will remove the institution from the list if the institution demonstrates that it has ceased all activity that boycotts energy companies.

§12-1C-4. Sources of information.

(a) In determining whether to include a financial institution on the restricted financial institution list, the Treasurer shall consider and may rely upon the following information:

(1) A financial institution's certification that it is not engaged in a boycott of energy companies;

(2) Publicly available statements or information made by the financial institution, including statements by a member of a financial institution's governing body, an executive director of a financial institution, or any other officer or employee of the financial institution with the authority to issue policy statements on behalf of the financial institution; or

(3) Information published by a state or federal government entity.

(b) In determining whether to include a financial institution on the restricted financial institution list, the Treasurer may not rely solely on the following information:

(1) Statements or complaints by an energy company; or

(2) Media reports of a financial institution's boycott of energy companies.

(c) A financial institution may not be compelled to produce or disclose any data or information deemed confidential, privileged, or otherwise protected from disclosure by state or federal law.

§12-1C-5. Restricted financial institutions.

(a) In selecting a financial institution to enter into a banking contract, the Treasurer is authorized to disqualify restricted financial institutions from the competitive bidding process or from any other official selection process.

(b) The Treasurer is authorized to refuse to enter into a banking contract with a restricted financial institution based on its restricted financial institution status.

(c) The Treasurer is authorized to require, as a term of any banking contract, an agreement by the financial institution not to engage in a boycott of energy companies for the duration of the contract.

§12-1C-6. Limitation on liability.

With respect to actions taken in compliance with this article, a public agency, public official, public employee, or member or employee of a financial institution is immune from liability.

§12-1C-7. Exemptions.

The provisions of this section do not apply to the duties, actions, and transactions of the West Virginia Investment Management Board as set forth in §12-6-1 *et seq.* of this code.



CHAPTER 236

(Com. Sub. for S. B. 438 - By Senators Nelson and Trump)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §12-1-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §12-1B-1, §12-1B-2, §12-1B-3, §12-1B-4, §12-1B-5, §12-1B-6, §12-1B-7, §12-1B-8, §12-1B-9, §12-1B-10, §12-1B-11, §12-1B-12, §12-1B-13, and §12-1B-14; all relating generally to the West Virginia Security for Public Deposits Act; requiring rule-making by the State Treasurer and authorizing emergency rules related to securing public deposits; providing a short title; providing legislative findings; specifying the act's applicability; defining terms; establishing the West Virginia Security for Public Deposits Program and requiring the program be operable by a certain date; establishing the Treasurer's Collateral Administration Fund as a special revenue account in the State Treasury and requirements for said fund; establishing powers and duties of the State Treasurer with regard to the West Virginia Security for Public Deposits Program; requiring rule-making by the State Treasurer and authorizing emergency rules related to the program; authorizing administrative fees, fines, penalties, and service charges; authorizing designated state depositories to secure public deposits pursuant to the act; clarifying that designated state depositories securing public deposits under the act are not required to secure deposits by other methods; establishing the duties of designated state depositories securing deposits pursuant to the act; allowing designated state depositories to secure public deposits through a pooled method; subrogating the State Treasurer to certain claims of a depositor and

requiring distribution of assets; requiring that deposits of public funds pursuant to the act be made in designated state depositories; authorizing public depositors to make public deposits; limiting liability of public depositors in certain circumstances; setting forth reporting requirements for designated state depositories; and clarifying that the act controls over inconsistent provisions of state or local law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-5. Limitation on amount on deposit; rules.

(a) The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall be secured by a deposit guaranty bond issued by a valid bankers' surety company or by other securities acceptable to the State Treasurer, pursuant to the dedicated method as defined in §12-1B-4 of this code, in an amount of at least 102 percent of the amount on deposit. The value of the collateral shall be determined by the State Treasurer.

(b) The State Treasurer shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this section.

ARTICLE 1B. WEST VIRGINIA SECURITY FOR PUBLIC DEPOSITS ACT.

§12-1B-1. Short title.

This article shall be known, and may be cited as, the West Virginia Security for Public Deposits Act.

§12-1B-2. Legislative intent; findings.

(a) The purpose of the West Virginia Security for Public Deposits Act is to allow designated state depositories to pledge

collateral for all public deposits made by the state or by any county, municipality, spending unit, or political subdivision of the state through a pooled method, as defined in §12-1B-4 of this code.

(b) It is the intent of the Legislature that designated state depositories participating in the Public Deposits Program be authorized to secure public deposits through the pooled method, as an alternative to the methods of securing public deposits authorized under other sections of this code, including §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code.

(c) The Legislature anticipates that authorizing designated state depositories to secure public deposits using the pooled method will lower the overall cost of public deposits and make public banking contracts in West Virginia more desirable to financial institutions.

§12-1B-3. Applicability.

This article applies to public deposits. This article does not apply to investments made by the State Treasurer, the Board of Treasury Investments, the Investment Management Board, or any other investments of the state.

§12-1B-4. Definitions.

For the purposes of this article, the following terms have the following meanings:

“Dedicated method” or “non-contingent liability pool” means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in §12-1-5 of this code.

“Default” or “insolvent” includes, but may not be limited to, the failure or refusal of any designated state depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

“Defaulting depository” means any designated state depository determined to be in default or insolvent.

“Designated state depository” means any state or national bank or any state or federal savings and loan association in this state meeting the requirements of this chapter.

“Political subdivision” means any county, municipality, board of education, corporation or instrumentality of one or more counties or municipalities, or any other government organization.

“Pooled method” means securing public deposits by accepting the contingent liability for the losses of public deposits of other designated state depositories that choose this method, as required by this article and any rule pursuant to this article.

“Public deposit” means funds of a public depositor held by a designated state depository that is authorized to receive or administer such moneys from a public depositor for deposit in any of the following types of accounts: Time deposits; demand deposits; savings deposits; or any other transaction accounts.

“Public depositor” means the state or any county, municipality, spending unit, or other political subdivision of the state.

“Qualified escrow agent” means the State Treasurer or any bank or trust company approved by the State Treasurer to hold collateral pledged to secure public deposits.

“Required collateral” of a designated state depository means the amount of collateral required to secure public deposits, according to this article or rules promulgated or proposed pursuant to this article.

“Spending unit” means a department, agency, board, commission, or institution of state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

“State Treasurer” or “Treasurer” means the State Treasurer of West Virginia or his or her designee.

“West Virginia Security for Public Deposits Program” or “Public Deposits Program” means the system and procedures developed by the State Treasurer to enable designated state depositories to secure public deposits pursuant to this article.

§12-1B-5. West Virginia Security for Public Deposits Program established.

The West Virginia Security for Public Deposits Program is hereby established. The Treasurer shall implement and administer the West Virginia Security for Public Deposits Program under the terms and conditions required by this article. The Public Deposits Program shall be operable on or before March 1, 2024.

§12-1B-6. The Treasurer’s Collateral Administration Fund.

There is hereby established in the State Treasury a special revenue account designated the Treasurer’s Collateral Administration Fund to be administered by the Treasurer pursuant to the provisions of this article. This fund shall be an interest-bearing fund and shall receive moneys authorized in the article. Moneys in the account shall be used by the Treasurer to pay any fees and costs associated with this article and for such other purposes as authorized by the Legislature.

§12-1B-7. Powers and duties of the State Treasurer; rules; charges; contracts.

In order to implement and administer the Public Deposits Program, the State Treasurer shall:

(1) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this article, including, but not limited to, the following:

(A) The terms and conditions under which public deposits must be secured;

(B) The method for determining the pooled collateral requirements based on balance the* of public funds held in the designated state depository in excess of funds insured by an agency of the federal government and the evaluation of the overall financial condition of the designated state depository;

(C) The collateral requirements and collateral pledging level for each designated state depository as determined to be prudent under the circumstances and based on nationally recognized financial rating services information and established financial performance guidelines;

(D) The securities or instruments that constitute eligible collateral under this article and the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;

(E) Reporting requirements for designated state depositories;

(F) The process for a designated state depository to withdraw from the pooled method of securing public deposits and instead be governed by the procedures for securing such deposits by the dedicated method or other approved method permitted in this code, consistent with the primary purpose of protecting public deposits;

(G) The process for determining when a default or insolvency has occurred, or is likely to occur, and the actions necessary for the protection, collection, compromise, or settlement of any claim arising in case of default or insolvency;

(H) Requirements for the payment of losses by pooled or dedicated methods; and

(I) Any and all guidelines necessary and proper for the full and complete administration of this article;

(2) Charge and collect any necessary administrative fees, fines, penalties, and service charges in connection with the Public Deposits Program or any agreement, contract, or transaction pursuant to this article;

*NOTE: An amendment had placed this word “the” following the word “on” but this is printed as it was in the enrolled bill.

(3) Execute contracts, agreements, or other instruments for goods and services necessary to effectuate this article, including agreements with designated state depositories or any other entity. Selection of these services is not subject to §5A-3-1 *et seq.* of this code; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

§12-1B-8. Authority to secure public deposits; acceptance of liabilities and duties of designated state depositories.

(a) All designated state depositories are hereby authorized to secure public deposits in accordance with this article and shall be considered to have accepted the liabilities and duties imposed upon it pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, including, but not limited to, §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code, a designated state depository securing public deposits in accordance with this article is not required to secure said deposits by another method provided in this code.

§12-1B-9. Collateral for public deposits.

(a) Designated state depositories shall secure public deposits under this article by the pooled method, the dedicated method or by any other method permitted in this code. Every designated state depository securing public deposits under this article shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the State Treasurer. Substitutions and withdrawals of eligible collateral may be made as determined by the State Treasurer.

(b) A designated state depository shall meet all collateral requirements under this article if it accepts or retains any public deposit under this article: *Provided*, That a designated state depository may accept or retain public deposits that occur outside of its set hours of operation and in excess of its required collateral, so long as any such necessary deposit of eligible collateral is made

prior to the close of business on the second business day following receipt of the deposit.

§12-1B-10. Subrogation of the State Treasurer to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any designated state depository on any claim presented pursuant to this article, the State Treasurer shall be subrogated to all of such depositor's rights, title, and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets in the same amount as would have been received by the public depositor ratably with other depositors. Any sums received from any such distribution shall be paid to the other designated state depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the State Treasurer in enforcing any such claim.

§12-1B-11. Deposit of public funds in designated state depositories; authority to make public deposits.

(a) Public deposits made pursuant to this article shall be deposited in a designated state depository.

(b) All public depositors shall make public deposits under their control in designated state depositories, securing such public deposits pursuant to this article: *Provided*, That a public depositor shall provide a designated state depository with at least two business days of advance notice prior to making any large increase in its public deposits that could otherwise result in the depository having an insufficient amount of eligible collateral necessary to secure the public deposits in accordance with the provisions of this article. If the advanced notice is not provided, the designated state depository shall notify the State Treasurer accordingly.

(c) A county, municipality, spending unit, or other political subdivision of the state may not require any pledge of collateral from a designated state depository for their deposits in excess of the requirements of this article.

§12-1B-12. Liability of public depositors.

When deposits are made in accordance with this article, no official of a public depositor may be personally liable for any loss resulting from the default or insolvency of any designated state depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

§12-1B-13. Reports of designated state depositories.

No later than the 10th day after the end of each reporting period, or when otherwise requested by the State Treasurer, each designated state depository accepting any public deposit under this article shall submit to the State Treasurer an electronic report of such data as required by the Treasurer for the administration of this article.

§12-1B-14. Inconsistent provisions.

If provisions of this article are inconsistent with the provisions of any other state or local law relating to the pledge of collateral by the state or any county, municipality, or other political subdivision for purposes of securing public deposits in financial institutions, the provisions of this article shall control.

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CHAPTER 237

**(Com. Sub. for S. B. 487 - By Senators Tarr, Clements,
Roberts, Hamilton, Plymale, and Jeffries)**

[Passed March 12, 2022; in effect from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the threshold which the Secretary of the Department of Revenue is to annually deposit up to the first 50 percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended; raising the percentage of the threshold; and combining the totals of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B Revenue for calculation of threshold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in §11B-2-21 and §11B-2-22 of this code. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with

this subsection up to an aggregate amount not to exceed 13 percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Within 60 days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first 50 percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the combined balance of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B to 20 percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B are funded at a combined amount equal to or exceeding 20 percent of the state's General Revenue Fund budget for the fiscal year just ended, then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until the time that the combined balances of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B is less than 20 percent of the total appropriations from the State Fund, General Revenue.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or §11B-2-21 or §11B-2-22 of this code, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section 19, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the

Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within 90 days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of §4-11A-2 of this code, repayments made of the loan from the

West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of §33-20F-1 *et seq.* of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in §4-11A-3 of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and

investment of the moneys in accordance with the provisions of §12-6C-1 *et seq.* of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.

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CHAPTER 238

**(Com. Sub. for S. B. 523 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 7, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to repeal §12-7-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-7-2, §12-7-3, §12-7-4, §12-7-5, §12-7-6, §12-7-7, §12-7-9, and §12-7-12 of said code; to amend and reenact §31-15-6 of said code; and to amend and reenact §31-18-20c of said code, all relating to management and control of Jobs Investment Trust to be vested in the West Virginia Economic Development Authority; and terminating the Jobs Investment Trust Board.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-2. Legislative findings.

(a) The Legislature finds that the Jobs Investment Trust is a necessary tool to make investment funds available to eligible businesses, would stimulate economic growth, and provide or retain jobs within the state. Accordingly, it is declared to be the public policy of the state to create an investment program to inject needed capital into the business community, sustain or improve business profitability, and provide jobs to the citizens of the state.

(b) The Legislature further finds that:

(1) The availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state;

(2) The public policy of the state will be served through financing projects, extending loans, providing financing or credit for working capital, creating innovative investment plans and options, and providing equity financing or the refinancing of existing debt of an enterprise;

(3) It is in the public interest, in order to address the needs of the business community and the citizens of the state, that a public body corporate be created with full power to accept grants, gifts, and appropriations; to generate revenues to furnish money and credit to approved businesses or enterprises; to promote the establishment of new and innovative projects; and to upgrade, expand, and retain existing projects; and

(4) Fundamental changes are occurring in national and international markets that increase the need for debt financing, equity capital, and near-equity capital for emerging, expanding, and restructuring business opportunities in the state.

(c) The Legislature further finds that:

(1) Due to the creation of the Jobs Investment Trust, moneys will be available for venture capital in this state;

(2) The implementation of this innovative program may supplant the need for the state to otherwise assist private venture capital concerns through other tax credits;

(3) Due to the availability of venture capital funds through this program the granting of venture capital company credits under the Capital Company Act should be reduced for three fiscal years pending the full implementation of the Jobs Investment Trust Program;

(4) Due to this reduction in the certification of tax credits, additional general revenue may become available for new economic development programs;

(5) These economic development programs may be funded from general revenue in an amount appropriate to effectuate the purposes of these programs; and

(6) Due to the foregoing findings, there shall be an annual line item appropriation, in an amount determined by the Legislature, to the West Virginia Development Office for a matching grant program for regional economic development corporations or authorities.

§12-7-3. Definitions.

For purposes of this article:

(a) “Board” means the West Virginia Economic Development Authority, established pursuant to §31-15-1 *et seq.* of this code.

(b) “Eligible business” means any business, including, but not limited to, a business licensed or seeking licensure by the small business administration as a small business investment company under the Small Business Investment Act, which is qualified to do business in West Virginia and is in good standing with all applicable laws affecting the conduct of such business.

(c) “Non-incentive tax credits” means the non-incentive tax credits issued by the state to the Jobs Investment Trust Board and authorized for sale and transfer by the jobs investment trust board pursuant to §12-7-8a of this code.

(d) “Securities” means all bonds, notes, stocks, units of ownership, debentures, or any other form of negotiable or nonnegotiable evidence of indebtedness or ownership.

§12-7-4. Jobs Investment Trust Board; termination; vesting with the Economic Development Authority.

(a) The Jobs Investment Trust Board is hereby terminated, and the management and control of the Jobs Investment Trust shall be vested in the West Virginia Economic Development Authority.

(b) The board shall meet on a quarterly basis or more often, if necessary, to carry out the powers and duties of the board with respect to the management of the Jobs Investment Trust, as set forth in this article.

(c) For the purposes of managing the Jobs Investment Trust, the rules related to board makeup and quorum requirements shall be the same as those set forth in §31-15-5 of this code.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

(a) It is the duty of the board to manage and control the Jobs Investment Trust. With the advice and consent of the Senate, the Governor appoints an executive director of the Jobs Investment Trust who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The director serves at the Governor's will and pleasure and is responsible for managing and administering the daily functions of the Jobs Investment Trust and for performing other functions necessary to the effective operation of the trust. The compensation of the director is annually fixed by the board.

(b) The board annually elects a secretary to keep a record of the proceedings of the board, who need not be a member of the board.

(c) The members and officers of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

(e) Upon the affirmative vote of at least a majority of those members in attendance in a meeting of the board, the board may approve any action to be taken and authorize the executive director for and on behalf of the board to execute and deliver all

instruments, agreements, or other documents that are required or are reasonably necessary to effectuate the decisions or acts of the board.

(f) The West Virginia Economic Development Authority shall provide office space and staff support services for the director and the board shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment activities of the board, and shall make the disbursements of all funds as directed by the board, for which the West Virginia Economic Development Authority shall be reasonably compensated as determined by the board.

(g) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board's activities in order to enhance the opportunities at the institutions for learning and for participation in the board's investment activities and in the economic development of the state, whether in research, financial analysis, management participation, or in such other ways as the board and the executive director may find appropriate.

§12-7-6. Corporate powers.

The board may:

(1)(A) Make loans to eligible businesses with or without interest secured if and as required by the board; and (B) acquire ownership interests in eligible businesses. These investments may be made in eligible businesses that stimulate economic growth and provide or retain jobs in this state and shall be made only upon the determination by the board that the investments are prudent and meet the criteria established by the board;

(2) Accept appropriations, gifts, grants, bequests, and devises and use or dispose of them to carry out its corporate purposes;

(3) Make and execute contracts, releases, compromises, agreements, and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

(4) Collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, in connection with making equity investments and in connection with providing technical, consultative, and project assistance services;

(5) Sue and be sued;

(6) Make, amend, and repeal bylaws and rules consistent with the provisions of this article;

(7) Hire its own employees, who shall be employees of the State of West Virginia for purposes of §5-10-1 *et seq.* and §5-16-1 *et seq.* of this code, and appoint officers and consultants and fix their compensation and prescribe their duties;

(8) Acquire, hold, and dispose of real and personal property for its corporate purposes;

(9) Enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association, or organization;

(10) Acquire real and personal property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer, and convey any real or personal property to a buyer; and, in the event a sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) Purchase, sell, own, hold, negotiate, transfer, or assign: (A) Any mortgage, instrument, note, credit, debenture, guarantee, bond, or other negotiable instrument or obligation securing a loan, or any part of a loan; (B) any security or other instrument evidencing ownership or indebtedness; or (C) equity or other ownership interest. An offering of one of these instruments shall include the representation and qualification that the board is a public body corporate, managing a venture capital fund that includes high-risk investments and that in any transfer, sale, or

assignment of any interest, the transferee, purchaser, or assignee accepts any risk without recourse to the Jobs Investment Trust or to the state;

(12) Procure insurance against losses to its property in amounts, and from insurers, as is prudent;

(13) Consent, when prudent, to the modification of the rate of interest, time of maturity, time of payment of installments of principal or interest, or any other terms of the investment, loan, contract, or agreement in which the board is a party;

(14) Establish training and educational programs to further the purposes of this article;

(15) File its own travel rules;

(16) Borrow money to carry out its corporate purpose in principal amounts and upon terms as are necessary to provide sufficient funds for achieving its corporate purpose;

(17) Take options in or warrants for, subscribe to, acquire, purchase, own, hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool, or syndicate: (A) Any loans, notes, mortgages, or securities; (B) debt instruments, ownership certificates, or other instruments evidencing loans or equity; or (C) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, or other private enterprise to foster economic growth, jobs preservation and creation in the State of West Virginia, and all other acts that carry out the board's purpose;

(18) Contract with either Marshall University or West Virginia University, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board to effectuate the purposes of this article;

(19) Enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;

(20) Provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this state and hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, debt instruments, or other instruments evidencing loans or equity interest in furtherance of the board's corporate purposes;

(21) Form partnerships, create subsidiaries, or take all other actions necessary to qualify as a small business investment company under the United States Small Business Investment Act, PL 85-699, as amended;

(22) Provide for staff payroll and make purchases in the same manner as the West Virginia Economic Development Authority;

(23) Indemnify its members, directors, officers, employees, and agents relative to actions and proceedings to which they have been made parties and make advances for expenses relative thereto and purchase and maintain liability insurance on behalf of those persons all to the same extent as authorized for West Virginia business corporations under present or future laws of the state applicable to business corporations generally; and

(24) Contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq.* of this code, counsel may, but is not limited to, represent the board in court, negotiate contracts and other agreements on behalf of the board, render advice to the board on any matter relating thereto, prepare contracts and other agreements, and provide any other legal services requested by the board.

§12-7-7. Limitation on investments.

Subject to the provisions of §12-7-9 of this code, the board may invest in any eligible business: *Provided*, That at the time of the placement of the investment not more than 20 percent of the board's total investment portfolio is invested in one eligible business within any two-year period: *Provided, however*, That the board may invest in an eligible business up to an additional 20 percent of the board's total investment portfolio, or up to a total of

\$2,000,000, whichever is less. The additional investment must be in the form of a short-term debt investment to be repaid within 12 months of the investment: *Provided further*, That the board may extend said 12-month repayment term and upon terms consistent with the actions of other investors involved in similar investments with the eligible business if the eligible business demonstrates to the board: (1) That said business is progressing with a plan for capital formation and business development; and (2) that said extension of the 12-month period, and any other modification thereto, will not substantially prejudice the position of the board in relation to the other investors in, and creditors of, the eligible business: *And Provided further*, That the board shall report to the Governor and the Joint Committee on Government and Finance of its intention to extend any repayment term at least 20 days prior to the board approving any extension made on or after April 1, 1994. Any reported intent to extend any repayment term may be made electronically.

§12-7-8. Funding.

[Repealed.]

§12-7-9. Applications for investment priority; investment package.

(a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness, the benefits to the West Virginia economy, the leverage potential for investments in small business investment companies, the jobs creation potential, and the economic circumstances of the region or regions of the state that would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.

(b) Any faculty or students of a public or private institution of higher education in the state may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) An annual audit shall be conducted by an independent firm of certified public accountants and shall be made available to the Legislature annually. A copy of the audit may be provided to the Legislature electronically and paper copies may be provided upon the request of any member.

(d) The board shall forward to the West Virginia Economic Development Authority for its review and information approved investment packages containing information as is necessary to permit the West Virginia Economic Development Authority to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

***§12-7-12. Reports of board; report of housing development fund.**

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state. The report required in this subsection may be made available electronically on the board's website or through the website of the West Virginia Economic Development Authority. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

(b) The West Virginia Economic Development Authority shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year. The report required in this subsection may be made available electronically on the West Virginia Economic

*NOTE: This section was also amended by H. B. 4067 (Chapter 140), which passed prior to this act.

Development Authority's website. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6. General powers of authority.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(1) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing, and tourist activity in this state.

(2) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

(3) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any project.

(4) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(5) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed, or to testify or who commits any contempt after being summoned to appear.

(6) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits, and issue subpoenas.

(7) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(8) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing contained in this subsection or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: *Provided, however*, That nothing contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: *Provided further*, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs: *And provided further*, That nothing contained in this subsection or any other provision of this article shall be construed as prohibiting the authority from making working capital loans from a revolving loan fund capitalized with federal grant funds including, but not limited to, federal grant funds received from the United States Economic Development Administration.

(9) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(10) To issue and deliver revenue bonds or notes in exchange for a project.

(11) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds

and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(12) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(13) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(14) To adopt, use, and alter a corporate seal.

(15) To make, amend, repeal, and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(16) To appoint officers, agents, and employees and to contract for and engage the services of consultants.

(17) To make contracts and to execute all instruments necessary to carry out the powers and duties of the authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of this code do not apply to contracts made pursuant to this subdivision: *Provided, however*, That nothing in this article authorizes the authority to enter into contracts or agreements with financial institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

(18) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(19) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or private sale, transfer, lease, or convey such project to any enterprise.

(20) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United

States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security, or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(21) To acquire, construct, maintain, improve, repair, replace, and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks, and other means of ingress and egress to and from projects located within this state.

(22) To acquire, construct, maintain, improve, repair, and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities, and any combinations thereof for the use and benefit of any enterprise located within this state.

(23) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses, and all other property, property rights, and appurtenances for the use and benefit of any enterprise located within this state.

(24) To acquire, by purchase, lease, donation, or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights, and interests acquired by the authority shall be taken in the name of the authority.

(25) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or

have not matured and whether the authority originally issued the bonds or notes to be refunded.

(26) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests, or bonds or notes to be refunded.

(27) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable, or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

(28) To the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(29) To sell loans, security interests, or other obligations in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of loans, security interests, or other obligations may be used in the same manner and for the same purposes as bond and note revenues.

(30) To procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as the authority deems desirable.

(31) To sell, license, lease, mortgage, assign, pledge, or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy, or use of such property or any right or interest therein by another, in such manner and upon such terms as it deems appropriate.

(32) To participate with state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.

(33) To finance, organize, conduct, sponsor, participate, and assist in the conduct of special institutes, conferences, demonstrations, and studies relating to the stimulation and formation of business, industry, and trade endeavors.

(34) To conduct, finance, and participate in technological, business, financial, and other studies related to business and economic development.

(35) To conduct, sponsor, finance, participate, and assist in the preparation of business plans, financing plans, and other proposals of new or established businesses suitable for support by the authority.

(36) To prepare, publish, and distribute, with or without charge, as the authority may determine, such technical studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information.

(37) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(38) To exercise all the powers which a corporation may lawfully exercise under the laws of this state.

(39) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq.* of this code, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(40) To develop, maintain, operate, and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(41) To exercise the powers and responsibilities previously vested in the State Building Commission by §5-6-11a of this code, including, but not limited to, the authority to refund bonds issued in accordance with said section.

(42) To manage the Jobs Investment Trust described in §12-7-1 *et seq.* of this code, and to exercise those powers and responsibilities previously vested in the Jobs Investment Trust Board, as outlined in §12-7-6 of this code.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-20c. Jobs Development Fund.

There is hereby created and established a special fund to be designated as the Jobs Development Fund into which the Housing Development Fund shall, effective July 1, 1992, deposit the sum of \$10 million. Thereafter, the Housing Development Fund shall have no further duty or obligation to, but may in its sole discretion, deposit additional funds. Effective July 1, 2022, such funds shall be governed, administered, and accounted for by the West Virginia Economic Development Authority established pursuant to §31-15-1 *et seq.* of this code as a special purpose account separate and distinct from any other moneys, fund, or funds owned or managed by the authority. The sole and exclusive purpose of such fund shall be to provide a source for distribution from time to time to the jobs investment trust as provided for in §12-7-1 *et seq.* of this code. Upon receipt by the authority from time to time of a written requisition from the trust together with a certificate that the funds so requisitioned will be used in accordance with the provisions of §12-7-1 *et seq.* of this code and are expected to be expended within 30 days after such disbursement to fund a loan or other investment or to pay the operating expenses of the trust, the authority shall disburse the amount so requisitioned. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such fund may be invested and reinvested by the authority as permitted under §31-18-6 of this code.

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CHAPTER 239

(S. B. 686 - By Senators Trump and Nelson)

[Passed March 12, 2022; in effect from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §31-18-6 and §31-19-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Housing Development Fund; providing certain limits on loans made or purchased with the proceeds of notes or bonds of the Housing Development Fund; and authorizing the Housing Development Fund to allocate a portion of its state ceiling allocation to political subdivisions or city or county housing authorities authorized to issue bonds or notes for qualified residential rental projects under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate Powers.

The Housing Development Fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that construction loans are not otherwise available, wholly or in part,

from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the Housing Development Fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized, and operated in accordance with the provisions of §31-18-19 of this code, to defray development costs to sponsors of land development, residential housing, or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests, and devises and to utilize or dispose of the same to carry out its corporate purpose;

(6) To make and execute contracts, releases, compromises, compositions, and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(7) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidences of indebtedness, and in connection with providing technical, consultative, and project assistance services;

(8) To invest any funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes, or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Tennessee Valley Authority; United States Postal Service; Inter-American Development Bank; International Bank for Reconstruction and Development; Small Business Administration; Washington Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank; Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer's Home Administration; the Federal National Mortgage Association or the Government National Mortgage Association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the Government National Mortgage Association or Federal National Mortgage Association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements, or similar banking arrangements with a member bank or banks of the federal reserve

system or a bank the deposits of which are insured by the federal deposit insurance corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: *Provided*, That such investments shall only be made to the extent insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the Housing Development Fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the State of West Virginia;

(vi) Direct and general obligations of any other state, municipality, or other political subdivision within the territorial United States: *Provided*, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture, or annuity issued by any corporation organized and operating within the United States: *Provided*, That such corporation shall have a minimum net worth of \$15 million and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: *Provided, however*, That: (1) Such corporation has earned a profit in eight of the preceding 10 fiscal years as reflected in its statements; and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding 10 fiscal years; and (3) the bonds, notes, or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet, Best's, or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity, or other market risks in relation

to obligations issued or to be issued or owned or to be owned by the Housing Development Fund, options, futures contracts (including index futures but exclusive of commodities futures, options, or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in §31-18-6(8)(vii) of this code;

(ix) Certificates, shares, or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia State Board of Investments or any other obligation authorized as an investment for the West Virginia State Board of Investments under §12-6-1 *et seq.* of this code or for a public housing authority under §16-15-1 *et seq.* of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

(11) To make, and from time to time, amend, and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees, and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association, or organization;

(15) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Housing Development Fund has an interest and to sell, transfer, and convey any such property to a buyer and, in the event of such sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(16) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, rehabilitation, improvement, land development, mortgage, or temporary loan;

(17) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(18) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation loan, improvement loan, temporary loan, contract, or agreement of any kind to which the Housing Development Fund is a party;

(19) To make and publish rules and regulations respecting its federally insured mortgage lending, uninsured mortgage lending, construction lending, rehabilitation lending, improvement lending and lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;

(20) To borrow money to carry out and effectuate its corporate purpose and to issue its bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than 20 years from date of issuance and no bonds shall be issued to mature more than 50 years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than 20 years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than 50 years from the date of issuance;

(22) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption, or payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement, or operation of residential housing, nonresidential projects, or land development: *Provided*, That no such grant or other financial assistance shall be provided except upon a finding by the Housing Development Fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining or increasing employment or the tax base;

(24) To provide project assistance services for residential housing, nonresidential projects, and land development, including, but not limited to, management, training, and social and other services;

(25) To promote research and development in scientific methods of constructing low-cost land development, residential housing, or nonresidential projects of high durability including grants, loans, or equity contributions for research and development purposes: *Provided*, That no such grant or other financial assistance shall be provided except upon a finding by the Housing Development Fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining and increasing employment and the tax base;

(26) With the proceeds from the issuance of notes or bonds of the Housing Development Fund, including, but not limited to, mortgage finance bonds, or with other funds available to the Housing Development Fund for such purpose, to participate in the making of or to make loans to mortgagees approved by the Housing Development Fund and take such collateral security therefor as is approved by the Housing Development Fund and to invest in, purchase, acquire, sell, or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans for the construction, rehabilitation, improvement, purchase, or refinancing of land development, residential housing, or nonresidential projects in this state: *Provided*, That the Housing Development Fund shall obtain such written assurances as shall be satisfactory to it that the proceeds of such loans, investments, or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans, or uninsured construction loans, for land development, residential housing, or nonresidential projects or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(28) To make or participate in the making of long-term uninsured mortgage loans for land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease or otherwise, which is found by the Housing Development Fund to be suitable, or potentially suitable, as a site, or as part of a site, for land

development or the construction of residential housing or nonresidential projects; to hold such real property or to acquire by purchase or otherwise and to transfer by sale or otherwise any ownership or equity interests in any other legal entity which holds such real property; to finance the performance of land development, residential housing, or nonresidential projects on or in connection with any such real property or to perform land development, residential housing, or nonresidential projects on or in connection with any such real property; to own, operate, and sponsor or participate in the sponsorship of land development, residential housing, or nonresidential projects; or to sell, transfer and convey, lease, or otherwise dispose of such real property, or lots, tracts, or parcels of such real property, for such prices, upon such terms, conditions, and limitations, and at such time or times as the Housing Development Fund shall determine;

(30) To make loans, with or without interest, but with such security for repayment as the Housing Development Fund determines reasonably necessary and practicable from the land development fund, if created, established, organized, and operated in accordance with the provisions of §31-18-20a of this code, to sponsors of land development, to defray development costs and other costs of land development;

(31) To exercise all of the rights, powers, and authorities of a public housing authority as set forth and provided in §16-15-1 *et seq.* of this code, in any area or areas of the state which the Housing Development Fund shall determine by resolution to be necessary or appropriate;

(32) To provide assistance to urban renewal projects in accordance with the provisions of §16-18-28 of this code and in so doing to exercise all of the rights, powers, and authorities granted in this article or in said article, in and for any communities of the state which the Housing Development Fund shall determine by resolution to be necessary or appropriate;

(33) To make or participate in the making of loans for the purpose of rehabilitating or improving existing residential and temporary housing or nonresidential projects, or to owners of

existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary housing or nonresidential projects and, in connection therewith, to refinance existing loans involving the same property. Such loans shall be made only upon determination by the Housing Development Fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(34) Whenever the Housing Development Fund deems it necessary in order to exercise any of its powers set forth in §31-18-6(29) of this code, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under §54-1-1 *et seq.* of this code, and the purposes set forth in said subdivision are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of “use or operation by the owner in the production of agricultural products” means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the Governor and the Commissioner of Agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products;

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase, or

refinancing of land development, residential housing, and nonresidential projects in this state;

(36) To form one or more nonprofit corporations, whose board of directors shall be the same as the Board of Directors of the Housing Development Fund, which shall be authorized and empowered to carry out any or all of the corporate powers or purposes of the Housing Development Fund, including, without limitation, acquiring limited or general partnership interests and other forms of equity ownership;

(37) To receive and compile data into an electronic database and make available the raw mortgage foreclosure data that is required to be reported to county clerks by trustees pursuant to the provisions of §38-1-8a of this code, including all data that has been received by the banking commissioner pursuant to §31A-2-4c(a) of this code, as of the effective date of the amendments made to said section during the regular session of the 2010 Legislature. This information shall be periodically forwarded by county clerks to the Housing Development Fund, in accordance with the provisions of §44-13-4a of this code;

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

(39) Notwithstanding any other provision of law, no loan may be made or purchased with proceeds of notes or bonds of the Housing Development Fund unless: (i) The related note or bond has received an investment grade rating from a nationally recognized bond-rating agency; or (ii) all payments of principal and interest on such loan are the subject of credit enhancement that is a senior obligation of a bank, national bank, trust company, savings bank, savings and loan association, insurance company, governmental agency of the United States, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any combination thereof; or (iii) at or prior to the issuance of the related note or bond, permanent financing is in full force and effect which will be drawn upon to pay all unpaid amounts with respect to such loan remaining at its maturity; or (iv) all payments of principal and interest on the related note or

bond are the subject of credit enhancement that is a senior obligation of a bank, national bank, trust company, savings bank, savings and loan association, insurance company, governmental agency of the United States, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any combination thereof; or (v) the related note or bond is fully cash-collateralized; or (vi) the related note or bond is a mortgage finance bond; and

(40) To allocate from time to time a portion of its state ceiling allocation under §13-2C-21(b) of this code to any political subdivision or city or county housing authority authorized to issue bonds or notes for qualified residential rental projects, upon such terms and conditions as the board of directors deems reasonable and appropriate: *Provided*, That any amounts so allocated by the Housing Development Fund that remain unused by December 31 in any year not otherwise subject to a carryforward pursuant to section 146(f) of the Internal Revenue Code shall be allocated to the Housing Development Fund, which shall be considered to have elected to carryforward the unused allocation for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code.

§31-18-9. Borrowing of money.

The borrowing of money and the notes and bonds evidencing any such borrowing shall be authorized by resolution approved by the Board of Directors of the Housing Development Fund, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewal thereof, not exceeding 20 years from the date of issue of such original note, and, in the case of any such bond, not exceeding 50 years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or conditions of redemption as such resolution or resolutions may provide.

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CHAPTER 240

(Com. Sub. for H. B. 2838 - By Delegates Westfall and Queen)

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §6-9-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-6-26, and §11-6-27 of said code; and to amend and reenact §11A-3-36 of said code, all relating to state auditor's special revenue funds; authorizing the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds; creating the state auditor's public integrity and fraud fund for use of said funds; providing for operating funds in the public utilities and land sections to expire funds at the end of the fiscal year in a method consistent with other divisions of the state auditor's office; and providing for the investment of balances in the public utilities tax loss restoration fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISOR OF LOCAL GOVERNMENT OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

(a) The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution shall be paid by the county commission of the county; the cost of any service or act to any board of education shall be paid by the board; the cost of any service or act to any municipal corporation shall be paid by the

authorities of the municipal corporation: *Provided*, That in municipalities in which the total revenue from all taxes does not exceed the sum of \$2,000 annually, the cost including the per diem and all actual costs and expenses of the services shall not exceed the sum of \$200. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help, and the other costs that are necessary to enable them to perform the services required, but the costs shall not exceed the sum of \$3,000 for services rendered to a Class IV municipality: *Provided, however*, That the chief inspector may charge up to an additional \$3,000 for costs incurred for each service or act performed for a utility or park system owned by a Class IV municipality and for each policemen's and firemen's pension and relief fund maintained by the municipality: *Provided further*, That if a municipality is required to undergo a single audit by the federal agency or agencies making a grant, the cost limitations of this subsection do not apply: *And provided further*, That the chief inspector shall provide a written quote for all costs in advance for all services required by this article. The chief inspector shall render to the agency liable for the cost a statement of the cost as soon after the cost was incurred as practicable and the agency shall allow the cost and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid and the total amount constitutes a debt against the local agency due the state. Whenever there is in the State Treasury a sum of money due any county commission, board of education or municipality from any source, upon the application of the chief inspector, the sum shall be at once applied on the debt against the county commission, board of education or municipality and the fact of the application of the fund shall be reported by the Auditor to the county commission, board of education or municipality, which report shall be a receipt for the amount named in the report. All money received by the chief inspector from this source shall be paid into the State Treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of the services, unless otherwise directed by the Legislature. The cost of any examination, service, or act by the chief inspector made necessary, or the part thereof that was made

necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from that person, on motion, on 10-days' notice in any court having jurisdiction.

(b) For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:

(1) Subject to legislative appropriation, the sum of \$25,000 to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service;

(2) Payments received for the cost of services of the chief inspector's office and interest earned on the invested balance of the chief inspector's revolving fund shall be deposited into this revolving fund, which shall be known as the Chief Inspector's Fund;

(3) Any appropriations made to this fund may not be considered to have expired at the end of any fiscal period; and

(4) The chief inspector may transfer an amount not to exceed \$400,000 from the Chief Inspector's Fund to the special operating fund created in §32-4-401 *et seq.* of this code: *Provided*, That any transfers shall be completed prior to July 1, 2003.

(c) Notwithstanding §61-11A-4 of this code, a court may, in its discretion, when sentencing a defendant convicted of a felony or misdemeanor based upon any audit, examination, or investigation by the State Auditor, which discloses misfeasance, malfeasance, or nonfeasance in the office on the part of any public officer or employee, order reimbursement to the State Auditor for the actual costs of auditing, investigating, or prosecuting a violation.

(1) There is hereby established a special fund in the State Treasury known as the "State Auditor's Public Integrity and Fraud Fund." The fund shall be administered by the State Auditor to enhance fraud detection, prevention, transparency and enforcement

efforts for the purposes of carrying out the duties under this article, and §12-4A-3 of this code and shall consist of moneys deposited in the fund pursuant to this subsection, any other funds appropriated by the Legislature, and the interest or other earnings on the moneys in the fund.

CHAPTER 11. TAXATION.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in Auditor's Office.

The Auditor shall establish a special operating fund in the state Treasury for the public utilities division in his or her office. The Auditor shall pay into the fund one and three eighths percent of the gross receipts of all moneys collected as provided for in this article. Up to one percent of the gross receipts shall be transferred from the operating fund to the tax loss restoration fund created in §11-6-27. From the operating fund, the Auditor shall reimburse the Tax Division for the actual operating expenses incurred in the performance of its duties required by this article not to exceed 50 percent of the fund balance after annual transfers to the tax loss restoration fund. Any moneys remaining in the special operating fund after annual transfers to the tax loss restoration fund shall be used by the Tax Division and the Auditor for funding the operation of their offices. If, at the end of any fiscal year, the balance in the special operating fund established under this section exceeds 20 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General Revenue Fund.

§11-6-27. Public utilities tax loss restoration fund.

(a) The Auditor shall establish a special revenue fund in the state Treasury entitled the "Public Utilities Tax Loss Restoration Fund". The Auditor shall pay into the fund up to one percent of the gross receipts deposited in the public utilities operating fund created in §11-6-26 of this code and up to one percent of the gross

receipts deposited in the operating fund of the interstate commerce division created in §11-6G-17 of this code. The proceeds of the tax loss restoration fund shall be distributed quarterly on a proportional basis to counties, districts and municipalities that have lost assessed value from the prior year's assessment and the method of distribution is based upon the county, district or municipality's percentage loss compared to the total loss of all counties, districts and municipalities that have lost assessed value from the prior year's assessment: *Provided*, That the calculation to the adjustments shall exclude loss in tax revenue attributed to the school current levy, as set forth in §11-8-6c of this code: *Provided, however*, That the proceeds received by any county, district or municipality shall not be greater than the loss of tax revenue caused by the decrease in assessed value.

(b) The Auditor shall request the State Treasurer to invest the balance of the Public Utilities Tax Loss Restoration Fund pursuant to §12-6C-6 of this code. The Auditor may use the earnings from investments to support any provisions of this code administered by the Auditor related to local government oversight or the general operations of the office.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-36. Operating fund for land department in Auditor's office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her if such charges were paid by or were payable to him or her the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as

represents state taxes and interest. All payments so excepted shall be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43 of this code, and to pay for the operation and maintenance of the land department in his or her office. If, at the end of any fiscal year, the balance in the special operating fund exceeds 20 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General School Fund.

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CHAPTER 241

(H. B. 4496 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §12-1-12 of the Code of West Virginia, 1931, as amended, to allow interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested and making said amendments retroactive in application.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12. Investing funds in treasury; depositories outside the state.

(a) When the funds in the Treasury exceed the amount needed for current operational purposes, as determined by the state Treasurer, the state Treasurer shall make all excess funds available for investment by the board of Treasury Investments which shall invest the excess for the benefit of the General Revenue Fund: *Provided*, That the state Treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed \$125 million of the operating funds needed to meet current operational purposes. Investments made by the state Treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in §12-6-8 of this code, including all cash and investments of the fund.

(b) Spending units with authority to retain interest or earnings on a fund or account may submit requests to the state Treasurer to transfer moneys to a specific investment pool of the Investment Management Board or the board of Treasury Investments and retain any interest or earnings on the money invested. The General Revenue Fund shall receive all interest or other earnings on money invested that are not designated for a specific fund or account.

(c) Whenever the funds in the Treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the state Treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when depositories outside the state have qualified by giving the bond prescribed in §12-1-4 of this code, the state Treasurer shall deposit funds in the same manner as funds are deposited in depositories within the state under this article.

(d) The State Treasurer may transfer funds to financial institutions outside the state to meet obligations to paying agents outside the state if the financial institution meets the same collateral requirements as set forth in this article.

