

HB2797

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015



ENROLLED

House Bill No. 2797

(By Delegate(s) Campbell, Perry, Moye,
Fleischauer, Bates, Guthrie, Ellington, Householder,
Ashley, P. Smith and McCuskey)



Passed March 12, 2015

In effect ninety days from passage.

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E N R O L L E D

H. B. 2797

(BY DELEGATE(S) CAMPBELL, PERRY, MOYE,
FLEISCHAUER, BATES, GUTHRIE, ELLINGTON, HOUSEHOLDER,
ASHLEY, P. SMITH AND MCCUSKEY)

[Passed March 12, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-20-1a of said code; to amend and reenact §28-1-2 of said code; and to amend and reenact §28-5-31 of said code, all relating to changing the term “mentally retarded” to “intellectually disabled;” and changing the term “handicapped” to “disabled.”

Be it enacted by the Legislature of West Virginia:

That §17A-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-20-1a of said code be amended and reenacted; that §28-1-2 of said code be amended and reenacted; and that §28-5-31 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.**

**§17A-3-4. Application for certificate of title; fees; abolishing
privilege tax; prohibition of issuance of certificate of
title without compliance with consumer sales and
service tax provisions; exceptions.**

1 (a) Certificates of registration of any vehicle or registration
2 plates for the vehicle, whether original issues or duplicates, may
3 not be issued or furnished by the Division of Motor Vehicles or
4 any other officer or agent charged with the duty, unless the
5 applicant already has received, or at the same time makes
6 application for and is granted, an official certificate of title of the
7 vehicle in either an electronic or paper format. The application
8 shall be upon a blank form to be furnished by the Division of
9 Motor Vehicles and shall contain a full description of the
10 vehicle, which description shall contain a manufacturer's serial
11 or identification number or other number as determined by the
12 commissioner and any distinguishing marks, together with a
13 statement of the applicant's title and of any liens or
14 encumbrances upon the vehicle, the names and addresses of the
15 holders of the liens and any other information as the Division of
16 Motor Vehicles may require. The application shall be signed and
17 sworn to by the applicant. A duly certified copy of the division's
18 electronic record of a certificate of title is admissible in any
19 civil, criminal or administrative proceeding in this state as
20 evidence of ownership.

21 (b) A tax is imposed upon the privilege of effecting the
22 certification of title of each vehicle in the amount equal to five
23 percent of the value of the motor vehicle at the time of the
24 certification, to be assessed as follows:

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser of the vehicle is the value of the
27 vehicle. If the vehicle is a used or secondhand vehicle, the
28 present market value at time of transfer or purchase is the value
29 of the vehicle for the purposes of this section: *Provided*, That so
30 much of the purchase price or consideration as is represented by
31 the exchange of other vehicles on which the tax imposed by this
32 section has been paid by the purchaser shall be deducted from
33 the total actual price or consideration paid for the vehicle,
34 whether the vehicle be new or secondhand. If the vehicle is
35 acquired through gift or by any manner whatsoever, unless
36 specifically exempted in this section, the present market value of
37 the vehicle at the time of the gift or transfer is the value of the
38 vehicle for the purposes of this section.

39 (2) No certificate of title for any vehicle may be issued to
40 any applicant unless the applicant has paid to the Division of
41 Motor Vehicles the tax imposed by this section which is five
42 percent of the true and actual value of the vehicle whether the
43 vehicle is acquired through purchase, by gift or by any other
44 manner whatsoever, except gifts between husband and wife or
45 between parents and children: *Provided*, That the husband or
46 wife, or the parents or children, previously have paid the tax on
47 the vehicles transferred to the State of West Virginia.

48 (3) The Division of Motor Vehicles may issue a certificate
49 of registration and title to an applicant if the applicant provides
50 sufficient proof to the Division of Motor Vehicles that the
51 applicant has paid the taxes and fees required by this section to
52 a motor vehicle dealership that has gone out of business or has
53 filed bankruptcy proceedings in the United States bankruptcy
54 court and the taxes and fees so required to be paid by the
55 applicant have not been sent to the division by the motor vehicle
56 dealership or have been impounded due to the bankruptcy
57 proceedings: *Provided*, That the applicant makes an affidavit of
58 the same and assigns all rights to claims for money the applicant

59 may have against the motor vehicle dealership to the Division of
60 Motor Vehicles.