(e) Notwithstanding subsection (b) of this section, at the direction of the Governor, interest or earnings on federal moneys received by the state related to the COVID-19 pandemic, including, but not limited to, moneys received pursuant to the Coronavirus Aid, Relief, and Economic Security Act and the American Rescue Plan Act, shall be retained in the funds or accounts where the moneys are invested unless otherwise restricted by federal law or regulation, to be expended according to funding source restrictions. This subsection shall apply retroactively to the date of receipt of the federal moneys described in this subsection.

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CHAPTER 242

(S. B. 435 - By Senators Trump, Baldwin, Romano, and Caputo)

[Passed February 7, 2022; in effect from passage.]
[Approved by the Governor on February 16, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2D-8, relating to awarding the service weapon of a retiring Division of Protective Services member to the retiree without charge when the retiring member honorably retires with at least 10 years of service or with less than 10 years of service based upon determination that the retiring member is totally physically disabled as a result of service with the Division of Protective Services; prohibiting the award of a service weapon to a retiring member whom the Division of Protective Services knows is prohibited from possessing a firearm, is mentally incapacitated, or a danger to any person or the community; authorizing the sale of service weapons that are taken out of service due to routine wear to any active or retired Division of Protective Services member; providing that proceeds from the sales be used to offset the cost of new service weapons; and exempting the sale from the requirements of the Purchasing Division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-8. Awarding service weapon upon retirement of Division of Protective Services member.

(a) Upon the retirement of a member of the Division of Protective Services, including the Director of the Division of

Protective Services and Deputy Director of the Division of Protective Services, the Division of Protective Services shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the member is retiring honorably with a minimum of 10 years of service; or

(2) The member is retiring with less than 10 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the Division of Protective Services.

(b) Notwithstanding the provisions of subsection (a) of this section, the Division of Protective Services shall not award a service weapon to any member whom the Division of Protective Services:(1) Knows is prohibited from possessing a firearm by state or federal law, (2) has reason to believe such retiring member to be mentally incapacitated, or (3) has reason to believe the retiring member constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the Division of Protective Services may offer the service weapon for sale, at fair market value, to any active or retired Division of Protective Services member. The Director of the Division of Protective Services, or his or her designee, may use the proceeds from any sales to offset the cost of new service weapons. The disposal of service weapons pursuant to this section does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

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CHAPTER 243

(S. B. 448 - By Senator Trump)

[Passed March 7, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §15-14-6 and §15-14-9 of the Code of West Virginia, 1931, as amended, all relating to the Statewide Interoperable Radio Network; providing duties for the Statewide Interoperability Executive Committee; authorizing the Statewide Interoperability Executive Committee to revoke, suspend, or modify any entity's use of the Statewide Interoperable Radio Network or equipment connected thereto; and requiring certain state agencies to submit two-way telecommunications equipment to the Division of Emergency Management for cleansing, redistribution, reuse or sale, with proceeds directed to the Statewide Interoperable Radio Network account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. THE STATEWIDE INTEROPERABLE RADIO NETWORK.

§15-14-6. Duties of the Statewide Interoperability Executive Committee.

The Executive Committee shall:

- (1) Monitor the implementation and operation of the SIRN;
- (2) Establish goals and guidance for the betterment of the SIRN;

(3) Review and approve all requests for use of the SIRN and its equipment, by a public or private entity;

(4) Develop, update, and implement policies, procedures, and guidelines related to the SIRN;

(5) Identify new technologies and develop technologies and standards for the SIRN;

(6) Enhance the coordination of all available resources for public safety communications interoperability;

(7) Investigate all matters relating to integrity, foresight in funding and operations and planning for the SIRN;

(8) Revoke, suspend, or modify any entity's use of the SIRN and equipment connected to the SIRN: *Provided*, That nothing in this section shall be construed to invalidate the Vertical Real Estate Management and Availability Act as provided in §31G-5-3 of this code;

(9) Provide guidance and services to support the proper cleansing of all decommissioned radio previously connected to SIRN; and

(10) Require all state agencies to submit two-way telecommunications equipment, not handled by the Office of Technology, to the Division of Emergency Management for cleansing, redistribution, reuse, or for the sale of the two-way telecommunications equipment.

§15-14-9. Creation of the Statewide Interoperable Radio Network account; purpose; funding; disbursements.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Statewide Interoperable Radio Network Account to be administered by the director. The special revenue account shall consist of appropriations made by the Legislature; income derived from the lease of property, towers or tower space owned, operated or controlled by the WVDHSEM or any other state agency managed as part of the SIRN; moneys received by the Department of Health and Human Resources or

WVDHSEM as proceeds of any claims for damages to structures, equipment or property of any kind, including moneys in the Insurance Property Loss Claims Fund administered by the Division of Health; income from the investment of moneys held in the special revenue account; grant money and all other sums available for deposit to the special revenue account from any source, public or private; and moneys received from the sale of recycled two-way telecommunications equipment pursuant to §15-14-6(10) of this code.

(b) Expenditures from the Statewide Interoperable Radio Network Account shall be for the purposes set forth in this article and used exclusively, to pay costs, fees and expenses incurred, or to be incurred for the following purposes: (1) The maintenance, upkeep, and repair of the SIRN; (2) operations of the Executive Committee; (3) payment of salaries for the SWIC and any personnel required to operate and maintain the SIRN; (4) the design, implementation, and management of the SIRN; (5) all other related SIRN activities approved by the Executive Committee; and (6) all costs incurred in the administration of the Statewide Interoperable Radio Network Account. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2018, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(c) Disbursements from the Statewide Interoperable Radio Network Account shall be authorized by the director or his or her designee. Moneys in the Statewide Interoperable Radio Network Account are not available for the payment of any personal injury claims, workers' compensation claims or other types of disability claims.

(d) Quarterly, the director shall prepare an accounting of all moneys disbursed from and any deposits made to the Statewide Interoperable Radio Network Account. This accounting shall include the reason for the withdraw, the recipients of any withdraw, and the source of any deposit.

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CHAPTER 244

**(Com. Sub. for S. B. 537 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 4, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §15-1B-26 of the Code of West Virginia, 1931, as amended, relating to providing for additional firefighters and security guards for the West Virginia National Guard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD

§15-1B-26. Firefighters and security guards to be members of the National Guard.

(a) Only firefighters and security guards who are members of the West Virginia National Guard may be employed by the Adjutant General as firefighters and security guards: *Provided*, That any person employed as a firefighter on the effective date of this section who is not a member of the West Virginia Air National Guard may continue to be employed as a firefighter: *Provided, however*, That no person who is not employed on the effective date of this section as a firefighter and who is not a member of the West Virginia Air National Guard may be employed as a firefighter for the West Virginia Air National Guard: *Provided further*, That any firefighter or security guard employed under this section who reaches age 60 and loses military membership may continue to serve as a civilian firefighter or civilian security guard until they reach age 62.

(b) In the event military deployments, mobilization, or other circumstances result in personnel shortages in the firefighter or security guard force, the Adjutant General may temporarily employ or execute any other agreement necessary to obtain the services of civilian firefighters or civilian security guards as may be required to continue operations.

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CHAPTER 245

**(Com. Sub. for S. B. 593 - By Senators Plymale, Woelfel,
Hamilton, Rucker, Woodrum, Takubo, and Beach)**

[Passed March 8, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §15-2B-3 of the Code of West Virginia, 1931, as amended, relating to the Legislature and State Police designating the Forensic Analysis Laboratory at the Marshall University Science Center as a criminal justice agency to allow its participation in the West Virginia DNA Database for certain purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. DNA DATA.

§15-2B-3. Definitions.

As used in this article:

(1) “CODIS” means the Federal Bureau of Investigation’s Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term “CODIS” includes the National DNA Index System administered and operated by the Federal Bureau of Investigation.

(2) “Conviction” includes convictions by a jury or court, guilty plea, or plea of nolo contendere.

(3) “Criminal justice agency” means an agency or institution of a federal, state, or local government, other than the office of public defender, which performs as part of its principal function the

apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders. The Forensic Analysis Laboratory of the Marshall University Forensic Science Center is hereby designated by the Legislature and the State Police to be a criminal justice agency for purposes of the laboratory's participation in the West Virginia DNA Database with its access limited to the missing persons, relatives of missing persons, and unidentified human remains databases as part of work performed for the National Missing and Unidentified Persons System.

(4) "Division" means the West Virginia State Police.

(5) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(6) "DNA record" means DNA identification information stored in any state DNA database pursuant to this article. The DNA record is the result obtained from DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also included as a "DNA record".

(7) "DNA sample" means a tissue, fluid, or other bodily sample, suitable for testing, provided pursuant to this article or submitted to the division laboratory for analysis pursuant to a criminal investigation.

(8) "FBI" means the Federal Bureau of Investigation.

(9) "Interim plan" means the plan used currently by the Federal Bureau of Investigation for Partial Match Protocol and to be adopted under the management rules of this article.

(10) "Management rules" means the rules promulgated by the West Virginia State Police that define all policy and procedures in the administration of this article.

(11) “Partial match” means that two DNA profiles, while not an exact match, share a sufficient number of characteristics to indicate the possibility of a biological relationship.

(12) “Qualifying offense” means any felony offense as described in §15-2B-6 of this code or any offense requiring a person to register as a sex offender under this code or the federal law. For the purpose of this article, a person found not guilty of a qualifying offense by reason of insanity or mental disease or defect shall be required to provide a DNA sample in accordance with this article.

(13) “Registering agency” means the West Virginia State Police.

(14) “State DNA database” means all DNA identification records included in the system administered by the West Virginia State Police.

(15) “State DNA databank” means the repository of DNA samples collected under the provisions of this article.

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CHAPTER 246

(Com. Sub. for H. B. 4282 - By Delegates Steele and Wamsley)

[Passed March 7, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §24-6-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-6-15, all relating to establishing next generation 911 services in this state; providing for expanded definitions; establishing a commission to study next generation 911 services; establishing commission membership and travel rates for meetings; prescribing the duties of the commission; requiring a preliminary report be provided to the Joint Committee on Government and Finance and to the Governor; and establishing an effective date and termination date of the commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

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

“Automatic location identification” or “ALI” means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless enhanced 911 call.

“Automatic number identification” or “ANI” means a telecommunications network capability that enables the automatic

display of the telephone number used to place a wireless enhanced 911 call.

“Commercial mobile radio service provider” or “CMRS provider” means cellular licensees, broadband personal communications services (PCS) licensees and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

“County answering point” or “public safety answering point” or “PSAP” means a facility to which 911 calls are initially routed for response and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

“Emergency services organization” means the organization established under article five, chapter fifteen of this code.

“Emergency service provider” means any emergency services organization or public safety unit.

“Emergency telecommunicator” means a professional telecommunicator meeting the training requirements set forth in §24-6-5 and is a first responder tasked with the gathering of information related to medical emergencies, the provision of assistance and instructions by voice, prior to the arrival of emergency medical services (EMS), and the dispatching and support of EMS resources responding to an emergency call.

“Emergency telephone system” means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

“Emergency services IP network” or “ESInet” means a shared public safety agency-managed Internet-Protocol (IP) network that:

(A) Is used for emergency services communications;

(B) Provides an IP transport infrastructure that is capable of carrying voice and data and that supports NG911 service core functions such as routing and location validation of emergency service requests; and

(C) Is engineered, managed, and intended to support emergency public safety communications and 911 service.

“Enhanced emergency telephone system” or “enhanced 911 service” means a telephone system which automatically connects the person dialing 911 to the appropriate county answering point with ALI and ANI data.

“Next Generation 911” or “NG911” means a service that:

(A) Consists of coordinated intrastate 911 IP networks serving residents of West Virginia with the routing of emergency service requests, by voice or data, across public safety ESInets;

(B) Automatically directs 911 emergency telephone calls and other emergency service requests in data formats to the appropriate PSAP by routing using geographical information system data;

(C) Provides for ALI and ANI features; and

(D) Interconnects with enhanced 911 service.

“Prepaid wireless calling service” means prepaid wireless calling service as defined in §11-15-2 of this code.

“Public agency” means the state and any municipality, county, public district or public authority which provides or has authority to provide firefighting, police, ambulance, medical, rescue or other emergency services.

“Public safety unit” means a functional division of a public agency which provides firefighting, police, medical, rescue or other emergency services.

“Telephone company” means any public utility and any CMRS provider which is engaged in the provision of telephone service whether primarily by means of wire or wireless facilities.

“Comprehensive plan” means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility’s response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility’s responsibility to report to the Public Service Commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.

“Technical and operational standards” means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (11) of this subsection.

“VoIP service” means interconnected voice over Internet protocol service as defined in the code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

§24-6-15. Commission to implement NG911 in West Virginia.

(a) *Legislative findings.* – (1) The Legislature finds that:

(A) Communication technology has substantially outpaced the legacy communication technology presently utilized by most public safety answering points in the State of West Virginia;

(B) The lack of modern technology is impacting the ability of the 911 system to provide responses efficiently and effectively to emergencies;

(C) West Virginia citizens expect a 911 emergency service to be reliable and efficient; and

(D) Modernizing West Virginia's 911 system to include new and evolving capabilities of broadband voice and data communications is essential for the safety and security of the general public and first responders.

(2) The Legislature further finds that it is necessary to implement Next Generation 911 emergency services and to create a framework to help guide the transition to implementation of Next Generation 911 services.

(b) *Commission established.* – (1) This article establishes a Commission to Advance NG911 in West Virginia.

(2) The commission consists of the following members:

(A) Two members of the Senate of West Virginia, appointed by the President of the Senate;

(B) Two members of the House of Delegates, appointed by the Speaker of the House;

(C) The chairman of the Public Service Commission or designee;

(D) The Chief Technology Officer from the West Virginia Office of Technology, or designee;

(E) The Chairperson of the Commission for the Deaf and Hard of Hearing, or designee;

(F) Two representatives from PSAPs, appointed by the Governor with the advice and consent of the Senate from a list of 12 names selected by the County Commission Association of West Virginia;

(G) Two county government representatives, familiar with county purchasing and finances, appointed by the Governor with the advice and consent of the Senate from a list of 12 names selected by the County Commission Association of West Virginia;

(H) The following nonvoting members appointed by the Governor;

(i) One representative from the broadband industry offering service within West Virginia;

(ii) One representative from a local exchange carrier offering service within West Virginia;

(iii) One representative from the wireless communications industry offering service within West Virginia; and

(iv) One representative from the mission critical communications industry offering service within West Virginia.

(3) The commission may call upon anyone with necessary expertise and knowledge to provide any advice relevant to the commission's purpose.

(4) The commission shall annually elect the chair of the commission.

(5) The entities represented on the commission in §24-6-15(b)(2)(A) through §24-6-15(b)(2)(G) of this code shall jointly provide staff for the commission. Additional staff may be requested through the Joint Committee on Government and Finance.

(c) A member of the commission may not receive compensation as a member of the commission, but may receive reimbursement for related travel expenses as prescribed by the West Virginia State Travel Management Office, as provided in the state budget.

(d) *Duties of the commission.* – The commission shall study and make recommendations regarding:

(1) The implementation, management, operation, and ongoing development of NG911 emergency communication services;

(2) The current statutory and regulatory framework for the management and funding of the current enhanced 911 or other emergency phone systems in the state;

(3) Federal, state, and local authorities, agencies, and governing bodies whose participation and cooperation will be necessary for the implementation of NG911 services in this state;

(4) The costs required to plan, test, implement, manage, and operate NG911 technology and services;

(5) Best practices, policies, and procedures for public safety telecommunications;

(6) Any efforts, projects, or initiative in progress or planned to upgrade the enhanced 911 systems in this state or implement NG911 in any county of this state;

(7) Any other issues the commission may consider useful in the planning and implementation of NG911 emergency communication services in West Virginia.

(8) The anticipation and prevention of cybersecurity threats to NG911 infrastructure.

(e) *Preliminary report.* – On or before December 31, 2022, the commission shall submit a preliminary report to the Joint Committee on Government and Finance regarding:

(1) The needs, both capital and operating, to bring efficient and effective NG911 technology and service across West Virginia, and estimated costs;

(2) The current funding structure for both state and local support for enhanced 911 or emergency telephone systems and the adequacy in supporting current service and NG911 service;

(3) Comparisons of the current West Virginia Wireless 911 fee pursuant to §24-6-6b of this code and the charge mechanisms used in other states;

(4) Potential changes to the fee in §24-6-6b of this code, including additional charge mechanisms and the estimated effect of the implementation of full-service NG911 across this state;

(5) Grant funding applicable to promote and ensure ideal support for maintenance, training, and other costs associated with both the transition to NG911 service and the continued function of effective call centers; and

(6) Other issues related to financing, procuring, and maintaining effective NG911 across this state.

(f) *Final report.* – On or before June 1, 2023, the commission shall submit a final report to the Joint Committee on Government and Finance and to the Governor regarding:

(1) The final expected costs and funding sources associated with NG911, including, final recommendations to change fees pursuant to §24-6-6b of this code or any additional charging mechanism, or grant funds applicable to implement and maintain NG911;

(2) The implementation, management, operation, and ongoing development of NG911 emergency communication services during both NG911 transition to expanded service and the permanent service;

(3) The current statutory and regulatory framework for the management and funding of NG911 services in the state;

(4) Federal, state, and local authorities, agencies, and governing bodies whose participation and cooperation will be necessary for the implementation of NG911 services in this state;

(5) Recommendations for oversight of NG911 services and ongoing oversight of expenses and funding;

(6) Best practices, policies, and procedures for public safety telecommunications;

(7) Any efforts, projects, or initiative in progress or planned to upgrade the enhanced 911 systems in this state or implement NG911 in any county of this state;

(8) Any other issues the commission may consider useful in the planning and implementation of NG911 emergency communication services in West Virginia.

(g) *Effective date.* – This commission shall be in full force and effect on June 1, 2022. The commission shall remain in effect until June 30, 2023, and, with no further action by the Legislature, the commission shall sunset and cease to exist.

●

CHAPTER 247

(H. B. 4578 - By Delegates Capito, Pushkin, Pack, Pinson, Zukoff and Garcia)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-56, relating to authorizing the superintendent to administer the Handle with Care program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-56. Handle with Care program.

(a) The purpose of this section is to ensure that the State Police, through its West Virginia Center for Children’s Justice, oversee and administer the state’s Handle with Care program.

(b) The superintendent shall:

(1) Direct and oversee the administration and implementation of the state’s Handle with Care program;

(2) Employ one or more persons deemed necessary to administer the program;

(3) Establish and coordinate education and training of law enforcement and other parties considered necessary for implementation of the program;

(4) Apply for grant funding necessary to support the administration and implementation of the program; and

(5) Accept and expend grants, gifts, bequests, donations, and other funds from any source to ensure that the State Police can accomplish the mission of the program.

(c) Nothing herein shall require that the Legislature appropriate funds to accomplish the purpose of this section.

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CHAPTER 248

**(Com. Sub. for H. B. 4596 - By Delegates Barrett, Haynes,
Fast, Barnhart, Holstein, Hanna, Dean, Phillips, Paynter,
Bridges, and McGeehan)**

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §15A-7-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-29-1 of said code; to amend and reenact §49-4-719 of said code; to amend and reenact §61-7-11a of said code; to amend said code by adding thereto a new section designated §62-11B-7b; and to amend and reenact §62-12-5 and §62-12-6 of said code all relating generally to recognizing additional professions qualifying for protections under the Law-Enforcement Officers Safety Act; clarifying that home incarceration supervisors, state adult probation officers, state juvenile probation officers, and state parole officers are, by virtue of their duties, qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting certain persons from prohibition for carrying deadly weapons on the premises of educational facilities; providing the statutory authority to give home incarceration supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law; requiring annual firearm training pursuant to federal law; removing inconsistent language relating to probation officers; clarifying that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program; providing for training to enable home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law-enforcement officers if they have not previously done so; setting forth the duties of

supervising authorities as to participation of home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers, and removing a duplicative reference to probation officers in code.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 15A. DEPARTMENT OF HOMELAND
SECURITY.**

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant:

(1) Arrest or order confinement of any parolee or probationer under his or her supervision; and

(2) Search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) Notwithstanding any provision of this article to the contrary, the Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry

firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(d) State parole officers, in recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C §926B.

(e) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes;

(2) For those state parole officers wishing to avail themselves of the provisions of this subdivision, there shall be in place in the Division of Corrections and Rehabilitation a requirement that those state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program; and

(3) The Division of Corrections and Rehabilitation issues a photographic identification and certification card which identify the state parole officers who meet the provisions of this subdivision, as law-enforcement employees of the Division of Corrections and Rehabilitation pursuant to the provisions of §30-29-12 of this code.

(f) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(g) Any state parole officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(h) It is the intent of the Legislature in enacting the amendments to this section during the 2022, regular session of the Legislature to authorize those state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(i) The privileges authorized by the amendments in this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) "Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) "Chief executive" means the Superintendent of the State Police; the chief Natural Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources

police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) “County” means the 55 major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency, and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided, however*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency, nor to any watchman or special natural resources police officer;

(7) “Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) “Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) “Pre-certified law-enforcement officer” means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification by the subcommittee. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked;

(10) “Subcommittee” or “law-enforcement professional standards subcommittee” means the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

(11) “West Virginia law-enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service Commission nor any state institution of higher education, nor any hospital, nor any resort area district is a law-enforcement agency.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

(b) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state juvenile probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(c) Any state juvenile probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing a state juvenile probation officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Supreme Court of Appeals a requirement that state juvenile probation officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program; and

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state juvenile probation officers as law-enforcement employees as that term is contemplated by 18 U.S.C. § 926B.

(d) Any policy instituted pursuant to this subsection includes provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(e) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2022, regular session of the Legislature to authorize state juvenile probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(g) The privileges authorized by the amendments to this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

(h) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

(i) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally, and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(I) of this code, are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the

grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds of the facility; or

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to §62-12-5 of this code or state juvenile probation officer appointed pursuant to §49-4-719 of this code, in the performance of his or her duties;

(C) Any home confinement supervisor employed by a county commission pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in performance of his or her official duties;

(E) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. § 926C(c), carries that firearm in a concealed manner, and has on his or her person official identification in accordance with that act;

(F) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(G) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a

motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(H) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(I) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

(J) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

(K) Any person, 21 years old or older, who has a valid concealed handgun permit. That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:*

(i) When he or she is occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe

rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff, or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's 19th birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward it to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code, and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's 20th birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-7b. Home incarceration supervisors deemed qualified law-enforcement officers as that term is used in 18 U.S.C. §926B.

(a) Notwithstanding any other provision of this code, for purposes of this section it is hereby recognized that home incarceration is a form of confinement as that term is used in 18 U.S.C. § 926B.

(b) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, home incarceration supervisors, are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(3) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program of §30-29-12 of this code.

(d) Any policy instituted pursuant to subsection (b) of this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm; and

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(e) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is

responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) The privileges authorized by the amendments to this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the supervising authority over the home incarceration supervisors.

(g) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of the order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical assistants.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct, and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or

her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) A judge may not appoint any probation officer, assistant probation officer, or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects, or supersedes the appointment or tenure of any probation officer, medical assistant, or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, may hire multijudicial-circuit probation officers, to be employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(j) Any policy instituted pursuant to this subsection shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(k) Any state probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2022 regular session of the Legislature to authorize state probation officers wishing to do so to meet the

requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2022 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section 10 of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the State Police and includes a minimum of four hours' training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections and Rehabilitation under subsection (h), section 13 of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

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CHAPTER 249

**(Com. Sub. for H. B. 4608 - By Delegates Statler, Riley,
Maynard, Hardy, Paynter, Jennings, Honaker, Maynor,
Phillips, Queen, and Pack)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §15A-11-8 of the Code of West Virginia, 1931, as amended, relating to the probationary status of volunteer firefighters; defining terms; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§15A-11-8. Powers, duties, and authority of State Fire Commission.

(a) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission. Beginning on the effective date of the amendment to this section, all trainings approved by the State Fire Commission for Fire Officer 2, shall contain a section on the current laws, rules and regulations governing the fire service. All trainings approved by the State Fire Commission for Firefighter 1, shall contain a section on the Fire Commission, and the Fire Marshal's Office, and the operations of both.

(b) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(c) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(d) The State Fire Commission shall certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the program established pursuant to this subsection.

(e) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: manpower needs, location of training centers, location of fire prevention and control units, communications, fire-fighting facilities, water sources, vehicular needs, public education and information, public participation, standardization in recordkeeping, evaluation of personnel, reporting of fire hazards, programs on mutual aid, location of public safety agencies, outline of fire prevention programs, and accessibility of fire prevention information.

(f) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning, and certification.

(g) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court-ordered civil forfeiture proceedings, and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign, and execute any agreements, and do and perform any acts that may be necessary, useful, desirable, or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings, and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, with the approval of the State Fire Commission, may make expenditures of,

or use of any tangible property, in order to effectuate the purposes of this article.

(h) The State Fire Commission shall establish standards and procedures for fire departments to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment, and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in §15A-11-9 of this code; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(i) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Fire or Building Code or related construction or renovation practices.

(j) The State Fire Commission may deny, suspend, or revoke certification of any fire department, or any chief or acting chief, in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations, or the chief or acting chief, does not operate the department in compliance with all applicable laws, rules and regulations, or allows the department, or members of the department to act or operate in a manner that is not in compliance with all applicable laws, rules and regulations.

(k) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter, except as otherwise provided in §15A-10-9(b) of this code.

(l) The State Fire Commission shall develop procedures to authorize persons with specialized training, but who are not certified as firefighters, to be members of a volunteer fire department to only perform specialized functions, none of which shall be or include fire fighting. These specialized functions can include, but are not limited to, swift water rescue, search and rescue, trench rescue, and confined space rescue. The State Fire Commission shall propose legislative rules, and may propose emergency legislative rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this program, and to set minimum training standards for these types of specialized members.

(m) The State Fire Commission shall, in compliance with §21-6-11 of this code, propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to specify what activities junior firefighters may and may not participate in.

(n) The State Fire Commission shall, by legislative rules proposed for promulgation in accordance with §29A-3-1 *et seq.* of this code, establish minimum probationary volunteer firefighter standards.

(1) For the purpose of this subsection, a probationary firefighter means an active member of a volunteer fire department who is 18 years old or older and is not a certified firefighter.

(2) A person may serve as a probationary firefighter, at the discretion of the fire chief, for a period not to exceed five years.

(3) The Legislature finds that an emergency exists, and therefore, the Fire Commission shall propose an emergency rule to implement the provisions of this subsection in accordance with §29A-3-15 of this code by October 1, 2022.

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CHAPTER 250

**(H. B. 4847 - By Delegates Capito, Graves, Westfall, Fast,
Pushkin, Lovejoy, Pack, Zukoff, Haynes, Pritt, and Fluharty)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §15-3D-4 and §15-3D-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §15-10-5 of said code, all relating to law enforcement generally; providing that missing persons information shall be furnished to West Virginia State Police; providing West Virginia State Police shall monitor and assist in missing persons investigation; providing that West Virginia State Police shall supervise missing persons investigation in certain circumstances; providing that missing persons report involving person aged over 75 years are high-risk; providing that an active investigation shall start when the missing persons complaint is received; providing the lead law-enforcement agency engage in coordination efforts with other law-enforcement agencies and ensure appropriate use of certain resources; and removing the incorporation by reference of an obsolete federal statute within the definition of Federal Bureau of Investigation police officer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-4. Missing persons complaints; law-enforcement procedures.

(a) Complaint requirements. — A person may file a missing persons complaint with any law-enforcement agency having jurisdiction. The law-enforcement agency shall attempt to collect

the following information from a complainant and, as soon as thereafter as is practicable, shall then furnish the information to the West Virginia State Police:

(1) The missing person's name;

(2) The missing person's date of birth;

(3) The missing person's address;

(4) The missing person's identifying characteristics, including, but not limited to: Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood type;

(5) A description of the clothing the missing person was believed to have been wearing when he or she went missing and any items that might be with the missing person, such as jewelry, accessories, shoes, or any other distinguishing garments or items;

(6) The date of the last known contact with the missing person;

(7) The missing person's driver's license and Social Security number, or any other numbers related to other forms of identification;

(8) A recent photograph of the missing person;

(9) Information related to the missing person's electronic communication devices or electronic accounts, such as cell phone numbers, social networking login information, and email addresses and login information;

(10) Any circumstances that the complainant believes may explain why the person is missing;

(11) The name and location of the missing person's school or employer;

(12) The name and location of the missing person's dentist or primary care physician;

(13) A description of the missing person's possible means of transportation, including make, model, color, license, and identification number of a vehicle;

(14) Any identifying information related to a known or possible abductor, or the person last seen with the missing person, including the person's name, physical description, date of birth, identifying physical marks, a description of the person's possible means of transportation, including the make, model, color, license, and identification number of the person's vehicle, and any known associates;

(15) The name of the complainant and his or her relationship to the missing person; and

(16) Any additional information considered relevant by either the complainant or the law-enforcement agency.

(b) Upon receipt of the information required by subsection (a) of this section, the State Police shall monitor and assist in the investigation or, if the available evidence supports a conclusion that the missing person may have left the county from which he or she went missing, or at the request of the lead law-enforcement agency, the State Police shall supervise the investigation.

(c) High-risk determination; requirements. —

(1) Upon initial receipt of a missing persons report, the lead law-enforcement agency shall immediately assess whether facts or circumstances indicate that the person meets any of the following risk indicators, which, if applicable, will be entered into NCIC:

(A) The person is or was likely involved in a natural disaster;

(B) The person is a juvenile, or was a juvenile when he or she went missing;

(C) The person is likely endangered;

(D) The person has mental or physical disabilities;

(E) The disappearance is believed to have been the result of abduction or kidnapping, or was otherwise involuntary;

(F) The person is 75 years of age or older;

(G) The person is under the age of 21 and declared emancipated by the laws of his or her state of residence; and

(H) None of the criteria in paragraphs (A) through (F), inclusive, of this subdivision apply, but additional facts support a reasonable concern for the person's safety.

(2) If, upon assessment, the lead law-enforcement agency determines that the missing person meets one of the classifications in subdivision (1) of this subsection, the lead law-enforcement agency shall:

(A) Immediately notify the terminal operator responsible for WEAPON system entries for the law-enforcement agency and provide the operator with all relevant information collected from the missing persons complainant as soon as possible. The terminal operator will enter all information into the WEAPON system and submit the information to the West Virginia State Police communications section. If the law-enforcement agency does not have an agreement with a local terminal agency, then the law-enforcement agency will contact the West Virginia State Police terminal agency for that particular area and request that the West Virginia State Police enter the information into the WEAPON system. Once the missing persons complaint has been entered into the WEAPON system, the West Virginia State Police communications section shall immediately notify all law-enforcement agencies within the state and surrounding region by means of the WEAPON system with all information that will promote efforts to promptly locate and safely recover the missing person. Local law-enforcement agencies that receive the notification of a missing persons shall notify all officers to be on the lookout for the missing person or a suspected abductor; and

(B) Immediately, and no later than two hours, after the determination that a juvenile is missing, take appropriate steps to

ensure that the case is entered into the NCIC database with a photograph and other applicable information related to that missing person.

(d) General requirements. —

(1) The lead law-enforcement agency shall take appropriate steps to ensure that all relevant information related to a missing persons complaint is submitted in a timely manner to the WEAPON system, and as applicable, NCIC, CODIS, NDIS, NamUs, and NCMEC. Any information that the West Virginia State Police obtains from these databases must be provided to the lead law-enforcement agency and to other law-enforcement agencies who may come in contact with or be involved in the investigation or location of a missing person.

(2) The lead law-enforcement agency or the West Virginia State Police shall submit any available DNA profiles that may aid in a missing persons investigation and that have not already been submitted by a medical examiner into appropriate DNA databases, including, but not limited to, NamUs.

(e) Removal upon location of person. — Upon the determination that the person is no longer missing, the lead law-enforcement agency or the West Virginia State Police shall immediately remove or request the removal of all records of the missing person from all missing persons databases.

§15-3D-5. Missing persons investigation requirements.

(a) A law-enforcement agency may not delay an investigation of a missing persons complaint on the basis of a written or unwritten policy requiring that a certain period of time pass after any event, including the receipt of a complaint, before an investigation may commence; and shall commence an active investigation immediately upon receipt of the missing persons complaint.

(b) A law-enforcement agency may not refuse to accept a missing person report over which it has investigatory jurisdiction.

(c) A law-enforcement agency is not required to obtain written authorization before publicly releasing any photograph that would aid in the location or recovery of a missing person.

(d) The lead law-enforcement agency shall notify the complainant, a family member, or other person in a position to assist in efforts to locate the missing person of the following:

(1) Whether additional information or materials would aid in the location of the missing person, such as information related to credit or debit cards the missing person may have access to, other banking information, or phone or computer records;

(2) That any DNA samples requested for the missing persons investigation are requested on a voluntary basis, to be used solely to help locate or identify the missing person and will not be used for any other purpose; and

(3) Any general information about the handling of the investigation and the investigation's progress, unless disclosure would adversely affect the ability to locate or protect the missing person, or to apprehend or prosecute any person criminally involved in the person's disappearance.

(e) A law-enforcement agency may provide informational materials through publications, or other means, regarding publicly available resources for obtaining or sharing missing persons information.

(f) The lead law-enforcement agency shall coordinate with all other law-enforcement agencies to ensure the appropriate use of all available and applicable tools, resources, and technologies to resolve a missing persons investigation, including but not limited to:

(1) Assistance from other law-enforcement agencies, whether at a local, state, or federal level;

(2) Nonprofit search and rescue organizations, which may provide trained animal searches, use of specialized equipment, or man trackers;

(3) Cell phone triangularization and tracking services;

(4) Subpoenas of cell phone, land line, Internet, email, and social networking website records; and

(5) Services of technology experts to examine any available information collected from a computer or communications device belonging to or used by the missing person.

(g) If a person remains missing for 30 days after the receipt of a missing persons complaint or the date on which the person was last seen, whichever occurs earlier, the lead law-enforcement agency shall attempt to obtain the following information:

(1) DNA samples from family members and the missing person, along with any necessary authorizations to release such information. All DNA samples obtained in a missing persons investigation shall be immediately forwarded to an appropriate laboratory for analysis;

(2) Any necessary written authorization to release the missing person's medical and dental records, including any available x-rays, to the lead law-enforcement agency. If no family or next of kin exists or can be located, the lead law-enforcement agency may execute a written declaration, stating that an active investigation seeking to locate the missing person is being conducted and that the records are required for the exclusive purpose of furthering the investigation. The written declaration, signed by the supervising or chief officer of the law-enforcement agency, is sufficient authority for a health care practitioner to immediately release the missing person's x-rays, dental records, dental x-rays, and records of any surgical implants to the law-enforcement agency;

(3) Additional photographs of the missing person that may aid the investigation; and

(4) Fingerprints of the missing person.

(h) Nothing in this section precludes a law-enforcement agency from attempting to obtain the materials identified in subsection (g) of this section before the expiration of the 30-day period.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.**§15-10-5. Federal officers' peace-keeping authority.**

(a) Notwithstanding any provision of this code to the contrary, any person who is employed by the United States government as a federal law-enforcement officer and is listed in subsection (b) of this section, has the same authority to enforce the laws of this state, except state or local traffic laws or parking ordinances, as that authority granted to state or local law-enforcement officers, if one or more of the following circumstances exist:

(1) The federal law-enforcement officer is requested to provide temporary assistance by the head of a state or local law-enforcement agency or the designee of the head of the agency and that request is within the state or local law-enforcement agency's scope of authority and jurisdiction and is in writing: *Provided*, That the request does not need to be in writing if an emergency situation exists involving the imminent risk of loss of life or serious bodily injury;

(2) The federal law-enforcement officer is requested by a state or local law-enforcement officer to provide the officer temporary assistance when the state or local law-enforcement officer is acting within the scope of the officer's authority and jurisdiction and where exigent circumstances exist; or

(3) A felony is committed in the federal law-enforcement officer's presence or under circumstances indicating a felony has just occurred.

(b) This section applies to the following persons who are employed as full-time federal law-enforcement officers by the United States government and who are authorized to carry firearms while performing their duties:

(1) Federal Bureau of Investigation special agents;

(2) Drug Enforcement Administration special agents;

(3) United States Marshal's Service marshals and deputy marshals;

(4) United States postal service inspectors;

(5) Internal revenue service special agents;

(6) United States secret service special agents;

(7) Bureau of alcohol, tobacco, and firearms special agents;

(8) Police officers employed at the Federal Bureau of Investigation's criminal justice information services division facility located within this state;

(9) Law enforcement commissioned rangers of the national park service;

(10) Department of Veterans Affairs Police and Department of Veterans Affairs special investigators;

(11) Office of Inspector General special agents; and

(12) Federal Air Marshals with the Federal Air Marshal Service.

(c) Any person acting under the authority granted pursuant to this section:

(1) Has the same authority and is subject to the same exemptions and exceptions to this code as a state or local law-enforcement officer;

(2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

(3) May not initiate or conduct an independent investigation into an alleged violation of any provision of this code except to the extent necessary to preserve evidence or testimony at risk of loss immediately following an occurrence described in subdivision (3), subsection (a) of this section;

(4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims Act;
and

(5) Has the same immunities from liability as a state or local
law-enforcement officer.

CHAPTER 251

(S. B. 597 - By Senator Nelson)

[Passed March 4, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §24C-1-2 of the Code of West Virginia, 1931, as amended, relating to the Public Service Commission underground facilities damage prevention and one-call system; and clarifying the definition of “excavate” or “excavation”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

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

“Board” or “Underground Facilities Damage Prevention Board” means the Underground Facilities Damage Prevention Board created in this article.

“Commission” or “Public Service Commission” means the Public Service Commission of West Virginia.

“Damage” means any impact or contact with or weakening of the support for, or the partial or complete destruction of, an underground facility, its appurtenances, protective casing, coating, or housing, which, according to the operation practices of the operator or state or federal regulation, requires repair or replacement.

“Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment or discharge of explosives which could damage underground facilities: *Provided*, That “demolish”, and “demolition” do not include earth-disturbing activities authorized pursuant to the provisions of §22-3-1 *et seq.* or §22A-2-1 *et seq.* of this code.

“Emergency” means:

(1) A condition constituting a clear and present danger to life, health, or property by reason of escaping toxic, corrosive, or explosive product, oil or oil-gas, or natural gas hydrocarbon product, exposed wires, or other breaks or defects in an underground facility; or

(2) A condition that requires immediate correction to assure the safety of the general public and operator personnel.

“Equipment operator” means any individual in physical control of powered equipment or explosives when being used to perform excavation work or demolition work.

“Excavate” or “excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives, and includes, without limitation, boring, backfilling, grading, trenching, trenchless technology, digging, ditching, dredging, drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms “excavate”, and “excavation” do not include routine maintenance of paved public roads or highways, where all work is confined to the traveled portion of the paved public way and does not exceed a depth greater than 12 inches measured from the top of the paved road surface.

“Excavator” means any person intending to engage or engaged in excavation or demolition work.

“Fund” or “Underground Damage Prevention Fund” means the fund created in §24C-1-2b of this code.

“Member” means a member of the one-call system as authorized by this article.

“One-call system” means a communication system that receives notification from excavators of intended excavation work and prepares and transmits such notification to operators of underground facilities in accordance with this article.

“Operator” means any person who operates an underground facility.

“Person” means any individual, firm, joint venture, partnership, corporation, association, state agency, county, municipality, cooperative association, or joint stock association, and any trustee, receiver, assignee, agency, or personal representative thereof.

“Powered equipment” means any equipment energized by an engine, motor or hydraulic, pneumatic, or electrical device and used in excavation or demolition work.

“Underground facility” means any underground pipeline facility owned by a utility and regulated by the Public Service Commission, which is used in the transportation or distribution of gas, oil, or a hazardous liquid; any underground pipeline facility, owned by a company subject to the jurisdiction of the federal energy regulatory commission, which is used in the gathering, transportation, or distribution of gas, oil, or a hazardous liquid; any underground production or gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in excess of four inches and that is not otherwise subject to one-call reporting requirements under federal or state law; any underground facility used as a water main, storm sewer, sanitary sewer, or steam line; any underground facility used for electrical power transmission or distribution; any underground cable, conductor, waveguide, glass

fiber, or facility used to transport telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or on the surface of the ground, any appurtenance, device, cathodic protection system, conduit, protective casing, or housing used in connection with any of the foregoing facilities: *Provided*, That “underground facility” does not include underground or surface coal mine operations.

“Workday” means any day except Saturday, Sunday, or a federal or state legal holiday.

“Work site” means the location of excavation or demolition work as described by an excavator, operator, or person or persons performing the work.

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CHAPTER 252

(S. B. 638 - By Senator Nelson)

[Passed March 7, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §24-2H-6 of the Code West Virginia, 1931, as amended, relating to the Public Service Commission; and changing hearing location and customer notice provisions in a distressed or failing utility and formal proceeding.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND WASTEWATER UTILITIES.

§24-2H-6. Notice to distressed or failing utility and formal proceeding.

(a) A proceeding under this article may be initiated by the commission on its own motion, or by the staff of the commission, or any other person or entity having a legal interest in the financial, managerial, or operational condition of the utility, by filing a petition with the commission. In any such petition, the utility shall be named as the respondent. The commission shall include as additional parties any capable proximate public and private utilities that may be able to acquire the utility.

(b) The commission shall hold an evidentiary and public hearing(s) in a location in or within 25 miles of the utility's service area. The commission shall give reasonable notice of the time, place, and subject matter of the hearing as follows:

(1) Issuance of a press release;

(2) Written notice by certified mail or registered mail to:

(A) The utility;

(B) The Consumer Advocate Division;

(C) Capable proximate public or private utility(s) that were made parties to the proceeding; and

(D) The county commission if the utility is a public service district; or

(E) The municipality if the utility is owned and operated by the municipality.

(3) The utility shall give notice to its customers of the time, place, and subject matter of the hearing either as a bill insert or printed on its monthly bill statement as ordered by the commission.

(c) The public hearing shall be conducted to receive public comments, including, but not limited to, comments regarding possible options available to bring the distressed or failing utility into compliance with appropriate statutory and regulatory standards concerning actual or imminent public health problems or unreasonable quality and reliability service standards. At the evidentiary hearing, the commission shall receive evidence to determine if the utility is a distressed or failing utility and whether a capable proximate utility should acquire the utility. If there is more than one capable proximate utility, then sufficient evidence should be presented to allow the commission to determine the appropriate capable proximate utility to acquire the distressed or failing utility.

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CHAPTER 253

(Com. Sub. for H. B. 3231 - By Delegates Conley and Riley)

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §24-3-8 of the Code of West Virginia, 1931, as amended, relating to public utility security deposits and interest thereon; prohibiting the charging of interest on security deposits held for up to eighteen months; and updating reference to prior law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-8. Deposits; interest.

(a) No public utility shall require any deposit of any residential customer which shall exceed one twelfth of the estimated annual charge to the customer for such service: *Provided*, That the provisions of this section shall not apply to deposits received prior to March 12, 1983.

(b) Public utilities may collect and hold a security deposit in accordance with this statute and the rules established by the commission. No interest shall be payable on security deposits when a deposit is, no later than 30 days following the date of the end of the eighteenth month of service, either (1) applied as a credit to the customer's account, or (2) returned or refunded to the customer by some other means.

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CHAPTER 254

(H. B. 4769 - By Delegate Capito)

(By Request of the Public Service Commission)

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §24-1-9 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement to send recommended decisions by certified mail.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.

(a) Any order recommended by a single hearing commissioner, a hearing examiner or a panel consisting of a hearing examiner and a single commissioner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings and shall be filed with the commission. A copy of such recommended order shall be served upon the parties who have appeared in the proceeding.

(b) Before any order is recommended, the parties shall be afforded an opportunity to submit, within the time prescribed by the hearing commissioner, hearing examiner or panel, proposed findings of fact and conclusions of law and briefs.