61 (4) The Division of Motor Vehicles shall issue a certificate
62 of registration and title to an applicant without payment of the
63 tax imposed by this section if the applicant is a corporation,
64 partnership or limited liability company transferring the vehicle
65 to another corporation, partnership or limited liability company
66 when the entities involved in the transfer are members of the
67 same controlled group and the transferring entity has previously
68 paid the tax on the vehicle transferred. For the purposes of this
69 section, control means ownership, directly or indirectly, of stock
70 or equity interests possessing fifty percent or more of the total
71 combined voting power of all classes of the stock of a
72 corporation or equity interests of a partnership or limited liability
73 company entitled to vote or ownership, directly or indirectly, of
74 stock or equity interests possessing fifty percent or more of the
75 value of the corporation, partnership or limited liability
76 company.

77 (5) The tax imposed by this section does not apply to
78 vehicles to be registered as Class H vehicles or Class M vehicles,
79 as defined in section one, article ten of this chapter, which are
80 used or to be used in interstate commerce. Nor does the tax
81 imposed by this section apply to the titling of Class B vehicles
82 registered at a gross weight of fifty-five thousand pounds or
83 more, or to the titling of Class C semitrailers, full trailers, pole
84 trailers and converter gear: *Provided*, That if an owner of a
85 vehicle has previously titled the vehicle at a declared gross
86 weight of fifty-five thousand pounds or more and the title was
87 issued without the payment of the tax imposed by this section,
88 then before the owner may obtain registration for the vehicle at
89 a gross weight less than fifty-five thousand pounds, the owner
90 shall surrender to the commissioner the exempted registration,
91 the exempted certificate of title and pay the tax imposed by this
92 section based upon the current market value of the vehicle:

93 *Provided, however,* That notwithstanding the provisions of
94 section nine, article fifteen, chapter eleven of this code, the
95 exemption from tax under this section for Class B vehicles in
96 excess of fifty-five thousand pounds and Class C semitrailers,
97 full trailers, pole trailers and converter gear does not subject the
98 sale or purchase of the vehicles to the consumers sales and
99 service tax.

100 (6) The tax imposed by this section does not apply to titling
101 of vehicles leased by residents of West Virginia. A tax is
102 imposed upon the monthly payments for the lease of any motor
103 vehicle leased by a resident of West Virginia, which tax is equal
104 to five percent of the amount of the monthly payment, applied to
105 each payment, and continuing for the entire term of the initial
106 lease period. The tax shall be remitted to the Division of Motor
107 Vehicles on a monthly basis by the lessor of the vehicle.

108 (7) The tax imposed by this section does not apply to titling
109 of vehicles by a registered dealer of this state for resale only, nor
110 does the tax imposed by this section apply to titling of vehicles
111 by this state or any political subdivision thereof, or by any
112 volunteer fire department or duly chartered rescue or ambulance
113 squad organized and incorporated under the laws of this state as
114 a nonprofit corporation for protection of life or property. The
115 total amount of revenue collected by reason of this tax shall be
116 paid into the state Road Fund and expended by the
117 Commissioner of Highways for matching federal funds allocated
118 for West Virginia. In addition to the tax, there is a charge of \$5
119 for each original certificate of title or duplicate certificate of title
120 so issued: *Provided,* That this state or any political subdivision
121 of this state or any volunteer fire department or duly chartered
122 rescue squad is exempt from payment of the charge.

123 (8) The certificate is good for the life of the vehicle, so long
124 as the vehicle is owned or held by the original holder of the
125 certificate and need not be renewed annually, or any other time,
126 except as provided in this section.