(c) The commission shall serve a copy of the recommended order on the parties by one of the following means:

(1) By U.S. mail; or

(2) By electronic transmission: *Provided*, That the party has the capability to receive the electronic transmission, has furnished an electronic address and has agreed in writing to accept recommended orders electronically. Electronic transmissions shall contain a “return receipt” or “read receipt” mechanism to assure that a recommended order was received by the party: *Provided, however*, That if the commission does not receive a confirmatory electronic transmission acknowledging the recommended order was received by the party, via return receipt, read receipt or electronic mail, within three business days of service, the commission shall serve the recommended order by U.S. mail.

(d) Service is complete when the recommended order is placed in the mail or transmitted electronically to the party.

(e) Within the time prescribed, the parties shall be afforded an opportunity to file exceptions to the recommended order and a brief in support, provided the time fixed is not less than fifteen days from the date of service of such recommended order.

(f) In all proceedings in which exceptions have been filed to a recommended order, the commission, before issuing its final order, may afford the parties an opportunity for oral argument. When exceptions are filed, the commission shall consider the exceptions. If sufficient reason appears for the exceptions, the commission may grant the review or make an order or hold or authorize further hearings or proceedings. The commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order thereon.

(g) When no exceptions are filed within the time specified, the recommended order shall become the order of the commission five days following the expiration of the period for filing exceptions unless the order is stayed or postponed by the commission: *Provided*, That the commission may, on its own motion before the order becomes the order of the commission, review any matter and take action as if exceptions had been filed.

(h) The commission, a hearing commissioner, a hearing examiner or panel to whom a matter is referred may expedite the hearing and decision of any case, if the public interest requires, by the use of pretrial conferences, stipulations and agreements, prepared testimony, depositions, daily transcripts of evidence, trial briefs and oral argument in lieu of briefs.

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CHAPTER 255

(H. B. 4773 - By Delegates Steele, Pushkin and Pack)

[Passed March 2, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §24D-1-14 and §24D-1-17 of the Code of West Virginia, 1931, as amended, all relating to the Public Service Commission; the Cable Television Systems Act; adoption of the FCC customer service and technical standards and requiring certain cable operators to operate an in-state customer call center.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. CABLE TELEVISION SYSTEMS ACT.

§24D-1-14. Requirement for adequate service; terms and conditions of service.

(a) Every cable operator shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, franchise requirements and its filed schedule of terms and conditions of service.

(b) The commission shall require each cable operator to submit a schedule of all terms and conditions of service in the form and with the notice that the commission may prescribe. The schedule shall be submitted with the annual report referenced in section twenty-four of this article.

(c) The commission shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and

the economics of providing cable service to subscribers in the service area.

(d) To the extent a subscriber elects to receive a paper bill, a cable operator shall provide a paper copy of the subscriber's monthly bill at no charge. A cable operator shall prorate any charge for service(s) that is cancelled by a subscriber rather than charging for the full term.

(e) A cable operator shall comply with all customer service and technical standards established by the Federal Communications Commission. These standards, as amended, are adopted for use and application in regulating cable operators.

§24D-1-17. Office operating requirements; office hours.

(a) Each cable operator shall operate a business office in or near its area of operation as approved by the franchise authority or the commission that shall be open during normal business hours.

(b) Each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the commission, staffed by a company customer service representative during normal business hours.

(c) In addition to the requirements of subsection (a) and (b) of this section, each cable operator that has been subject to a compliance order issued by the Public Service Commission in a show cause or general investigation proceeding in which the commission concluded that the provider's customer service communications were not safe, adequate, or reliable shall maintain a call center within the boundaries of the state to serve its subscribers. The foregoing requirement shall be in effect for a minimum period of five years commencing 90 days from the commission compliance order or on the effective date of this subsection, whichever occurs later. After five years of operations under this subsection, a cable operator may petition the commission for, and the commission has authority to grant or deny, a release of the cable operator from the requirements of this subsection. The commission will grant a release only upon proper showing that the cable operator is in compliance with this chapter, commission rules, and the commission compliance order.

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CHAPTER 256

**(Com. Sub. for H. B. 4540 - By Delegates Storch, Evans,
Bates, Anderson, Pethtel, and Gearheart)**

(By Request of the Consolidated Public Retirement Board)

[Passed March 10, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §5-10-2, §5-10-27b and §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-2, §7-14D-7a and §7-14D-9b; to amend and reenact §8-22A-2, §8-22A-8a and §8-22A-11; to amend and reenact §15-2-25b, §15-2-45 and §15-2-54; to amend and reenact §15-2A-2, §15-2A-6b and §15-2A-23; to amend and reenact §16-5V-2, §16-5V-8a and §16-5V-13; to amend and reenact §18-7A-3, §18-7A-14c and §18-7A-28b; to amend and reenact §18-7B-2, §18-7B-12a and §18-7B-21; to amend and reenact §20-18-2, §20-18-9 and §20-18-14; and to amend and reenact §51-9-1a, §51-9-12b and §51-9-18, all relating to updating provisions of the retirement and pension benefits of the West Virginia Public Employees Retirement System, the Deputy Sheriffs' Retirement System, the Municipal Police and Firefighters Retirement System, the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement Fund, the Emergency Medical Services Retirement System, the Teachers Retirement System, the Teachers' Defined Contribution Retirement System, the Natural Resources Police Officers Retirement System and the Judges' Retirement Fund in order to comply with federal law; changing age threshold for plan members born after June 30, 1949; clarifying provisions regarding correction of errors; and amending definitions for each retirement system named here.

Be it enacted by the Legislature of West Virginia:

**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 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members’ deposit fund, together with regular interest on the contributions;

(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) “Actuarial equivalent” means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) “Annuity” means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) “Annuity reserve” means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) “Beneficiary” means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) “Board of Trustees” or “board” means the Board of Trustees of the West Virginia Consolidated Public Retirement Board;

(8) “Compensation” means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member’s remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member’s final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member’s final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(9) “Contributing service” means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) “Credited service” means the sum of a member’s prior service credit, military service credit, workers’ compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) “Employee” means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(12) “Employer error” means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required;

(13) “Final average salary” means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-10-22h of this code are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature;

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member’s 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member’s fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or

November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

(14) “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) “Limited credited service” means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

(16) “Member” means any person who has accumulated contributions standing to his or her credit in the members’ deposit fund;

(17) “Participating public employer” means the State of West Virginia, any board, commission, department, institution or

spending unit and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(18) "Plan year" means the same as referenced in §5-10-42 of this code;

(19) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(21) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(22) “Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which a member ceases providing service covered under this retirement system to a participating employer;

(23) “Retirant” means any member who commences an annuity payable by the retirement system;

(24) “Retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) “Retirement system” or “system” means the West Virginia Public Employees Retirement System created and established by this article;

(26) “Retroactive service” means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) “Service” means personal service rendered to a participating public employer by an employee of a participating public employer; and

(28) “State” means the State of West Virginia.

§5-10-27b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this code. This provision applies to plan years beginning after December 31, 1986. Notwithstanding anything in this code to the contrary, the payment of benefits under

this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under Section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as

rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the

retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§5-10-44. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether an individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the retirement system.* — Any error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund,

reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the retirement system paying a retiree an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer.* — When mistaken or excess employer contributions or other employer overpayments have been made to the retirement system, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public

employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any

corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied

by the member's years of credited service: *Provided*, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under

Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(g) “Annual leave service” means accrued annual leave.

(h) “Annuity starting date” means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached early or normal retirement age.

(i) “Base salary” means a member’s cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) “Beneficiary” means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(k) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(l) “County commission” has the meaning ascribed to it in §7-1-1 of this code.

(m) “Covered employment” means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this

code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, unused annual leave service, and unused sick leave service.

(o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

(p) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(q) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(r) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(s) “Early retirement age” means age 40 or over and completion of 20 years of service.

(t) “Employer error” means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(u) “Effective date” means July 1, 1998.

(v) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then “final average salary” means the average of the full monthly salary determined paid to the member during that period multiplied by 12.

(w) “Fund” means the West Virginia Deputy Sheriff Retirement Fund created pursuant to §7-14D-6 of this code.

(x) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(y) “Member” means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(z) “Monthly salary” means the portion of a member’s annual compensation which is paid to him or her per month.

(aa) “Normal form” means a monthly annuity which is one-twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) “Normal retirement age” means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(cc) “Partially disabled” means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(dd) “Public Employees Retirement System” means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(ee) “Plan” means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

(ff) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(gg) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury

Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(hh) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ii) “Required beginning date” means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

(jj) “Retire” or “retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) “Retirement income payments” means the annual retirement income payments payable under the plan.

(ll) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(mm) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(nn) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives;

(B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member’s receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(oo) “Year of service”. — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member’s first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-

14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-7a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of errors, the board shall correct errors in the retirement plan in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan paying a retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous

contributions directly to the employer. Earnings or interest shall not be returned, offset, or credited to the employer under any of the means used by the board for returning employer overpayments made to the plan.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the

amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee

contributions for such service, in accordance with subsection (b) of this section, including interest.

§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the

highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and six-tenths percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be credited with a maximum benefit of 67 percent of a member’s final average salary. A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) “Accumulated contributions” means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) “Active military duty” means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) “Actuarial equivalent” means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarial equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) “Annual compensation” means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services

performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and section 401(a) (17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

(g) “Annuity starting date” means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, “retirement” means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) “Beneficiary” means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) “Board” means the Consolidated Public Retirement Board.

(j) “Covered employment” means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member’s contribution in §8-22A-8 of this code.

(k) “Credited service” means the sum of a member’s years of service, active military duty and disability service.

(l) “Dependent child” means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member’s household at the time of the member’s death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(n) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) “Effective date” means January 1, 2010.

(p) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(q) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service while employed, prior to any

disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(r) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(u) “Member” means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(v) “Monthly salary” means the W-2 reportable compensation received by a member during the month.

(w) “Municipality” has the meaning ascribed to it in this code.

(x)(1) “Municipal police officer” means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen’s pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen’s pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) “Municipal firefighter” means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen’s pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen’s pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(y) “Municipal subdivision” means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(z) “Normal form” means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(bb) “Plan” means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(cc) “Plan year” means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(dd) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

(ee) “Regular contributory service” means a member’s credited service excluding active military duty, disability service and accrued annual and sick leave service.

(ff) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(gg) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(hh) “Retirement income payments” means the monthly retirement income payments payable.

(ii) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(jj) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(kk) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2)

“Physical or mental impairment” is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member’s annual tax return for purposes of monitoring the earnings limitation.

(ll) “Vested” means eligible for retirement income payments after completion of five or more years of regular contributory service.

(mm) “Year of service” means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-8a. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of errors, the board shall correct errors in the plan in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing

the affected individual, entity, and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors, and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan correcting an erroneous underpayment from the plan, the correction of the underpayment from the plan shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the plan by the employer.* — When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by the employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the plan.

(d) *Overpayments to the plan by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee

contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan more than he would have been entitled to receive had the error not occurred the board, upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary, or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) *Underpayments from the plan.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs

after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section, and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

§8-22A-11. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal

regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent on, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required

by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25b. Definitions.

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

(a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(b) “Agency” means the West Virginia State Police.

(c) “Beneficiary” means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(d) “Board” means the West Virginia Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) “Dependent child” means any unmarried child or children born to or adopted by a member of the fund who is:

(1) Under the age of 18;

(2) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university, business or trade school, until the child or children reaches the age of 20 years; or

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

(f) “Dependent parent” means the member’s parent or stepparent claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(g) “Employee” means any person regularly employed in the service of the agency as a law-enforcement officer before March 12, 1994, and who is eligible to participate in the fund.

(h) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(i) “Fund”, “plan” or “system” means the West Virginia State Police Death, Disability and Retirement Fund.

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

(k) “Member” means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(l) “Partially disabled” means an employee’s inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(m) “Physical or mental impairment” means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(n) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(o) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(p) “Retirant” or “retiree” means any former member who is receiving an annuity payable by the fund.

(q) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(r) “Totally disabled” means an employee’s probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (1) The work exists in the immediate area in which the employee lives; (2) a specific job vacancy exists; or (3) the employee would be hired if he or she applied for work.

§15-2-45. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in

this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. For purposes of this section, the term “required beginning date” means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member’s death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member’s interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period

certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100

percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§15-2-54. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the system in a timely manner whether the individual, entity, or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system.* — Any error resulting in an underpayment to the system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the system by an employer.* — When mistaken or excess employer contributions, including any overpayments have been made to the system by the employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of

the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) *Underpayments from the system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of

the determination, and the individual and his or her employer shall prospectively commence participation in the system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) in this section, including interest.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

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

(1) “Accumulated contributions” means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) “Active military duty” means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) “Agency” means the West Virginia State Police.

(5) “Base salary” means compensation paid to an employee without regard to any overtime pay.

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

(7) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D- 1 *et seq.* of this code.

(8) “Dependent child” means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) “Dependent parent” means the member’s or retirant’s parent or stepparent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member’s or retirant’s death.

(10) “Employee” means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(11) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(12) “Final average salary” means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the

employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(13) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

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

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

(17) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(18) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which

impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(19) “Physical or mental impairment” means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(20) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(21) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(22) “Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise separates from service with the agency.

(23) “Retirant” or “retiree” means any member who commences an annuity payable by the retirement system.

(24) “Salary” means the compensation of an employee, excluding any overtime payments.

(25) “Surviving spouse” means the person to whom the member or retirant was legally married at the time of the member’s or retirant’s death and who survived the member or retirant.

(26) “Totally disabled” means an employee’s probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled

only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(27) “Years of service” means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

§15-2A-6b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental

benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period

certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100

percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§15-2A-23. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system.* — Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board

receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the system by an employer.* — When mistaken or excess employer contributions or other overpayments have been made to the system by an employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error

occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) *Underpayments from the system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible

to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) in this section, including interest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

***§16-5V-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and six 10ths percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board’s actuary, increase the employees’ contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years

*NOTE: This section was also amended by H. B. 4688 (Chapter 72), which passed subsequent to this act.

of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(b) “Accumulated contributions” means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) “Active military duty” means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) “Annual compensation” means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

(g) “Annuity starting date” means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income

payments commence after the normal retirement age, “retirement” means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) “Board” means the Consolidated Public Retirement Board.

(i) “Contributing service” or “contributory service” means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) “County commission or political subdivision” has the meaning ascribed to it in this code.

(k) “Covered employment” means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer contributes to the fund created in this article the amount specified as the member’s contribution in §16-5V-8 of this code.

(l) “Credited service” means the sum of a member’s years of service, active military duty, disability service and accrued annual and sick leave service.

(m) “Dependent child” means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(q) "Effective date" means January 1, 2008.

(r) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to

include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(s) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(t) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under this article, then “final average salary” means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(u) “Full-time employment” means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1040 hours per year service in that position.

(v) “Fund” means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(w) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(x) “Member” means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(y) “Monthly salary” means the W-2 reportable compensation received by a member during the month.

(z) “Normal form” means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(bb) “Participating public employer” means any county commission or political subdivision in the state which has elected to cover its emergency medical services officers, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.

(cc) “Plan” means the West Virginia Emergency Medical Services Retirement System established by this article.

(dd) “Plan year” means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) “Political subdivision” means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(ff) “Public Employees Retirement System” means the West Virginia Public Employee’s Retirement System created by West Virginia Code.

(gg) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) “Retirant” means any member who commences an annuity payable by the plan.

(jj) “Retire” or “retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) “Retirement income payments” means the monthly retirement income payments payable under the plan.

(ll) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(mm) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(nn) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member’s annual tax return for purposes of monitoring the earnings limitation.

(oo) “Year of service” means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Year of Service Credited.
Less than 500	0
500 to 999	1/3

1,000 to 1,499 2/3

1,500 or more 1

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§16-5V-8a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement plan, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive

service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to

the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

§16-5V-13. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly

required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions

are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is 100 percent of the

survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

“Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.

“Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

“Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Average final salary” means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Contributor” means a member of the retirement system who has an account in the Teachers Accumulation Fund.

“Deposit” means a voluntary payment to his or her account by a member.

“Employer” means the agency of and within the state which has employed or employs a member.

“Employer error” means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

“Employment term” means employment for at least 10 months, a month being defined as 20 employment days.

“Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the

member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

“Member” means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

“Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff of the public schools” means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

“New entrant” means a teacher who is not a present teacher.

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems

under this article and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

“Plan year” means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

“Present member” means a present teacher or nonteacher who is a member of the retirement system.

“Present teacher” means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

“Prior service” means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

“Public schools” means all publicly supported schools, including colleges and universities in this state.

“Refund beneficiary” means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

“Regular interest” means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

“Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires or ceases covered employment under the retirement system.

“Retirant” means any member who commences an annuity payable by the retirement system.

“Retirement board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

“Retirement system” means the State Teachers Retirement System established by this article.

“Teacher member” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-

11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

“Total service” means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the retirement system.* — Any error resulting in an underpayment to the retirement system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an

underpayment to the retirement system will result in the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer.* — When mistaken or excess employer contributions or other employer overpayments have been made to the retirement system, the board shall credit the employer with an amount equal to the erroneous overpayment, to be offset against the employer's future liability for employer contributions to the retirement system. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the retirement board for returning employer overpayments to the retirement system.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the retirement board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the retirement board for returning member overpayments.

(e) *Overpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the retirement board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned

to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

§18-7A-28b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period

certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100

percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

“Annual addition” means, for purposes of the limitations under section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

“Annuity account” or “annuity” means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

“Compensation” means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation

allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code: *Provided, however,* That solely for purposes of applying the limitations of section 415 of the Internal Revenue Code to any annual addition, “compensation” has the meaning given it in §18-7B-13(d) of this code.

“Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code.

“Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article.

“Employer” means the agency of and within the State of West Virginia which has employed or employs a member.

“Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds.

“Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

“Employment term” means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

“Existing employer” means any employer who employed or employs a member of the system.

“Existing retirement system” means the State Teachers Retirement System established in §18-7A-1 *et seq.* of this code.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

“Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a, and §18-7A-1 *et seq.* of this code.

“Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s

individual annuity account within the Teachers' Defined Contribution Retirement System.

“Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, “permanent, total disability” means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

“Plan year” means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

“Public schools” means all publicly supported schools, including normal schools, colleges, and universities in this state.

“Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer.

“Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

“Year of employment service” means employment for at least 10 months, with a month being defined as 20 employment days:

Provided, That no more than one year of service may be accumulated in any 12-month period.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary (subject to the provisions of subsection (g) of this section: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted

by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death (subject to the provisions of subsection (g) of this section).

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this section), commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution (subject to the provisions of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

(f) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse

of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

(g) The provisions of this subsection will apply to distributions with respect to members who die on or after January 1, 2022, and to the designated beneficiaries of members who die prior to January 1, 2022, as described in subdivision (2) of this subsection. This subsection will not apply to qualified annuities described in SECURE Act section 401(b)(4)(B)[P.L. 116-94, Div. O].

(1) *10-Year Rule.* — If the distributee of a deceased member’s account is a designated beneficiary who is not an “Eligible Designated Beneficiary,” then the system will distribute the member’s vested account in full no later than December 31 of the 10th year following the year of the member’s death.

(2) *Beneficiary Death.* — If an Eligible Designated Beneficiary dies before receiving distribution of the beneficiary’s entire interest in the member’s account, the system will distribute the remaining interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary’s death. Similarly, if a member died before January 1, 2022, the limitations of this subsection (g) shall apply to distributions to the beneficiary of the member’s designated beneficiary.

(3) *Eligible Designated Beneficiary.* — An individual is an “Eligible Designated Beneficiary” of a member if the individual qualifies as a designated beneficiary under section 401(a)(9)(E) of the Internal Revenue Code and is (1) the member’s spouse, (2) the member’s child who has not reached the age of majority (as defined for purposes of section 401(a)(9)(F) of the Internal Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled individual, as defined in section 72(m)(7) of the Internal Revenue Code, or (5) an individual who has been certified to be chronically ill, as defined in section 7702B(c)(2) of the Internal Revenue Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to sections 401(a)(9)(H)(iv) and (v) of the Internal Revenue Code. When a child of the member reaches the

age of majority, the system will distribute the child's account in full no later than 10 years after that date.

§18-7B-21. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system.* — Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the existing employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the system by an employer.* — When mistaken or excess employer contributions or other employer overpayments have been made to the system, the board shall credit the employer with an amount computed by the board, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer

contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the existing employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual are not considered compensation for any purposes of this article.

(e) *Overpayments from the retirement system.* — If any error results in any member, retirant beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest

shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service: *Provided*, That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half percent of the member’s final average salary multiplied by the member’s years of credited service. A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this code.

(b) “Accumulated contributions” means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) “Active member” means a member who is active and contributing to the plan.

(d) “Active military duty” means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarial equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) “Annual compensation” means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(g) “Annual leave service” means accrued annual leave.

(h) “Annuity starting date” means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached normal retirement age.

(i) “Beneficiary” means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(j) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(k) “Covered employment” means either: (1) Employment as a Natural Resources Police Officer and the active performance of the duties required of a Natural Resources Police Officer; (2) the period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police

Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service, eligible annual and sick leave service.

(m) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for Federal Income Tax purposes at the time of the member's death.

(o) "Director" means Director of the Division of Natural Resources.

(p) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this code.

(q) “Division of Natural Resources” or “division” means the West Virginia Division of Natural Resources.

(r) “Effective date” means January 2, 2021.

(s) “Employer error” means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(t) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under §20-18-21 or §20-18-22 of this code then “final average salary” means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability multiplied by 12.

(u) “Fund” means the West Virginia Natural Resources Police Officer Retirement Fund created pursuant to §20-18-7 of this code.

(v) “Hour of service” means:

(1) Each hour for which a member is paid;

(2) Each hour for which a member is paid but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the Division of Natural Resources, irrespective of mitigation of damages. The same hours of service may not be credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(w) “Member” means a person first hired as a Natural Resources Police Officer, as defined in subsection (y) of this section, on or after January 2, 2021, or a Natural Resources Police Officer first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

(x) “Monthly salary” means the portion of a member’s gross annual compensation which is paid to him or her per month.

(y) “Natural Resources Police Officer” means any person regularly employed in the service of the division as a law-enforcement officer on or after the effective date of this article, and who is eligible to participate in the fund. The term shall not include Emergency Natural Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined in §20-7-1(e) of this code, or

Federal Law Enforcement Officer as defined in §20-7-1b of this code.

(z) “Normal form” means a monthly annuity which is 1/12 of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following: (1) Attainment of age 55 years and the completion of 15 or more years of service; (2) while still in covered employment, attainment of at least age 55 years, and when the sum of current age plus years of service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have 10 or more years of service, all of which years shall be actual, contributory ones.

(bb) “Partially disabled” means a member’s inability to engage in the duties of a Natural Resources Police Officer by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) “Plan” means the West Virginia Natural Resources Police Officers Retirement System established by this article.

(dd) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(ee) “Public Employees Retirement System” means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(ff) “Qualified public safety employee” means any employee of the division who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(gg) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) “Required beginning date” means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which the member retires or otherwise separates from covered employment.

(ii) “Retirant” means any member who commences an annuity payable by the retirement system.

(jj) “Retire” or “retirement” means a member’s termination from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) “Retirement income payments” means the annual retirement income payments payable under the plan.

(ll) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(mm) “Substantial gainful employment” or “gainful employment” means employment in which an individual may earn up to an amount that is determined by the United States Social

Security Administration as substantial gainful activity and still receive total disability benefits.

(nn) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(oo) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a Natural Resources Police Officer but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member’s receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(pp) “Year of service.” A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, be credited with year of service credit, based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment or within the plan year of the effective date, the member shall be credited with 1/12 of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§20-18-9. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of errors, the board shall correct errors in the retirement plan in a timely manner whether the individual, division or board was at fault for the error with the intent of placing the affected individual, division and board in the position each would have been in had the error not occurred.

(b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the division remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan

and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the division. The division may remit total payment and the employee reimburse the division through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan paying a retirant an additional amount, this additional payment may be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the plan by the division.* — When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the division with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the plan. If the division has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the division. Earnings or interest may not be returned, offset or credited to the division under any of the means used by the board for returning employer overpayments made to the plan.

(d) *Overpayments to the plan by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board has sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, the board may require the division to pay the individual the amounts as wages, with the board crediting the division with a corresponding amount to offset against its future contributions to the plan. If the division has no future liability for employer contributions to the plan, the board shall refund said amount directly to the division: *Provided*, That the wages paid to the individual shall not be considered compensation

for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary, the division or other individual receiving from the system more than he or she would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, the division or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) *Underpayments from the plan.* — If any error results in any member, retirant, beneficiary, the division or other individual receiving from the plan less than he or she would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual is not eligible to participate, the board shall notify the individual and the division of the determination and terminate his or her participation in the plan. Any erroneous payments to the retirement system shall be returned to the division and individual in

accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and the division of the determination, and the individual shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

(h) *Correction of errors occurring prior to transfer from Public Employee Retirement System.* — If any errors requiring correction occurred prior to establishment of the plan created pursuant to this article or prior to the transfer of funds from the Public Employee Retirement System, into the plan, or both, the employer and member contributions, if any, required to be calculated in order to effect correction shall be based on the rates in effect for the retirement system under which such employer or member contributions would have been made had the error not occurred. For purposes of this subsection, “retirement system” means either the Public Employees Retirement System or the plan. The board shall have full discretion when applying this subsection (h), consistent with the general principles of subsection (a) of this section. The intent of any correction is to place the affected individual, division and board in the position in which each would have been had the error not occurred.

§20-18-14. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under

this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement plan which satisfies the MDIB regulations. Benefit payments under this section may not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion

of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 72; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election may not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year

containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 72; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

(a) As used in this article, the term "judge", "judge of any court of record", or "judge of any court of record of this state" means, refers to, and includes judges of the several circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to, or include family court judges.

(b) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the

federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) “Beneficiary” means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(f) “Final average salary” means the average of the highest 36 consecutive months’ compensation received by the member as a judge of any court of record of this state.

(g) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(h) “Member” means a judge participating in this system.

(i) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(j) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which the member retires or otherwise separates from covered employment under this retirement system.

(k) “Retirement system” or “system” means the Judges’ Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the

provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System.

§51-9-12b. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiaries' interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement

system. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of (A) or (B) below:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§51-9-18. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and

retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system.* — Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer.* — When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by a participating public employer, the board, upon learning of the error, shall credit the participating public employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board, upon learning

of the error, shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer, participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 257

(S. B. 492 - By Senators Azinger, Boley, and Clements)

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17-16A-11 of the Code of West Virginia, 1931, as amended, relating to the electronic collection of tolls; and providing that nonrenewal of vehicle registration provisions may become effective whenever a reciprocal enforcement agreement is entered into by the West Virginia Parkways Authority, the Commissioner of Motor Vehicles, and any state sharing a common border with this state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16D. ELECTRONIC TOLL COLLECTION.

§17-16D-11. Nonrenewal of vehicle registration; effect of civil or criminal violation.

(a) Upon receipt of a notice from the Parkways Authority that a vehicle owner failed to pay tolls and costs in accordance with a notice of default judgment, or court order, the Commissioner of Motor Vehicles shall refuse to register, or renew the registration of any vehicle of which the person committing the violation is a registered owner or co-owner until such time as the Commissioner of Motor Vehicles receives notice from the Parkways Authority that all fees, penalties and costs imposed on that person pursuant to this article have been paid or satisfied.

(b) The Commissioner of Motor Vehicles shall refuse or suspend the registration of any motor vehicle incurring a toll violation under this article if:

(1) The commissioner is notified by the Parkways Authority that a registered owner has been served with a citation in accordance with this article and:

(A) Has failed to pay the electronic toll, administrative fee, and the civil penalty for the toll violation by the date specified in the citation; or

(B) Has failed to contest liability for the toll violation by the date identified and in the manner specified in the citation; or

(2) The commissioner is notified by the Parkways Authority or the circuit court that a person who elected to contest liability for a toll violation under this article has failed to appear for trial or hearing or has been determined to be responsible for the toll violation and has failed to pay the electronic toll and related civil penalty.

(c) In conjunction with any rule promulgated by the Parkways Authority, the Commissioner of Motor Vehicles may adopt regulations and develop procedures to carry out the refusal or suspension of a registration as authorized by this section.

(d) The procedures specified in this section are in addition to any other penalty provided by law for toll violations.

(e) The provisions of this section may be applied to enforce a reciprocal agreement entered into by this state and another jurisdiction in accordance with section thirteen of this article, and any reciprocal enforcement of toll violations entered into by the commissioner may include any such violations involving a private toll transportation facility operating pursuant to §17-17-38 of this code.

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CHAPTER 258

**(Com. Sub. for Com. Sub. for S. B. 530 - By Senators Blair
(Mr. President) and Baldwin)**
[By Request of the Executive]

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-6b; and to amend and reenact §17-27-3, §17-27-4, §17-27-5, §17-27-7, §17-27-8, §17-27-9, §17-27-11, §17-27-13, §17-27-14, §17-27-15, and §17-27-16 of said code, all relating to encouraging public-private partnerships related to transportation facilities; providing coal severance tax escrow fund for the state portion of coal severance taxes paid on a public-private transportation facility; authorizing the Division of Highways to repay collected tax in escrow to private entities; cleaning up antiquated language; clarifying the roles of the division, public entities, and developers; simplifying the public-private partnership review process; providing that project proposal may not include use of more than \$100 million from state road fund; clarifying that Commissioner of the Division of Highways may approve or modify the division's rankings, authorize negotiations and entry into comprehensive agreement with the highest-ranked developer, or reject all proposals; providing that division is not obligated to accept, consider, or review unsolicited conceptual proposals, but may choose to do so; providing that no obligation or liability attaches to either party if they are unable to reach an agreement; providing that the division may negotiate a comprehensive agreement with the next highest-ranked developer if agreement cannot be reached with highest-ranked developer; clarifying

the extent to which the division may utilize condemnation if it is found the project serves a public purpose or the developer is in material default; and exempting public-private partnership agreements from statutory government construction contract requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-6b. Severance tax on coal extracted incident to highway construction performed under §17-27-1 et seq. of this code.

(a) Notwithstanding any other provision of this code, severance tax paid on coal extracted incident to the construction of any highway financed, in whole or in part, by this state or any agency of the government of the United States, and subject to the provisions of 30 CFR §912.707 or §22-3-26 of this code shall be deposited on a quarterly basis by the Tax Commissioner in a special fund in the State Treasury to be managed by the Commissioner of the Division of Highways and held in escrow until such time as the conditions specified in this section are complied with.

(b) *Coal severance tax subject to escrow.* —

The severance tax subject to escrow under this section includes:

(A) The 4.65 percent state portion of severance tax on coal imposed under §11-13A-3 of this code; and

(B) The 1.65 percent state portion of the coal severance tax on coal extracted from seams having a thickness of 37 to 45 inches; and

(C) The 0.65 percent state portion of the coal severance tax on coal extracted from seams having a thickness of less than 37 inches; and

(D) The 2.65 percent state portion of the coal severance tax on thermal coal imposed under §11-13A-3(b) of this code; and

(E) If the minimum severance tax set forth in §11-12B-1 *et seq.* of this code is paid or due owing and payable, the minimum severance tax.

(c) *Coal severance tax not subject to escrow.* — The severance tax on coal imposed under §11-13A-3 and §11-13A-6 of this code for the benefit of counties and municipalities may not be subject to escrow under this section, but shall be distributed for the benefit of counties and municipalities as mandated by law.

(d) The moneys accumulated in escrow pursuant to the provisions of this section shall be paid to each participant in a public-private partnership related to transportation facilities under §17-27-1 *et seq.* of this code.

(e) The amount paid to each such private entity shall be equal to the severance tax paid by each entity that was deposited into the escrow fund, with interest at the statutory rate of interest on tax overpayments established under the West Virginia Tax Procedure and Administration Act, §11-10-1 *et seq.* of this code.

(f) Moneys to be paid out of the escrow fund to each such private entity shall only be paid when the Commissioner of the Division of Highways has certified that:

(1) All contracted work of the private entity for construction of the highway that yielded the coal extracted incident to the construction has been satisfactorily completed, and that the work meets all applicable highway construction standards;

(2) All taxes due and owing to this state by the private entity have been paid;

(3) All rights-of-way relating to the highway have been satisfactorily settled;

(4) All subcontractors, laborers, and obligees of the private entity have been properly paid;

(5) All legal and contractual obligations undertaken by the private entity under §17-27-1 *et seq.* of this code have been satisfactorily fulfilled; and

(6) The private entity is in compliance with all state and federal laws applicable to the construction project.

(g) Upon a determination by the Commissioner of the Division of Highways that moneys in the escrow fund may not be paid, or that the moneys have remained unpaid for a period of not less than one year, the moneys shall be removed from the escrow fund and paid into the General Fund.

CHAPTER 17. ROADS AND HIGHWAYS

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-3. Prerequisites for development.

Any private entity seeking authorization under this article to acquire, construct, or improve a transportation facility shall first submit a conceptual proposal as set forth in §17-27-5 of this code.

§17-27-4. Powers and duties of the division and other agencies that are part of the department.

In addition to the powers and duties set forth elsewhere in this code, the division and any other agency that is part of the department may:

(1) Review proposals submitted by private entities in accordance with this article. The review shall consist of the review by the division of the conceptual proposal: *Provided*, That expenses of the division incurred for review of an unsolicited proposal or proposals shall be paid by the private entity submitting

the proposal. The division shall take into account at all times the needs and funding capabilities of the state as a whole in terms of transportation;

(2) Enter into agreements, contracts, or other transactions with any agency that is part of the department, as well as any federal, state, county, municipal agency, or private entity;

(3) Act on behalf of the state and represent the state in the planning, financing, development, and construction of any transportation facility for which proposals have been received in accordance with the provisions of this article. Other public entities in this state shall cooperate to the fullest extent with what the division considers appropriate to effectuate the duties of the division;

(4) Exempt from disclosure any sensitive business, commercial, or financial information that is not customarily provided to business competitors that is submitted to the division for final review and approval;

(5) Exempt from disclosure any documents, communications, or information described in this section including, but not limited to, the project's design, management, financing, and other details in accordance with §29B-1-1 *et seq.* of this code; and

(6) Do any and all things necessary to carry out and accomplish the purposes of this article.

§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner of the Division of Highways.

(a) The division may solicit, or a private entity may submit in writing, a conceptual proposal for a transportation facility to the division for consideration. The conceptual proposal shall include the following:

(1) A statement of the private entity's qualifications and experience;

(2) A description of the proposed transportation facility;

(3) A description of the financing for the transportation facility; and

(4) A statement setting forth the degree of public support for the proposed transportation facility, including a statement of the benefits of the proposed transportation facility to the public and its compatibility with existing transportation facilities.

(b) The conceptual proposal shall be accompanied by the following material and information unless waived by the division with respect to the transportation facility or facilities that the private entity proposes to develop as a qualifying transportation facility:

(1) A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

(2) A description of the transportation facility or facilities, including the conceptual design of the facility or facilities and all proposed interconnections with other transportation facilities;

(3) The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to, the transportation facility or facilities;

(4) A statement setting forth the method by which the private entity proposes to secure all property interests required for the transportation facility or facilities: *Provided*, That with the approval of the division, the private entity may request that the comprehensive agreement assign the division with responsibility for securing all property interests, including public utility facilities, with all costs, including costs of acquiring the property, to be reimbursed to the division by the private entity. The statement shall include the following information regarding the property interests or rights, including, but not limited to, rights to extract mineable minerals:

(A) The names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities;

(B) The nature of the property interests to be acquired;

(C) Any property that the division may expect to condemn; and

(D) The extent to which the property has been or will be subjected to the extraction of mineable minerals.

(5) Information relating to the current transportation plans, if any, of each affected local jurisdiction;

(6) A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals: *Provided*, That the acquisition, construction, improvement, or operation of a qualifying transportation facility that includes the extraction of mineable minerals is required to obtain all necessary permits or approvals from all applicable authorities in the same manner as if it were not a qualifying transportation facility under this article;

(7) A list of public utility facilities, if any, that will be crossed or affected by or as the result of the construction or improvement of the public port transportation facility or facilities and a statement of the plans of the developer to accommodate the crossings or relocations;

(8) A statement setting forth the private entity's general plans for financing and operating the transportation facility or facilities;

(9) The names and addresses of the persons who may be contacted for further information concerning the request;

(10) Information about the private entity and, to the extent they differ, any developer, including, but not limited to, an organizational chart, capitalization, experience in the operation of transportation facilities, and references and certificates of good standing from the Tax Commissioner, Insurance Commissioner, and the Division of Unemployment Compensation evidencing good standing with state tax, workers' compensation, and unemployment compensation laws, respectively; and

(11) Any additional material and information requested by the Commissioner of the Division of Highways.

(c) The division may solicit proposals for the acquisition, construction, or improvement of any transportation facility or facilities if it finds that it serves the public purpose of this article. The division may find that the acquisition, construction, or improvement of the transportation facility or facilities serves a public purpose if:

(1) There is a public need for the transportation facility;

(2) The transportation facility and the proposed interconnections with existing transportation facilities are reasonable and compatible with the state transportation plan and any applicable local plans;

(3) The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities: *Provided*, That moneys used by the state road fund shall not exceed \$100 million.

(4) The use of federal funds in connection with the financing of a qualifying transportation facility has been determined by the division to be compatible with the state transportation plan and any applicable local plans; and

(5) The solicitation will result in the timely acquisition, construction, or improvements of transportation facilities, or the more efficient operation thereof, and will result in a more timely and economical delivery of transportation facilities than otherwise available under existing delivery systems.

(d) If proposals for a transportation facility are solicited by the division, the division shall review all solicited conceptual proposals, assign them a priority ranking, and present them with the priority ranking to the Commissioner of the Division of Highways for review. Upon presentation of the priority-ranked proposals, the commissioner shall approve or modify the division's rankings, and may authorize the division to negotiate and enter into a comprehensive agreement with the highest-ranked developer or reject all proposals. The division has no duty to accept, consider,

or review a conceptual proposal that was not solicited by the division, but may do so in its sole discretion.

§17-27-7. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds it will serve the public purpose of this article. In connection with the dedication, a public entity may convey any property interest that it has to a developer or the division for any consideration determined by the public entity. This consideration may include, without limitation, the agreement of the developer to develop the qualifying transportation facility. No real property may be dedicated by a public entity pursuant to this article unless all other public notice and comment requirements are met.

§17-27-8. Powers and duties of the developer.

(a) The developer has all power allowed by law generally to a private entity having the same form of organization as the developer and may acquire, construct or improve a qualifying transportation facility and impose user fees in connection with the use of the facility.

(b) The developer may own, lease, or acquire any other right to facilitate the development of a qualifying transportation facility.

(c) Any financing of a qualifying transportation facility may be in the amounts and upon terms and conditions negotiated by the developer. The developer may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

(d) In developing the qualifying transportation facility, the developer may:

(1) Make classifications according to reasonable categories for assessment of user fees; and

(2) With the consent of the division, make and enforce reasonable rules to the same extent that the division may make and enforce rules with respect to a similar transportation facility. The developer may, by agreement with appropriate law-enforcement agencies, arrange for video enforcement in connection with its toll collection activities.

(e) The developer shall:

(1) Acquire, construct, or improve the qualifying transportation facility in a manner that meets the engineering standards of:

(A) The authority for facilities operated and maintained by the division, in accordance with the provisions of the comprehensive agreement; and

(B) The division, in accordance with the provisions of the comprehensive agreement;

(2) Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees or service payments: *Provided*, That the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the division, to protect the safety of the public or for reasonable construction or maintenance procedures;

(3) Contract for the performance of all maintenance and operation of the transportation facility through the division, using its maintenance and operations practices, until the date of termination of the developer's duties as defined in the comprehensive agreement;

(4) Cooperate with the division in establishing any interconnection with the qualifying transportation facility requested by the division;

(5) Remain in compliance with state tax, workers' compensation, and unemployment compensation laws; and

(6) Comply with the provisions of the comprehensive agreement and any service contract.

§17-27-9. Comprehensive agreement.

(a) Prior to acquiring, constructing, or improving the qualifying transportation facility, the developer shall enter into a comprehensive agreement with the division. The comprehensive agreement shall provide for:

(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the division;

(2) Review and approval of the final plans and specifications for the qualifying transportation facility by the division;

(3) Inspection of the construction of or improvements to the qualifying transportation facility to ensure that they conform to the engineering standards acceptable to the division;

(4) Maintenance of a policy or policies of public liability insurance or self insurance, in a form and amount satisfactory to the division and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility: *Provided*, That in no event may the insurance impose any pecuniary liability on the state, its agencies, or any political subdivision of the state. Copies of the policies shall be filed with the division accompanied by proofs of coverage;

(5) Monitoring of the maintenance and operating practices of the developer by the division and the taking of any actions the division finds appropriate to ensure that the qualifying transportation facility is properly maintained and operated;

(6) Itemization and reimbursement to be paid to the division for the review and any services provided by the division;

(7) Filing of appropriate financial statements on a periodic basis;

(8) A reasonable maximum rate of return on investment for the developer;

(9) The date of termination of the developer's duties under this article and dedication to the division; and

(10) That a transportation facility shall accommodate all public utilities on a reasonable, nondiscriminatory, and completely neutral basis and in compliance with §17-4-17b of this code.

(b) The comprehensive agreement may require user fees established by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the developer the rate of return on its investment specified in the comprehensive agreement: *Provided*, That the schedule and amount of the initial user fees to be imposed and any increase of the user fees shall be approved by the Commissioner of the Division of Highways. A copy of any service contract shall be filed with the division. A schedule of the current user fees shall be made available by the developer to any member of the public upon request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not unreasonably discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment to the comprehensive agreement constitutes conclusive evidence that the user fees provided in the comprehensive agreement comply with this article. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

(c) In the comprehensive agreement, the division may agree to accept grants or loans from the developer, from time to time, from amounts received from the state or federal government or any agency or instrumentality of the state or federal government.

(d) The comprehensive agreement shall incorporate the duties of the developer under this article and may contain any other terms

and conditions that the division determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the division agrees to provide notice of default and cure rights for the benefit of the developer and the persons specified in the comprehensive agreement as providing financing for the qualifying transportation facility. The comprehensive agreement may contain any other lawful terms and conditions to which the developer and the division mutually agree, including, without limitation, provisions regarding unavoidable delays.

(e) The comprehensive agreement shall require the deposit of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement in the State Road Fund established pursuant to §17-3-1 of this code.

(f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties, shall be added to the comprehensive agreement by written amendment.

(g) Notwithstanding any provision of this article to the contrary, at least 60 days prior to execution, the commissioner shall provide a copy of a comprehensive agreement, with any findings required by this article, to the Joint Committee on Government and Finance and the Joint Legislative Oversight Commission on Department of Transportation Accountability and the commissioner shall provide notice to the public.

(h) If a developer and the division cannot agree to the terms of a comprehensive agreement, neither party shall have any further obligation or liability to the other. In the event a developer and the division fail to enter into a comprehensive agreement, the commissioner may authorize the division to negotiate and enter into a comprehensive agreement with any next-highest-ranked developer identified pursuant to §17-27-5 of this code.

(i) Before entering into any comprehensive agreement related to or resulting from an unsolicited proposal, the commissioner shall make a written finding that entry into the comprehensive

agreement serves the public purpose of this article and is in the best interest of the state.

§17-27-11. Material default; remedies.

(a) Except upon written agreement of the developer and any other parties identified in the comprehensive agreement, the division may exercise any or all of the following remedies provided in this section or elsewhere in this article to remedy any material default that has occurred or may continue to occur.

(1) To elect to take over the transportation facility or facilities and in that case, it shall succeed to all of the rights, title and interest in the transportation facility or facilities, subject to any liens on revenues previously granted by the developer to any person providing financing for the facility or facilities and the provisions of this section;

(2) To exercise the power of condemnation to acquire the qualifying transportation facility or facilities;

(3) To terminate the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, subject only to the express limitations of the terms of the comprehensive agreement; and

(4) To make or cause to be made any appropriate claims under the performance or payment bonds required by this article.

(b) If the division elects to take over a qualifying transportation facility pursuant to subdivision (1), subsection (a) of this section, the division may acquire, construct, or improve the transportation facility, impose user fees for the use of the transportation facility and comply with any service contracts as if it were the developer. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the developer's obligations to secured parties, including the maintenance of reserves and the liens shall be correspondingly reduced and, when paid off, released. The full faith and credit of the division may not be pledged to secure any financing of the developer by the election

to take over the qualifying transportation facility. Assumption of development of the qualifying transportation facility does not obligate the division to pay any obligation of the developer from sources other than revenues.

§17-27-13. Condemnation.

(a) At the request of the developer, the division may exercise the power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests in any lands or estates to the extent that the division finds that the action serves the public purpose of this article. Any amounts to be paid in any condemnation proceeding shall be paid by the developer.

(b) Until the division has provided written certification as to the existence of a material default under §17-27-11(a) of this code, the power of condemnation may not be exercised against a qualifying transportation facility.

§17-27-14. Utility crossings.

The developer and each county, municipality, public service district, utility, railroad, and cable television provider whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any entity possessing the power of condemnation is expressly granted the powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that the moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which includes construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for the crossing, construction, moving or relocating of facilities shall be paid by the developer.

§17-27-15. Dedication of assets.

The division shall terminate the developer's authority and duties under this article on the date set forth in the comprehensive

agreement. Upon termination, the duties of the developer and division under this article cease and the qualifying transportation facility shall be dedicated to the division for public use.

§17-27-16. Qualifying a transportation facility as a public improvement.

Comprehensive agreements entered into pursuant to this article are exempt from the provisions of §5-22-1 *et seq.* of this code. The provisions §21-1C-1 *et seq.* of this code apply to the construction of all qualifying transportation facilities approved under this article.

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CHAPTER 259

(Com. Sub. for S. B. 609 - By Senators Clements and Jeffries)

[Passed March 11, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §17-2A-15 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of Highways to accept ownership of equipment that was rented or leased; and setting forth requirements related to acquiring and reporting ownership of equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-15. Other code provisions relating to purchasing not controlling; exceptions.

(a) The provisions of §5A-3-1 *et seq.* of this code shall not control or govern the purchase, acquisition, or disposition of any equipment, materials, or supplies by the commissioner, except as provided in §17-2A-13 and §17-2A-14 of this code. The commissioner may, in his or her discretion, resort to applicable provisions of §5A-3-1 *et seq.* of this code and to rules and practices of the Purchasing Division within the Department of Administration in purchasing, acquiring, or disposing of equipment, supplies, and materials.

(b) The commissioner may accept ownership of equipment if the equipment has been rented or leased by the division, maintained by the division, and the equipment vendor voluntarily relinquishes ownership of the equipment to the division. Any equipment acquired pursuant to this subsection shall be included in the

division's inventory and the division's equipment and vehicle reports. Prior to any termination of a rental or lease agreement with an assumption of ownership of equipment, the commissioner shall notify the Director of the Purchasing Division within the Department of Administration.



CHAPTER 260

(Com. Sub. for S. B. 611 - By Senator Clements)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §17-4-20 of the Code of West Virginia, 1931, as amended, relating to contract bidder's surety or collateral bond; modifying cap on contract bidder's surety or collateral bond; authorizing Commissioner of Highways to determine bond amounts based on objective criteria; setting forth that any final decision would be considered a contested case subject to appeal; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-20. Bidder's bond required; return or forfeiture of bond.

(a) In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall, within 20 days after notice of award, execute a formal contract to be approved as to its form, terms, and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the State of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed 110 percent of the contract price, conditioned that the contractor shall well and truly perform the contract. The commissioner may determine individual contractor surety or collateral bond amounts based upon objective criteria set by the commissioner, and any final decision that adversely affects a contractor shall be a contested case subject to appeal under chapter 29A of this code.

(b) The contractor shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by the contractor in the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of the contract. A legal action may be maintained upon the bond for breach thereof by any person for whose benefit the bond was executed or by his or her assignee.

(c) The bidder who has the contract awarded to him or her and who fails within 20 days after notice of the award to execute the required contract and bond shall forfeit such check or bond, which shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute the contract and bond.

(d) Upon the execution of the contract and bond by the successful bidder, his or her check or bond shall be released to him or her. The checks or bonds of the unsuccessful bidders shall be released to them promptly after the bids are opened and the contract awarded to the successful bidder.

(e) A duplicate copy of such contract and bond shall be furnished by the Commissioner of the Division of Highways, in electronic or paper form as may be required, to the county clerk of the county in which such contract is to be performed. It is the duty of the county clerk to bind and preserve the same in his or her office and index the same in the name of the commissioner and of the contractor.

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CHAPTER 261

**(Com. Sub. for S. B. 535 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 9, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §18A-3-6 of the Code of West Virginia, 1931, as amended, relating to revocation of school personnel certification; authorizing the state superintendent to automatically suspend certificates held by a teacher or other certificate holder upon charge or indictment for certain offenses or filing of a petition alleging child abuse; providing for reinstatement of automatically suspended certificate in certain circumstances; extending automatic revocation provisions to certain certificate holders; clarifying that certain revocation provisions are triggered by guilty plea or conviction; providing for automatic revocation of a certificate upon adjudication by a court of competent jurisdiction that a teacher or certificate holder has committed abuse of a child; and providing for reinstatement of automatically revoked certificate when adjudication of abuse of a child is overturned by the Supreme Court of Appeals of West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Grounds for revocation or suspension of certificates; other authorized actions by state superintendent; required reporting by county superintendents; and recalling certificates for correction.

(a) The state superintendent may, after 10 days' notice and upon proper evidence, revoke or suspend the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea, or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved, or insufficient credit to obtain the certificates: *Provided*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved, or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent shall also have the authority to limit certificates, issue letters of admonishment, or enter into consent agreements requiring specific training in order for a teacher to maintain a certificate. The state superintendent may designate the West Virginia Commission for Professional Teaching Standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent. The state superintendent may issue subpoenas and subpoenas *duces tecum* to obtain testimony and documents to aid in the investigation of allegations against any person subject to licensure by the state superintendent.

(b) The state superintendent may automatically suspend the certificate held by a teacher, as defined by §18-1-1(g) of this code, or any individual holding a certificate granted pursuant to §18A-3-2a of this code, in any of the following circumstances:

(1) The teacher or certificate holder is charged or indicted for an offense under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state;

(2) The teacher or certificate holder is charged or indicted with any criminal offense that requires the teacher to register as a sex offender;

(3) The teacher or certificate holder is charged or indicted with any criminal offense which has as an element delivery or distribution of a controlled substance;

(4) The teacher or certificate holder is charged or indicted for any offense under the provisions of §61-2-1 of this code or under any law of the United States or any other state for an offense which has the same elements as those offenses described in §61-2-1 of this code; or

(5) A petition has been filed pursuant to §49-4-601 of this code alleging that the teacher or certificate holder has committed abuse of a child.

(c) If any such charge or indictment resulting in suspension pursuant to subsection (b) of this section is dismissed by the court in which it is pending, if the teacher or certificate holder is acquitted of such charge, or if a petition filed pursuant to §49-4-601 and resulting in suspension pursuant to subsection (b) of this section is dismissed by the court in which it is pending, the teacher's or certificate holder's certification shall be reinstated unless otherwise prohibited by law.

(d) The state superintendent shall automatically revoke the certificate held by a teacher, as defined by §18-1-1(g) of this code, or any individual holding a certificate granted pursuant to §18A-3-2a of this code, in any of the following circumstances:

(1) The teacher or certificate holder pleads guilty to or is convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state;

(2) The teacher or certificate holder pleads guilty to or is convicted of any criminal offense that requires the teacher to register as a sex offender;

(3) The teacher or certificate holder pleads guilty to or is convicted of any criminal offense which has as an element delivery or distribution of a controlled substance;

(4) The teacher or certificate holder pleads guilty to or is convicted under the provisions of §61-2-1 of this code or has been so convicted under any law of the United States or any other state

for an offense which has the same elements as those offenses described in §61-2-1 of this code; or

(5) A court of competent jurisdiction has adjudicated the teacher or certificate holder as having committed abuse of a child under §49-4-601 of this code.

(e) If any conviction resulting in automatic revocation pursuant to subsection (d) of this section is overturned by any court of this state or the United States, or if such adjudication of abuse of a child pursuant to §49-4-601 of this code and resulting in automatic revocation pursuant to subsection (d) of this section is overturned by the Supreme Court of Appeals of West Virginia, the teacher's or certificate holder's certification shall be reinstated unless otherwise prohibited by law.

(f) A teacher, as defined by §18-1-1(g) of this code, and including any individual holding a certificate granted pursuant to §18A-3-2a of this code, shall maintain a professional relationship with all students at all times, both in and out of the classroom. Following a hearing as provided in subsection (a) of this section, any teacher found to have committed any act of sexual abuse of a student or minor, or to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children or an act of child endangerment or solicited, encouraged, engaged in or consummated an inappropriate relationship with any student, minor, or individual; exploited a student by engaging in any of the aforementioned illegal or inappropriate conduct which then escalated into a relationship with the exploited student within 12 months of that student's graduation; or engaged in grooming a student or minor shall have his or her certificate revoked for a period of time not less than five years. For the purposes of this subsection, "grooming a student or minor" means befriending and establishing an emotional connection with a student or minor, which may include the family of the student or minor, to lower the student's or minor's inhibitions with the objective of committing sexual abuse, child trafficking, child prostitution, the production of child pornography, or any other offense for which a certificate shall be revoked under this subsection.

(g) Any county superintendent, public school principal, or public charter school administrator who knows of any acts on the part of any teacher for which a certificate may be revoked or for which other action may be taken in accordance with this section shall report this, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(h) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent may recall the certificate and make such corrections as will conform to the requirements of law and the state board.

(i) The state superintendent shall maintain a public database of individuals who have had adverse action taken against their teaching certificate by the state superintendent. Individuals whose certificate has been revoked by the state superintendent are not eligible to be employed by a county board unless the individual's certificate is subsequently reinstated by the state superintendent.

(j) This section applies to all public school teachers whether employed by a county board or the governing board of a public charter school.

(k) The state superintendent shall periodically ensure that county boards are acting in compliance with this section.

(l) The state board may propose legislative rules pursuant to §29A-3B-1 *et seq.* of this code that are necessary to implement the provisions of this section.

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CHAPTER 262

**(Com. Sub. for H. B. 4420 - By Delegates Toney, Rohrbach,
Rowan, Paynter, and Dean)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18A-2-4 of the Code of West Virginia, 1931, as amended, relating to eligibility requirements of school bus operators diagnosed with diabetes mellitus requiring insulin; providing that the eligibility requirements are also applicable to a school bus operator candidate; clarifying that the operator must also be issued a school bus endorsement for his or her commercial driver's license; and specifying that the school bus operator must remain in compliance with the eligibility stipulations and grounds as per applicable state and federal rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-4. Commercial driver's license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician's and commercial driver's license when required, and educational sign language interpreter certification.

(a) If a commercial driver's license is required as a condition of employment for any school employee or qualified applicant who becomes an employee by a county board the cost is paid in full by the county board.

A county board may not require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver's license as a condition of employment.

(b) The Division of Motor Vehicles shall accept the West Virginia Department of Education physical and psychomotor test result forms in lieu of the Division of Motor Vehicles vision report form.

(c) A school bus operator who is currently employed by a county board or a school bus operator candidate who is otherwise subject to state board rules governing school bus operators and who is diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus operator because of the diagnosis if the operator is issued a passenger and school bus endorsement for his or her commercial driver's license through the West Virginia Division of Motor Vehicles, subject to the following:

(1) A copy of the information required to be submitted to the Division of Motor Vehicles and proof of passenger and school bus endorsement is submitted to his or her employer; and

(2) The operator remains in compliance with the stipulations of and grounds for eligibility per Federal Motor Carrier Safety Administration, Division of Motor Vehicles, and state board rules.

(d) If a county board requires of any employee who is employed as an electrician any license renewal when the employee is exempt from renewing the license pursuant to §29-3B-3 of this code, the cost of the license renewal is paid in full by the county board.

(e) The cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer for any service person who is:

(1) Employed as an educational sign language interpreter I or II and is required to complete any testing, training or continuing education in order to renew or maintain certification at that level;

(2) Employed as an educational sign language interpreter I and is required to complete any testing, training or continuing education to advance to an educational sign language interpreter II; or

(3) Employed as a sign support specialist and is required to complete any testing, training or continuing education in order to advance to an educational sign language interpreter I or II.

(f) For any service person required to hold certification as a condition of employment, any time devoted to acquiring or maintaining the certification, including instructional time and training, constitutes hours of continuing education for purposes of meeting the annual continuing education requirements in state board policy.

(g) Compliance with or failure to comply by a health care provider licensed and authorized pursuant to chapter thirty of this code, with the reporting requirements of the Division of Motor Vehicles regarding the provisions of subsection (c) of this section does not constitute negligence, nor may compliance or noncompliance with the requirements of this section be admissible as evidence of negligence in any civil or criminal action.

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CHAPTER 263

**(Com. Sub. for H. B. 4489 - By Delegates Linville,
Hornbuckle, and Lovejoy)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18A-2-7a of the Code of West Virginia, 1931, as amended, relating to including service and extracurricular personnel positions in the statewide job bank required to be established by the State Board of Education; and requiring county boards of education report certain information to the statewide job bank.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-7a. Statewide job bank.

(a) The state board shall establish and maintain a statewide job bank to assist the recruitment and reemployment of experienced professional, service and extracurricular personnel. The job bank shall consist of the following for each county:

(1) A list of the names, qualifications, and contact information of all professional, service, and extracurricular personnel who have been terminated because of a reduction in force, except personnel who have requested in writing that they not be listed in the job bank;

(2) A list of professional, service and extracurricular positions for which the county is seeking applicants; and

(3) A total compensation statement for each listed position.

(b) Each county board of education shall provide the information listed in subsection (a) of this section to the state board and the information shall be included in the statewide job bank in a prompt manner.

(c) The job bank shall be accessible electronically to each county and to individuals on a read only basis, except that each county shall have the capability of editing information for the county and shall be responsible for maintaining current information on the county lists.

(d) The following terms are defined as follows:

(1) “Direct compensation” means base salary and incentives that are provided regularly and consistently.

(2) “Indirect compensation” means any noncash benefit provided to an employee, including, but not limited to:

(A) Health insurance;

(B) Dental insurance;

(C) Vision insurance;

(D) Life insurance;

(E) Disability income protection;

(F) Retirement benefits;

(G) Employer student loan contributions or other employee assistance programs;

(H) Educational benefits;

(I) Childcare;

(J) Relocation benefits; and

(K) Vacation leave, sick leave, and any other form of paid time-off.

(3) “Total compensation statement” means a list of direct and indirect compensation provided or offered for a position, including an itemized list of the types of compensation provided or offered and a cumulative total of the value of all compensation provided or offered.

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CHAPTER 264

**(Com. Sub. for H. B. 4562 - By Delegates Kessinger,
Burkhammer, Maynor, Keaton, and Pinson)**

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended, relating generally to the suspension and dismissal of school personnel by board and the appeals process; requiring upon commencement of any fact-finding investigation involving conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, the affected employee to be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils; requiring an employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse to be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils pending final disposition; and making it the duty of any school principal to report any employee conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, to the county superintendent within 24 hours.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for:

Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a misdemeanor or a guilty plea or a plea of *nolo contendere* to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of *nolo contendere* to a felony charge. Upon the commencement of any fact-finding investigation involving conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, whether being conducted internally, or in cooperation with police or Department of Health and Human Resources, the affected employee shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of *nolo contendere* to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health,

safety, or welfare of students be jeopardized or the learning environment of other students has been impacted. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

(e) It shall be the duty of any school principal to report any employee conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, to the county superintendent within 24 hours of the allegation. Nothing in this subsection supersedes §49-2-803 of this code or the provisions therein regarding mandated reporting of child abuse and neglect.

(f) It shall be the duty of any county superintendent to report any employee suspended or dismissed, or resigned during the course of an investigation of the employee's alleged misconduct, in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent within seven business days of the suspension, dismissal, or resignation. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, or welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent of schools.

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CHAPTER 265

**(H. B. 4829 - By Delegates Toney, Doyle, Horst, Clark,
Hornbuckle, Walker, Bridges, Evans, Griffith, Thompson,
and Ferrell)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18A-4-8 of the Code of West Virginia, 1931, as amended, relating to modifying the definitions of certain school cafeteria personnel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than 10 months. A month is defined as 20 employment days. The county board may contract with all or part of these service personnel for a longer term.

(b) Service personnel employed on a yearly or 12-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the 200-day minimum employment term are paid for additional employment at a daily rate of not less than the daily rate paid for the 200-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in §18A-1-1 of this code.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum

requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in §18A-2-5 of this code, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in §18A-4-8a of this code, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the armed forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of §18A-4-8a of this code, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in §18A-4-8a of this code;

(3) "Class title" means the name of the position or job held by a service person;

(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) “Accounts payable supervisor” means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) “Aide I” means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) “Aide II” means a service person referred to in the “Aide I” classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) “Aide III” means a service person referred to in the “Aide I” classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year’s experience as an aide in special education;

(11) “Aide IV” means a service person referred to in the “Aide I” classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed 18 hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed 15 hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program

determined by the State Board to be the equivalent of three hours of college credit;

(12) “Audiovisual technician” means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) “Auditor” means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) “Autism mentor” means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with §18A-4-8b of this code;

(15) “Braille specialist” means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with §18A-4-8b of this code;

(16) “Bus operator” means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;

(17) “Buyer” means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) “Cabinetmaker” means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) “Cafeteria manager” means a person referred to in the Cook III classification who is employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs,

keeping inventories, inspecting areas to maintain high standards of sanitation, monitoring freezers and temperatures on equipment, communicating with the food service supervisor or food service director, preparing financial reports, keeping records pertinent to food services of a school and maintaining that an appropriate time per day will be for ordering/emailing and paper work as needed;

(20) “Carpenter I” means a person classified as a carpenter’s helper;

(21) “Carpenter II” means a person classified as a journeyman carpenter;

(22) “Chief mechanic” means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) “Clerk I” means a person employed to perform clerical tasks;

(24) “Clerk II” means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(25) “Computer operator” means a qualified person employed to operate computers;

(26) “Cook I” means a person employed as a cook’s helper;

(27) “Cook II” means a person employed to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a “Cook I” for a period of four years;

(28) “Cook III” means a person employed to assist the cafeteria manager, interpret menus and to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system, and act as the cafeteria manager if that employee is absent;

(29) “Crew leader” means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) “Custodian I” means a person employed to keep buildings clean and free of refuse;

(31) “Custodian II” means a person employed as a watchman or groundsman;

(32) “Custodian III” means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) “Custodian IV” means a person employed as a head custodian. In addition to providing services as defined in “Custodian III” duties may include supervising other custodian personnel;

(34) “Director or coordinator of services” means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of “director or coordinator of services;”

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title “director or coordinator of services” may not be exclusively assigned to

perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multi-classified;

(35) “Draftsman” means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) “Early childhood classroom assistant teacher I” means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(37) “Early childhood classroom assistant teacher II” means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the State Board;

(38) “Early childhood classroom assistant teacher III” means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(39) “Educational sign language interpreter I” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to State Board policy;

(40) “Educational sign language interpreter II” means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to State Board policy;

(41) “Electrician I” means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(42) “Electrician II” means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(43) “Electronic technician I” means a person employed at the apprentice level to repair and maintain electronic equipment;

(44) “Electronic technician II” means a person employed at the journeyman level to repair and maintain electronic equipment;

(45) “Executive secretary” means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(46) “Food services supervisor” means a qualified person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The food services supervisor is employed to manage and supervise a county school system’s food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(47) “Foreman” means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(48) “General maintenance” means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(49) “Glazier” means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(50) “Graphic artist” means a person employed to prepare graphic illustrations;

(51) “Groundsman” means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(52) “Handyman” means a person employed to perform routine manual tasks in any operation of the county school system;

(53) “Heating and air conditioning mechanic I” means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(54) “Heating and air conditioning mechanic II” means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(55) “Heavy equipment operator” means a person employed to operate heavy equipment;

(56) “Inventory supervisor” means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(57) “Key punch operator” means a qualified person employed to operate key punch machines or verifying machines;

(58) “Licensed practical nurse” means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(59) “Locksmith” means a person employed to repair and maintain locks and safes;

(60) “Lubrication man” means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(61) “Machinist” means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(62) “Mail clerk” means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(63) “Maintenance clerk” means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(64) “Mason” means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(65) “Mechanic” means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(66) “Mechanic assistant” means a person employed as a mechanic apprentice and helper;

(67) “Multiclassification” means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;

(68) “Office equipment repairman I” means a person employed as an office equipment repairman apprentice or helper;

(69) “Office equipment repairman II” means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(70) “Painter” means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(71) “Paraprofessional” means a person certified pursuant to §18A-3-2a of this code to perform duties in a support capacity

including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with §18A-4-8b of this code; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(72) “Payroll supervisor” means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed 12 college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(73) “Plumber I” means a person employed as an apprentice plumber and helper;

(74) “Plumber II” means a person employed as a journeyman plumber;

(75) “Printing operator” means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(76) “Printing supervisor” means a person employed to supervise the operation of a print shop;

(77) “Programmer” means a person employed to design and prepare programs for computer operation;

(78) “Roofing/sheet metal mechanic” means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(79) “Sanitation plant operator” means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection;

(80) “School bus supervisor” means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(81) “Secretary I” means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(82) “Secretary II” means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(83) “Secretary III” means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health

departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of “Secretary II” or “Secretary III”;

(84) “Sign support specialist” means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with §18A-4-8b of this code.

(85) “Supervisor of maintenance” means a skilled person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(86) “Supervisor of transportation” means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(87) “Switchboard operator-receptionist” means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(88) “Truck driver” means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(89) “Warehouse clerk” means a person employed to be responsible for receiving, storing, packing and shipping goods;

(90) “Watchman” means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(91) “Welder” means a person employed to provide acetylene or electric welding services for a school system; and

(92) “WVEIS data entry and administrative clerk” means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in §18A-4-8a of this code, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee’s hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in §18A-4-8a of this code may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the

county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in §18A-4-8e of this code.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the

designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice 10 days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to §18A-4-8b of this code, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the braille or sign language specialist classification title has that classification title renamed on his or her employment contract as either braille specialist or sign support specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the braille or sign language specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the braille specialist or sign support specialist classification;

(2) Any service person holding the paraprofessional classification title and holding the initial paraprofessional certificate – educational interpreter has the title educational sign language interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter I classification; and

(3) Any service person holding the paraprofessional classification title and holding the permanent paraprofessional certificate – educational interpreter has the title educational sign language interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior early childhood classroom assistant teacher;

(u) A person who has held or holds an aide title and becomes employed as an early childhood classroom assistant teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with §18A-4-8b of this code.

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CHAPTER 266

(S. B. 450 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed February 14, 2022; in effect from passage.]
[Approved by the Governor on February 21, 2022.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after March 12, 2021, but prior to January 1, 2022, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2022, may be given any effect.

(b) *Medical savings accounts.* — The term “taxable trust” does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) *Surtax.* — The term “surtax” means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) *Effective date.* — The amendments to this section enacted in the year 2022 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2022, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in subsection (a) of this section means and includes the term “low income” as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to “each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes”, this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.

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CHAPTER 267

(S. B. 451 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed February 11, 2022; in effect from passage.]
[Approved by the Governor on February 21, 2022.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2020, but prior to January 1, 2022, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2022, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) *Effective date.* — The amendments to this section enacted in the year 2022 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2022, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

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CHAPTER 268

(Com. Sub. for S. B. 476 - By Senator Tarr)

[Passed March 10, 2022; in effect from passage.]

AN ACT to amend and reenact §11-12B-3 of the Code of West Virginia, 1931, as amended, relating to the imposition of the minimum severance tax on coal; and making technical corrections to the code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

(a) *Imposition of tax.* – Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession, or producing coal for sale, profit, or commercial use, there is hereby imposed an annual minimum severance tax equal to 50 cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: *Provided*, That for taxable years ending after May 31, 1993, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit, or commercial use during such taxable year shall be 75 cents per ton, with such rate increase to apply only to tons of coal produced after May 31, 1993: *Provided, however*, That for taxable years ending after December 31, 1999, the minimum severance tax on coal may not be imposed on any ton of coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000, on which the severance tax is imposed by §11-13A-3 of this code.

(b) *Credit against the severance tax imposed under §11-13A-1 et seq. of this code* – A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on the privilege of producing coal by §11-13A-3 of this code, but not including the additional severance tax on coal imposed by §11-13A-6 of this code or, for taxable years ending after December 31, 1999, the severance tax imposed by the provisions of §11-13A-3 of this code on coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000. The amount of credit allowed shall be equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: *Provided*, That the amount of credit allowed by this section may not exceed the severance tax liability of the taxpayer for the taxable year determined under §11-13A-3 of this code exclusive of the additional tax on coal imposed by §11-13A-6 of this code and, for taxable years ending after December 31, 1999, of the severance tax imposed by §11-13A-3 of this code on coal mined by underground methods from seams with an average thickness of 45 inches or less produced on or after April 1, 2000, after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to §5E-1-1 *et seq.* of this code, any credit for installment payments of estimated tax paid pursuant to §11-12B-6 of this code during the taxable year, and any credit for overpayment of the severance tax imposed under §11-13A-1 *et seq.* Notwithstanding anything herein to the contrary, in no event may the credit allowed under §5E-1-1 *et seq.* of this code be allowed as a credit against the minimum severance tax imposed by this article.

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CHAPTER 269

(S. B. 478 - By Senator Tarr)

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §11-13J-10 of the Code of West Virginia, 1931, as amended, relating to the Neighborhood Investment Program; adding a sunset provision regarding the reporting requirement; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-10. Public information relating to tax credit.

(a) The Tax Commissioner shall annually publish in the State Register the name of every taxpayer asserting this credit on a tax return, and the amount of any credit asserted on a tax return under this article by each such taxpayer, and the confidentiality provisions of §11-1-4a or §11-10-5d of this code, or of any other provision of this code, do not apply to such information.

(b) The provisions of §11-13J-10(a) of this code shall have no force or effect on or after January 1, 2022.

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CHAPTER 270

**(Com. Sub. for S. B. 533 - By Senators Tarr, Baldwin,
Roberts, Hamilton, Jeffries, Martin, Plymale, and Nelson)**

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT amend and reenact §11-19-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-19-13; and to amend said code by adding thereto a new section, designated §33-3-14e, all relating to funding for health sciences and medical schools in this state; eliminating the direction of proceeds of the soda tax into special medical school fund; providing for the eventual elimination of the tax; providing for a sunset date; directing a portion of insurance premium tax to health sciences and medical schools in this state; setting out findings; providing for specific amounts to be directed to Health Sciences Center at West Virginia University, Marshall University School of Medicine, and West Virginia school of Osteopathic Medicine; providing for effective dates, providing for quarterly distribution for dedicated fund; and providing that the additional dedicated amounts directed from premium tax in addition to the base appropriations to these schools shall not limit or reduce total appropriation to the health sciences and medical schools.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 19. SOFT DRINKS TAX.

§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

(a) An excise tax is levied and imposed on and after midnight of June 30, 1951, upon the sale, use, handling or distribution of all bottled soft drinks and all soft drink syrups, whether manufactured within or without this state, as follows:

(1) On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.

(2) On each gallon of soft drink syrup, a tax of 80 cents, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of 84 cents, and in like ratio on each part four liters thereof.

(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks, a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of 1 cent.

(b) Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax hereby imposed. The excise tax imposed shall not be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used or distributed in this state.

(c) The changes made to this section during the regular session of the Legislature, 2022, shall be effective July 1, 2022.

§11-19-13. Effective date of repeal of article.

Effective July 1, 2024, the provisions of this article shall become ineffective, and the entire article shall be repealed. The soft drink tax authorized for collection shall no longer be imposed or collected after that date.

CHAPTER 33. INSURANCE

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14e. Use of insurance premium tax proceeds to support health sciences and medical schools.

(a) The Legislature recognizes that the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University School of Medicine; the Medical School at Marshall University; and the West Virginia School of Osteopathic Medicine, each provide critical, medical, and related health educational and service opportunities for the significant benefit of the residents of the State of West Virginia. The Legislature finds and declares that it should dedicate a portion of the insurance tax proceeds credited to the general fund as contemplated by §33-3-14(c) of this code and §33-3-14a of this code to provide additional dedicated funds to the base of appropriation support for these schools.

(b) Effective July 1, 2022, to support these schools, and in addition to the base appropriations to these schools, the Governor shall include appropriations in each annual budget bill submitted to the Legislature from the amounts sent to the credit of the General Revenue Fund pursuant to §33-3-14(c) of this code and §33-3-14a of this code, as follows:

(1) To the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, \$14 million;

(2) To the School of Medicine at Marshall University, \$5,500,000; and

(3) To the West Virginia School of Osteopathic Medicine, \$3,900,000.

(c) These funds shall be dedicated quarterly from the collection of the insurance premium tax in the months of July, October, February, and April of each fiscal year. Each school as set forth in subsection (b) of this section shall receive their dedicated funds at the rate of one quarter of the full amount in each of those months.

(d) Nothing in this section shall be construed to limit or reduce the amount of total appropriations to schools of medicine,

dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, the Medical School at Marshall University, and the West Virginia School of Osteopathic Medicine to the amounts contemplated by this section.

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CHAPTER 271

**(Com. Sub. for S. B. 552 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §11A-2-18 of the Code of West Virginia, 1931, as amended; to repeal §11A-3-5, §11A-3-5a, §11A-3-5b, §11A-3-6, §11A-3-7, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-17, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, §11A-3-29, §11A-3-30, and §11A-3-31 of said code; to amend and reenact §11A-1-8 of said code; to amend and reenact §11A-2-14 of said code; to amend and reenact §11A-3-1, §11A-3-2, §11A-3-4, §11A-3-8, §11A-3-9, §11A-3-10, §11A-3-11, §11A-3-12, §11A-3-13, §11A-3-32, §11A-3-39 §11A-3-42, §11A-3-44, §11A-3-45, §11A-3-46, §11A-3-48, §11A-3-50, §11A-3-52, §11A-3-53, §11A-3-54, §11A-3-55, §11A-3-56, §11A-3-66, and §11A-3-69 of said code; to amend and reenact §11A-4-3 and §11A-4-4 of said code; to amend and reenact §16-18-3 of said code; to amend and reenact §22-15A-30 of said code; to amend and reenact §31-18E-9 of said code; and to amend and reenact §31-21-11 of said code, all relating to delinquent and dilapidated property and the process for the collection of delinquent real estate taxes and sales of tax liens and property; modifying the method by which notice is provided regarding the payment of property taxes; requiring a sheriff to accept credit cards as a form of payment for property taxes; allowing a sheriff to offer discounts on tax liability to taxpayers that pay with a credit card; modifying the deadline by which a sheriff must present

delinquent lists to its county commission; modifying the deadline that a county commission certifies a delinquent list to the auditor; modifying the form of certain notice provided by the sheriff regarding delinquent taxes; repealing provisions related to the annual sheriff's sale; modifying provisions related to the annual sheriff's sale to be related to certification to the Auditor; providing that a sheriff provide a redemption receipt if property is redeemed prior to certification to the auditor; directing a portion of the redemption fee to the Courthouse Facilities Improvement Fund; modifying the policy related to the sale of tax liens; modifying the process by which a sheriff provides its second notice of delinquent real estate; modifying the timing and payment of redemption for delinquent properties prior to certification to the auditor; modifying dates for auditor to certify list of lands to be sold; providing any property not redeemed to the sheriff is to be certified to the auditor; providing that the sheriff prepare a list of all the tax liens on delinquent real estate redeemed prior to certification or certified to the auditor; providing that the sheriff account for the proceeds from redemptions prior to certification; providing a sheriff may modify its redemption and certification list within 30 days after the publication of such list; providing for the publication of such list; requiring sheriffs keep separate accounts for redemption moneys; modifying the deposit and disposition of certain funds; modifying certain fees related to redemption; identifying lands subject to sale by the deputy commissioner; relating to the obligation that the auditor certify and deliver a list of lands subject to sale by the deputy commissioner; addressing annual auctions held by the deputy commissioner and the publication of notice of public auctions held by the deputy commissioner; relating to auditor's sale of delinquent and non-entered land; relating to moving certain obligations from the deputy commissioner to the auditor; relating to the requirements that a purchaser must satisfy before he or she can secure a deed; relating to the sale of certain delinquent lands subject to sale and certain entities right of first refusal therein; relating to the receipt to purchaser for purchase price at auditor's sale; relating to the purchaser's obligation to secure deed to delinquent property; relating to refund to

purchaser for property determined to be nonexistent; relating to the notice to redeem provided to a person entitled to redeem delinquent property; relating to redemption of delinquent property; modifying fees for redemption; clarifying effect of repeal of certain code; directing portion of fees for specific purpose; providing for certain delinquent taxpayers to redeem in installment payments; modifying the procedure for and duration of right to set aside deed; modifying definition of blighted property; modifying the Reclamation of Abandoned and Dilapidated Properties Program; relating to the right of certain entities to purchase delinquent properties; modifying compensation due deputy commissioner; modifying the reclamation of abandoned and dilapidated properties program; requiring certain periodic reports; providing the department of environmental protection with the right to enter into certain statewide contracts; modifying certain entities rights to acquire tax delinquent properties; and modifying certain obligations of the West Virginia Land Stewardship Corporation land bank program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§ 11A-1-8. Notice of time and place for payment; mailing of tax tickets.

(a) The sheriff shall send to every person owing real or personal property taxes a copy of such taxpayers annual tax ticket or tickets showing what tax is due and how such tax may be paid. Such copy shall be sent to the last known address of such taxpayer by first class United States mail. The notice shall also state: (i) Those who pay the first installment of their taxes on or before the first day of September shall be entitled to a discount of two and one-half percent; and (ii) those who pay the second installment of their taxes on or before the first day of March shall be entitled to the same discount.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes or the method of enforcing the payment of such taxes, interest or penalty.

At such time as the sheriff prepares the delinquent list for real property, he or she shall compare such list with a copy of the landbooks most recently delivered by the assessor to the board of review and equalization pursuant to §11-3-19 of this code. The assessor shall make a copy of said landbooks available to the sheriff. If property on the delinquent list should appear as a transfer on said landbooks with the delinquent owner as the transferor, the sheriff shall send to the transferee at his or her last known address by first class United States mail a copy of the annual tax ticket or tickets showing what taxes are due upon the real property of such transferee and how they may be paid as prescribed in this section.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes or the method of enforcing the payment of such taxes, interest, or penalty.

(b) In addition to the notice of real or property taxes owed, provided in this section, the county commission of any county may order that the sheriff include in the mailing notice of any taxes or other fees owed to the county or a municipality in the county.

(c)(1) The sheriff shall accept credit cards in payment of any of the taxes, interest, or penalty described in this section. The type of credit card accepted shall be at the discretion of the sheriff.

(2) The sheriff may set a fee to be added to each credit card transaction equal to the charge paid by the state, county, sheriff, or taxpayer for the use of the credit card by the taxpayer. Except for fees imposed pursuant to this subdivision, no other fees for the use of a credit card may be imposed upon the taxpayer.

(d) The tax commissioner may promulgate legislative rules to provide for the payment of tax liability by installment payments other than those prescribed in subsection (a) of this section.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§ 11A-2-14. Correction of delinquent lists by county commission; certification to Auditor; recordation.

The sheriff shall on or before May 15 of each year present the delinquent lists to the county commission for examination. The county commission having become satisfied that the lists are correct, or having corrected them if erroneous, shall direct the clerk of the county commission to certify a copy of each list, pertaining to real property, to the Auditor not later than June 1 of each year. The original lists shall be preserved by the clerk in his or her office, and the list of delinquent real estate shall be recorded in a permanent book to be kept by him or her for that purpose.

§ 11A-2-18. Redemption before sale; record; lien.

[Repealed.]

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-1. Declaration of legislative purpose and policy.

In view of the paramount necessity of providing regular tax income for the state, county, and municipal governments, particularly for school purposes; and in view of the further fact that delinquent land not only constitutes a public liability, but also represents a failure on the part of delinquent private owners to bear a fair share of the costs of government; and in view of the rights of owners of real property to adequate notice and an opportunity for redemption before they are divested of their interests in real property for failure to pay taxes or have their property entered on the land books; and in view of the fact that the circuit court suits heretofore provided prior to deputy commissioners' sales are

unnecessary and a burden on the judiciary of the state; and in view of the necessity to continue the mechanism for the disposition of escheated and waste and unappropriated lands; now therefore, the Legislature declares that its purposes in the enactment of this article are as follows: (1) To provide for the speedy and expeditious enforcement of the tax claims of the state and its subdivisions; (2) to provide for the transfer of delinquent and non-entered lands to those that will make beneficial use of said lands who are more responsible to, or better able to bear, the duties of citizenship than were the former owners; (3) to secure adequate notice to owners of delinquent and nonentered property of the pending issuance of a tax deed; (4) to permit deputy commissioners of delinquent and nonentered lands to sell such lands without the necessity of proceedings in the circuit courts; (5) to reduce the expense and burden on the state and its subdivisions of tax sales so that such sales may be conducted in an efficient manner while respecting the due process rights of owners of real property; and (6) to provide for the disposition of escheated and waste and unappropriated lands.

§11A-3-2. Second publication of list of delinquent real estate; notice.

(a) On or before the September 10 of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his or her county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land or undivided interests therein in the County of _____ and the tax liens that encumber the same which are delinquent for the nonpayment of taxes for the year (or years) 20____, will be certified to the Auditor for disposition pursuant to West Virginia Code §11A-3-44 on the 31st day of October, 20____.

Upon certification to the Auditor, tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, shall be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest, and charges

which shall be due thereon to the date of sale, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale

If any of said tracts or lots remain unsold following the auction, they shall be subject to sale by the Auditor without additional advertising or public auction such terms as the Auditor deems appropriate pursuant to §11A-3-48 of this code.

Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before certification to the Auditor, of the total amount of taxes, interest, and charges due thereon up to the date of redemption by credit card, cashier's check, money order, certified check or United States currency. Payment must be received in the tax office by the close of business on the last business day prior to the certification.

After certification to the Auditor, any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the date of redemption.

Given under my hand this _____ day of
 _____, 20__.

Sheriff (or collector).

The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

(b) In addition to such publication, no less than 30 days prior to the sale by the Auditor pursuant to § 11A-3-44 of this code, the sheriff shall send a notice of the delinquency and the date of sale by certified mail: (1) To the last known address of each person listed in the land books whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes are due as disclosed by a statement filed with the sheriff pursuant to the provisions of section three of this article; (3) to each other person with an interest in the property or with a fiduciary relationship to a person with an interest in the property who has in writing delivered to the sheriff on a form prescribed by the Tax Commissioner a request for such notice of delinquency; and (4) in the case of property which includes a mineral interest but does not include an interest in the surface other than an interest for the purpose of developing the minerals, to each person who has in writing delivered to the sheriff, on a form prescribed by the Tax Commissioner, a request for such notice which identifies the person as an owner of an interest in the surface of real property that is included in the boundaries of such property: *Provided*, That in a case where one owner owns more than one parcel of real property upon which taxes are delinquent, the sheriff may, at his or her option, mail separate notices to the owner and each lienholder for each parcel or may prepare and mail to the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is conveyed pursuant to § 11A-3-27 of § 11A-3-59 of this code.

(c) To cover the cost of preparing and publishing the second delinquent list, a charge of \$25 shall be added to the taxes, interest, and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) To cover the cost of preparing and mailing notice to the landowner, lienholder, or any other person entitled thereto pursuant to this section, a charge of \$10 per addressee shall be added to the taxes, interest, and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(e) Any person whose taxes were delinquent on the first day of September may have his or her name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the person at the date of such redemption. In such case, the sheriff shall include but \$3 of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the General County Fund.

§11A-3-4. Redemption after second publication and before certification to the Auditor.

Any of the real estate included in the list published pursuant to the provisions of §11A-3-2 of this code may be redeemed at any time before certification to the Auditor as provided in §11A-3-8 of this code, by cashier check, money order, certified check, or United States currency.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

[Repealed.]

§11A-3-5a. Effective date of transfer of duties for delinquent land sales by sheriff from the county clerk to the State Auditor.

[Repealed.]

§11A-3-5b. Authorization for county clerk to perform duties for delinquent land sales by sheriff.

[Repealed.]

§11A-3-6. Purchase by sheriff, State Auditor, deputy commissioner and clerk of county commission prohibited; co-owner free to purchase at tax sale.

[Repealed.]

§11A-3-7. Suspension from same; amended delinquent lists; subsequent sale.

[Repealed.]

§11A-3-8. Certification of property to the Auditor.

If any real estate included in the list published pursuant to the provisions of §11A-3-2 of this code is not redeemed in accordance with §11A-3-4 of this code by October 31 of the year the list was published, the sheriff shall certify the real estate except the sheriff shall include any subsequent taxes due at the time of the list published pursuant to §11A-3-2 of this code to the Auditor for disposition pursuant to §11A-3-44 of this code, subject, however, to the right of redemption provided by §11A-3-38 of this code. The Auditor shall prescribe the form by which the sheriff certifies the property.

§11A-3-9. Sheriff's list of redemptions and certifications; oath.

(a) As soon as the certification provided in §11A-3-8 of this code has been completed, the sheriff shall prepare a list of all tax liens on delinquent real estate redeemed before certification or certified to the Auditor. The heading of the list shall be in form or effect as follows:

List of tax liens on real estate in the county of _____, returned delinquent for nonpayment of taxes thereon for the year (or years) 20____, and redeemed before certification or certified to the Auditor.

(b) The sheriff shall, at the foot of the list, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, _____, sheriff (or deputy sheriff or collector) of the county of _____, do swear that the above list contains a true account of all the tax liens on real estate within my county returned delinquent for nonpayment of taxes thereon for the year (or years) 20____, which were redeemed before certification or certified to the Auditor.

(c) Except for the heading and the oath, the Auditor shall prescribe the form of the list.

§11A-3-10. Sheriff to account for proceeds; disposition of surplus.

(a) The sheriff shall account for the proceeds of all redemptions included in such list in the same way he or she accounts for other taxes collected by him or her.

(b) All real estate included in the first delinquent list sent to the Auditor, and not accounted for in the list of redemptions and certifications, shall be deemed to have been redeemed before certification, and the taxes, interest, and charges due thereon shall be accounted for by the sheriff as if they had been received by him or her before the sale.

§11A-3-11. Return of list certifications; redemptions.

(a) Within one month after completion of the certification, the sheriff shall deliver the original list of redemptions and certifications described in §11A-3-9 of this code, with a copy thereof, to the clerk of the county commission. The clerk shall bind the original of such list in a permanent book to be kept for the purpose in his or her office. The clerk, within 10 days after delivery of the list to him or her, shall transmit the copy to the Auditor, who shall note each redemption, and certification on the record of delinquent lands kept in his or her office.

(b) Any sheriff who fails to prepare and return the list of redemptions and certifications within the time required by this section shall forfeit not less than \$50 nor more than \$500, for the benefit of the general school fund, to be recovered by the Auditor or by any taxpayer of the county on motion in a court of competent

jurisdiction. Upon the petition of any person interested, the sheriff may be compelled by mandamus to make out and return the list and the proceedings thereon shall be at his or her cost.

§11A-3-12. Amendment of such list.