93 *Provided, however,* That notwithstanding the provisions of
94 section nine, article fifteen, chapter eleven of this code, the
95 exemption from tax under this section for Class B vehicles in
96 excess of fifty-five thousand pounds and Class C semitrailers,
97 full trailers, pole trailers and converter gear does not subject the
98 sale or purchase of the vehicles to the consumers sales and
99 service tax.

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101 of vehicles leased by residents of West Virginia. A tax is
102 imposed upon the monthly payments for the lease of any motor
103 vehicle leased by a resident of West Virginia, which tax is equal
104 to five percent of the amount of the monthly payment, applied to
105 each payment, and continuing for the entire term of the initial
106 lease period. The tax shall be remitted to the Division of Motor
107 Vehicles on a monthly basis by the lessor of the vehicle.

108 (7) The tax imposed by this section does not apply to titling
109 of vehicles by a registered dealer of this state for resale only, nor
110 does the tax imposed by this section apply to titling of vehicles
111 by this state or any political subdivision thereof, or by any
112 volunteer fire department or duly chartered rescue or ambulance
113 squad organized and incorporated under the laws of this state as
114 a nonprofit corporation for protection of life or property. The
115 total amount of revenue collected by reason of this tax shall be
116 paid into the state Road Fund and expended by the
117 Commissioner of Highways for matching federal funds allocated
118 for West Virginia. In addition to the tax, there is a charge of \$5
119 for each original certificate of title or duplicate certificate of title
120 so issued: *Provided,* That this state or any political subdivision
121 of this state or any volunteer fire department or duly chartered
122 rescue squad is exempt from payment of the charge.

123 (8) The certificate is good for the life of the vehicle, so long
124 as the vehicle is owned or held by the original holder of the
125 certificate and need not be renewed annually, or any other time,
126 except as provided in this section.

127 (9) If, by will or direct inheritance, a person becomes the
128 owner of a motor vehicle and the tax imposed by this section
129 previously has been paid to the Division of Motor Vehicles on
130 that vehicle, he or she is not required to pay the tax.

131 (10) A person who has paid the tax imposed by this section
132 is not required to pay the tax a second time for the same motor
133 vehicle, but is required to pay a charge of \$5 for the certificate
134 of retile of that motor vehicle, except that the tax shall be paid
135 by the person when the title to the vehicle has been transferred
136 either in this or another state from the person to another person
137 and transferred back to the person.

138 (11) The tax imposed by this section does not apply to any
139 passenger vehicle offered for rent in the normal course of
140 business by a daily passenger rental car business as licensed
141 under the provisions of article six-d of this chapter. For purposes
142 of this section, a daily passenger car means a Class A motor
143 vehicle having a gross weight of eight thousand pounds or less
144 and is registered in this state or any other state. In lieu of the tax
145 imposed by this section, there is hereby imposed a tax of not less
146 than \$1 nor more than \$1.50 for each day or part of the rental
147 period. The commissioner shall propose an emergency rule in
148 accordance with the provisions of article three, chapter
149 twenty-nine-a of this code to establish this tax.

150 (12) The tax imposed by this article does not apply to the
151 titling of any vehicle purchased by a senior citizen service
152 organization which is exempt from the payment of income taxes
153 under the United States Internal Revenue Code, Title 26 U.S.C.
154 §501(c)(3) and which is recognized to be a bona fide senior
155 citizen service organization by the senior services bureau
156 existing under the provisions of article five, chapter sixteen of
157 this code.

158 (13) The tax imposed by this section does not apply to the
159 titling of any vehicle operated by an urban mass transit authority

160 as defined in article twenty-seven, chapter eight of this code or
161 a nonprofit entity exempt from federal and state income tax
162 under the Internal Revenue Code and whose purpose is to
163 provide mass transportation to the public at large designed for
164 the transportation of persons and being operated for the
165 transportation of persons in the public interest.