If the sheriff shall make any error or omission in the list of redemptions and certifications returned to the clerk of the county commission, he or she or any person interested may, within 30 days after the publication of such list, apply by petition to the county commission for an order permitting or requiring amendment of the list. Any person who may be prejudiced by the proposed amendment must, if found within the county, be given at least 10 days' notice of such application. Upon proof of the error or mistake the commission shall make an order permitting or requiring the sheriff to file an amended list with the clerk of the commission. The sheriff shall thereupon prepare and deliver to the clerk of the commission the amended list and a copy thereof, with a copy of the order of the commission permitting or requiring it to be filed attached to the list and to the copy. The clerk shall substitute the original of the amended list for the list already in his or her office, and make the necessary corrections on his record of delinquent lands. The clerk shall transmit the copy of the amended list to the Auditor who shall note the corrections on his or her record of delinquent lands.

§11A-3-13. Publication by sheriff of certification list.

Within one month after completion of the certification, the sheriff shall prepare and publish a list of all the certifications made by him or her, in form or effect as follows, which list shall be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

List of tax liens on real estate in the county of _____, in the month (or months) of _____, 20____, certified for nonpayment of taxes thereon for the year (or years) 20____, and certified to the Auditor of the State of West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged
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The owner of any real estate listed above, or any other person entitled to pay the taxes thereon, may, however, redeem such real estate as provided by law.

Given under my hand this _____ day of _____, 20__.

 Sheriff

To cover the costs of preparing and publishing such list, a charge of \$15 shall be added to the taxes, interest, and charges already due on each item listed.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

[Repealed.]

§11A-3-15. Certificate of sale assignable.

[Repealed.]

§11A-3-16. Subsequent tax payments by purchaser.

[Repealed.]

§11A-3-17. Sale of subsequent tax liens.

[Repealed.]

§11A-3-18. Limitations on tax liens.

[Repealed.]

§11A-3-19. What purchaser must do before the deed can be secured.

[Repealed.]

§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

[Repealed.]

§11A-3-21. Notice to redeem.

[Repealed.]

§11A-3-22. Service of notice.

[Repealed.]

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

[Repealed.]

§11A-3-24. Notice of redemption from purchases; moneys received by sheriff.

[Repealed.]

§11A-3-25. Distribution of surplus to purchaser.

[Repealed.]

§11A-3-26. Certificate of redemption issued by State Auditor; recordation; disposition of redemption money.

[Repealed.]

§11A-3-27. Deed to purchaser; record.

[Repealed.]

§11A-3-28. Compelling service of notice or execution of deed.

[Repealed.]

§11A-3-29. One deed for adjoining pieces of real estate within the same tax district.

[Repealed.]

§11A-3-30. Title acquired by individual purchaser; action to quiet title

[Repealed]

§11A-3-31. Effect of irregularity on title acquired by purchaser.

[Repealed]

§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.

(a) The sheriff shall keep in a separate fund the proceeds of all redemptions paid to him or her under the provisions of this chapter, except for those proceeds for which a separate fund is directed by the provisions of §11A-3-64 of this code. Out of the total proceeds of each redemption he or she shall in the order of priority stated below credit the following amounts for payment as provided in this section:

(1) To the general county fund, the part that represents costs paid out of the fund for publishing the sheriff's delinquent and sales list and all other costs incurred by the sheriff pursuant to the provisions of this article;

((2) The balance, if any, of the proceeds of the lands included in each suit shall be prorated among the various taxing units on the basis of the total amount of taxes due them in respect to the lands that were redeemed.

(b) The amounts so determined shall be credited as follows for payment as provided in this subsection:

(1) To the Auditor, the part that represents state taxes and interest; and

(2) To the fund kept by the sheriff for each local taxing unit, the part that represents taxes and interest payable to the unit.

(c) All amounts which under the provisions of this section were credited by the sheriff to the Auditor shall be paid to him or her semiannually, and those credited to the various local taxing units shall be transferred semiannually by the sheriff to the fund kept by him or her for each taxing unit.

(d) The Auditor shall prescribe the form of the records to be kept by the sheriff for the purposes of this section, and the method to be used by him or her in making the necessary pro rata distributions.

§11A-3-39. Certificate of redemption issued by Auditor; recordation.

(a) Upon payment of the sum necessary to redeem, the Auditor shall execute a certificate of redemption in triplicate, which certificate shall specify the real estate redeemed, or the interest therein, as the case may be, together with any changes in respect thereto which were made in the land book and in the record of delinquent lands, shall specify the year or years for which payment was made, and shall state that it is a receipt for the money paid and a release of the state's lien against the real estate redeemed. The original certificate shall be retained in the files in the Auditor's office, one copy shall be delivered to the person redeeming and the second copy shall be mailed by the Auditor to the clerk of the county commission of the county in which the real estate is situated, who, after making any necessary changes in his or her record of delinquent lands, shall note the fact of redemption on such record, and shall record the certificate in a separate volume provided for the purpose.

The fee for issuing the certificate of redemption shall be \$20 and seven and one-half percent of the total taxes and interest not to exceed \$120.

(b) All certificates of redemption issued by the Auditor in each year shall be numbered consecutively and shall be filed by the clerk of the county commission in numerical order. Reference to the year and number of the certificate shall be included in the notation of redemption required of the clerk of the county commission. No fee shall be charged by the clerk for any recordation, filing, or notation required by this section. Ten dollars of the commission fee received by the Auditor on a redemption shall be deposited into the Courthouse Facilities Improvement Fund set out in §29-26-6 of this code.

§11A-3-42. Lands subject to sale by Auditor.

All lands which were certified to the Auditor pursuant to §11A-3-8 of this code and which have not been redeemed, , together with all non-entered lands, all escheated lands, and all waste and unappropriated lands, shall be subject to sale by the Auditor as further provided in this article. References in this chapter to the sale or purchase of certified or non-entered lands by or from the Auditor shall be construed as the sale or purchase of the tax lien or liens thereon.

§ 11A-3-44. Auditor to certify list of lands to be sold; lands so certified are subject to sale.

On or after March 1 and on or before August 1 of each year, the Auditor shall certify a list of all lands subject to sale under this article. He or she shall note the fact of certification on the land record in his or her office. Upon completion of the list for certification, a charge of \$25 shall be added to the taxes, interest, and charges already due on each tract listed, to cover the costs incurred by the Auditor in the preparation of the list, and in the event of sale or redemption, the same shall be collected and paid into the operating fund provided for in this article.

Escheated lands and waste and unappropriated lands shall be listed separately. The list shall be arranged by districts and, except in the case of waste and unappropriated lands, alphabetically by the name of the owner. The list shall state as to each item listed the information required by §11A-3-35 of this code to be set forth in

the land record in the Auditor's office, and shall specify as to each tract listed as delinquent or non-entered the amount of taxes and interest due or chargeable thereon on the date of certification, the publication and other charges due, with interest, and the total currently due. The specification of taxes due or chargeable shall as to delinquent land commence with those for nonpayment of which it was certified, and as to non-entered land with those properly chargeable to it for the first year of nonentry, subject to the provisions of the proviso set forth in §11A-3-38(b) of this code.

All items certified by the Auditor shall be numbered consecutively. All subsequent entries, applications, or proceedings under this article in respect to any item shall refer to its number and the year of certification. Notwithstanding any provisions of this article to the contrary, all tracts, lots, or parcels certified to the Auditor as a unit may be treated by the Auditor as a single item for purposes of certification. Subject to the provisions of this section, the Auditor shall prescribe a form for the list and shall provide in such form adequate space to show the subsequent history and final disposition of each item certified.

The list shall be made in quadruplicate. The Auditor shall keep the original and send one copy to the clerk of the county commission, one to the sheriff, and one to the West Virginia Land Stewardship Corporation created pursuant to §31-21-1 *et seq.* of this code. The clerk of the county commission shall bind his or her copy in a permanent book to be labeled "Report of Auditor of Delinquent and Non-Entered Lands" and shall note the fact of the certification of each item on his or her record of delinquent lands. Such copies delivered to the clerk of the county commission and the sheriff shall become permanent records, and shall be preserved as such in the offices of the Auditor and the clerk of the county commission.

§11A-3-45. Auditor to hold annual auction.

(a) Each tract or lot certified by the Auditor pursuant to §11A-3-44 of this code shall be sold by him or her at public auction at the courthouse of the county to the highest bidder during the courthouse's normal operating hours on any business working day

within 90 days after the Auditor has certified the lands as required by §11A-3-44 of this code. The payment for any tract or lot purchased at a sale shall be made by check, U. S. currency, or money order payable to the Auditor and delivered before the close of business on the day of sale. No part or interest in any tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety of such unredeemed tract, lot, or interest, as the same is described and constituted as a unit or entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on the first day of the sale, it shall be continued from day to day between the same hours until all the land shall have been offered for sale.

(b) A private, nonprofit, charitable corporation, incorporated in this state, which has been certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal Internal Revenue Code, as amended, which has as its principal purpose the construction of housing or other public facilities and which notifies the Auditor of an intention to bid and subsequently submits a bid that is not more than five percent lower than the highest bid submitted by any person or organization which is not a private, nonprofit, charitable corporation as defined in this subsection, shall be sold the property offered for sale at public auction by the Auditor pursuant to the provisions of this section at the public auction as opposed to the highest bidder.

The nonprofit corporation referred to in this subsection does not include a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, and it does not include any other group which does not have as its principal purpose the construction of housing or public facilities.

§11A-3-46. Publication of notice of auction.

Once a week for three consecutive weeks prior to the auction required in §11A-3-45 of this code, the Auditor shall publish notice of the auction as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

The notice shall be in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land in the County of _____, have been certified by the Auditor of the State of West Virginia, for sale at public auction. The lands will be offered for sale by the undersigned Auditor at public auction in (specify location) the courthouse of _____ County between the hours of _____ in the morning and _____ in the afternoon, on the _____ day of _____, 20____.

Each tract or lot as described below will be sold to the highest bidder at the auction. The payment for any tract or lot purchased at a sale shall be made by check or money order payable to the Auditor and delivered before the close of business on the day of the sale. If any of said tracts or lots remain unsold following the auction, they will be subject to later sale without additional advertising or public auction. The Auditor's sale may include tracts or lots remaining unsold from a previous auction not required by law to be readvertised and described for this subsequent auction of those same tracts and lots. All sales are subject to the approval of the Auditor of the State of West Virginia.

(here insert description of advertised lands to be sold)

Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the date of redemption. Lands listed above as escheated or waste and unappropriated lands may not be redeemed.

Given under my hand this _____ day of _____, 20____.

_____ Auditor of the State of West Virginia.

The description of lands required in the notice shall be in the same form as the list certifying said lands for sale. If the Auditor is required to auction lands certified to him or her in any previous years, pursuant to §11A-3-48 of this code, he or she shall include

such lands in the auction without further advertisement, with reference to the year of certification and the item number of the tract or interest.

To cover the cost of preparing and publishing the notice, a charge of \$30 shall be added to the taxes, interest, and charges due on the delinquent and non-entered property.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

If any of the lands which have been offered for sale at the public auction provided in §11A-3-45 of this code shall remain unsold following such auction; or were sold at a tax sale auction within the previous five years, which were not redeemed, and for which no deed was secured by the purchaser; or if the Auditor refuses to approve the sale pursuant to §11A-3-51 of this code, the Auditor may sell the lands without any further public auction or additional advertising of the land, in the following priority: (1) To a person vested with an ownership interest in an adjacent tract or parcel of land: *Provided*, That If more than one adjacent landowner desires to acquire the same tract or lot, then the Auditor shall sell such tract or lot to the highest bidder; (2) to the municipality in which the tract or lot is located; (3) The county commission of the county in which the tract or lot is located; (4) to the West Virginia Land Stewardship Corporation as part of its Land Bank Program set forth in §31-21-11 *et seq.* of this code; or (5) to any party willing to purchase such property.

The price of such property shall be as agreed upon by the Auditor and purchaser.

§ 11A-3-50. Receipt to purchaser for purchase price.

The Auditor shall prepare an original and two copies of the receipt for the purchase money. He or she shall give the original receipt to the purchaser and shall file one copy thereof with the clerk of the county commission and one copy thereof with the sheriff, each of whom shall note the fact of such sale on their

respective records of delinquent lands. The heading of the receipt shall be:

Memorandum of real estate sold in the county of _____ on this ____ day of _____, 20 ____, by _____, the Auditor of the State of West Virginia.

Except for the heading, the Auditor shall prescribe the form of the receipt.

§ 11A-3-52. Duties of purchaser to secure a deed.

(a) Within 120 days following the approval of the sale by the Auditor pursuant to §11A-3-51 of this code, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the Auditor to prepare and serve the notice as provided in §11A-3-54 and §11A-3-55 of this code;

(2) When the real property subject to the tax lien was classified as Class II property, provide the Auditor with the actual mailing address of the property that is subject to the tax lien or liens purchased; and

(3) Deposit, or offer to deposit, with the Auditor a sum sufficient to cover the costs of preparing and serving the notice.

(b) If the purchaser fails to fulfill the requirements set forth in subsection (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of subsection (a) of this section have been satisfied, the Auditor shall issue and notice to redeem as required by §11A-3-54 and §11A-3-55 of this code.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the Auditor a written assignment to him or

her of the purchaser's rights, executed, acknowledged, and certified in the manner required to make a valid deed.

(e) Whenever a purchaser has failed to comply with the notice requirements set forth in subsection (a) of this section, the purchaser may receive an additional 60 days from the expiration of the time period set forth in subsection (a) of this section to comply with the notice requirements set forth in subsection (a) of this section if the purchaser files with the Auditor a request in writing for the extension within 30 days following the expiration of the time period set forth in subsection (a) of this section and makes payment by U. S. currency, cashier's check, certified check, or money order in the amount of \$100 or 10 percent of the total amount paid on the day of sale set forth in §11A-3-45 of this code, whichever is greater. The fee for issuing the certificate of extension shall be \$25 made payable to the Auditor.

(f) The Auditor shall each month draw his or her warrant upon the treasury payable to the county board of education of each county for payment received by him or her for the extension of the time period set forth in subsection (e) of this section for property located within each such county.

§11A-3-53. Refund to purchaser of payment made at Auditor's sale where property is nonexistent.

If, within 180 days following the approval of the sale by the Auditor, the purchaser discovers that the property purchased at the sale is nonexistent, the purchaser shall submit the abstract or certificate of an attorney-at-law that the property is nonexistent. Upon receipt of the abstract or certificate, the Auditor cause the moneys so paid on the day of the sale to be refunded. Upon refund of the amount bid at an Auditor's sale, he or she shall inform the assessor that the property does not exist for the purpose of having the assessor correct the error.

If at any within 180 days following the approval of the sale by the Auditor, the sheriff, clerk of the county commission, assessor or Auditor determines that the tax lien on the subject property should be cancelled or dismissed, the Auditor shall issue a

certificate of cancellation on the tax lien and shall cause the money paid on the day of the sale to be refunded.

§11A-3-54. Notice to redeem.

Whenever the provisions of §11A-3-52 of this code have been complied with, the Auditor shall thereupon prepare a notice in form or effect as follows:

To _____

You will take notice that _____, the purchaser (or _____, the assignee, heir, or devisee of _____, the purchaser) of the following real estate, _____, (here describe the real estate sold) located in _____, (here name the city, town, or village in which the real estate is situated or, if not within a city, town, or village, give the district and a general description) which was _____ (here put whether the property was returned delinquent or non-entered) in the name of _____, and was sold by the Auditor at the sale for delinquent taxes (or nonentry) on the ___ day of _____, 20 ___, has requested that you be notified that a deed for such real estate shall be made on or after the ___ day of _____, 20 ___, as provided by law, unless before that day you redeem such real estate. The amount you shall have to pay to redeem on the ___ day of _____, 20 ___ shall be as follows:

Amount equal to the taxes, interest, and charges due on the date of sale, with interest to _____ \$ _____

Amount of taxes paid on the property, since the sale, with interest to _____ \$ _____

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest to _____ \$ _____

Amount paid for other statutory costs (describe) _____ \$ _____

Total \$ _____

You may redeem at any time before _____ by paying the above total less any unearned interest.

If the above real estate is your primary residence, you may petition the Auditor to redeem the real estate in not more than three incremental payments that equal the total amount required to redeem the real estate prior to the issuance of the deed described above.

Given under my hand this ___ day of _____, 20 ___.

Auditor

_____ County,

State of West Virginia

For preparing this notice, the Auditor shall receive a fee of \$10 for the original and two dollars for each copy required. Any costs which must be expended in addition thereto for publication, or service of such notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the Auditor. All costs provided by this section shall be included as redemption costs and included in the notice described herein.

§11A-3-55. Service of notice.

(a) As soon as the Auditor has prepared the notice provided for in §11A-3-54 of this code, he or she shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of §11A-3-52 of this code. Such notice shall be mailed and, if necessary, published at least 45 days prior to the first day a deed may be issued following the Auditor's sale.

(b) The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested, or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30th day following the request for such notice.

(c) The notice shall be served upon persons not residing or found in the state by certified mail, return receipt requested, or in the manner provided for serving process commencing a civil action or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30 days following the request for the notice.

(d) If the address of a person is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication shall be the county in which the real property is located. If service by publication is necessary, publication shall be commenced within 60 days following the request for the notice, and a copy of the notice shall, at the same time, be sent pursuant to subsection (b) or (c) of this section, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

(e) In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the Auditor issues the required notices by certified mail, the Auditor shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, or in the manner provided for serving process commencing a civil action, addressed to "Occupant", to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the property, pursuant to the provisions of §11A-3-52 of this code. Where the mail is not deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists to which the notice would be delivered to an occupant of the subject property.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the Auditor the following amounts:

(1) An amount equal to the taxes, interest, and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) All other taxes thereon, which have since been paid by the purchaser, his or her heirs or, with interest at the rate of one percent per month from the date of payment;

(3) Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) All additional statutory costs paid by the purchaser; and

(5) The Auditor's fee and commission as provided by §11A-3-66 of this code. Where the Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, or of any licensed attorney's title examination incident thereto, in the form of receipts or other evidence thereof,

the person redeeming shall pay the Auditor the sum of \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of § 11A-3-57, § 11A-3-58, and § 11A-3-64 of this code. Upon payment to the Auditor of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff and the Auditor, and the deputy commissioner in the exercise of their duties pursuant to this article, the Auditor shall prepare an original and five copies of the receipt for payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The Auditor shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person for reasons of financial hardship may petition the Auditor to redeem his or her primary residence in installments. The petition shall certify to the Auditor that the real estate is the primary residence of the redeeming party. The Auditor may approve a financial hardship plan and it shall be signed by him or her and the party making the request. A copy of the document evidencing such acceptance shall be filed with the clerk of the county commission in which the property is located.

(c) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased at the public auction or at a subsequent sale, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30 days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-66. Compensation of Auditor.

As compensation for his or her services, the Auditor shall be entitled to a fee of \$20 for each item certified by him or her pursuant to §11A-3-44 of this code. In addition thereto he or she shall receive a commission of seven and one half percent and interest on each sale or redemption not to exceed \$120.00. A commission received on a sale shall be based on the sale price and a commission received on a redemption shall be based on the total taxes and interest due. Such compensation shall be paid as provided in this article. Ten dollars of the commission fee received by the Auditor on a redemption shall be deposited into the Courthouse Facilities Improvement Fund set out in §29-26-6 of this code.

§11A-3-69. Effect of repeal.

The repeal of the provisions of §11A-3-5, §11A-3-5a, §11A-3-5b, §11A-3-6, §11A-3-7, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-17, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, §11A-3-29, §11A-3-30, and §11A-3-31 of this code, enacted during the 2022 regular session of the Legislature, shall not affect any tax liens sold prior to January 1, 2022.

ARTICLE 4. REMEDIES RELATING TO TAX SALES.**§ 11A-4-3. Right to set aside deed improperly obtained.**

Whenever the Auditor has delivered a deed to the purchaser after the time specified in §11A-3-59 of this code, or, within that time, has delivered a deed to a purchaser who was not entitled thereto either because of his failure to meet the requirements of §11A-3-52 of this code, or because the property conveyed had been redeemed, the owner of such property, his heirs and assigns, or the person who redeemed the property, may, before the expiration of three years following the delivery of the deed, institute a civil action to set aside the deed. No deed shall be set aside under the provisions of this section, except in the case of redemption, until payment has been made or tendered to the purchaser, he or she, his

or her heirs and assigns, of the amount which would have been required for redemption, together with any taxes which have been paid on the property since delivery of the deed, with interest at the rate of 12 percent per annum.

§ 11A-4-4. Right to set aside deed when one entitled to notice not notified.

(a) If any person entitled to be notified under the provisions of §11A-3-55 of this code is not served with the notice as therein required, and does not have actual knowledge that such notice has been given to others in time to protect his or her interests by redeeming the property, he or she, his or her heirs and assigns may, before the expiration of two years following the delivery of the deed, institute a civil action to set aside the deed.

(b) Any person instituting a civil action pursuant to this section seeking to set aside a tax deed shall, as a condition precedent to the court allowing the action to proceed, tender to the clerk of the court in which the suit is pending the funds necessary to redeem the real estate. The court shall enter an order directing the clerk to accept the funds of the applicant, and deposit those funds into an account in the control of the clerk pending the conclusion of the proceeding.

(c) In any action brought by a tax sale purchaser or his or her grantee seeking to quiet the title pursuant to an Auditor's sale, the previous owner and any person entitled to notice or right to redeem shall have the right to assert as a defense to the requested remedy the existence of both a failure of notice of the right to redeem and a failure of the applicant for the deed to have exercised reasonably diligent efforts to provide notice of his or her intention to acquire title to the real estate. It shall be a condition precedent to raising such a defense that he or she has the funds necessary to redeem the real estate should he or she prevail. Upon application by the person instituting such suit, the court shall enter an order directing the defendant to tender funds in the sufficient amount to the clerk for deposit into an account in the clerk's control pending conclusion of the proceeding. Failure to tender the necessary funds within 30 days following the entry of the order requiring the deposit shall entitle the purchaser to a judgment in his or her favor.

(d) An answer filed by a purchaser or his or her grantee shall include the amount required for redemption, together with any taxes which have been paid on the property since delivery of the deed, with interest at the rate of 12 percent per annum.

(e) No title acquired pursuant to this article shall be set aside in the absence of a showing by clear and convincing evidence that the person who originally acquired such title failed to exercise reasonably diligent efforts to provide notice of his intention to acquire such title to the complaining party or his predecessors in title.

(f) Upon a preliminary finding by the court that the deed will be set aside pursuant to this section, such amounts on deposit with the clerk pursuant to this section shall be paid by the clerk to the sheriff within one month of the entry thereof and shall direct the sheriff to pay to the purchaser amounts pursuant to §11A-3-58 of this code. Upon a finding by the court that the deed will not be set aside and with the entry of a judgment dismissing the action with prejudice, the clerk shall return to the plaintiff or other appropriated person whose funds previously tendered, less any accrued costs assessed against such person such funds by the court.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 18. SLUM CLEARANCE.

§16-18-3. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning is clearly indicated by the context:

“Area of operation” means in the case of a municipality, the area within such municipality and the area within five miles of the territorial boundaries thereof, except that the area of operation of a municipality under this article shall not include any area which lies within the territorial boundaries of another municipality unless a resolution shall have been adopted by the governing body of such other municipality declaring a need therefor; and in the case of a county, the area within the county, except that the area of operation

in such case shall not include any area which lies within the territorial boundaries of a municipality unless a resolution shall have been adopted by the governing body of such municipality declaring a need therefor; and in the case of a regional authority, shall mean the area within the communities for which such regional authority is created: *Provided*, That a regional authority shall not undertake a redevelopment project within the territorial boundaries of any municipality unless a resolution shall have been adopted by the governing body of such municipality declaring that there is a need for the regional authority to undertake such development project within such municipality. No authority shall operate in any area of operation in which another authority already established is undertaking or carrying out a redevelopment project without the consent, by resolution, of such other authority.

“Authority”, “slum clearance and redevelopment authority”, or “urban renewal authority” means a public body, corporate and politic, created by or pursuant to section four of this article or any other public body exercising the powers, rights, and duties of such an authority as hereinafter provided.

“Blighted area” means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

“Blighted property” means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, tax

delinquency, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare.

“Bonds” means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this section.

“Community” means any municipality or county in the state.

“Clerk” means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

“Federal government” is the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

“Governing body” means the council or other legislative body charged with governing the municipality or the county court or other legislative body charged with governing the county.

“Mayor” means the officer having the duties customarily imposed upon the executive head of a municipality.

“Municipality” means any incorporated city, town, or village in the state.

“Obligee” means any bondholder, agents, or trustees for any bondholders, or lessor demising to the authority property used in connection with a redevelopment project, or any assignee or assignees of such lessor’s interest or any part thereof, and the federal government when it is a party to any contract with the authority.

“Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and shall include any trustee, receiver, assignee, or other similar representative thereof.

“Public body” means the state or any municipality, county, township, board, commission, authority, district, or any other subdivision or public body of the state.

“Real property” includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

“Redeveloper” means any person, partnership, or public or private corporation or agency which shall enter or propose to enter into a redevelopment contract.

“Redevelopment contract” means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan.

“Redevelopment plan” means a plan for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area.

“Redevelopment project” means any work or undertaking:

(1) To acquire pursuant to the limitations contained in §54-1-2(11) of this code slum areas or blighted areas or portions thereof, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

(2) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan;

(3) To sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial or other

use or for public use or to retain such land for public use, in accordance with a redevelopment plan; and

(4) Preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

“Slum area” means an area in which there is a predominance of buildings or improvements or which is predominantly residential in character and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals, or welfare.

“Unblighted property” means a property that is not a blighted property.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-30. Reclamation of Abandoned and Dilapidated Properties Program.

(a) To assist county commissions, municipalities, urban renewal authorities created pursuant to §16-18-1 *et seq.* of this code, and land reuse agencies and municipal land banks created pursuant to §31-18E-1 *et seq.* of this code, in their efforts to remediate abandoned, blighted, and dilapidated structures or properties as provided in this code, the Department of Environmental Protection may develop a program called the Reclamation of Abandoned and Dilapidated Properties Program. Using the fund established in subsection (b) of this section, the Department of Environmental Protection may work with county commissions, municipalities, urban renewal authorities, land reuse

agencies, and municipal land banks to implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.

(b) There is created in the State Treasury a special revenue fund known as the Reclamation of Abandoned and Dilapidated Properties Program Fund. The fund shall be comprised of any money granted by charitable foundations, allocated by the Legislature, allocated from federal agencies, and earned from the investment of money held in the fund, and all other money designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years.

(c) The fund, to the extent that money is available, may be used solely to assist county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks to remediate abandoned and dilapidated structures and properties by demolishing, deconstructing, or redeveloping them together with predevelopment expenses related thereto and other activities as authorized by a charitable grant or legislative appropriation. The fund may also be used to defray costs incurred by the Department of Environmental Protection in administering the provisions of this section. However, no more than five percent of money transferred from the Solid Waste Facility Closure Cost Assistance Fund may be used for administrative purposes.

(d) The Department of Environmental Protection, in consultation with the State Fire Marshal, Insurance Commissioner, the Auditor, the Secretary of Revenue, and the Legislative Auditor, shall conduct a review of the needs of county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks. On or before December 31, 2023, the Department of Environmental Protection shall submit to the Joint Committee on Government and Finance a comprehensive report of

that review, along with recommendations that are substantiated by the findings of the review that may be taken to meet the needs of the state in demolishing and redeveloping abandoned and dilapidated structures and properties.

(e) *Statewide contracts.* — The Department of Environmental Protection may cooperate with the Purchasing Division of the Department of Administration to establish one or more statewide contracts for services to be utilized by county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks to implement the purposes of this section.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to include, but not be limited to, governing the disbursement of money from the fund, establishing the Reclamation of Abandoned and Dilapidated Properties Program, directing the distribution of money from the fund, entering contracts statewide contracts, and establishing criteria for eligibility to receive money from the fund.

(g) Nothing in this section shall be construed to limit, restrain, or otherwise discourage this state and its political subdivisions from disposing of abandoned and dilapidated structures in any other manner provided by the laws of this state.

CHAPTER 31. CORPORATIONS.

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§ 31-18E-9. Acquisition of property.

(a) *Title to be held in its name.* — A land reuse agency or municipal land bank shall hold in its own name all real property it acquires.

(b) *Tax exemption.* — (1) Except as set forth in subdivision (2) of this subsection, the real property of a land reuse agency or municipal land bank and its income and operations are exempt from property tax.

(2) Subdivision (1) of this subsection does not apply to real property of a land reuse agency or municipal land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) *Methods of acquisition.* — A land reuse agency or municipal land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper: *Provided*, That a land reuse agency or municipal land bank may not acquire any interest in oil, gas, or minerals which have been severed from the realty.

(d) *Acquisitions from municipalities or counties.* — (1) A land reuse agency or municipal land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, and land contracts and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the land reuse agency or municipal land bank and the municipality or county.

(2) A municipality or county may transfer to a land reuse agency or municipal land bank real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the land reuse agency or municipal land bank.

(3) An urban renewal authority, as defined in §16-18-4 of this code, located within a land reuse jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the land reuse agency. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(e) *Maintenance.* — A land reuse agency or municipal land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) *Prohibition.* — (1) Subject to the provisions of subdivision (2) of this subsection, a land reuse agency or municipal land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land reuse agency under §31-18E-4(c) of this code.

(2) A land reuse agency or municipal land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(g) *Acquisition of tax-delinquent properties.* — (1) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, a land reuse agency or municipal land bank may acquire an interest in tax-delinquent property through the provisions of chapter 11A of this code. If any unredeemed tract or lot or undivided interest in real estate offered for sale at public auction remain unsold following the auction, , the Auditor shall provide a list of all of said real estate within a land reuse or municipal land bank jurisdiction to the land reuse agency or municipal land bank and the land reuse agency or municipal land bank shall be given an opportunity to purchase the tax lien and pay the taxes, interest, and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency or municipal land bank purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and meets one or more of the following criteria: (A) It has an assessed value of \$50,000 or less; (B) there are municipal liens on the property that exceed the amount of back taxes owed in the current tax cycle; (C) the property has been on the municipality's vacant property registry for 24 consecutive months or longer; (D) the

property was sold at a tax sale within the previous three years, was not redeemed, and no deed was secured by the previous lien purchaser; or (E) has been condemned: *Provided*, That the land reuse agency or municipal land bank satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When a land reuse agency or municipal land bank exercises a right of first refusal in accordance with subdivision (2) of this section, the land reuse agency or municipal land bank shall, within 15 days of obtaining a tax deed, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to express an interest in purchasing the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for the property plus expenses incurred by the land reuse agency or municipal land bank: *Provided*, That the land reuse agency or municipal land bank may refuse to sell the property to the adjacent property owner that expressed interest in the tax-delinquent property if that property owner or an entity owned by the property owner or its directors is delinquent on any state and local taxes or municipal fees on any of their property.

(4) Effective July 1, 2025, the provisions of subdivisions (2) and (3) of this subsection shall sunset and have no further force and effect.

(5) Prior to January 1, 2025, any land reuse agency or municipal land bank which exercises the authority granted by this subsection shall submit to the Joint Committee on Government and Finance a report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection.

ARTICLE 21. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.**§31-21-11. Land bank program.**

(a) This article hereby authorizes the establishment of a voluntary state land bank program. Under this program, the corporation is authorized to acquire properties, hold title and prepare them for future use. Prior to acquiring any properties, the corporation shall conduct site appropriate assessments to determine the environmental conditions or issues associated with a particular property. The corporation shall not acquire title to any property unless all pending liens have been satisfied and released. Liabilities, including, but not limited to, environmental liabilities, shall not pass to the corporation by its acquisition of title. Participation in the land bank program under this article shall not relieve an entity of any of its liabilities.

(b) The objective of the land bank program is to assist state and local government efforts for economic development by accepting formerly used or developable properties and preparing the properties so they can be conveyed to other parties to locate or expand businesses and create or retain jobs in this state.

(c) The corporation may acquire by gift, devise, transfer, exchange, foreclosure, purchase or otherwise on terms and conditions and in a manner the corporation considers proper, real or personal property or rights or interests in real or personal property. The corporation may not accept by any conveyance or other action any liability for prior pollution or contamination liabilities that occurred on the property prior to its conveyance to the corporation.

(d) Real property acquired by the corporation may be by purchase and sale agreement, lease purchase agreement, installment sales contract, land contract or otherwise as may be negotiated or structured. The corporation may acquire real property or rights or interests in real property for any purpose the corporation considers necessary to carry out the purposes of this article including, but not limited to, one or more of the following purposes:

(1) Use or development of property the corporation has otherwise acquired;

(2) To facilitate the assembly of property for sale or lease to any other public or private person, including, but not limited to, a nonprofit or for-profit corporation;

(3) To conduct environmental remediation and monitoring activities.

(e) The corporation may also acquire by purchase, on terms and conditions and in a manner the corporation considers proper, property or rights or interests in property.

(f) The corporation may hold and own in its name any property acquired by it or conveyed to it by this state, a foreclosing governmental unit, a local unit of government, an intergovernmental entity created under the laws of this state, or any other public or private person.

(g) All deeds, mortgages, contracts, leases, purchases, or other agreements regarding property of the corporation, including agreements to acquire or dispose of real property, shall be approved by the board of directors and executed in the name of the corporation or any single purpose entity created by the board for the transaction.

(h) All property held by the corporation or a single purpose entity created by the board for a transaction shall be inventoried and classified by the corporation according to title status and suitability for use.

(i) A document including, but not limited to, a deed evidencing the transfer under this article of one or more parcels of property to the corporation by this state or a political subdivision of this state may be recorded within the office of the county clerk of the county in which the property is located without the payment of a fee.

(j) The corporation shall notify the county commission and county assessor in the affected county or counties upon receipt of an application for participation in the land bank program.

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CHAPTER 272

**(Com. Sub. for S. B. 656 - By Senators Takubo, Boley,
Hamilton, Nelson, Phillips, Stollings, Swope, Sypolt, Trump,
Woodrum, Jeffries, Lindsay, Baldwin, Plymale, and Weld)**

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-97; and to amend said code by adding thereto a new section, designated §11-24-44, all relating to providing a tax credit against the state corporate net income tax and the state personal income tax for expenditures related to the establishment and operation of employer-provided or sponsored child-care facilities; defining terms; providing for rulemaking; setting the amount of the credit; providing for limitation of the credit; providing for transferrable credit available to non-profit corporations; and providing for a recapture process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-97. Tax credit for employers providing child care for employees.

(a) *Definitions.* — As used in this section, the term:

(1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

(2) “Cost of operation” means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child-care facilities: *Provided,*

That the term cost of operation shall exclude the cost of any property that is qualified child-care property.

(3) “Department” or “Tax Department” means the West Virginia State Tax Department.

(4) “Employer” means any employer upon whom an income tax is imposed by this article.

(5) “Employer provided” refers to child care offered on the premises of the employer.

(6) “Premises of the employer” refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child-care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(7) “Qualified child-care property” means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child-care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child-care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

Qualified child-care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child-care property as defined in this section.

(8) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) "Recapture event" means any disposition of qualified child-care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child-care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(10) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-	The recapture percentage is:
Five full years after the qualified child-care property is	
placed in service	100

The sixth full year after the qualified child-care property is placed in service	90
The seventh full year after the qualified child-care property is placed in service	80
The eighth full year after the qualified child-care property is placed in service	70
The ninth full year after the qualified child-care property is placed in service	60
The tenth full year after the qualified child-care property is placed in service	50
The eleventh full year after the qualified child-care property is placed in service	40
The twelfth full year after the qualified child-care property is placed in service	30
The thirteenth full year after the qualified child-care property is placed in service	20
The fourteenth full year after the qualified child-care property is placed in service	10
Any period after the close of the fourteenth full year after the qualified child-care property is placed in service	0

(11) “Recapture year” means the taxable year in which a recapture event occurs with respect to qualified child-care property.

(b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child-care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child-care property jointly owned by two or more unaffiliated employers, each employer’s credit is limited to that employer’s respective investment in the qualified child-care property.

(c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection (b) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer’s income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer’s West Virginia income tax return setting forth the following information with respect to such tax credit:

- (A) A description of the child-care facility;
 - (B) The amount of qualified child-care property acquired during the taxable year and the cost of such property;
 - (C) The amount of tax credit claimed for the taxable year;
 - (D) The amount of qualified child-care property acquired in prior taxable years and the cost of such property;
 - (E) Any tax credit utilized by the taxpayer in prior taxable years;
 - (F) The amount of tax credit carried over from prior years;
 - (G) The amount of tax credit utilized by the taxpayer in the current taxable year;
 - (H) The amount of tax credit to be carried forward to subsequent tax years; and
 - (I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.
- (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care property:
- (1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and
 - (2) All credits previously claimed with respect to such property under subsection (b) of this section shall be recaptured as follows:
 - (A) Any carryover attributable to such credits pursuant to subdivision (1), subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b) of this section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on credit for operating costs.*— The tax credit allowed under subsection (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child-care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(g) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner

deems to be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-44. Tax credit for employers providing child care for employees.

(a) *Definition.* — As used in this section, the term:

(1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

(2) “Cost of operation” means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child-care facilities; provided, however, that the term cost of operation shall exclude the cost of any property that is qualified child-care property.

(3) “Department” or “Tax Department” means the West Virginia State Tax Department.

(4) “Employer” means any employer upon whom an income tax is imposed by this article or any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or § 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

(5) “Employer provided” refers to child care offered on the premises of the employer.

(6) “Premises of the employer” refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child-care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child-care facility, as determined by the commissioner, such

facility may be located within a reasonable distance of the premises of the employer.

(7) “Qualified child-care property” means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child-care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child-care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of Section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

Qualified child-care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child-care property as defined in this section.

(8) “Recapture amount” means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) “Recapture event” refers to any disposition of qualified child-care property by the taxpayer, or any other event or

circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child-care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(10) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-The recapture percentage is:

Five full years after the qualified child-care property is placed in service100

The sixth full year after the qualified child-care property is placed in service90

The seventh full year after the qualified child-care property is placed in service80

The eighth full year after the qualified child-care property is placed in service70

The ninth full year after the qualified child-care property is placed in service60

The tenth full year after the qualified child-care property is placed in service50

The eleventh full year after the qualified child-care property is placed in service	40
The twelfth full year after the qualified child-care property is placed in service	30
The thirteenth full year after the qualified child-care property is placed in service	20
The fourteenth full year after the qualified child-care property is placed in service	10
Any period after the close of the fourteenth full year after the qualified child-care property is placed in service	0

(11) “Recapture year” means the taxable year in which a recapture event occurs with respect to qualified child-care property.

(b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child-care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child-care property jointly owned by two or more unaffiliated employers, each employer’s credit is limited to that employer’s respective investment in the qualified child-care property.

(c) *Limitations on capital investment credit.* — The tax credit allowable under subsection (b) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's West Virginia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child-care facility;

(B) The amount of qualified child-care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child-care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care property:

(1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (b) of this section shall be recaptured as follows:

(A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b) of this section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on credit for operating costs.* — The tax credit allowed under subsection (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child-care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated under the provisions of this section shall be available as a transferrable credit that may be transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3) of this code. The Tax Department shall within 90 days certify the amount of transferrable credit available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or assignee of non-profit corporation credits certified to a non-profit corporation under this section takes the transferred, purchased, or assigned credits subject to any limitations placed on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and §11-24-44(f) of this code.

(h) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

●

CHAPTER 273

**(Com. Sub. for H. B. 2096 - By Delegates Graves, Barrett,
Hanna, Skaff, Lovejoy, Martin, Thompson and Wamsley)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7; §11-13X-8, §11-13X-11, §11-13X-12, and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; reinstating the film investment tax credit; providing the coordination and management by the West Virginia Office of Economic Development; defining terms; excluding commercials and promotional videos from the definition of qualified project; excluding short-term depreciation from credit; raising the minimum threshold of cumulative annual expenditures necessary to qualify for credit; eliminating limitation of credit; requiring the Economic Development Office to develop a database of locations, music, and other resources to be made available to film production teams; providing Economic Development Office discretion to determine if project negatively portrays West Virginia; providing and clarifying effective date; eliminating reference to business franchise tax; providing sunset provision; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-3. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) of this

section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* —

“Commercial exploitation” means reasonable intent for public viewing for the delivery medium used.

“Direct production expenditure” means a transaction that occurs in the State of West Virginia or with a West Virginia vendor and includes:

(A) Payment of wages, fees, and costs for related fringe benefits provided for talent, management or labor that are subject to West Virginia income tax;

(B) Payment to a personal services corporation for the services of a performing artist if:

(i) The personal services corporation is subject to West Virginia income tax on those payments; and

(ii) The performing artist receiving payments from the personal services corporation is subject to West Virginia income tax; and

(C) Any of the following provided by a West Virginia vendor:

(i) The story and scenario to be used by a qualified project;

(ii) Set construction and operations, wardrobe, accessories, and related services;

(iii) Photography, sound synchronization, lighting, and related services;

(iv) Editing and related services;

(v) Rental of facilities and equipment;

(vi) Leasing of vehicles;

(vii) Food or lodging;

(viii) Airfare if purchased through a West Virginia-based travel agency or travel company;

(ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance agent; and

(x) Other direct costs of producing a qualified project in accordance with generally accepted entertainment industry practices: *Provided*, That “direct production expenditure” shall not include depreciation of any item that has less than one full year of depreciable life.

“Eligible company” means a person or business entity engaged in the business of producing film industry productions. The term excludes state agencies.

“Feature length” means in excess of 40 minutes.

“Film industry production” means a qualified project intended for reasonable national or international commercial exploitation.

“Multi-state distribution” means reaching at least one other state besides West Virginia.

“Postproduction expenditure” means a transaction that occurs in West Virginia or with a West Virginia vendor after the completion of principal photography, including editing and negative cutting; Foley recording and sound effects; automatic dialogue replacement (also known as ADR or dubbing); special effects or visual effects, including computer-generated imagery or other effects; scoring and music editing; sound editing; beginning and end credits; soundtrack production; subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution, or expense payments.

“Qualified project” means a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, a music video, commercial still photography, a television pilot program, a television series, and a television mini-series that incurs a cumulative amount of \$50,000 in a calendar year in direct production expenditures and post-production expenditures in West

Virginia or any combination of projects not previously claimed that would qualify for the credit except for cost, and that combined meets or exceeds the cumulative amount of \$50,000 in a calendar year. The term excludes news or current affairs programming, a weather or market program, a talk show, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising, or a concert production.

A qualified project may be produced on any single media or multimedia program that:

(A) Is fixed on film, digital medium, videotape, computer disk, laser disc, or other similar delivery medium;

(B) Can be viewed or reproduced;

(C) Is not intended to and does not violate §61-8C-1 *et seq.* of this code;

(D) Does not contain obscene matter or sexually explicit conduct, as defined by §61-8A-1 *et seq.* of this code;

(E) Is intended for reasonable commercial exploitation for the delivery medium used whether delivery is in state or multi-state distribution; and

(F) Does not contain content that, in the sole discretion of the Office of Economic Development, negatively portrays the state of West Virginia.

“Tax Commissioner” means the West Virginia State Tax Commissioner or his or her designee.

§11-13X-4. Creation of the tax credit.

(a) An eligible company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit in an amount equal to the percentage specified in §11-13X-5 of this code of:

(1) Direct production expenditures incurred in West Virginia that are directly attributable to the production in West Virginia of

a qualified project which expenditures occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project; and

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose of calculating or qualifying investment for claiming the economic opportunity tax credit authorized by §11-13Q-1 *et seq.* of this code or the manufacturing investment tax credit authorized by §11-13S-1 *et seq.* of this code.

§11-13X-5. Amount of credit allowed; limitation of the credits.

(a) *Base allowance.* — The amount of credit allowed to every eligible company, except as provided in subsection (b) of this section, is 27 percent.

(b) *Extra allowance for hiring of local workers.* — Any amount allowed in subsection (a) of this section shall be increased by an additional four percent if the eligible company, or its authorized payroll service company, employs 10 or more West Virginia residents as part of its full-time employees working in the state or as apprentices working in the state.

(c) *Application of the credits.* — The tax credit allowed under this section shall be applied to the eligible company's state tax liability as provided in §11-13X-7 of this code.

§11-13X-6. Requirements for credit.

(a) In order for any eligible company to claim a tax credit under this article, it shall comply with the following requirements:

(1) If the qualified project contains production credits, the eligible company shall agree, upon request by the Office of Economic Development, to recognize the State of West Virginia with the following acknowledgment in the end credit roll: “Filmed in West Virginia with assistance of the West Virginia Film Industry Investment Act”;

(2) Apply to the Office of Economic Development on forms and in the manner the Office of Economic Development may prescribe;

(3) If an eligible company submits a proposal to perform a qualified project for a state agency, the eligible company shall indicate its intention to claim the tax credit provided by this article; and

(4) Submit to the Office of Economic Development information required by the office to demonstrate conformity with the requirements of this section and shall agree in writing:

(A) To pay all obligations the eligible company has incurred in West Virginia; and

(B) To delay filing of a claim for the tax credit authorized by this article until the Office of Economic Development delivers written notification to the Tax Commissioner that the eligible company has fulfilled all requirements for the credit.

The Office of Economic Development shall determine the eligibility of the company and the qualification of each project, and shall report this information to the Tax Commissioner in a manner and at times the Office of Economic Development and the Tax Commissioner shall agree upon.

(b) Upon completion of a qualified project:

(1) An eligible company shall have filed all required West Virginia tax reports and returns and paid any balance of West Virginia tax due on those returns;

(2) All claims for the tax credit shall be filed with an expense verification report prepared by an independent certified public accountant, utilizing “agreed upon procedures” which are prescribed by the Office of Economic Development in accordance with generally accepted auditing standards in the United States. The certified public accountant will render a report as to the qualification of the credits, consistent with guidelines to be determined by the Office of Economic Development and approved by the Tax Commissioner; and

(3) An eligible company claiming an extra allowance for employing local workers shall submit to the Office of Economic Development documentation verifying West Virginia residency for all individuals claimed to qualify for the extra allowance. The documentation shall include the name, home address, and telephone number for all individuals used to qualify for the extra allowance.

(c) If the requirements of this section have been complied with, the Office of Economic Development shall approve the film tax credit and issue a document granting the appropriate tax credit to the eligible company and shall report this information to the Tax Commissioner.

§11-13X-7. Application of credit to state taxes.

(a) *Credit allowed.* —

Beginning in the taxable year that the expenditures permitted under section four of this article are incurred, eligible companies and owners of eligible companies, as described in subsection (d) of this section, are permitted a credit, as described in section five of this article, against the taxes imposed by articles twenty-four and twenty-one of this chapter, in that order, as specified in this section.

(b) *Corporation net income taxes.* —

After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

(c) *Personal income tax.* –

(1) If the eligible taxpayer is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit, after application of subsections (b) and (c) of this subsection, is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

(a) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(b) If the tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c), or (d) of §11-13X-7 of this code, for that taxable year, the excess may be applied against those taxes, in the order and manner stated in §11-13X-7 of this code, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used;

(2) The expiration of the second taxable year after the taxable year in which the expenditures occurred. The tax credit remaining thereafter is forfeited; or

(3) The excess tax credit is transferred or sold.

(c) No carryback is allowed to a prior taxable year that does not have qualified expenditures for the amount of any unused portion of any annual credit allowance.

(d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally issued by the Office of Economic Development.

(e) Any tax credit certificate issued in accordance with this article, which has been issued to an eligible company, and to the extent not previously claimed against the tax of the eligible company or the owner of the certificate, may be transferred or sold by such eligible company to another West Virginia taxpayer, subject to the following conditions:

(1) A single transfer or sale may involve one or more transferees, assignees or purchasers. A transfer or sale of the credits may involve multiple transfers to one or more transferees, assignees or purchasers;

(2) Transferors and sellers shall apply to the office for approval of any transfer, sale, or assignment of the tax credit. Any amount of the tax credit that has been transferred or assigned shall be subject to the same limitations and conditions that apply to the eligible company's or seller's entitlement, use and application of the credit. The application for sale, transfer or assignment of the credit shall include the transferor's tax credit balance prior to transfer, the credit certificate number, the name of the seller, the transferor's remaining tax credit balance after transfer, if any, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate and any other information required by the Office of Economic Development or the Tax Commissioner.

(3) The Office of Economic Development shall not approve the transfer or assignment of a tax credit if the seller or transferor has an outstanding tax obligation with the State of West Virginia for any prior taxable year.

(f) The transferee, assignee or purchaser shall apply such credits in the same manner and against the same taxes as specified in this article.

(g) For purposes of this chapter, any proceeds received by the eligible company or transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt from the West Virginia consumers sales and service tax, use tax, the corporate net income tax, and personal income tax.

(h) The Tax Commissioner shall not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

Failure to comply with this section will result in the disallowance of the tax credit until the seller or transferor is in full compliance.

§11-13X-11. Tax credit review and accountability.

(a) Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the Office of Economic Development shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the Film Industry Investment Act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the two-year period:

- (1) The number of eligible companies claiming the credit;
- (2) The dollar amount of tax credit certificates issued to taxpayers;
- (3) The number of new businesses created by the tax credit;
- (4) The number of new jobs, if any, created by the tax credit;
- (5) The amount of direct expenditures made on qualified projects; and

(6) The cost of the credit.

(b) Eligible companies claiming the credit shall provide any information the Tax Commissioner and the Office of Economic Development may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code: *Provided, however*, That notwithstanding the provisions of §11-10-5d and §11-10-5s of this code, the Tax Department is hereby authorized to disclose to the Office of Economic Development such tax information as may be necessary to compile the report required by this section and the report required by §11-13X-12 of this code.

§11-13X-12. Economic development; utilization of state locations, talent, and production companies.

(a) The West Virginia Office of Economic Development, in consultation and coordination with the appropriate public and private entities, shall promote, foster, encourage, and monitor the development of the film industry in this state as part of its comprehensive economic development strategy for West Virginia and report recommendations for expanding the industry in the state to the Governor and the Joint Committee on Government and Finance annually on or before December 1.

(b) The West Virginia Office of Economic Development shall coordinate with property owners, musicians and other performers, and other managers of resources suitable for film production to develop a database of locations, music, and other resources available for incorporation into film projects. To the greatest feasible extent, the Economic Development Office shall establish methods for interface with national and international databases of these resources that are available to, or used by, film and video production teams in the identification and selection of location, music, and other resources. The Economic Development Office shall also implement means for property owners and for staff in the field to connect to the state's database and to submit entries or nominations thereto.

§11-13X-13. Effective date, elimination of film tax credits, preservation of film tax credits earned prior to the sunset date; cessation of the West Virginia Film Office.

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007 and before January 16, 2018, and shall be allowed upon eligible expenditures occurring on and after the date specified in subsection (d) of this section and before the termination date specified therein.

(b) Film tax credits to which a taxpayer has gained lawful entitlement, after December 31, 2007, and before January 16, 2018 may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement prior to the effective date of this subsection may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

(c) Effective July 1, 2018, all operations of the West Virginia Film Office shall cease. To the extent necessary to settle, finalize, and conclude business relating to outstanding film tax credits issued prior to the effective date of the bill, the Division of Tourism is hereby authorized to administer such duties for that limited purpose.

(d) The amendments to this article enacted in the year 2022 shall apply to all taxable years beginning on or after July 1, 2022: *Provided*, That, unless sooner terminated by law, the film investment tax credit will terminate on December 31, 2027. No entitlement to any tax credit authorized by this article may result from, and no credit is available to any person for, expenditures incurred subsequent to December 31, 2027. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may continue to be applied against tax liabilities, subject to the conditions, limitations,

and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

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CHAPTER 274

**(Com. Sub. for H. B. 4336 - By Delegates Graves, Foster,
Steele, Burkhammer, Clark, Bridges, Criss, Anderson, J.
Kelly, Barrett and Householder)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; relating generally to valuation and assessment regarding personal property taxation; providing for a revised methodology to value property producing oil, natural gas, and natural gas liquids by the Tax Commissioner for property tax assessments; providing for methods, limitations, calculation requirements, and definitions, all of which are used to determine fair market value, net proceeds, actual annual operating costs, a capitalization rate, production decline rates, a yield capitalization model, a working interest model, and a royalty interest model; providing for a safe harbor for marginal wells costs; providing limitations on calculations by the commissioner; providing for annualized gross receipts and actual annual operating expenses before calculation of the models; providing limitations on minimum valuations of wells; providing for reporting by the Tax Commissioner of certain information; providing for rule-making; providing a sunset date; and providing multiple effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) “Industrial property” means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) “Natural resources property” means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e)

of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Division of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Division of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any

challenged appraisal when the assessed value of the property in question exceeds \$2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding \$2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) *Property producing oil, natural gas, natural gas liquids-*

(A) The Tax Commissioner shall value property producing oil, natural gas, natural gas liquids, or any combination thereof in the state at its fair market value determined through the process of applying a yield capitalization model to the net proceeds.

(B) For the purposes of this subdivision:

(i) “Natural gas liquids” means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(ii) “Actual annual operating costs” shall include, without limitation, all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs; as further defined herein.

(iii) “Net proceeds” means actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer’s returns, less royalty interest receipts, and less actual annual operating costs as reported on the taxpayer’s returns.

(iv) “Royalty interest receipts” means the fractional interest in production of oil, natural gas, natural gas liquids, or any combination thereof, that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the mineral owner, mineral lessor, or both.

(v) “Capitalization rate” means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax Department based on a “Build-up-Model” of the Weighted Average Cost of Capital (WACC).

(vi) “Lease operating expenses” means the actual costs incurred to bring the subsurface minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to marketable products. Lease operating expenses refers to the costs of operating the wells and equipment. “Lease operating expenses” includes actual costs of labor, fuel, utilities, materials, rent or supplies, which are directly related to the production, processing, or transportation of oil, natural gas, natural gas liquids, or any combination thereof and that can be documented by the producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of oil, natural gas, natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

(vii) “Lifting costs” means the actual costs incurred to operate a well during production.

(viii) “Gathering costs” means the actual costs of transportation of oil, natural gas, natural gas liquids, condensate, or any combination thereof from multiple wells by separate and individual pipelines to a central point of accumulation, dehydration, compression, separation, heating and treating or storage.

(ix) “Compression costs” are the actual costs in the process of raising the pressure of minerals.

(x) “Processing, Separation and Fractionation costs” means de-ethnization fees, processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees charged by a processing or fractionation plant to the producer.

(xi) “Fractionation costs” means the actual costs incurred by the producer in fractionation. Fractionation is the separating of components of a mixture through differences in physical or chemical properties. Fractionation is the process by which raw hydrocarbons are separated into products.

(xii) “Processing costs” means the actual costs incurred by the producer for activities occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that changes the physical or chemical characteristics, enhances the marketability, or enhances the value of the separate components. Processing costs are limited to the costs for the following activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration within a processing facility, beneficiation, stabilizing, compression, and separation which occurs within a processing facility.

(xiii) “Transportation costs” means the actual costs of moving oil, natural gas, natural gas liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point of sale.

(xiv) “Marginal well” means in the calendar year immediately preceding the July 1 assessment date a well with an average daily production of 2 barrels of oil or less and an average daily production of 10 MCF or less of natural gas.

(C) (i) For all assessments made on or after July 1, 2022, the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using a yield capitalization model. The yield capitalization model shall be composed of a working interest model and a royalty interest model. The summation of the working interest model and the royalty interest model shall represent the fair market value of the property.

(I) The working interest model shall be calculated as the sum of the working interest net proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income series shall be calculated as a terminating series of net proceeds discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of net proceeds

shall be the net proceeds for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the net proceeds income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(II) The royalty interest model shall be calculated as the sum of the royalty interest receipts income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income series shall be calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of royalty interest receipts shall be the royalty interest receipts for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the royalty interest receipts income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Companies may provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

(iii) For all assessments made on or after July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of \$0.30 per MCF of

natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated on or about December 22, 2021.

(D) *Safe harbor.* – The Tax Commissioner shall annually determine a safe harbor amount for actual annual operating costs to be published in the State Register for all marginal wells producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of marginal wells choosing to use the safe harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the producing geographical area and geological strata.

(E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter, all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(F) This subdivision shall be effective for all assessments made on or after July 1, 2022 and shall have no further force or effect for any assessments made on or after July 1, 2025, unless reenacted by the legislature.

(G) The Tax Commissioner shall propose rules required to administer this subdivision, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code, regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such

plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided*, That the office of the state Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

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CHAPTER 275

**(Com. Sub. for H. B. 4393 - By Delegates Rohrbach, Reed,
Worrell, Bates, Miller, and Criss)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended, relating to a tax on managed care organizations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-10a. Imposition of tax on managed care organizations.

(a) *Imposition of tax.* — For the privilege of holding a certificate of authority within this state to establish or operate a “health maintenance organization” pursuant to §33-25A-4 of this code (hereinafter “certified HMO”), there is hereby levied and shall be collected from every such certified HMO an annual broad-based health care-related tax.

(b) *Rate and measure of tax.* — (i) Prior to July 1, 2022, the tax imposed by this section shall be based on the following rates applied to each taxable health plan’s total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

(1) Tier I — \$35 for each Medicaid member month under 250,000;

(2) Tier II — \$20 for each Medicaid member month between 250,000 and 500,000;

(3) Tier III — \$1 for each Medicaid member month greater than 500,000;

(4) Tier IV — 25 cents for each non-Medicaid member month under 150,000; and

(5) Tier V — 10 cents for each non-Medicaid member month of 150,000 or more.

(ii) On and after July 1, 2022, the tax imposed by this section shall be based on the following rates applied to each taxable health plan's total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

(1) Tier I — \$36.26 for each Medicaid member month under 250,000;

(2) Tier II — \$20.72 for each Medicaid member month between 250,000 and 500,000;

(3) Tier III — \$1.036 for each Medicaid member month greater than 500,000;

(4) Tier IV — 25.9 cents for each non-Medicaid member month under 150,000; and

(5) Tier V — 10.36 cents for each non-Medicaid member month of 150,000 or more.

(iii) On July 1, 2023, and every July 1 thereafter, the tax rates for each tier will be increased by the greater of either 0.0% or the average West Virginia Medicaid Managed Care capitation rate change from the two preceding fiscal years ending on June 30: *Provided*, That any increase shall meet the requirements in 42 C.F.R. §433.68.

(1) The average West Virginia Medicaid Managed Care capitation rate change will be calculated by the West Virginia Bureau for Medical Services from the initial SFY rate certifications as follows:

(A) The monthly membership weights by rate cell and month will be determined based on the projected member months by rate cell from the most recent initial SFY rate certification.

(B) For each of the two preceding fiscal years, to determine the total projected premium payments for each year, the West Virginia Bureau for Medical Services will multiply the initial SFY certified capitation rates net of directed payments by the monthly membership weights by rate cell and month as determined in §11-27-10a(b)(iii)(1)(A).

(C) For each of the two preceding fiscal years, the West Virginia Bureau for Medical Services will divide the total projected premium payments as determined in §11-27-10a(b)(iii)(1)(B) by the total enrollment to determine the average premium payment for each fiscal year.

(D) To determine the average West Virginia Medicaid Managed Care capitation rate change from the preceding two fiscal years, the West Virginia Bureau for Medical Services will divide the most recent fiscal year's average premium payment by the earlier fiscal year's average premium payment and subtract 1.

(2) Before July 1, 2023, and every July 1 thereafter, the West Virginia Bureau for Medical Services will certify to the Tax Commissioner the capitation rate change from the preceding two fiscal years, the calculation used in making that determination, and whether the increase meets the requirements of federal and state law for permissible health care-related taxes.

(3) Using the certified calculations from the West Virginia Bureau for Medical Services, the Tax Commissioner will publish, by Administrative Notice, before July 1 of each year the rates for the next tax year applicable to each taxable health plan's total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V.

(c) *Definitions.* —

(1) “Managed care organization” or “MCO” means a certified HMO that provides health care services to Medicaid members pursuant to an agreement or contract with the department.

(2) “Managed care plan” means an agreement or contract between the secretary and an MCO under which the MCO agrees to provide health care services to Medicaid members.

(3) “Medicaid member” means an individual enrolled in a taxable health plan who is a Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated payment.

(4) “Medicaid member months” means the number of Medicaid members in a taxable health plan in each month or part of a month over the course of the tax year.

(5) “Non-Medicaid enrollee” means an individual who is an “enrollee”, “subscriber”, or “member”, as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who is not a Medicaid member: *Provided*, That this definition does not include Public Employees Retirement Agency members or Medicare Advantage members.

(6) “Non-Medicaid member months” means the number of non-Medicaid enrollees in a taxable health plan in each month or part of a month over the course of the tax year, but does not include persons enrolled in either a health plan issued by the West Virginia Public Employees Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of 1959 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted pursuant to 5 U.S.C. §8909(f).

(7) “Taxable health plan” means: (i) An agreement or contract under which a certified HMO agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1 *et seq.* of this code; and (ii) a managed care plan.

(8) “Tax year” means the fiscal year beginning on July 1 and ending on June 30.

(9) “Rate cell” means a set of mutually exclusive categories of enrollees that is defined by one or more characteristics for the purpose of determining the capitation rate and making a capitation payment; such characteristics may include age, gender, eligibility category, and region or geographic area.

(10) “Initial SFY rate certification” means the MHT and MHP actuarial certifications as submitted to the Centers for Medicare and Medicaid Services prior to the start of the state fiscal year and prior to any mid-year or other rate amendments.

(d) *Effective date.* —

(i) Subject to an earlier termination pursuant to the terms of subdivision (ii) of this subsection, the tax imposed by this section shall be effective for three years beginning on the first day of the state fiscal year following a 30-day period after the secretary has posted notice on the department Internet website that approval had been received from the federal Centers for Medicare and Medicaid Services that the tax imposed by this section is a permissible health care-related tax in accordance with 42 C.F.R. §433.68 and is therefore eligible for federal financial participation.

(ii) The tax imposed by this section shall be administered in accordance with the provisions of this article and the Tax Administration and Procedures act in §11-10-1 *et seq.* of this code: *Provided*, That the tax imposed by this section shall be automatically void if the Centers for Medicare and Medicaid Services determines that it is no longer a permissible health care-related tax that is eligible for federal financial participation.

(e) *Time for paying tax.* — Notwithstanding the provisions of §11-27-25 of this code, no taxes may be collected under this article until the department receives written notice that the federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as actuarially sound for the taxable year in which the tax will be imposed.

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CHAPTER 276

(H. B. 4410 - By Delegates Householder and Criss)

(By Request of the State Tax Department)

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11-21-37a of the Code of West Virginia, 1931, as amended, relating to specifying allocation and apportionment of income of flow-through entities and treatment of income derived from flow-through entities by recipients thereof, providing that allocation and apportionment of income for flow-through entities to be the same as allocation and apportionment of income for C corporations; specifying effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-37a. Allocation and apportionment of income of nonresidents from multistate business activity.

(a) Notwithstanding any provision of §11-21-37 of this code to the contrary, a business doing business in West Virginia and in one or more other states shall allocate its nonbusiness income as provided in §11-21-37a(c) of this code and shall apportion its business income as provided in §11-21-37a(f) of this code to determine the West Virginia source income of its nonresident partners and nonresident S corporation shareholders for purposes of this article. For purposes of this section:

(1) The term “business entity” includes a partnership, limited partnership, joint venture, corporation, S corporation, and any

other group or combination acting as a unit, but does not include a sole proprietorship; and

(2) The term “engaging in business” or “doing business” means any activity of a business entity which enjoys the benefits and protection of government and laws in this state.

(b) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not “taxable in another state”. For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) Nonbusiness income is allocated. —

Nonbusiness income. — The term “nonbusiness income” means all income other than business income.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in §11-21-37a(d)(1) through (4) of this code: *Provided*, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but shall be apportioned to this state according to the provisions of §11-21-37a(e) of this code.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state;
or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale;
or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Patent and copyright royalties. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(e) Business income defined. — The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations and includes all

income which is apportionable under the Constitution of the United States.

(f) Business activities partially within and partially without this state; apportionment of business income. — All net income, after deducting those items specifically allocated under §11-21-37a(d) of this code, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator.

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1065, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) Movable property. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) Leasehold improvements. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvement, or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) Average value of property. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the

denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(7) Compensation. — The term “compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. — The term “employee” means:

(A) Any officer of a business entity; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. — Compensation is paid or accrued in this state if:

(A) The employee's service is performed entirely within this state; or

(B) The employee's service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within this state. The word “incidental” means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of a more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers, or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the employer.

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1065 or 1120, as appropriate, or any successor form, and consisting of those certain pertinent portions of the (gross income) elements set forth: *Provided*, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the free on board point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

(12) Allocation of other sales. — Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in §11-21-7b(b) of this code.

(g) Income-producing activity. — The term “income-producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the

taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income-producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing, or other use of real property;

(3) The sale, rental, leasing, licensing, or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property. — The mere holding of intangible personal property is not, in itself, an income-producing activity: *Provided*, That the conduct of the business of a financial organization is an income-producing activity.

(h) Cost of performance. — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(i) Other methods of allocation and apportionment. —

(1) General. — If the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) Burden of proof. — In any proceeding before the Office of Tax Appeals established in §11-10A-1 *et seq.* of this code, or in any court in which employment of one of the methods of allocation or apportionment provided in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of §11-21-37a(d) and §11-21-37a(f) of this code do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is on:

(A) The Tax Commissioner, if the commissioner seeks employment of one of the methods; or

(B) The taxpayer, if the taxpayer seeks employment of one of the other methods.

(j)(A) Allocation and apportionment on and after January 1, 2022. — For tax years beginning on and after January 1, 2022, income of flow-through entities allocated and apportioned under this section and §11-21-32 of this code, shall be allocated and apportioned in the same manner and to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq.* of this code are allocated and apportioned under §11-24-7 of this code. Apportioned income shall be apportioned pursuant to application of a single sales factor to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq.* of this code are apportioned under §11-24-7 of this code. Allocated

income shall be allocated in the same manner and to the same extent as the income of corporations and entities taxable under §11-24-1 *et seq.* of this code are apportioned under §11-24-7 of this code.

(B) For purposes of this article the provisions of §11-21-12K, §11-21-37b and §11-21-37c of this code remain unchanged by this section.

(C) For purposes of this article, “flow-through entity”, “conduit entity” or “pass through entity” means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term “flow-through entity,” “conduit entity” or “pass through entity” includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under Section 12 of Title I of the Securities Exchange Act of 1934, 15 USC 781.

(D) Allocation of flow-through income to recipients. — Income of a flow-through entity allocated and apportioned under this section or any other provision of this article is allocated income in the hands of a shareholder, interest owner, partner, member or other recipient of flow-through income, and taxable to such recipient as income allocated to this state under the provisions of this article, or in the case of recipients of such flow through income that are taxable under the provisions of §11-24-1 *et seq.* of this code, such income is taxable to such recipient as income allocated to this state under the provisions of §11-24-1 *et seq.* of this code.

(k) Effective date. — (A) The provisions of this section added in 2019 shall apply to taxable years beginning on and after January 1, 2018.

(B) The provisions of this section added in 2022 shall apply to taxable years beginning on and after January 1, 2022.

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CHAPTER 277

(Com. Sub. for H. B. 4451 - By Delegates Householder and Criss)

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11-6F-6 of the Code of West Virginia, 1931, as amended, all relating to the special method for appraising qualified capital additions to manufacturing facilities, eliminating the requirement that otherwise qualified capital addition be located or installed at or within two miles of a preexisting manufacturing facility; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-6. Effective date, expiration of two-mile limitation.

(a) This article is effective for the tax years beginning on and after the first day of July, one 1997.

(b) Notwithstanding any other provision of this article to the contrary, the requirement that a qualified capital addition to a manufacturing facility be located or installed at or within two miles of a preexisting manufacturing facility owned or operated by the person making the capital addition, or by a multiple party project participant, is null, void and of no further force or effect for otherwise qualified capital addition to a manufacturing facility placed in service or use on and after the first day of January 2023.

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CHAPTER 278

**(Com. Sub. for H. B. 4461 - By Delegates Householder and
Criss)**

(By Request of the State Tax Department)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §11-10-27 of the Code of West Virginia, 1931, as amended, relating to the consolidation of all administrative fees collected by the Tax Division into the existing “Tax Administration Services Fund”; removing the \$3 million cap on the fund; providing that excess amounts in this Fund are not converted into the General Fund; consolidating the balances of moneys in various funds collected as fees by, and administered for, the Tax Division of the Department of Revenue; reducing the amount of the fee that may be retained for the state administration of local sales and use taxes; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-27. Administrative fees.

(a) Administrative fee for the collection of money for other state departments, divisions, agencies and institutions.

(1) The Tax Commissioner may retain one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto, collected by the Tax Division of the Department of Revenue that are to be deposited into any of the following special revenue funds: The Special Reclamation Fund,

the Special Reclamation Water Trust Fund, the Mining and Reclamation Operations Fund, the Solid Waste Reclamation and Environmental Response Fund, the Solid Waste Enforcement Fund, the Solid Waste Management Board Reserve Fund, the Recycling Assistance Fund, the Closure Cost Assistance Fund, the Solid Waste Planning Fund, the Hazardous Waste Emergency Response Fund, the Law-Enforcement Fund, the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund, the Waste Coal-Producing Counties Fund, the Coalbed Methane Gas Distribution Fund, the Eligible Acute Care Provider Enhancement Account, the West Virginia Affordable Housing Trust Fund, the special revenue account in the State Treasury to be appropriated by the Legislature for the purposes of the Division of Forestry and the special medical school fund in the State Treasury to be used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing. For all taxes collected by the Tax Division of the Department of Revenue that are to be deposited into any other special revenue funds, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto. Notwithstanding any provision of this code to the contrary, on and after July 1, 2022, any fee collected by or dedicated to the Office of the Tax Commissioner for the collection, distribution, or administration of a specified tax or fee, shall be deposited into the "Tax Administration Services Fund" specified in this section, and shall be used for the purposes and in the manner specified in this section. The amount retained by the Tax Commissioner is a fee for the services provided by the Tax Division in the administration, distribution or collection, or any combination thereof, of those taxes and fees.

(2) (A) Notwithstanding any provision of this code to the contrary, effective July 1, 2022, and thereafter, all amounts required to be deposited into the following funds prior to the amendment of this section during the 2022 regular legislative session shall, in lieu thereof, be deposited into the "Tax Administrative Services Fund" specified in this section and shall be used for the purposes and in the manner specified in this section. All moneys currently contained in the following funds, as of July

1, 2022, shall be transferred to the “Tax Administrative Service Fund”:

(i) The “Motor Fuel General Tax Administrative Fund” created pursuant to §11-14C-47 of this code;

(ii) The “Oil and Gas County Revenue Fund Administration Fund” created pursuant to §11-13A-5a of this code;

(iii) The “Additional Tax Administration Fund” created pursuant to §11-13A-6 of this code;

(iv) The “Special Audit and Investigative Unit Fund” created pursuant to §11-9-2a of this code;

(v) The “Medicaid State Share Administration Fund” created pursuant to §11-27-32 of this code;

(vi) The “Cemetery Company Registration Fund” created pursuant to §35-5B-2 of this code;

(vii) The “Telemarketer Registration Fund” created pursuant to §46A-6F-303 of this code;

(viii) The “Local Sales Tax and Excise Tax Administration Fund” created pursuant to §11-10-11c of this code;

(ix) The “Wine Tax Administration Fund” created pursuant to §60-8-24 of this code;

(x) The “Tax Offset Fee Administration Fund” created pursuant to §11-10-11 of this code;

(xi) The “Municipal Fines and Fees Collection Fund” created pursuant to the previous provisions of §8-10-2b of this code; and

(xii) The “Magistrate Fines and Fees Collection Fund” created pursuant to §50-3-2c of this code.

(B) The amount of any statutory authorized fee listed in paragraph (A) of this subdivision shall be the amount provided in the authorizing statute: *Provided*, That, notwithstanding any

provision of this code to the contrary, the fee authorized by §11-10-11c(c) of this code shall be one percent of collections.

(b) Administrative fee for the collection, administration and distribution of money for local or municipal government, any other governmental subdivision or other public entity or public corporation, where a fee is not otherwise provided for elsewhere in this code.

For all taxes or fees collected by the Tax Division of the Department of Revenue on behalf of any local, county or municipal government, or any other governmental subdivision or public entity or public corporation, including, but not limited to, sanitary districts, water districts and solid waste authorities, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto: *Provided*, That the Legislature has not expressly and specifically authorized a fee in a provision of this code other than this section, to be collected by, retained by or dedicated to, the Tax Commissioner for the collection, distribution or administration of a specified tax or fee. For purposes of this section the term “taxes and fees” includes any interest, additions to tax and penalties relating to any taxes or fees.

(c) Transaction fees imposed by the Enterprise Resource Planning System may be recovered by the Tax Division of the Department of Revenue.

If the Tax Division of the Department of Revenue incurs a fee imposed by the Enterprise Resource Planning System, which is developed, implemented and managed by the West Virginia Enterprise Resource Planning Board §12-6D-1 *et seq.* of this code, relating to a transaction of any entity or person with the Tax Division of the Department of Revenue, then the Tax Commissioner may charge that entity or person a fee in the amount that the Tax Division of the Department of Revenue incurred or will incur relating to that transaction.

(d) Fees collected under this section shall be retained in a revolving fund for the use of the Tax Division of the Department of Revenue.

Any fees collected or retained under subsections (a), (b) and (c) of this section shall be held in a revolving fund for the use of the Tax Division of the Department of Revenue for general tax administration, which fund is hereby created in the State Treasury and designated the “Tax Administration Services Fund”. Expenditures from the fund are authorized from collections. Moneys remaining in such fund on the last day of the fiscal year shall carry over and remain in the fund in the next succeeding fiscal year for use by the Tax Division of the Department of Revenue.

(e) *Fee increases.* – Any state agency may increase any administrative fee that the agency is authorized to impose by West Virginia statute or West Virginia rule by proposing a legislative rule, for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, imposing the increase: *Provided*, That no such increase shall be made within three years of the initial imposition of the fee or within three years of the most recent revision of a statute or rule that increases or decreases the fee.

(f) *Effective date.* – The provisions of this section, as enacted in 2015, become effective January 1, 2016. The provisions of this section, as enacted in 2022, become effective January 1, 2022.

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CHAPTER 279

**(Com. Sub. for H. B. 4567 - By Delegates Steele, Foster,
Householder, Criss, Kimes, Hanshaw (Mr. Speaker),
Kessinger, Hardy, Barrett, Hott, and Ellington)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating the limiting of the imposition of the municipal business and occupation or privilege tax on the business of selling automobiles; providing for a decreasing reduction in the tax on new automobiles that have never been registered in the name of an individual over a three year period; providing for complete elimination of the tax on new automobiles that have never been registered in the name of an individual; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.

***§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

***NOTE:** This section was also amended by H. B. 4636 (Chapter 281), which passed subsequent to this act.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification and refurbishing services to any aircraft or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January 1, 1959, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of article twenty-five-a, chapter thirty-three of this code, shall not exceed one half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health

maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in this state, whether such income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 shall not be subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least sixty days prior to the effective date of said tax or revision thereof.

(d) *Exemptions.* —

(1) A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation

tax under the provisions of section three, article thirteen of chapter eleven, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of section 511 of the Internal Revenue Code of 1986, as amended.

(2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by 50% percent of the total amount of the tax: *Provided*, That, effective July 1, 2024, the remaining municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by an additional 50% of the total amount of the tax: *Provided, however*, That effective July 1, 2025, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be completely eliminated. For the purposes of this section an automobile is a self-propelled vehicle used primarily for the transportation of passengers and their effects and operated on the roads and highways by the use of motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the rear and a sport utility vehicle. An automobile does not include a motorcycle.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any

other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June 30, 1978, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

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CHAPTER 280

**(H. B. 4568 - By Delegates Barrett, Householder, Storch,
Criss, Espinosa, Linville, Ellington, Rowan, Riley, Graves,
and Hardy)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §11-24-23a of the Code of West Virginia, 1931, as amended, relating to tax credits for qualified rehabilitation expenditures for certified historic structures; elimination of certain limitations on and allocations of tax credits allowed against corporation net income tax and personal income tax per year and per rehabilitation of a certified historic structure; elimination of allocation of portion of limited tax credits for certified rehabilitation projects with proposed tax credits of \$500,000; authorizing phased rehabilitations of certified historic structures; authorizing tax credit certificates for completed phases of a phased rehabilitation; providing for recapture of tax credits; removing provisions providing for guarantee of tax credits; and requiring issuance of tax credit certificates based on issuance of Phase Advisory Determination in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

Certified historic structures. — For certified historic structures, the credit is equal to 10 percent of qualified

rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure: *Provided, however*, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic building”, and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) *Phased rehabilitations.* — Phased rehabilitations are authorized for any rehabilitation completed after July 1, 2022. For

certified rehabilitations that may reasonably be expected to be completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the Description of Rehabilitation, which may be amended by the applicant, the state historic preservation officer shall permit phased rehabilitations. A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. A phased rehabilitation plan shall be consistent with phasing guidance issued by the National Park Service. The state historic preservation officer may review each phase as it is presented, but a phased rehabilitation cannot be designated a certified rehabilitation until all of the phases are completed. The owner may elect to claim the credit allowable for each completed phase of a phased rehabilitation, upon receipt from the state historic preservation officer of a written tax credit certificate, for each phase of the phased rehabilitation. Written tax credit certificates for completed phases of a phased rehabilitation shall be issued when the substantial rehabilitation test has been satisfied with respect to the completed phase and the completed phase has been placed into service, consistent with phase advisory guidance issued by the National Park Service. Any claims of a tax credit associated with a completed phase of a phased rehabilitation are contingent upon final certification of the completed project. Tax credits claimed by a taxpayer, including, but not limited to, the applicant or a third-party transferee of the tax credit, as applicable, associated with a completed phase of a phased rehabilitation are subject to recapture by the Tax Commissioner if an applicant for tax credits fails to submit an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work, for the rehabilitation within 60 months of the date of the advisory determination by the National Park Service that such phase has been completed in accordance with the Secretary of the Interior standards for rehabilitation.

(c) Procedure for issuance of tax credits reservations and certificates by the state historic preservation officer —

(1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this code shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The historic preservation certification application, Part 2 – Description of Rehabilitation, will be reviewed by the State Historic Preservation Office for completion and submitted to the National Park Service for full review. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state historic preservation officer shall send a request for the fee prescribed in subsection (e) of this section to the property owner.

(3) The state historic preservation officer shall issue tax credit certificates for rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based on the issuance of an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work, or a Phase Advisory Determination.

(d) The state historic preservation officer shall prescribe and publish a form and instructions for an application for issuance of the tax credits authorized by this section and §11-21-8a of this code.

(e) Application fee - Each application for tax credits authorized pursuant to this section and §11-21-8a of this code shall require a fee payable to the state historic preservation officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application; and (2) \$10,000. The state historic preservation officer shall review and act on all such applications within 30 days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and §11-21-8a of this code.

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CHAPTER 281

**(Com. Sub. for H. B. 4636 - By Delegates Pack, Graves,
Householder, Criss, Steele, Foster, Kimes, Westfall, Queen
and Fast)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §8-13-5 and §8-13-13 of the Code of West Virginia, 1931, as amended, all relating to providing that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality that are postmarked after the due date are late and subject to late fees or penalties; clarifying that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality are considered to be remitted on time when the date on which the payment is postmarked is on or before the due date; and clarifying that municipalities may not impose a late fee or penalty for those municipal taxes or municipal rates, fees, and charges owed to them if the payment is postmarked on or before the due date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.

***§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within

***NOTE:** This section was also amended by H. B. 4567 (Chapter 279), which passed prior to this act.

the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification, and refurbishing services to any aircraft, or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of the municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, 11-13-2b, 11-13-2c, 11-13-2d, 11-13-2e, 11-13-2g, 11-13-2h, 11-13-2i, and 11-13-2j of this code, as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not exceed one-half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.* of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public

Employees Insurance Agency, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any company maintains its office or offices in this state, whether the income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 is not subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under §11-2E-1 *et seq.* of this code, applies only to gross income derived from contracts entered into after the effective date of the imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least 60 days prior to the effective date of said tax or revision thereof.

(d) *Exemptions.* — A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association, or society

organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as amended.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, the governing body may offer tax credits from the tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of the tax, which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

(h) *Timely payment.* — Payments for taxes due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided,* That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

§8-13-13. Special charges for municipal services.

(a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has plenary power and authority to provide by ordinance for the installation, continuance, maintenance, or improvement of the service, to make reasonable regulations of the service, and to impose by ordinance upon the users of the service reasonable rates, fees, and charges to be collected in the manner specified in the ordinance.

(b) Any sewerage and sewage disposal service and any service incident to the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the provisions of chapter 24 of this code.

(c) A municipality shall not have a lien on any property as security for payments due under subsection (a) of this section except as provided in subsection (d) of this section.

(d) A municipality may enact an ordinance, pursuant to this section, permitting it to file a lien on real property located within the municipal corporate limits for unpaid and delinquent fire, police, or street fees. The ordinance must provide an administrative procedure for the municipality's assessment and collection of the fees. The administrative procedure must require that, before any lien is filed, the municipality will give notice to the property owner,

by certified mail, return receipt requested, that the municipality will file the lien unless the delinquency is paid by a date stated in the notice, which must be no less than 90 days from the date the notice is mailed. The administrative procedure must include the right to appeal to the circuit court of the county in which the real property is located. The circuit court shall consider the appeal under its general authority, including but not limited to §51-2-2(f) of this code.

(e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the municipality.

(f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within 45 days after the expiration of the publication, protest against the ordinance as enacted or amended, the ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as the governing body directs. Voting shall not take place until after notice of the submission is given by publication as provided in subsection (e) of this section.

(g) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

(h) Notwithstanding any other provisions of this section, if rates, fees, and charges provided in this section are imposed by the governing body of a municipality for the purpose of replacing, and in amounts approximately sufficient to replace in its general fund amounts appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to an election duly called and held under the Constitution and laws of the state to authorize the issuance and sale of the municipality's general

obligation bonds for public improvement purposes, the call for the election shall state that the governing body of the municipality proposes to impose rates, fees, and charges in specified amounts under this section for the use of one or more of the services specified in subsection (a) of this section, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or referendum, or election or other condition or prerequisite to the imposition of the rates, fees, and charges shall be required or necessary other than the legal requirements for issuance and sale of the general obligation bonds.

(i) Payments for rates, fees, and charges due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

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CHAPTER 282

**(Com. Sub. for H. B. 4511 - By Delegates Linville, Howell,
Hanshaw (Mr. Speaker), Graves, Summers, Espinosa,
Householder, Steele and Hamrick)**

(By Request of the State Treasurer)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-25, and §36-8-33 of the Code of West Virginia, 1931, as amended, all relating generally to unclaimed property and escheatment of said property to the state; defining terms; setting forth presumption of abandonment period for virtual currency; setting forth the presumption of abandonment period for demand, savings, or time deposits; requiring the holder of virtual currency to liquidate said currency prior to remittance to the state; providing that the owner of abandoned virtual currency has no recourse against the holder or state for gain in value after liquidation; providing that the administrator shall reimburse the holder of a safety deposit box for the cost of opening said box upon remittance to the administrator using administrative funds in the Unclaimed Property Fund; authorizing the administrator to invest the moneys in the Unclaimed Property Fund and allowing earnings to accrue to said fund; eliminating obsolete language related to previous transfers of moneys from the Unclaimed Property Fund; discontinuing an annual transfer from the Unclaimed Property Trust Fund to the Prepaid Trust Escrow Fund and instead providing for an annual transfer from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund; authorizing the administrator to waive the requirement that an apparent owner file a claim with the administrator in certain circumstances; permitting the

administrator to disclose the monetary value and nature or type of a property to a person who is reasonably believed to be the property's apparent owner or a person authorized to receive the property on the owner's behalf; and requiring the administrator to publish a report including certain unclaimed property data for the most recently concluded fiscal year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.

As used in this article:

“Administrator” means the State Treasurer.

“Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

“Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

“Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic mail” means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

“Financial organization” means a savings and loan association, bank, banking organization, or credit union.

“Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

“Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers’ compensation insurance.

“Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and non-fissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

“Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

“Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a

financial organization if the seller has obtained the name and address of the payee.

“Owner” means a person who has a legal or equitable interest in property subject to this article or the person’s legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

“Person” means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Property” means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued, or owed in the course of a holder’s business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

Money, virtual currency, check, draft, warrant for payment issued by the State of West Virginia, deposit, interest, or dividend;

Credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

Stock or other evidence of ownership of an interest in a business association or financial organization;

A bond, debenture, note, or other evidence of indebtedness;

Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance, or health and disability insurance; and

An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

“United States savings bond” means property, tangible or intangible, in the form of a savings bond issued by the United States Treasury whether in paper form, electronic or paperless form, along with the proceeds thereof.

“Utility” means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas as defined in §24-1-2 of this code.

“Virtual currency” means a digital representation of value, including cryptocurrency, used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(A) The software or protocols governing the transfer of the digital representation of value;

(B) Game-related digital content; or

(C) A loyalty card or gift card.

§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, 15 years after issuance;
- (2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, three years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the State of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state Municipal Bond Commission, for the payment of a note, bond, debenture, or other evidence of indebtedness, three years after the principal maturity date, or if such note, bond, debenture, or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture, or other evidence of indebtedness;

(17) Any virtual currency held or owing by any banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity, three years after the owner's last indication of interest in the property; and

(18) All other property, three years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account;

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions; and

(5) For demand, savings and time deposits held by a financial organization, any indication of the owner's interest in any demand, savings and time deposit held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

§36-8-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by §36-8-7 of this code, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 120 days after filing the report required by §36-8-7 of this code.

(b) If the property reported to the administrator is a security or security entitlement under article eight of the uniform commercial code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security

or the security entitlement in accordance with article eight of the uniform commercial code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to article eight, section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with section 10 of this article.

(e) If the property reported is virtual currency, the holder shall liquidate the virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator. The owner shall have no recourse against either the holder or the administrator for any gain in value after liquidation.

§36-8-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in “good faith” if:

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: *Provided*, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under §36-8-19(a) of this code.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any

liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges in an amount not to exceed \$150. The administrator shall reimburse the holder after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.

§36-8-13. Deposit of funds

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under §36-8-12 of this code. The administrator may invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments or the Investment Management Board and all earnings shall accrue to the fund and are available for expenditure in accordance with the article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator may transfer the sum of \$1 million from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund, until an actuary certifies there are sufficient funds to satisfy all obligations and administrative expenses of the Jumpstart Savings Program.

(e) After transferring any money required by subsection (d) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

§36-8-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section 16 of this article.

(c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

(d) The administrator may waive the requirement in subsection (a) and may pay or deliver property directly to a person who does not file a claim if:

(1) The person receiving the property or payment is shown to be the apparent owner included on a report filed pursuant to this act;

(2) The administrator reasonably believes the person is entitled to receive the property or payment; and

(3) The property has a value of less than \$5,000.

§36-8-25. Records of abandoned property.

Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law, or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of the West Virginia Freedom of Information Act, Chapter 29B of this code: *Provided*, That nothing in this section prevents the administrator from disclosing the monetary value of an unclaimed property or the general nature or type of said property to any person that the administrator reasonably believes to be the apparent owner of said property or a person entitled to claim the property on the apparent owner's behalf.

§36-8-33. Report by administrator.

(a) Not later than six months after the end of the state's fiscal year, the administrator shall compile and publish a report on the West Virginia Treasury website. The report must contain the following information about property deemed unclaimed for the preceding fiscal year for the state:

(1) The total amount and value of all property paid or delivered under this act to the administrator, separated into:

(A) The portion voluntarily paid or delivered; and

(B) The portion delivered as the result of an examination under the act.

(2) The total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this act.

(b) The report required under subsection (a) of this section is a public record and is subject to disclosure pursuant to the West Virginia Freedom of Information Act, Chapter 29B of this code.

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CHAPTER 283

**(Com. Sub. for S. B. 598 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 4, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9A-5-1, §9A-5-2, and §9A-5-3, all relating to specifically authorizing programs to assist at-risk veterans through partnerships with service organizations, government agencies, military organizations, or private entities engaged with their local veteran communities to connect veterans and their families with existing resources to combat suicide, and its contributing factors, among the veteran population in this state; providing legislative fundings and purpose; authorizing programs to assist at-risk veterans through partnerships with service organizations to combat suicide and its contributing factors among the veteran population; and providing for funding and grant-making from the Department of Veterans' Assistance to partner service organizations, government agencies, military organizations, or private entities and for the purposes of this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AID TO AT-RISK VETERANS.

§9A-5-1. Legislative finding and purpose.

(a) The Legislature hereby finds that there exists a health care crisis among our state's veterans and their families, with veterans

in this state dying by suicide at a rate of nearly 60 percent higher than nonveterans.

(b) The Legislature finds there are significant resources available to help combat this crisis, but that these resources are not well-known or easily available to veterans and their families.

(c) The Legislature hereby specifically authorizes and directs the Department of Veterans' Assistance to develop and implement programs to assist at-risk veterans, including establishing partnerships with veteran service organizations, government agencies, military organizations, private entities, and mental health providers engaged with their local veteran communities to connect veterans and their families with existing resources to combat suicide, and its contributing factors, among the veteran population in this state.

§9A-5-2. Assistance to at-risk veterans; partnerships.

(a) As used in this article, "at-risk veteran" means a person who is currently serving in the armed forces on active duty, reserve status, or in the National Guard, or a person who served on active duty, reserve status, or in the National Guard, or who was discharged, and who may be at risk of suicide owing to a physical or mental health condition that is related to his or her service.

(b) In addition to the duties and powers otherwise provided to the department under this chapter, the department shall develop and implement programs to assist at-risk veterans and their families combat suicide and its contributing factors.

(c) The department may enter into partnerships or agreements with veteran service organizations, government agencies, military organizations, private entities, and mental health providers engaged with their local veteran communities to provide or connect veterans and their families to resources that may be available through any source, including state, federal, or private resources.

(d) The department shall provide for the annual education of its employees on the warning signs of suicide and the resources available to assist in suicide prevention. This education may be

accomplished through an employee's self-review of suicide prevention materials and resources approved by the U. S. Department of Veterans Affairs.

§9A-5-3. Grant-making authority.

(a) In addition to all other funding allocated to the department, the secretary is directed to seek funds, grants, and other sources of assistance from other agencies of government, as well as the private sector to accomplish the purposes of this article.

(b) The secretary, in his or her discretion, may make grants or otherwise transfer funds held by the department from any available source to provide assistance to at-risk veterans or their families, including by providing funding to veteran service organizations, government agencies, military organizations, private entities, and mental health providers, for the purposes of this article.

(c) The department shall maintain records of any monies transferred or expended under this article and shall comply with all relevant reporting requirements.

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CHAPTER 284

**(Com. Sub. for S. B. 698 - By Senators Weld, Lindsay, and
Hamilton)**

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §9A-1-2 of the Code of West Virginia, 1931, as amended, relating to the number and selection of members for the Governor's Veterans Council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF VETERANS ASSISTANCE.

§9A-1-2. Veterans Council; administration of department.

(a) There is continued the Veterans Council consisting of 11 members who must be citizens and residents of this state and who have served in and been honorably discharged or separated under honorable conditions from the Armed Forces of the United States, and whose service was within a time of war as defined by the laws of the United States.

(b) Where feasible, members of the council shall be veterans who are active in the veteran community and who have been recommended by a West Virginia veterans service organization, with consideration given to ensure a diverse representation of service branches in council membership. Additionally, no more than seven members of the council shall reside in any one congressional district. The members of the veterans council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article. If an eligible veteran is not available or cannot be selected, a veteran who is a citizen and resident of this state, who served in and was honorably discharged

or separated under honorable conditions from the Armed Forces of the United States, and who served during any time of war or peace, may be selected.

(c) The secretary and such officers, assistants, and employees as the secretary considers advisable, shall administer the West Virginia Department of Veterans Assistance.

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CHAPTER 285

**(Com. Sub. for H. B. 4406 - By Delegates Conley, Cooper,
Longanacre, Barnhart, J. Kelly, Anderson, Toney,
McGeehan, Reynolds, Mandt, and Linville)**

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated †§9A-5-1, relating to creating a West Virginia Military Hall of Fame to honor veterans of West Virginia who have distinguished themselves on the field of battle.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 5. WEST VIRGINIA MILITARY HALL OF FAME.

†§9A-5-1. West Virginia Military Hall of Fame.

(a)(1) The secretary shall create a West Virginia Military Hall of Fame with the mission to honor veterans of West Virginia who have distinguished themselves on the field of battle and who have also made significant contributions to the state or their communities following their military service. The honorees must:

(A) Have been honorably discharged or separated under honorable conditions from the Armed Forces of the United States and be of good moral character; and

(B) Be natural born citizens of West Virginia; or

†NOTE: S. B. 598 (Chapter 283), which passed prior to this act, also created a new Article 5. Therefore, this have been redesignated as Article 6 for the code.

(C) Entered into or have been discharged from the Armed Forces in West Virginia; or

(D) Have resided in West Virginia for at least 8 years.

(2) Nominations shall include a nomination form approved by the secretary, a DD214 or other supporting Department of Defense personnel records, or national or state archive records substantiating the nominee's military service, and a copy of any citation received, including any supporting documentation.

(b) In order to be considered, a nominee must have been awarded any of the following during his or her time in service:

- (1) Medal of Honor;
- (2) Army Distinguished Service Cross;
- (3) Navy Cross;
- (4) Air Force Cross;
- (5) Coast Guard Cross;
- (6) Silver Star;
- (7) Distinguished Flying Cross;
- (8) Bronze Star Medal with "V" Device;
- (9) Air Medal with "V" Device;
- (10) Commendation Medal With "V" Device;
- (11) Joint Service Achievement Medal With "V" Device; or
- (12) Purple Heart.

(c) There shall be created the West Virginia Military Hall of Fame Board consisting of seven members who shall be residents of this state and who have served in and been honorably discharged or separated under honorable conditions from the Armed Forces of the United States. In addition to the seven members of the board,

the secretary shall be an *ex officio* member and shall serve as its chair.

(d) Where feasible, members of the board shall be veterans who are active in the veteran community, with consideration given to ensure a diverse representation of service branches in board membership. Additionally, no more than four members shall be from the same congressional district.

(e) The secretary shall promulgate rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the purpose and mission of the Military Hall of Fame.

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CHAPTER 286

**(H. B. 4048 - By Delegates Horst, Householder, Howell,
Linville, Fast, B. Ward, Dean, Kimble, McGeehan, Barrett
and Steele)**

[Passed February 23, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to removing the criminal prohibitions against carrying loaded long guns, nocked cross bows with a nocked bolt, or bows with a nocked arrow in a motor vehicle; and removing prohibitions against carrying long guns, cross bows, or bows, that are not in a case or taken apart, in motor vehicles during evening hours.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging, or active illumination while hunting, locating, attracting, taking,

trapping, or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum, or skunk by the use of artificial light or night vision technology, including image intensification, thermal imaging, or active illumination. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than 10 days nor more than 100 days;

(4) Hunt, take, kill, wound, harass, or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile, or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take, wound, harass, transport, or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping, or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt, or kill by seine, net, bait, trap, or snare or like device a wild turkey, ruffed grouse, pheasant, or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas, or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds, and migratory wild birds during the open season, in the open fields, open water, and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to §20-2-6 of this code;

(D) A person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law; or

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: *Provided*, That this exception does not apply to an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities and marked trails within state park or state forest borders;

(10) Hunt, catch, take, kill, injure, or pursue a wild animal or wild bird with the use of a ferret;

(11) Buy raw furs, pelts, or skins of fur-bearing animals unless licensed to do so;

(12) Catch, take, kill, or attempt to catch, take, or kill any fish by any means other than by rod, line, and hooks with natural or artificial lures, unless otherwise authorized by the director: *Provided*, That snaring of any species of sucker, carp, fallfish, and creek chub and catching catfish by hand are lawful if done by a holder of a valid license issued pursuant to §20-2-1 *et seq.* of this code or is exempted from licensure pursuant to §20-2-27 or §20-2-28 of this code;

(13) Employ, hire, induce, or persuade, with money, things of value, or by any means, any person to hunt, take, catch, or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take, or kill any fish, amphibian, or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

(14) Hunt, catch, take, kill, capture, pursue, transport, possess, or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U.S.C. §703 *et seq.*, and its regulations;

(15) Kill, take, catch, sell, transport, or have in his or her possession, living or dead, any wild bird other than a game bird,

including the plumage, skin, or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*), and cowbird (*Molothrus ater*), which may be killed at any time;

(16) Use dynamite, explosives, or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony, and upon conviction thereof, shall be fined not more than \$500 or confined for not less than six months nor more than three years, or both fined and confined;

(17) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

(18) Have a crossbow in the woods or fields, or use a crossbow to hunt, take, or attempt to take any wildlife except as otherwise provided in §20-2-5g and §20-2-42w of this code;

(19) Take or attempt to take turkey, bear, elk, or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three-fourths of an inch wide;

(20) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

(21) Shoot an arrow across any public highway;

(22) Permit any dog owned or under his or her control to chase, pursue, or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have

firearms or other implements for taking wildlife in his or her possession during the closed season on wild animals and wild birds, except a person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law;

(23) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race, or wild hunt: *Provided*, That any person, group of persons, club, or organization may hold a trial upon obtaining a permit pursuant to §20-2-56 of this code. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(24) Hunt, catch, take, kill, or attempt to hunt, catch, take, or kill any wild animal, wild bird, or wild fowl except during open seasons;

(25) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia; and

(26) Catch, take, kill, or attempt to catch, take, or kill any fish by any means within 200 feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia on private lands on Sundays with the written consent of the private landowner pursuant to §20-2-7 of this code, and it is lawful to hunt throughout the State of West Virginia on federal land where hunting is permitted, in state forests, on land owned or leased by the state for wildlife purposes, and on land managed by the state for wildlife purposes pursuant to a cooperative agreement.



CHAPTER 287

(H. B. 4296 - By Delegate Westfall)

[Passed March 10, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §23-1-1c, §23-1-1d, §23-1-1e, §23-1-1g, §23-1-3, §23-1-4a, §23-1-6, §23-1-7, and §23-1-20 of the Code of West Virginia, 1931, as amended; to repeal §23-2-1b, §23-2-4, §23-2-5c, §23-2-5d, §23-2-14, §23-2-15, and §23-2-16 of said code; to repeal §23-2B-1, §23-2B-2, and §23-2B-3 of said code; to repeal §23-2C-3a, §23-2C-4, §23-2C-11, §23-2C-13, §23-2C-14, §23-2C-23, and §23-2C-24 of said code; to repeal §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9, and §23-2D-10 of said code; to repeal §23-3-1, §23-3-1a, §23-3-2, §23-3-3, §23-3-4, §23-3-5, and §23-3-6 of said code; to repeal §23-4A-2, §23-4A-3, §23-4A-4, §23-4A-5, §23-4A-6, §23-4A-8, and §23-4A-9 of said code; to repeal §23-4B-6, §23-4B-8, §23-4B-8a, and §23-4B-8b of said code; to repeal §23-4C-1, §23-4C-2, §23-4C-3, §23-4C-4, §23-4C-5, and §23-4C-6 of said code; to amend and reenact §23-1-1, §23-1-1b, §23-1-1f, §23-1-2, §23-1-4, §23-1-5, §23-1-8, §23-1-9, §23-1-10, §23-1-11, §23-1-12, §23-1-13, §23-1-14, §23-1-15, §23-1-18, and §23-1-19 of said code; to amend said code by adding thereto a new section, designated §23-1-21; to amend and reenact §23-2-1, §23-2-1c, §23-2-1d, §23-2-2, §23-2-3, §23-2-5, §23-2-5a, §23-2-6, §23-2-7, §23-2-8, §23-2-9, §23-2-11, §23-2-13, and §23-2-17 of said code; to amend and reenact §23-2A-1 of said code; to amend and reenact §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-12, §23-2C-15, §23-2C-16, §23-2C-18, §23-2C-19, §23-2C-20, and §23-2C-21 of said code; to amend and reenact §23-4A-1 of said code; and to amend and reenact §23-4B-2, §23-4B-4, §23-4B-5, §23-4B-7, and §23-4B-9 of said code, all relating to modernizing and

updating workers' compensation statutes; removing or revising provisions made obsolete by legislation and regulatory revisions in 2005 and 2006; standardizing references to public offices or agencies; updating statutory citations; and making spelling and grammatical changes throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Regulation of the workers' compensation system by the Insurance Commissioner; findings.

(a) As recognized by the Supreme Court of Appeals of West Virginia in *Wampler Foods, Inc. v. Workers' Compensation Division*, 216 W.Va. 129, 602 S.E.2d 805 (2004), and in recognition that a deficit of such critical proportions existed in the workers' compensation fund that it constituted an immediate and long term threat to the solvency of the fund, as well as a substantial deterrent to the economic development of this state, and further that lawmakers are uniquely charged with the responsibility for passing laws designed to cure such serious concerns and that substantial deference is accorded to legislative actions aimed at doing so, it was and remains the intent of the Legislature that the amendments to this chapter enacted in the year 2003 be applied from the date upon which the enactment was made effective by the Legislature.

(b) It is the further intent of the Legislature that this chapter be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits and that a rule of "liberal construction" based on any "remedial" basis of workers' compensation legislation shall not affect the weighing of evidence in resolving such cases. The workers' compensation system in this state is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the

provisions of this chapter and employers' rights to raise common law defenses, such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the Legislature hereby declares that any remedial component of the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by §23-4-1g of this code.

(c) It is the intent of the Legislature, expressed through its enactment of legislation, to transfer the regulation of the workers' compensation system to the Insurance Commissioner. By proclamation of the Governor, as authorized by §23-2C-1 *et seq.* of this code, the Workers' Compensation Commission was terminated on December 31, 2005. To further the transition from the state-operated workers' compensation system to a system of private insurance, the duties and responsibilities of the Workers' Compensation Commission and the board of managers, including, but not limited to, ratemaking and adjudication of claims now reside with the Insurance Commissioner.

§23-1-1b. Powers and duties of Insurance Commissioner.

The Insurance Commissioner shall have the power and duty to:

(1) Establish operating guidelines and policies designed to ensure the effective regulation of the workers' compensation insurance market in West Virginia and effectuate the provisions of this chapter;

(2) Employ, direct, and supervise all employees required in the connection with the performance of the duties assigned to the Insurance Commissioner by this chapter;

(3) Reorganize the work of the Insurance Commissioner, its divisions, sections, and offices to the extent necessary to achieve the most efficient performance of its functions.

(4) Keep accurate and complete accounts and records necessary to the collection, administration, and distribution of the workers' compensation funds created in §23-2C-6 of this code;

(5) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(6) Ensure that all employees of the Insurance Commissioner follow the orders, operating guidelines, and policies of the agency as they relate to the agency's overall policymaking, management, and adjudicatory duties under this chapter;

(7) Delegate all powers and duties vested in the Insurance Commissioner to his or her appointees and employees: *Provided*, That the Insurance Commissioner is responsible for their acts;

(8)(A) Contract or employ counsel to perform all legal services for the Insurance Commissioner including, but not limited to, representing the Insurance Commissioner in any administrative proceeding and in any state or federal court. Additionally, the Insurance Commissioner may, but shall not be required to, call upon the Attorney General for legal assistance and representation as provided by law. The Attorney General shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the Insurance Commissioner and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the Insurance Commissioner or the Office of the Attorney General to represent the Insurance Commissioner in any matter arising from the performance of his or her duties or the execution of his or her powers under this chapter.

(9) Propose rules for approval by the Industrial Council created in §23-2C-5 of this code, under which agencies of this state shall revoke or refuse to grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit who is in default as set forth in §23-2C-19(d)(1) of this code or listed in the Employer Violator System with the Insurance Commissioner. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has

entered into a repayment agreement with the Insurance Commissioner and remains in compliance with its obligations under the repayment agreements;

(A) The rules shall provide that, before granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists provided by the Insurance Commissioner of employers that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The prohibition against granting, issuing, or renewing any contract, license, permit, certificate, or other authority under this subdivision shall remain in full force and effect as promulgated under §21A-2-6 of this code until the rules required by this subdivision are promulgated and in effect;

(B) The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the Insurance Commissioner to be exempt from the provisions of the rules;

(10) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorneys' fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state;

(11) Regularly audit or examine and monitor programs established by self-insured employers or third-party administrators under this chapter to ensure compliance with the Insurance Commissioner's rules and the law;

(12) Oversee the Insurance Fraud Unit that has the responsibility and authority for investigating and controlling insurance fraud and workers' compensation fraud in the State of West Virginia as set forth in §33-41-1 *et seq.* of this code. The fraud unit shall be under the supervision of an inspector general, who shall be appointed by the Insurance Commissioner. Nothing in this section shall preclude private carriers from independently investigating and controlling abuse.

(A) The inspector general shall, with the consent and advice of the Insurance Commissioner, employ all personnel as necessary for the institution, development and finalization of procedures and investigations which serve to ensure that only necessary and proper workers' compensation benefits and expenses are paid to or on behalf of injured employees. Qualification, compensation, and personnel practice relating to the employees of the fraud and abuse unit, including that of the position of inspector general, shall be governed by the provisions of the statutes and rules of the classified service pursuant to §29-6-1, *et seq.* of this code. The inspector general shall supervise all personnel;

(B) The fraud unit shall have the following powers and duties:

(i) The fraud unit will take action to identify and prevent and discourage any and all fraud and abuse;

(ii) The fraud unit, in cases of criminal fraud, has the authority to review and prosecute those cases for violations of §23-1-1 *et seq.*, §33-1-1 *et seq.*, §61-3-1 *et seq.*, and §61-4-5 of this code, as well as any other criminal statutes that may be applicable. In addition, the fraud unit not only has the authority to prosecute and refer cases involving criminal fraud to appropriate state authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the appropriate federal authorities for review and possible prosecution, by either state or federal agencies, of cases involving criminal fraud concerning the Workers' Compensation System in West Virginia; and

(iii) The fraud unit is expressly authorized to initiate investigations and participate in the development of, and if

necessary, the prosecution of any health care provider, including a provider of rehabilitation services and in-home caretaker, alleged to have violated the provisions of §23-4-3c of this code;

(C) Specific personnel, designated by the inspector general, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(D) Notwithstanding any provision of this code to the contrary, specific personnel designated by the inspector general may carry handguns in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction, which qualifications shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include the personnel so designated by the inspector general to carry handguns within the meaning of the term law-enforcement official as defined in §30-29-1 of this code;

(E) The fraud unit is not subject to any requirement of §6-9a-1 *et seq.* of this code and the investigations conducted by the fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code;

(F) In the event that a final judicial decision adjudges that the statewide prosecutorial powers vested by this subdivision in the fraud unit may only be exercised by a public official other than an employee of the fraud unit, then to that extent the provisions of this subdivision vesting statewide prosecutorial power shall thenceforth be of no force and effect, the remaining provisions of this subdivision shall continue in full force and effect, and prosecutions hereunder may only be exercised by the prosecuting attorneys of this state and their assistants or special assistant prosecuting attorneys appointed as provided by law;

(13) Enter into interagency agreements to assist in exchanging information and fulfilling the default provisions of this chapter;

(14) Establish an employer violator system to identify individuals and employers who are in default, as defined by §23-2C-19(d)(1) of this code. The employer violator system shall prohibit violators who own, control or have a 10 percent or more ownership interest, or other ownership interest as may be defined by the Insurance Commissioner, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the Insurance Commissioner or has entered into and remains in compliance with a repayment agreement;

(15) Perform all other functions necessary for the regulation of the workers' compensation insurance industry, including, but not limited to: ratemaking, self-insurance, office of judges, and board of review; and

(16) Perform all duties set forth in §23-2C-1 *et seq.* of this code.

§23-1-1c. Payment withholding; interception; penalty.

[Repealed.]

§23-1-1d. Rules of former division of workers' compensation.

[Repealed.]

§23-1-1e. Transfer of assets and contracts; ability to acquire, own, lease and otherwise manage property.

[Repealed.]

§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.

Notwithstanding any other provision of this code, the Insurance Commissioner may:

(1) Exempt no more than 20 positions of the offices of the Insurance Commissioner from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: *Provided*, That such exempt

positions shall be in addition to those positions in classified-exempt service under the classification plan adopted by the Division of Personnel; and

(2) Expend such sums for professional services as he or she determines are necessary to perform duties under this chapter. The provisions of §5A-3-1 *et seq.* of this code relating to the Purchasing Division of the Department of Administration shall not apply to these contracts, and the Insurance Commissioner shall award the contract or contracts on a competitive basis.

§23-1-1g. Legislative intent to create a quasi-public entity.

[Repealed.]

§23-1-2. Oversight of the workers' compensation commission.

The Insurance Commissioner shall report at least quarterly to the Joint Committee on Government and Finance regarding the funds created in §23-2C-1 *et seq.* of this code. This analysis shall include the current balances in the fund and revenue generated and expended in relationship to the liabilities and assets of the funds and estimates of any debt reduction relative to the fund over the next reporting period.

§23-1-3. Payment of salaries and expenses generally; manner; limitation.

[Repealed.]

§23-1-4. Records; confidentiality; exceptions.

Except as expressly provided for in this subsection, information obtained regarding employers and claimants pursuant to this chapter for the purposes of its administration is not subject to the provisions of chapter 29B of this code unless the provisions are hereafter specifically made applicable, in whole or in part. The information that is reasonably necessary may be released in formal orders or opinions of any tribunal or court which is presented with an issue arising under this chapter as well as in the presentations of the parties before the tribunal or court. Similarly, claimants or other

interested parties to an issue arising under this chapter may, upon request, obtain information from the Insurance Commissioner's records to the extent necessary for the proper presentation or defense of a claim or other matter. Information may be released pursuant to the provisions of chapter 29B of this code only if all identifying information has first been eliminated from the records. Nothing in this subsection shall prevent the release of information to another agency of the state or of the federal government for the legitimate purposes of those agencies: *Provided*, That the agency shall guarantee the confidentiality of the information provided to the fullest extent possible in keeping with its own statutory and regulatory mandates. Nothing in this section shall prevent the Insurance Commissioner from complying with any subpoena duces tecum: *Provided, however*, That the issuing tribunal or court shall take such actions as proper to maintain the confidentiality of the information.

The Insurance Commissioner may release, pursuant to a proper request under the provisions of chapter 29B of this code, the following information:

- (1) Whether or not a specific employer has obtained coverage under the provisions of this chapter;
- (2) Whether or not a specific employer is in good standing or is delinquent or in default according to the Insurance Commissioner's records and the time periods thereof; and
- (3) If a specific employer is delinquent or in default, what the payments due the Insurance Commissioner are and what the components of that payment are, including the time periods affected.

§23-1-4a. Bond for executive director and associate director.

[Repealed.]

§23-1-5. Office of Insurance Commissioner; hearings.

The Insurance Commissioner shall keep and maintain his or her office at the seat of government and shall provide a suitable room

or rooms, necessary office furniture, supplies, books, periodicals, maps, and other equipment. After due notice, showing the time and place, the Insurance Commissioner may hold hearings anywhere within the state, or elsewhere by agreement of claimant and employer, with the approval of the Insurance Commissioner.

§23-1-6. Employment of associate director and other assistants; compensation and travel expenses.

[Repealed.]

§23-1-7. Associate director to act during executive director's absence or inability to act and in case of vacancy; bond of associate director.

[Repealed.]

§23-1-8. Authority of Insurance Commissioner and employees as to oaths and evidence.

The Insurance Commissioner and other employees appointed by the Insurance Commissioner may, for the purpose contemplated by this chapter, administer oaths, certify official acts, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of pertinent books, accounts, papers, records, documents, and testimony.

§23-1-9. Compelling compliance with order or subpoena.

In case of failure or refusal of any person to comply with the order of the Insurance Commissioner, or subpoena issued by him or her, or duly appointed employee, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, or refusal to permit an inspection as aforesaid, the circuit judge of the county in which the person resides, on application of the Insurance Commissioner or any duly appointed employee, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify in the court.

§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.

Each officer who serves subpoenas on behalf of the Insurance Commissioner shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena before the Insurance Commissioner or duly appointed employee shall receive for his or her attendance the fees and mileage provided for witnesses in civil cases in the circuit court if the witness was subpoenaed without the request of either claimant or employer at the instance of the Insurance Commissioner or duly appointed employee. The witness fees and mileage of any witness subpoenaed by, or at the instance of, either claimant or employer shall be paid by the party who subpoenas the witness.

§23-1-11. Depositions; investigations.

(a) In an investigation into any matter arising under this chapter, the Insurance Commissioner may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in the circuit court, but the depositions shall be upon reasonable notice to claimant and employer or other affected persons or their respective attorneys.

(b) The Insurance Commissioner also has discretion to accept and consider depositions taken within or without the state by either the claimant or employer or other affected person, provided due and reasonable notice of the taking of the depositions was given to the other parties or their attorneys, if any: *Provided*, That the Insurance Commissioner, upon due notice to the parties, has authority to refuse or permit the taking of depositions or to reject the depositions after they are taken, if they were taken at a place or under circumstances which imposed an undue burden or hardship upon the other parties. The Insurance Commissioner's discretion to accept, refuse to approve or reject the depositions is binding in the absence of abuse of the discretion.

§23-1-12. Copies of proceedings as evidence.

A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation or hearing, taken by a stenographer appointed by the Insurance Commissioner and

certified and sworn to by the stenographer to be a true and correct transcript of the testimony in the investigation or hearing, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on the investigation or hearing purporting to be taken and subscribed, may be received in evidence by the Insurance Commissioner with the same effect as if the stenographer were present and testified to the facts certified. A copy of the transcript shall be furnished on demand to any party upon payment of the fee prescribed in the rules and policies of the Insurance Commissioner. The fee shall not exceed that prescribed for transcripts in the circuit court.

§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

(a) The Insurance Commissioner shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service of the notices, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, the method of taking and furnishing of evidence to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, and the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made.

(b) At hearings and other proceedings before the Insurance Commissioner or before the duly authorized representative of the Insurance Commissioner, an employer who is a natural person may appear, and a claimant may appear, only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0 - admission pro hac vice, West

Virginia Supreme Court Rules for admission to the practice of law, as amended;

(3) By a representative from a labor organization who has been recognized by the Insurance Commissioner as being qualified to represent a claimant or who is an individual otherwise found to be qualified by the Insurance Commissioner to act as a representative. The representative shall participate in the presentation of facts, figures, and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures; or

(4) Pro se.

(c) At hearings and other proceedings before the Insurance Commissioner or before the duly authorized representative of the Insurance Commissioner, an employer who is not a natural person may appear only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0 - admission pro hac vice, West Virginia Supreme Court Rules for admission to the practice of law, as amended;

(3) By a member of the board of directors of a corporation or by an officer of the corporation for purposes of representing the interest of the corporation in the presentation of facts, figures, and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures; or

(4) By a representative from an employer service company who has been recognized by the Insurance Commissioner as being qualified to represent an employer or who is an individual otherwise found to be qualified by the Insurance Commissioner to act as a representative. The representative shall participate in the presentation of facts, figures, and factual conclusions as

distinguished from the presentation of legal conclusions in respect to the facts and figures.

(d) The Insurance Commissioner or his or her representative may require an individual appearing on behalf of a natural person or corporation to produce satisfactory evidence that he or she is properly qualified and authorized to appear pursuant to this section.

(e) The provisions of §23-1-13(b), (c), and (d) of this code shall not be construed as being applicable to proceedings before the office of judges or board of review pursuant to the provisions of §23-5-1 *et seq.* of this code.

(f) At the direction of a treating or evaluating psychiatrist or clinical doctoral-level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral-level psychologist. The summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide the claimant with only the summary before the full report is provided to the representative or attorney for his or her use in preparing the claimant's case. The report shall only be withheld from the claimant in those instances where the treating or evaluating psychiatrist or clinical doctoral-level psychologist certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a serious threat of harm to a third party.

(g) In any matter arising under §23-1-1 *et seq.*, §23-2-1 *et seq.*, §23-2A-1 *et seq.*, §23-2C-1 *et seq.*, §23-4-1 *et seq.*, §23-4A-1, §23-4B-1 *et seq.*, and §23-5-1 *et seq.* of this code in which the Insurance Commissioner is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative is sufficient notice to the party represented.

§23-1-14. Forms.

The Insurance Commissioner shall prepare and furnish free of cost forms (and provide in his or her rules for their distribution so

that they may be readily available) of applications for benefits for compensation, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and any other forms considered proper and advisable. It is the duty of employers to constantly keep on hand a sufficient supply of the forms.

§23-1-15. Procedure before Insurance Commissioner.

The Insurance Commissioner is not bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in a manner that in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter.

§23-1-18. Insurance Commissioner employees not subject to subpoena for workers' compensation hearings.

No employee of the Insurance Commissioner shall be compelled to testify as to the basis, findings, or reasons for any decision or order rendered by the employee under this chapter in any hearing conducted pursuant to §23-5-1 *et seq.* of this code.

§23-1-19. Civil remedies.

(a) Any person, firm, corporation, or other entity which willfully, by means of false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device, or artifice on behalf of himself or herself, itself, or others, obtains or attempts to obtain benefits, payments, allowances, or reduced premium costs or other charges, including Workers' Compensation coverage, from the Insurance Commissioner, a private carrier, or self-insured employer, to which he, she, or it is not entitled, or in a greater amount than that to which he, she, or it is entitled, shall be liable to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, in an amount equal to three times the amount of such benefits, payments, or allowances to which he, she, or it is not entitled and shall be

liable for the payment of reasonable attorney fees and all other fees and costs of litigation.

(b) No criminal action or indictment need be brought against any person, firm, corporation, or other entity as a condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted and maintained on behalf of the Insurance Commissioner, a private carrier, or self-insured employer by any attorney in contract with or employed by the Insurance Commissioner, a private carrier, or self-insured employer to provide such representation.

(d) Venue for a civil action under this section shall be either in the county in which the defendant resides or in Kanawha County as selected by the Insurance Commissioner. Venue for a civil action under this section for private carriers and self-insured employers shall be either in the county in which the defendant resides or the county in which the injured worker was employed, as selected by the private carrier or self-insured employer.

(e) The remedies and penalties provided in this section are in addition to those remedies and penalties provided elsewhere by law.

§23-1-20. Employment preference for employees in workers' compensation litigation unit.

[Repealed.]

§23-1-21. Authorization to require the electronic invoices and transfers.

(a) The Insurance Commissioner shall establish a program to require the acceptance of disbursements by electronic transfer from the funds created in §23-2C-1 *et seq.* of this code to employers, vendors, claimants, and all others lawfully entitled to receive such disbursements.

(b) The Insurance Commissioner may establish a program to require payments of deposits and other funds into the funds created in §23-2C-1 *et seq.* of this code by electronic transfer of funds.

(c) The Insurance Commissioner may establish a program whereby invoices and other charges against the funds created in §23-2C-1 *et seq.* of this code may be submitted to the Insurance Commissioner by electronic means.

(d) Any program authorized by this section must be implemented through a rule promulgated by the Workers' Compensation Industrial Council.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

(a) The State of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company, and other emergency service organizations as defined by §15-5-1 *et seq.* of this code, and all persons, firms, associations, and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service, or business in this state, are employers within the meaning of this chapter and are subject to all requirements of this chapter and all rules prescribed by the Industrial Council pursuant to §23-2C-5 of this code.

(b) The following employers are not required to procure workers' compensation insurance, but may elect to do so:

(1) Employers of employees in domestic services;

(2) Employers of five or fewer full-time employees in agricultural service;

(3) Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;

(4) Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent, and sporadic in nature and does not exceed 10 calendar days in any calendar quarter;

(5) Churches;

(6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing;

(7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality, or other government entity or political subdivision; volunteer organizations created or sponsored by government entities or political subdivisions; or area or regional emergency medical services boards of directors in furtherance of the purposes of the Emergency Medical Services Act of §16-4C-1 *et seq.* of this code: *Provided*, That if any of the employers described in this subdivision have paid employees, to the extent of those paid employees, the employer shall procure workers' compensation insurance based upon the gross wages of the paid employees, but with regard to the volunteers, the coverage remains optional;

(8) Taxicab drivers of taxicab companies operating under §24A-2-1 *et seq.* of this code, who provide taxicab service pursuant to a written or electronic agreement that identifies the taxicab driver as an independent contractor consistent with the West Virginia Employment Law Worker Classification Act as set forth in §21-5I-1 *et seq.* of this code: *Provided*, That any such taxicab driver identified as an independent contractor shall not be eligible for workers' compensation benefits under this chapter as an employee of the taxicab company.

(9) Any employer whose employees are eligible to receive benefits under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, but only for those employees eligible for those benefits.

(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to the clergyman from the churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer.

(d) The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association, or corporation, the employer may elect not to include as an "employee" within this chapter any member of the partnership, the owner of the sole proprietorship, or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary, and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed, or chosen, the employer may elect not to include the officer or assistant officer as an "employee" within the meaning of this chapter: *Provided*, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice president, secretary, and treasurer and who may be excluded by reason of their positions from workers' compensation benefits

required by this chapter even though their duties, responsibilities, activities, or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator, or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied benefits merely because he or she is an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator, or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator, or an employee who is not an officer and receives pay for performing the duties in the capacity of an employee; or

(C) He or she is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation;

(3) If an employer is a limited liability company, the employer may elect not to include as an "employee" within this chapter a total of no more than four persons, each of whom are acting in the capacity of manager, officer, or member of the company.

(e) "Regularly employing" or "regular employment" means employment by an employer which is not a casual employer under this section.

§23-2-1b. Special provisions as to premiums.

[Repealed.]

§23-2-1c. Extraterritorial coverage; approval and change of agreements.

(a) Whenever there is a possibility of conflict with respect to the application of workers' compensation laws because the contract

of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of any other state in which all or some portion of the work of the employee is to be performed: *Provided*, That nothing in this section shall be construed as to require an agreement in those instances where §23-2-1(b)(3) or §23-2-1a(a)(1) of this code are applicable. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter is entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his or her dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and as a result of the employment.

(b) If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his or her dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

(c) If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers' compensation law or similar laws of a state other than this state, the employee and his or her dependents are not entitled to the benefits payable under this chapter on account of injury, disease, or death in the course of and as a result of employment temporarily within this state, and the rights of the employee and his or her dependents under the laws of the other state shall be the exclusive remedy against the employer on account of any injury, disease or death.

(d) If any employee or his or her dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount

awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.

§23-2-1d. Prime contractors and subcontractors liability.

(a) The Legislature finds that every prime contractor should be responsible to ensure that any subcontractor with which it directly contracts is either self-insured or maintains workers' compensation coverage throughout the periods during which the services of a subcontractor are used and, further, if the subcontractor is neither self-insured nor covered, then the prime contractor rather than the Uninsured Employer Fund should be responsible for the payment of statutory benefits. It is also the intent of the Legislature that this section not be used as the basis for expanding the liability of a prime contractor beyond the limited purpose of providing coverage in the limited circumstances and in the manner expressly addressed by this section: *Provided*, That receipt by the prime contractor of a certificate of coverage from a subcontractor shall be deemed to relieve the prime contractor of responsibility regarding the subcontractor's workers' compensation coverage.

(b) If an employee of a subcontractor suffers an injury or disease and, on the date of injury or last exposure, his or her employer did not have workers' compensation coverage or was not an approved self-insured employer, and the prime contractor did not obtain certification of coverage from the subcontractor, then that employee may file a claim against the prime contractor for which the subcontractor performed services on the date of injury or last exposure, and such claim shall be administered in the same manner as claims filed by injured employees of the prime contractor: *Provided*, That a subcontractor that subcontracts with another subcontractor shall, with respect to such subcontract, be the prime contractor for the purposes of this section: *Provided, however*, That the provisions of this subsection do not relieve a subcontractor from any requirements of this chapter, including the duty to maintain coverage on its employees. The subcontractor shall provide proof of continuing coverage to the prime contractor by providing a certificate showing current as well as renewal or

replacement coverage during the term of the contract between the prime contractor and the subcontractor. The subcontractor shall provide notice to the prime contractor within two business days of cancellation or expiration of coverage.

(c) Notwithstanding that an injured employee of a subcontractor is eligible for workers' compensation benefits pursuant to this section from the prime contractor's carrier or the self-insured prime contractor, whichever is applicable, a subcontractor who has failed to maintain workers' compensation coverage on its employees:

(1) May not claim the exemption from liability provided by §23-2-6 and §23-2-6a of this code;

(2) May be held liable to an injured employee pursuant to the provisions of §23-2-8 of this code; and

(3) Is the designated employer for the purposes of any "deliberate intention" action brought by the injured worker pursuant to the provisions of §23-4-2 of this code.

(d) If a claim of an injured employee of a subcontractor is accepted or conditionally accepted into the Uninsured Employer Fund, both the prime contractor and subcontractor are jointly and severally liable for any payments made by the fund, and the Insurance Commissioner may seek recovery of the payments, plus administrative costs and attorneys' fees, from the prime contractor, the subcontractor, or both: *Provided*, That a prime contractor who is held liable pursuant to this subsection for the payment of benefits to an injured employee of a subcontractor may recover the amount of such payments from the subcontractor, plus reasonable attorneys' fee and costs: *Provided, however*, That if a prime contractor has performed due diligence in all matters requiring the verification of a subcontractor's maintenance of workers' compensation insurance coverage, then the prime contractor is not liable for any claim made hereunder against the subcontractor.

§23-2-2. Insurance Commissioner to be furnished information by employers, State Tax Commissioner, and WorkForce West Virginia; secrecy of information; examination of employers, etc.; violation a misdemeanor.

(a) Every employer shall furnish the Insurance Commissioner, upon request, all information required by him or her to carry out the purposes of this chapter. Every employer shall have a continuous and ongoing duty to maintain current information about its activities, risks, and rates regarding workers' compensation coverage. The Insurance Commissioner may examine under oath any employer or officer, agent, or employee of any employer.

(b) Notwithstanding the provisions of any other statute to the contrary, specifically, but not exclusively, §11-10-5, §11-10-5b, and §21A-10-11 of this code, the Insurance Commissioner may receive the following information:

(1) Upon written request to the State Tax Commissioner: The names, addresses, places of business, and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly or other applicable reporting period and annual gross wages or other compensation paid to the workers and employees of businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to WorkForce West Virginia: In addition to the information that may be released to the Insurance Commissioner for the purposes of this chapter under the provisions of chapter 21A of this code, the names, addresses, and other identifying information of all employing units filing reports and information pursuant to §21A-10-11 of this code as well as information contained in those reports regarding the number and names, addresses, and social security numbers of employees employed and the gross quarterly or other applicable reporting period wages paid by each employing unit to each identified employee.

(c) All information acquired by the Insurance Commissioner pursuant to §23-2-2(b) of this code shall be used only for the performance of the functions necessary for the regulation of the workers' compensation insurance industry and other duties as set forth in this chapter.

(d) Reasonable costs of compilation and production of any information made available pursuant to §23-2-2(b) of this code shall be charged to the Insurance Commissioner.

(e) Information acquired by the Insurance Commissioner pursuant to §23-2-2(b) of this code is not subject to disclosure under the provisions of chapter 29B of this code.

§23-2-3. Report forms and other forms for use of employers.

The Insurance Commissioner shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the Insurance Commissioner any form or forms with direction for completion and returning to the Insurance Commissioner shall return the form, within the period fixed by the Insurance Commissioner, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the failure.

§23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.

[Repealed.]

§23-2-5. Notice to employees.

Upon discovery that an employer is not maintaining West Virginia workers' compensation insurance, the Insurance Commissioner shall issue a written notice to the employees of that employer. Notice to employees provided in this section shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia and that the defaulted employer is liable to its employees for injury or death, both in Workers' Compensation benefits and in damages at common law or by statute. The notice shall be in the form prescribed by the

Insurance Commissioner and shall be posted in a conspicuous place at the chief works of the employer, as it appears in records of the Insurance Commissioner. If the chief works of the employer cannot be found or identified, the notices shall be posted at the front door of the courthouse of the county in which the chief works are located, according to the Insurance Commissioner's records. Any person who shall, prior to the reinstatement of the employer, as provided in this section, or prior to sixty days after the posting of the notice, whichever shall first occur, remove, deface, or render illegible the notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined \$1,000. The notice shall state this provision upon its face. The Insurance Commissioner may require any sheriff, deputy sheriff, constable, or other official of the State of West Virginia, authorized to serve civil process, to post the notice and to make return thereof of the fact of the posting to the Insurance Commissioner. Any failure of the officer to post any notice within 10 days after he or she has received the notice from the Insurance Commissioner, without just cause or excuse, constitutes a willful failure or refusal to perform a duty required of him or her by law within the meaning of §61-5-28 of this code. Any person actually injured by reason of the failure has an action against the official, and upon any official bond he or she may have given, for the damages as the person may actually have incurred, but not to exceed, in the case of any surety upon the bond, the amount of the penalty of the bond. Any official posting the notice as required in this section is entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the State of West Virginia. The fee shall be paid by the Insurance Commissioner out of any funds at his or her disposal.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of Secretary of State to register liens; distraint powers; insolvency proceedings; Secretary of State to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

(a) The Insurance Commissioner in the name of the state may commence a civil action against an employer who, after due notice,

defaults in any payment required by this chapter. If judgment is against the employer, the employer shall pay the costs of the action. A civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in a civil action, the Insurance Commissioner is entitled to recover its attorneys' fees and costs of action from the employer.

(b) In addition to the provisions of §23-2-5a(a) of this code, any payment, interest and penalty due and unpaid under this chapter is a personal obligation of the employer immediately due and owing to the Insurance Commissioner and shall, in addition, be a lien enforceable against all the property of the employer: *Provided*, That the lien shall not be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in §38-10C-1 of this code: *Provided, however*, That the lien may be enforced as other judgment liens are enforced through the provisions of said chapter and the same is considered deemed by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed, the Insurance Commissioner may in the name of the state, after giving appropriate notice as required by due process, distrain upon any personal property, including intangible property, of any employer delinquent for any payment, interest, and penalty thereon. If the Insurance Commissioner has good reason to believe that the property or a substantial portion of the property is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, the Insurance Commissioner may likewise distrain in the name of the state before the delinquency occurs. For that purpose, the Insurance Commissioner may require the services of a sheriff of any county in the state in levying the distress in the county in which the sheriff is an officer and in which the personal property is situated. A sheriff collecting any payment, interest, and penalty thereon is entitled to the compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the Insurance

Commissioner is entitled to recover its attorneys' fees and costs of action from the employer.

(d) In case a business subject to the payments, interest, and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction the business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of the payments, interest, and penalties as they become due.

(e) The Secretary of State of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of any other state and admitted to do business in this state, until notified by the Insurance Commissioner that all payments, interest, and penalties thereon against the corporation which is an employer under this chapter have been paid or that provision satisfactory to the Insurance Commissioner has been made for payment.

(f) In any case when an employer is in default to the Old Fund or has a liability to the Uninsured Employer Fund or is in default on a policy or otherwise fails to maintain mandatory workers' compensation coverage, the Insurance Commissioner may bring action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer's business as provided for in §33-2-22 of this code: *Provided*, That the Insurance Commissioner may, in his or her sole discretion and as an alternative to this action, require the delinquent employer to file a bond in the form prescribed by the Insurance Commissioner with satisfactory surety in an amount not less than 150 percent of the total payments, interest, and penalties due.

§23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.

[Repealed.]

§23-2-5d. Uncollectible receivables; write-offs.

[Repealed.]

§23-2-6. Exemption of contributing employers from liability.

Any employer subject to this chapter who procures and continuously maintains workers' compensation insurance as required by this chapter or who elects to make direct payments of compensation as provided in this section is not liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which the employer is not in default and has complied fully with all other provisions of this chapter. Continuation in the service of the employer shall be considered a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have: *Provided*, That in case of employers not required by this chapter to procure and maintain workers' compensation insurance, the injured employee has remained in the employer's service with notice that his or her employer has elected to procure and maintain workers' compensation insurance, or has elected to make direct payments as aforesaid.

§23-2-7. Benefits of chapter may not be waived by contract or regulation.

No employer or employee shall exempt himself or herself from the burden or waive the benefits of this chapter by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

§23-2-8. Liability of employer for failing to procure or maintain workers' compensation insurance; certain common-law defenses prohibited; exceptions.

All employers who fail to procure and continuously maintain workers' compensation insurance as required by this chapter or who fail to obtain permission to self-insure their workers' compensation risk as permitted by §23-2-9 of this code shall be liable to their employees (within the meaning of this article) for all

damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect, or default of the employer or any of the employer's officers, agents, or employees while acting within the scope of their employment and in the course of their employment and also to the personal representatives of such employees where death results from such personal injuries, and in any action by any such employee or personal representative thereof, such defendant shall not avail himself or herself of the following common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself or herself of any defense that the negligence in question was that of someone whose duties are prescribed by statute: *Provided*, That such provision depriving a defendant employer of certain common-law defenses under the circumstances therein set forth shall not apply to an action brought against a county court, Board of Education, municipality, or other political subdivision of the state, or against any employer not required to cover his or her employees under the provisions of this chapter.

§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; self administration; rules; penalties; regulation of self-insurers.

(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers' groups may apply for permission to self-insure their workers' compensation risk.

(1) The types of employers are:

(A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided in this chapter at least equal in value to the compensation provided for in this chapter;

(B) Any employer or group of employers as provided in §23-2-9(a)(1)(A) of this code of such capability and financial

responsibility that maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided in this chapter; or

(C) Any employer who is signatory to a collective bargaining agreement that allows for participation in a group workers' compensation insurance program may join with any other employer or employers that are signatory to a collective bargaining agreement or agreements that allow for participation in a group workers' compensation program and jointly apply to the Insurance Commissioner to collectively self-insure their obligations under this chapter. The employers must collectively meet the conditions set forth in §23-2-9(a)(1)(A) and (B) of this code. There shall be joint and several liability for all employers who choose to jointly self-insure under the provisions of this article.

(2) In order to be approved for self-insurance status, the employer shall:

(A) Submit all information requested by the Insurance Commissioner;

(B) Provide security or bond, in an amount and form determined by the Insurance Commissioner, which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value of current liability for future claim payments based upon generally accepted actuarial and accounting principles of the employer's existing and expected liability;

(C) Meet the financial responsibility requirements set forth in rules promulgated by the industrial council;

(D) Obtain and maintain a policy of excess insurance if required to do so by the Insurance Commissioner; and

(E) Have an effective health and safety program at its workplaces.

(3) Upon a finding that the employer has met all of the requirements of this section and any rules promulgated thereunder, the employer may be permitted self-insurance status. An annual review of each self-insurer's continuing ability to meet its obligations and the requirements of this section shall be made by the Insurance Commissioner. At the time of such review, the Insurance Commissioner may require that the self-insured employer post a bond or security or obtain and maintain an excess insurance policy. This review shall also include a recalculation of the amount of any security, bond, or policy of excess insurance previously required to be posted or obtained under any provision of this chapter or any rules promulgated thereunder. Failure to provide the required amount or form of security or bond or to obtain or maintain the required excess insurance policy may cause the employer's self-insurance status to be terminated by the Insurance Commissioner.

(4) Whenever a self-insured employer furnishes security or bond, including replacement and amended bonds and other securities, as surety to ensure the employer's or guarantor's payment of all obligations under this chapter for which the security or bond was furnished, the security or bond shall be in the most current form or forms approved and authorized by the Insurance Commissioner for use by the employer or its guarantors, surety companies, banks, financial institutions, or others in its behalf for that purpose.

(b)(1) Notwithstanding any provision in this chapter to the contrary, self-insured employers shall, effective July 1, 2004, administer their own claims. The Insurance Commissioner shall, pursuant to rules promulgated by the industrial council, regulate the administration of claims by employers granted permission to self-insure their obligations under this chapter. A self-insured employer shall comply with rules promulgated by the industrial council governing the self-administration of its claims.

(2) An employer or employers' group that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the Insurance Commissioner or private carriers in this chapter and provide notices of action taken to effect

the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in §23-4-1 *et seq.* of this code pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the provisions of this chapter and such rules relating to this chapter as may be approved by the industrial council may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter.

(c) Each self-insured employer shall, on or before the last day of the first month of each quarter or other assigned reporting period, file with the Insurance Commissioner a certified statement of the total gross wages and earnings of all of the employer's employees subject to this chapter for the preceding quarter or other assigned reporting period.

(d)(1) If a self-insured employer defaults in the payment of any portion of surcharges or assessments required under this chapter or rules promulgated thereunder, or in any payment required to be made as benefits provided by this chapter to the employer's injured employees or dependents of fatally injured employees, the Insurance Commissioner shall, in an appropriate case, determine the full accrued value based upon generally accepted actuarial and accounting principles of the employer's liability, including the costs of all awarded claims and of all incurred but not reported claims. The amount determined may, in an appropriate case, be assessed against the employer. The Insurance Commissioner may demand and collect the present value of the defaulted liability. Interest shall accrue upon the demanded amount as provided in §23-2-13 of this code until the liability is fully paid. Payment of all amounts then due to the Insurance Commissioner and to the employer's employees is a sufficient basis for reinstating the

employer to good standing with the Insurance Commissioner and removing the employer from default status.

(2) The assessments and surcharges required to be paid by self-insured employers pursuant to the provisions of this chapter and the rules promulgated thereunder are special revenue taxes under and according to the provisions of state workers' compensation law and are considered to be tax claims, as priority claims or administrative expense claims according to those provisions under the law provided in the United States bankruptcy code, Title 11 of the United States Code. In addition, as the same was previously intended by the prior provisions of this section, this amendment and reenactment is for the purpose of clarification of the taxing authority of the Insurance Commissioner.

(e) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on reports to the Insurance Commissioner for a period of four or more consecutive quarters may have its status inactivated and shall apply for reactivation to status as a self-insured employer prior to its reemployment of employees. Despite the inactivation, the self-insured employer shall continue to make payments on all awards for which it is responsible. Upon application for reactivation of its status as an operating self-insured employer, the employer shall document that it meets the eligibility requirements needed to maintain self-insured employer status under this section and any rules adopted to implement it. If the employer is unable to requalify and obtain approval for reactivation, the employer shall, effective with the date of employment of any employee, purchase workers' compensation insurance as provided in §23-2C-1 *et seq.* of this code, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(f) Self-insured employers may withdraw from self-insured status and purchase workers' compensation insurance as provided in §23-2C-1 *et seq.* of this code, but said self-insured employers shall remain liable for their self-insured employer claims liabilities

for each claim with a date of injury or last exposure prior to the effective date of insurance coverage.

(g) Any employer subject to this chapter, who elects to carry the employer's own risk by being a self-insured employer and who has complied with the requirements of this section and of any applicable rules, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after the election's approval and during the period that the employer is allowed to carry the employer's own risk.

(h) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administrator unless the person or group has been determined to be qualified to be a third-party administrator by the Insurance Commissioner pursuant to rules adopted by the industrial council. Any person or group whose status as a third-party administrator has been revoked, suspended, or terminated by the Insurance Commissioner shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the Insurance Commissioner.

§23-2-11. Partial invalidity of chapter.

If any provision of this chapter or the application of such provision to any circumstance is held to be unconstitutional or otherwise invalid, the remainder of this chapter or the application of the provisions to other circumstances shall not be affected thereby. The Legislature hereby declares that it would have passed the remainder of this chapter if it had known that such provision, or its application to any circumstances, would be declared unconstitutional or otherwise invalid.

§23-2-13. Interest.

The interest due on payments pursuant to §23-2-9(d)(1) and §23-2C-8(d)(1) of this code shall be the prime rate plus four percent rounded to the nearest whole percent. The prime rate shall be the rate published in the *Wall Street Journal* on the last business

day of the prior fiscal year reflecting the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks: *Provided*, That in no event shall the rate of interest charged to a political subdivision of the state or a volunteer fire department exceed 10 percent per annum.

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc.; payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.

[Repealed.]

§23-2-15. Liabilities of successor employer; waiver of payment by commission; assignment of predecessor employer's premium rate to successor.

[Repealed.]

§23-2-16. Acceptance or assignment of premium rate.

[Repealed.]

§23-2-17. Employer right to hearing; content of petition; appeal.

Notwithstanding any provision in this chapter to the contrary and notwithstanding any provision in §29A-5-5 of this code to the contrary, in any situation where an employer objects to a decision or action of the Insurance Commissioner, the employer is entitled to file a written demand for hearing upon the decision or action in accordance with §33-2-13 of this code. The written demand must be filed within 30 days of the employer's receipt of notice of the disputed Insurance Commissioner's decision or action or, in the absence of such receipt, within 60 days of the date of the decision, the time limitations being hereby declared to be a condition of the right to litigate the decision or action and therefore jurisdictional.

The employer's written demand shall clearly identify the decision or action disputed and the bases upon which the employer disputes the decision or action. Upon receipt of a written demand,

the Insurance Commissioner shall schedule a hearing which shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* and §33-2-13 of this code. An appeal from a final decision of the Insurance Commissioner shall be taken in accord with the provisions of §33-2-13 of this code.

ARTICLE 2A. SUBROGATION.

§23-2A-1. Subrogation; limitations.

(a) Where a compensable injury or death is caused, in whole or in part, by the act or omission of a third party, the injured worker or, if he or she is deceased or physically or mentally incompetent, his or her dependents or personal representative are entitled to compensation under the provisions of this chapter, and shall not by having received compensation be precluded from making claim against the third party.

(b) Notwithstanding the provisions of §23-2A-1(a) of this code, if an injured worker, his or her dependents, or his or her personal representative makes a claim against the third party and recovers any sum for the claim:

(1) With respect to any claim arising from a right of action that arose or accrued, in whole or in part, on or after January 1, 2006, the private carrier or self-insured employer, whichever is applicable, shall be allowed statutory subrogation with regard to indemnity and medical benefits paid as of the date of the recovery.

(2) With respect to any claim arising from a right of action that arose or accrued, in whole or in part, prior to January 1, 2006, the Insurance Commissioner shall be allowed statutory subrogation with regard to only medical payments paid as of the date of the recovery: *Provided*, That with respect to any recovery arising out of a cause of action that arose or accrued prior to July 1, 2003, any money received by the Insurance Commissioner or self-insured employer as subrogation to medical benefits expended on behalf of the injured or deceased worker shall not exceed 50 percent of the amount received from the third party as a result of the claim made by the injured worker, his or her dependents or personal

representative, after payment of attorneys' fee and costs, if such exist.

(3) Notwithstanding the provisions of §23-2A-1(b)(1) and (2) of this code, the Insurance Commissioner, acting as administrator of the Uninsured Employer Fund, shall be allowed statutory subrogation with regard to indemnity and medical benefits paid and to be paid from such fund regardless of the date on which the cause of action arose.

(c) For claims that arose or accrued, in whole or in part, prior to the effective date of the reenactment of this section in 2009, and all claims thereafter, the party entitled to subrogation shall permit the deduction from the amount received reasonable attorneys' fees and reasonable costs and may negotiate the amount to accept as subrogation.

(d) In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be, and there is hereby created, a statutory subrogation lien upon the moneys received which shall exist in favor of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

(e) It is the duty of the injured worker, his or her dependents, his or her personal representative, or his or her attorney to give reasonable notice to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, after a claim is filed against the third party and prior to the disbursement of any third-party recovery. The statutory subrogation described in this section does not apply to uninsured and underinsured motorist coverage or any other insurance coverage purchased by the injured worker or on behalf of the injured worker. If the injured worker obtains a recovery from a third party and the injured worker, personal representative, or the injured worker's attorney fails to protect the statutory right of subrogation created herein, the injured worker, personal representative, and the injured worker's attorney shall lose the right to retain attorney fees and costs out of the subrogation amount. In addition, such failure creates a cause of action for the Insurance Commissioner, private carrier, or self-

insured employer, whichever is applicable, against the injured worker, personal representative, and the injured worker's attorney for the amount of the full subrogation amount and the reasonable fees and costs associated with any such cause of action.

ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

[Repealed].

§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.

[Repealed].

§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.

[Repealed].

ARTICLE 2C. TRANSITION TO A PRIVATE MARKET.

§23-2C-1. Findings and purpose.

(a) The Legislature finds that:

(1) There is a long-term actuarial funding crisis in the state-run monopolistic workers' compensation system;

(2) Similar short-term and long-term crises have been ongoing during the past two decades;

(3) During the current crisis, employers in West Virginia find it increasingly difficult to afford the rates charged by the Workers' Compensation Commission for workers' compensation coverage and that paying said rates adversely impacts employers' ability to compete in a global economic environment;

(4) The cost of obtaining workers' compensation coverage from the state system may result in many employers leaving the state;

(5) Employers' access to competitive workers' compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to provide an enduring solution to this recurring workers' compensation crisis;

(7) An employers' mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

(8) There is a substantial public interest in creating a method to provide a stable workers' compensation insurance market in this state;

(9) The state-run workers' compensation program is a substantial actual and potential liability to the state;

(10) There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers' compensation coverage for employers in this state;

(11) A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

(12) Because the public will greatly benefit from the formation of an employers' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity's initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of an employers' mutual insurance company that will provide:

(1) A means for employers to obtain workers' compensation insurance that is reasonably available and affordable; and

(2) Compensation to employees of mutual policyholders who suffer work place injuries as defined in this chapter.

(c) The employers' mutual insurance company contemplated and created as the successor to the former Workers' Compensation Commission in this article began operation on January 1, 2006. The state opened to a private, competitive market for workers' compensation insurance on July 1, 2008. This section remains in this code for historical purposes.

§23-2C-2. Definitions.

(a) "Insurance Commissioner" means the Insurance Commissioner of West Virginia as provided in §33-2-1 of this code.

(b) "Policy default" means a policyholder that has failed to comply with the terms of its workers' compensation insurance policy and is consequently without workers' compensation insurance coverage.

(c) "Workers' compensation insurance" means insurance which provides all compensation and benefits required by this chapter.

(d) "Insurer" includes:

(1) A self-insured employer; and

(2) A private carrier.

(e) "Industrial Council" means the advisory group established in §23-2C-5 of this code.

(f) "Old Fund" means a fund held by the State Treasurer's office consisting of those funds transferred to it from the defunct Workers' Compensation Fund or other sources and those funds due and owing the defunct Workers' Compensation Fund as of June 30, 2005, that are thereafter collected. The Old Fund and assets in the fund remain property of the state after the transition to a private market.

(g) "Old Fund liabilities" mean all claims payment obligations (indemnity and medical expenses), related liabilities and appropriate administrative expenses necessary for the administration of all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or before June 30, 2005: *Provided*, That Old Fund liabilities include all claims payments for any claim, regardless of date of injury or last exposure, through December 31, 2005: *Provided, however*, That Old Fund liabilities include all claims with dates of injuries or last exposure prior to July 1, 2004, for bankrupt self-insured employers that had defaulted on their claims obligations which were recognized by the former Workers' Compensation Commission in its actuarially determined liability number as of June 30, 2005.

(h) "Private carrier" means any insurer or the legal representative of an insurer authorized by the Insurance Commissioner to provide workers' compensation insurance pursuant to this chapter. The term does not include a self-insured employer or private employers.

(i) "Uninsured Employer Fund" means a fund held by the State Treasurer's office consisting of those funds transferred to it from the defunct Workers' Compensation Fund and any other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule promulgated by the Industrial Council.

(j) "Self-Insured Employer Guaranty Risk Pool" is a fund held by the State Treasurer's office consisting of those funds transferred to it from the guaranty pool created pursuant to 85 CSR 19 (2007) and any future funds collected through continued administration of

that exempt legislative rule as administered by the Insurance Commissioner. Disbursements shall be made from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund are as provided in 85 CSR 19 (2007).

(k) "Self-Insured Employer Security Risk Pool" is a fund held by the State Treasurer consisting of those funds paid into it through the Insurance Commissioner's administration of 85 CSR 19 (2007). Disbursement from the fund shall be made from the Self-Insured Employer Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund are as provided in 85 CSR 19: *Provided*, That the liabilities are limited to those self-insured employers who default on their claims obligations after the termination of the former Workers' Compensation Commission.

(l) "Voluntary market" means the workers' compensation insurance market in which insurers voluntarily offer coverage to applicants who meet the insurers' underwriting standards or guidelines.

§23-2C-3. Private carriers not subject to certain premium taxes, surcharges, and credits; regulatory surcharge imposed on private carriers and self-insured employers.

Private carriers including the company, are not subject to payment of insurance premium taxes, surcharges, and credits contained in §33-3-1 *et seq.* of this code on premiums received for workers' compensation insurance coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(1)(A) With respect to fiscal years beginning on and after July 1, 2008, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and every five years thereafter, the Insurance Commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary; and

(B) The amounts required to be collected under §23-2C-3(a)(1)(A) of this code shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing the previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. All private carriers and self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter 33 of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose.

§23-2C-3a. Employers' mutual insurance company - additional provisions enacted in November 2005.

[Repealed.]

§23-2C-4. Governance and organization.

[Repealed.]

§23-2C-6. Continuation of old fund, uninsured employer fund, self-insured employer guaranty risk pool, and self-insured employer security risk pool.

There is hereby continued in the State Treasury a "Workers' Compensation Old Fund", "Workers' Compensation Uninsured

Employers' Fund", "Self-insured Employer Guaranty Risk Pool", and "Self-insured Employer Security Risk Pool". The Insurance Commissioner shall have full authority to administer the Old Fund, the Uninsured Employers' Fund, the Self-Insured Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool.

§23-2C-7. Custody, investment and disbursement of funds.

The State Treasurer shall be the custodian of the Old Fund, the Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool, and moneys payable to each of these funds shall be deposited in the State Treasury to the credit of the funds. Each fund shall be a separate and distinct fund upon the books and records of the Auditor and Treasurer. Disbursements from these funds shall be made upon requisitions signed by the Insurance Commissioner. The Old Fund, the Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool are participant plans as defined in §12-6-2 of this code and are subject to the provisions of §12-6-9a of this code. The funds may be invested by the Investment Management Board in accordance with §12-6-1 *et seq.* of this code.

§23-2C-8. Workers' Compensation Uninsured Employer Fund.

(a) The Workers' Compensation Uninsured Employer Fund shall be governed by the following:

(1) All money and securities in the fund must be held by the State Treasurer as custodian thereof to be used solely as provided in this article.

(2) The State Treasurer may disburse money from the fund only upon written requisition of the Insurance Commissioner.

(3) *Assessments.* — The Insurance Commissioner shall assess each private carrier and may assess self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policyholders in the form

of a policy surcharge. To establish the amount of the assessment, the Insurance Commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall allocate a portion of that amount to be payable by each of the groups subject to the assessment. After allocating the amounts payable by each group, the Insurance Commissioner shall apply an assessment rate to:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(B) Self-insured employers, if assessed, that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other groups assessed that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The Industrial Council may adopt rules for the establishment and administration of the assessment methodologies, rates, payments, and any penalties that it determines are necessary to carry out the provisions of this section.

(b) *Payments from the fund.* —

(1) Except as otherwise provided in this subsection, an injured employee of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the Uninsured Employer Fund if such employee meets all jurisdictional and entitlement provisions of this chapter, files a claim with the Insurance Commissioner and makes an irrevocable assignment to the Insurance Commissioner of a right to be subrogated to the rights of the injured employee.

(2) Employees who are injured while employed by a self-insured employer are ineligible for benefits from the Workers' Compensation Uninsured Employer Fund.

(c) *Initial determination upon receipt of a claim.* —

If a claim is filed against the Uninsured Employer Fund, the Insurance Commissioner or his or her third-party administrator shall: (1) Accept the claim into the fund if it is determined that the employer was required to maintain workers' compensation coverage with respect to the injured worker but failed to do so; (2) reject the claim if it is determined that the employer maintained such coverage or was not required to do so; or (3) in a claim involving the availability of benefits pursuant to §23-2-1d of this code, either reject or conditionally accept the claim. An aggrieved party may file a protest with the Office of Judges, or Board of Review upon the termination of the Office of Judges, to any decision by the Insurance Commissioner or the third-party administrator to accept or reject a claim into the fund, as well as to any claims decisions made with respect to any claim accepted into the fund and such protests shall be determined in the same manner as disputed claims are determined pursuant to the provisions of §23-5-1 *et seq.* of this code: *Provided*, That in any proceeding involving the decision to accept or refuse to accept a claim into the fund, the employer has the burden of proving that it either provided mandatory workers' compensation insurance coverage or that it was not required to do so.

(d) *Employer liability.* —

(1) Any employer who has failed to provide mandatory coverage required by the provisions of this chapter is liable for all payments made and to be made on its behalf, including any benefits, administrative costs and attorney's fees paid from the fund or incurred by the Insurance Commissioner, plus interest calculated in accordance with the provisions of §23-2-13 of this code.

(2) The Insurance Commissioner:

(A) May bring a civil action in a court of competent jurisdiction to recover from the employer the amounts set forth in §23-2C-8(d)(1) of this code. In any such action, the Insurance Commissioner may also recover the present value of the estimated

future payments to be made on the employer's behalf and administrative costs and attorney's fees attributable to such claim: *Provided*, That the failure of the Insurance Commissioner to include a claim for future payments shall not preclude one or more subsequent actions for such amounts;

(B) May enter into a contract with any person, including the third-party administrator of the Uninsured Employer Fund, to assist in the collection of any liability of an uninsured employer; and

(C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

(3) In addition to any other liabilities provided in this section, the Insurance Commissioner may impose an administrative penalty of not more than \$10,000 against an employer if the employer fails to provide mandatory coverage required by this chapter. All penalties and other moneys collected pursuant to this section shall be deposited into the Uninsured Employer Fund.

§23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.

[Repealed.]

§23-2C-12. Certain personnel provisions governing Workers' Compensation Commission employees and employees laid off by the employers' mutual insurance company during its initial year of operation.

A person who was employed by the former Workers' Compensation Commission upon its termination or was laid off by the employers' mutual insurance company created in this article on or before June 30, 2008, is entitled to be placed on an appropriate reemployment list maintained by the Department of Personnel and to be allowed a preference on that list. The Department of Personnel shall maintain such an employee on the reemployment list indefinitely, or until the employee has declined three offers of employment at a paygrade substantially similar to that of his or her

position upon termination of the former Workers' Compensation Commission, or until he or she is reemployed by the executive branch of state government, whichever occurs earlier.

§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.

[Repealed.]

§23-2C-14. Certain benefits provided to commission employees.

[Repealed.]

§23-2C-15. Mandatory coverage; changing of coverage.

(a) An employer may elect to purchase workers' compensation insurance from another a private carrier licensed and otherwise authorized to transact workers' compensation insurance in this state or (3) self-insure its obligations if it satisfies all requirements of this code to so self-insure and is permitted to do so. Private carriers are permitted to sell workers' compensation insurance through licensed agents in the state. To the extent that a private carrier markets workers' compensation insurance through a licensed agent, it is subject to all applicable provisions of chapter 33 of this code.

(b) Every employer shall continuously post a notice upon its premises in a conspicuous place identifying its workers' compensation insurer. The notice must include the name, business address, and telephone number of the insurer and of the person to contact with questions about a claim.

(c) Any rule promulgated by the Industrial Council empowering agencies of this state to revoke or refuse to grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employer whose account is in default with regard to any liability under this chapter shall be fully enforceable by the Insurance Commissioner against the employer.

(d) Private carriers may cancel a policy upon the issuance of 30 days' written advance notice to the policyholder and may refuse to renew a policy upon the issuance of 60 days' written advance notice to the policyholder: *Provided*, That cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder or for refusal to comply with a premium audit is effective after 10 days' advance written notice of cancellation to the policyholder.

(e) Every private carrier shall notify the Insurance Commissioner as follows: (1) Of the issuance or renewal of insurance coverage, within 30 days of: (A) The effective date of coverage; or (B) the private carrier's receipt of notice of the employer's operations in this state, whichever is later; (2) of a termination of coverage by the private carrier due to refusal to renew or cancellation, at least 10 days prior to the effective date of the termination; and (3) of a termination of coverage by an employer, within 10 days of the private carrier's receipt of the employer's request for such termination; the notifications shall be on forms developed or in a manner prescribed by the Insurance Commissioner.

(f) For the purposes of §23-2C-15(d) and (e) of this code, the transfer of a policyholder between insurance companies within the same group is not considered a cancellation or refusal to renew a workers' compensation insurance policy.

§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund.

(a) The Insurance Commissioner shall review claims determined to be payable from the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund and may contest the determination pursuant to the provisions of §23-5-1 *et seq.* of this code. The Insurance Commissioner may retain a third-party administrator for said funds. The administrative duties may include, receipt of all claims, processing said claims,

providing for the payment of said claims through the State Treasurer's office or other applicable state agency, and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended.

(b) The Insurance Commissioner may conduct or cause to be conducted an annual audit to be performed on said funds.

(c) The Insurance Commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the Old Fund, including the collection of moneys due the Old Fund and enforcement of repayment agreements entered into for the collection of moneys due on or before June 30, 2005, in any administrative proceeding and in any state or federal court.

(d) During the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, July 1, 2022, and July 1, 2023, the Insurance Commissioner may, in his or her discretion, transfer special revenue moneys contained in the Insurance Commission Fund to the Old Fund in any fiscal year in which the Insurance Commissioner has determined, and an independent Auditor has attested thereto, that a deficit balance existed in the Old Fund for the prior fiscal year.

§23-2C-18. Ratemaking; Insurance Commissioner.

(a)(1) Rates for workers' compensation insurance are subject to the provisions of this section, §23-2C-18a of this code, and §33-20-1 *et seq.* of this code.

(2) In the event of any conflict, the provisions of this article shall have paramount effect, but the provisions in this chapter and chapter 33 of this code shall be construed as complementary and harmonious unless so clearly in conflict that they cannot reasonably be reconciled.

(b) An insurer shall file its rates by filing a multiplier or multipliers to be applied to prospective loss costs that have been filed by the designated advisory organization on behalf of the insurer in accordance with §23-2C-18a of this code and may also file carrier specific rating plans.

(c) Rates must not be excessive, inadequate, or unfairly discriminatory, nor may an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

(d) The Insurance Commissioner may disapprove rates if there is not a reasonable degree of price competition at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the Insurance Commissioner shall consider all relevant tests, including:

(1) The number of insurers actively engaged in the class of business and their shares of the market;

(2) The existence of differentials in rates in that class of business;

(3) Whether long-run profitability for private carriers generally of the class of business is unreasonably high in relation to its risk;

(4) Consumers' knowledge in regard to the market in question; and

(5) Whether price competition is a result of the market or is artificial. If competition does not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to the risk of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(e) Rates are inadequate if they are clearly insufficient, together with the income from investments attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(f) One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with similar exposure to loss but different expense factors, or similar expense factors but different exposure to loss, so long as

the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy.

§23-2C-19. Premium payment; employer default; special provisions as to employer default collection.

(a) Each employer who is required to purchase and maintain workers' compensation insurance or who elects to purchase workers' compensation insurance shall pay a premium to a private carrier. Each carrier shall notify its policyholders of the mandated premium payment methodology and under what circumstances a policyholder will be found to be in policy default.

(b) An employer who is required to purchase and maintain workers' compensation insurance but fails to do so or otherwise enters policy default shall be deprived of the benefits and protection afforded by this chapter, including §23-2-6 of this code, and the employer is liable as provided in §23-2-8 of this code: The policy defaulted employer's liability under these sections is retroactive to the day the policy default occurs: The private carrier shall notify the policy defaulted employer of the method by which the employer may be reinstated with the private carrier.

(c) In addition to any other liabilities provided in this section, the Insurance Commissioner may impose an administrative fine of not more than \$10,000 against an employer if the employer fails to provide mandatory coverage required by this chapter.

(d) Every agency shall, upon notification of employer default by the Insurance Commissioner, immediately begin the process to revoke or terminate any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business in this state and shall refuse to issue, grant, or renew any such contract, license, permit, certificate, or authority.

(1) The term "employer default" means having an outstanding balance or liability to the Old Fund or to the Uninsured Employers' Fund or being in policy default, as defined in §23-2C-2 of this code, or failure to maintain mandatory workers' compensation coverage.

An employer is not in default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

(2) The term “agency” includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations.

(e) Any amounts owed by an employer to the state as a result of an employer default is a personal liability of the employer, its officers, owners, partners, and directors and is immediately due and owing and shall, in addition, be a lien enforceable against all the property of the employer, its officers, owners, partners, and directors: *Provided*, That the lien shall not be enforceable as against a purchaser, including a lien creditor, of real estate or personal property for a valuable consideration without notice, unless docketed as provided in §38-10C-1 of this code: *Provided, however*, That the lien may be enforced as other judgment liens are enforced through the provisions of chapter 38 of this code and the same is considered by the circuit court to be a judgment lien for this purpose.

(f) The Insurance Commissioner shall propose rules for adoption by the industrial council to effectuate the purposes of this section including the conditions under which agencies shall comply with the provisions of §23-2C-19(d) of this code and specifying how notice of default shall be given by the Insurance Commissioner.

§23-2C-20. Claims administration issues.

(a) Private carriers and self-insured employers shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in §23-4-1 *et seq.* of this code pertaining to disability and death benefits are binding on and shall be strictly adhered to by the successor to the commission, private carriers, and the self-insured employer in their administration of claims presented by employees of the self-insured employer private carriers and self-insured employers.

(b) The Occupational Pneumoconiosis Board shall be administered by the Insurance Commissioner. Private carriers and self-insured employers shall have all authority and responsibility in the administration and processing of occupational pneumoconiosis claims.

(c) Upon termination of the former Workers' Compensation Commission, claims allocation responsibilities transferred to the Insurance Commissioner.

(d) The Insurance Commissioner's third-party administrator for the Old Fund has administrative and adjudicatory authority in administering old law liability and deciding old law claims.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

(a) No civil action may be brought or maintained by an employee against a private carrier or a third-party administrator, or any employee or agent of a private carrier or third-party administrator, who violates any provision of this chapter or chapter 33 of this code.

(b) Any administrative fines or remedies provided in this chapter or chapter 33 of this code or rules promulgated by the Insurance Commissioner are the exclusive civil remedies for any violation of this chapter committed by a private carrier or a third-party administrator or any agent or employee of a private carrier or a third-party administrator.

(c) Upon a determination by the Office of Judges, or by the Board of Review upon the termination of the Offices Judges, that a denial of compensability, a denial of an award of temporary total disability, or a denial of an authorization for medical benefits was unreasonable, reasonable attorney's fees and the costs actually incurred in the process of obtaining a reversal of the denial shall be awarded to the claimant and paid by the private carrier or self-insured employer which issued the unreasonable denial. A denial is unreasonable if, after submission by or on behalf of the claimant, of evidence of the compensability of the claim, the entitlement to temporary total disability benefits or medical benefits, the private

carrier or self-insured employer is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the time of the denial which is relevant and probative and supports the denial of the award or authorization. Payment of attorney's fees and costs awarded under this subsection will be made to the claimant at the conclusion of litigation, including all appeals, of the claimant's protest of the denial.

§23-2C-23. Transfer of assets and contracts.

[Repealed.]

§23-2C-24. Surplus note or other loan arrangement for new fund.

[Repealed.]

ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.

§23-2D-1. Short title.

[Repealed.]

§23-2D-2. Legislative findings; legislative intent.

[Repealed.]

§23-2D-3. Definitions.

[Repealed.]

§23-2D-4. Workers' Compensation debt reduction revenue bonds; amount; when may issue.

[Repealed.]

§23-2D-5. Special account created; use of moneys in the Fund.

[Repealed.]

§23-2D-5a. Excess regular coal severance taxes.

[Repealed.]

§23-2D-6. Creation of Debt Service Fund; disbursements to pay debt service on Workers' Compensation debt reduction revenue bonds.

[Repealed.]

§23-2D-7. Covenants of state.

[Repealed.]

§23-2D-8. Workers' compensation debt reduction revenue bonds lawful investments.

[Repealed.]

§23-2D-9. Refunding bonds.

[Repealed.]

§23-2D-10. Approval and payment of all necessary expenses.

[Repealed.]

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation Fund; catastrophe and catastrophe payment defined; compensation by employers.

[Repealed.]

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

[Repealed.]

§23-3-2. Custody, investment and disbursement of funds.

[Repealed.]

§23-3-3. Investment of surplus funds required.

[Repealed.]

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

[Repealed.]

§23-3-5. Authorization to require the electronic invoices and transfers.

[Repealed.]

§23-3-6. Emergency fiscal measures.

[Repealed.]

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled Workers' Relief Fund.

Persons who are receiving benefits from the Disabled Workers' Relief Fund at the time the amendments made to this article by the Legislature during the 2022 regular session become effective shall continue to receive said benefits as awarded.

§23-4A-2. To whom benefits paid.

[Repealed.]

§23-4A-3. Computation of benefits.

[Repealed.]

§23-4A-4. Mode of payment.

[Repealed.]

§23-4A-5. Employers providing own system of compensation.

[Repealed.]

§23-4A-6. Powers of commission over disabled workers' relief fund.

[Repealed.]

§23-4A-8. Disabled workers' relief fund; how funded.

[Repealed.]

§23-4A-9. Transfer of authority to the Insurance Commissioner.

[Repealed.]

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.**§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.**

For the relief of persons who are entitled to receive benefits by virtue of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before December 31, 2005, without regard to the date the claim is filed, there is continued a fund to be known as the Coal-Workers' Pneumoconiosis Fund. The Coal-Workers' Pneumoconiosis Fund shall consist of premiums and other funds paid to the fund by employers, subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, who shall elect to subscribe to the fund to ensure the payment of benefits required by the Act for claims incurred under said Act, including all claims where the date of last exposure is on or before December 31, 2005, without regard to the date the claim is filed.

The State Treasurer shall be the custodian of the Coal-Workers' Pneumoconiosis Fund and all premiums, deposits, or other moneys paid to the fund shall be deposited in the State Treasury to the credit of the Coal-Workers' Pneumoconiosis Fund. Disbursements from the fund shall be made upon requisition signed by the Insurance Commissioner. The West Virginia Investment Management Board may invest any surplus, reserve, or other moneys belonging to the Coal-Workers' Pneumoconiosis Fund in accordance with §12-6-1 *et seq.* of this code.

§23-4B-4. Who may subscribe.

Only those employers who are subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as

amended, may elect to subscribe to the Coal-Workers' Pneumoconiosis Fund to insure the liability imposed upon such employers under the provisions of Title IV of the Act. Coverage by the Coal-Workers' Pneumoconiosis Fund will be provided only for claims incurred under the Act, including all claims where the date of last exposure is on or before December 31, 2005, without regard to the date the claim is filed. Pursuant to §23-4B-9 of this code, the Coal-Workers' Pneumoconiosis Fund was closed to new subscribers after December 31, 2005, upon the termination of the former Workers' Compensation Commission. Only those persons entitled to benefits under §23-4B-3 of this code and who were employed by employers who elected to subscribe to the Coal-Workers' Pneumoconiosis Fund prior to its closure may apply for benefits.

§23-4B-5. Payment of benefits.

Upon receipt of an order of compensation issued pursuant to a claim for benefits filed under the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before December 31, 2005, without regard to the date the claim is filed, the Insurance Commissioner shall disburse the Coal-Workers' Pneumoconiosis Fund in the amounts and to the persons as directed by the order.

§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.

[Repealed.]

§23-4B-7. Administration.

The Coal-Workers' Pneumoconiosis Fund shall be administered by the Insurance Commissioner, who shall employ any employees and contract with any parties necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the State Treasurer from the Coal-Workers' Pneumoconiosis Fund upon requisitions signed by the Insurance Commissioner.

Provided, That the employers' mutual insurance company established pursuant to article two-c of this chapter shall be the administrator of the Coal-Workers' Pneumoconiosis Fund for a term not to exceed three years following the termination of the Workers' Compensation Commission pursuant to an agreement to be entered into between the Insurance Commissioner and the Company prior to the termination of the Workers' Compensation Commission. The Company's administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer's office and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. Any contract entered into by the Insurance Commissioner for the administration of the Coal-Workers' Pneumoconiosis Fund thereafter shall be subject to the procedures set forth in article three, chapter five-a of this code.

§23-4B-8. Separable from workers' compensation fund.

[Repealed.]

§23-4B-8a. Legislative findings; transfers to the state; maximum transfer authorization; purpose for which moneys transferred may be disbursed and expended; maximum amount of transfer authorization; terms and conditions for repayment; premiums to be set without regard to transfers; creation of special account in State Treasury.

[Repealed.]

§23-4B-8b. Transfer of funds to workers' compensation fund.

[Repealed.]

§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund.

Upon the termination of the former Workers' Compensation Commission, the Coal-Workers' Pneumoconiosis Fund shall close to new subscribers. All claims payment obligations, including indemnity benefits, medical benefits, administrative, and all other

expenses necessary for the administration and defense of claims, where the date of last exposure is on or before December 31, 2005, without regard to the date the claim is filed, shall be an obligation of the Coal-Workers' Pneumoconiosis Fund.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-1. Purpose.

[Repealed.]

§23-4C-2. Employers' excess liability fund established.

[Repealed.]

§23-4C-3. Payment of excess damages from fund.

[Repealed.]

§23-4C-4. Employers' excess liability fund; how funded.

[Repealed.]

§23-4C-5. Administration.

[Repealed.]

§23-4C-6. Novation to the successor of the commission.

[Repealed.]



CHAPTER 288

(H. B. 4301 - By Delegate Rohrbach)

[Passed February 14, 2022; in effect from passage.]
[Approved by the Governor on February 16, 2022.]

AN ACT to amend and reenact section two, chapter 26, Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 187, Acts of the Legislature, regular session 2011, relating to election of commissioners to Greater Huntington Park and Recreation District Board; providing for nonpartisan elections; modifying composition of board; modifying timing of elections; providing for number and composition of commissioners to be elected at primary election in 2022; providing for number and composition of commissioners to be elected at primary election in 2024; and providing for number and composition of commissioners to be elected at primary election in 2026.

Be it enacted by the Legislature of West Virginia:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§2. Greater Huntington Park and Recreation District; composition, terms of office; nonpartisan political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contacts or property controlled by the board.

(a) The purpose of the Greater Huntington Park and Recreation District Board is to establish, own, develop and operate a park system for the benefit, health, safety, welfare, pleasure, and

relaxation of the inhabitants of the Greater Huntington Park and Recreation District.

(b) The Park Board shall consist of ten nonpartisan commissioners, nine of whom shall be elected from Cabell County, but no more than three of whom shall be elected from any one magisterial district, and one of whom shall be elected from Westmoreland magisterial district in the county of Wayne. The commissioners shall be elected pursuant to subdivision (1) of this subsection.

(1) Commissioners of the Park District shall be elected in the nonpartisan primary election for state officers on the second Tuesday in May and in the manner prescribed by law for the nomination and election of nonpartisan district officers, except as provided in this section.

(A) At the general election in the year 1984, there shall be elected six commissioners. One commissioner shall be elected from the Westmoreland Magisterial District in the County of Wayne. Five commissioners shall be elected from the County of Cabell. In Westmoreland District of Wayne County, the person receiving the highest number of votes shall be elected for a term of six years. In Cabell County, the three persons receiving the highest number of votes shall be elected for a term of six years, the person receiving the next highest number of votes shall be elected for a term of four years, and the remaining elected commissioner shall be elected for a term of two years.

(B) Beginning at the general election in the year 1986 and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

(C) Beginning at the general election in the year 1988 and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

(D) Beginning at the general election in the year 1990 and every sixth year thereafter, there shall be elected four commissioners who shall be elected for a term of six years.

(E) Beginning at the general election in the year, 2004, and every sixth year thereafter, there shall be elected four commissioners from the county of Cabell who shall be elected for a term of six years.

(F) Beginning at the general election in the year, 2006, and every sixth year thereafter, there shall be elected three commissioners from the county of Cabell who shall be elected for a term of six years.

(G) Beginning at the general election in the year, 2008, and every sixth year thereafter, there shall be elected four commissioners who shall be elected for a term of six years. One commissioner shall be elected from the Westmoreland magisterial district in the county of Wayne. Three commissioners shall be elected from the county of Cabell.

(H) Beginning at the primary election in the year 2022 there shall be elected five commissioners. Three commissioners shall be elected for a term of six years and elected every sixth year thereafter. One commissioner shall be elected from Westmoreland magisterial district in the county of Wayne. One commissioner shall be elected from magisterial district 2 in the county of Cabell. One commissioner shall be elected from magisterial district 3 in the county of Cabell.

One commissioner shall be elected from magisterial district 2 in the county of Cabell for a two-year unexpired term. One commissioner shall be elected from magisterial district 3 in the county of Cabell for a four-year unexpired term.

(I) Beginning at the primary election in the year 2024 there shall be elected four commissioners. Three commissioners shall be elected for a term of six years and elected every sixth year thereafter. One commissioner shall be elected from magisterial district 1 in the county of Cabell. One commissioner shall be elected from magisterial district 2 in the county of Cabell. One commissioner shall be elected from magisterial district 3 in the county of Cabell. One commissioner shall be elected from

magisterial district 1 in the county of Cabell for a four-year unexpired term.

(J) Beginning at the primary election in the year 2026 there shall be elected three commissioners. Three commissioners shall be elected for a term of six years and elected every sixth year thereafter. One commissioner shall be elected from magisterial district 1 in the county of Cabell. One commissioner shall be elected from magisterial district 2 in the county of Cabell. One commissioner shall be elected from magisterial district 3 in the county of Cabell.

(2) The commissioners in office upon the effective date of this act under the authority of the acts hereby amended and reenacted, shall continue in office for the term for which they were elected.

(c) No elected commissioners may hold any other elected or appointed public office.

(d) Commissioners may receive no compensation for their services as commissioners, but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as commissioners.

(e) Commissioners may not have any personal financial interest, directly or indirectly, in any contract entered into by the Park District, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as commissioners.

CONSTITUTIONAL AMENDMENT

REGULAR SESSION, 2022

HOUSE JOINT RESOLUTION 102

**(HJR 102 - By Delegates Espinosa, Tully, G. Ward, Maynor,
Crouse, Clark, Linville, Barnhart, Barrett, Hanna, and
Kimble)**

[Adopted by the Legislature on March 3, 2022.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section 2, article XII thereof, relating to education and the supervision of free schools; clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 2, article XII thereof, be amended and reenacted to read as follows:

ARTICLE XII. EDUCATION.**§2. Supervision of free schools.**

Subject to the provisions of this section, the general supervision of the free schools of the State is vested in the West Virginia Board of Education which shall perform the duties prescribed by law. Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law. The board shall consist of nine members to be appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

The West Virginia Board of Education shall, in the manner prescribed by law, select the State Superintendent of Free Schools who shall serve at its will and pleasure. He or she shall be the chief school officer of the state and shall perform the duties prescribed by law.

The State Superintendent of Free Schools shall be a member of the Board of Public Works as provided by subsection B, section fifty-one, article VI of this Constitution.

Resolved further, That in accordance with the provisions of §3-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, the amendment is hereby numbered “Amendment No. 1” and designated as the “Education Accountability Amendment” and the purpose of the proposed amendment is summarized as follows: “The purpose of this amendment is to clarify that the rules and policies promulgated by the State Board of Education, are subject to legislative review, approval, amendment, or rejection.”