166 (14) The tax imposed by this section does not apply to the
167 transfer of a title to a vehicle owned and titled in the name of a
168 resident of this state if the applicant:

169 (A) Was not a resident of this state at the time the applicant
170 purchased or otherwise acquired ownership of the vehicle;

171 (B) Presents evidence as the commissioner may require of
172 having titled the vehicle in the applicant's previous state of
173 residence;

174 (C) Has relocated to this state and can present such evidence
175 as the commissioner may require to show bona-fide residency in
176 this state;

177 (D) Presents an affidavit, completed by the assessor of the
178 applicant's county of residence, establishing that the vehicle has
179 been properly reported and is on record in the office of the
180 assessor as personal property; and

181 (E) Makes application to the division for a title and
182 registration, and pays all other fees required by this chapter
183 within thirty days of establishing residency in this state as
184 prescribed in subsection (a), section one-a of this article:
185 *Provided*, That a period of amnesty of three months be
186 established by the commissioner during the calendar year 2007,
187 during which time any resident of this state, having titled his or
188 her vehicle in a previous state of residence, may pay without
189 penalty any fees required by this chapter and transfer the title of

190 his or her vehicle in accordance with the provisions of this
191 section.

192 (c) Notwithstanding any provisions of this code to the
193 contrary, the owners of trailers, semitrailers, recreational
194 vehicles and other vehicles not subject to the certificate of title
195 tax prior to the enactment of this chapter are subject to the
196 privilege tax imposed by this section: *Provided*, That the
197 certification of title of any recreational vehicle owned by the
198 applicant on June 30, 1989, is not subject to the tax imposed by
199 this section: *Provided, however*, That mobile homes,
200 manufactured homes, modular homes and similar nonmotive
201 propelled vehicles, except recreational vehicles and house
202 trailers, susceptible of being moved upon the highways but
203 primarily designed for habitation and occupancy, rather than for
204 transporting persons or property, or any vehicle operated on a
205 nonprofit basis and used exclusively for the transportation of
206 intellectually disabled or physically disabled children when the
207 application for certificate of registration for the vehicle is
208 accompanied by an affidavit stating that the vehicle will be
209 operated on a nonprofit basis and used exclusively for the
210 transportation of intellectually disabled and physically disabled
211 children, are not subject to the tax imposed by this section, but
212 are taxable under the provisions of articles fifteen and fifteen-a,
213 chapter eleven of this code.

214 (d) Beginning on July 1, 2008, the tax imposed under this
215 subsection (b) of this section is abolished and after that date no
216 certificate of title for any motor vehicle may be issued to any
217 applicant unless the applicant provides sufficient proof to the
218 Division of Motor Vehicles that the applicant has paid the fees
219 required by this article and the tax imposed under section
220 three-b, article fifteen, chapter eleven of this code.

221 (e) Any person making any affidavit required under any
222 provision of this section who knowingly swears falsely, or any

223 person who counsels, advises, aids or abets another in the
224 commission of false swearing, or any person, while acting as an
225 agent of the Division of Motor Vehicles, issues a vehicle
226 registration without first collecting the fees and taxes or fails to
227 perform any other duty required by this chapter or chapter eleven
228 of this code to be performed before a vehicle registration is
229 issued is, on the first offense, guilty of a misdemeanor and, upon
230 conviction thereof, shall be fined not more than \$500 or be
231 confined in jail for a period not to exceed six months or, in the
232 discretion of the court, both fined and confined. For a second or
233 any subsequent conviction within five years, that person is guilty
234 of a felony and, upon conviction thereof, shall be fined not more
235 than \$5,000 or be imprisoned in a state correctional facility for
236 not less than one year nor more than five years or, in the
237 discretion of the court, both fined and imprisoned.

238 (f) Notwithstanding any other provisions of this section, any
239 person in the military stationed outside West Virginia or his or
240 her dependents who possess a motor vehicle with valid
241 registration are exempt from the provisions of this article for a
242 period of nine months from the date the person returns to this
243 state or the date his or her dependent returns to this state,
244 whichever is later.

245 (g) No person may transfer, purchase or sell a factory-built
246 home without a certificate of title issued by the commissioner in
247 accordance with the provisions of this article:

248 (1) Any person who fails to provide a certificate of title upon
249 the transfer, purchase or sale of a factory-built home is guilty of
250 a misdemeanor and, upon conviction thereof, shall for the first
251 offense be fined not less than \$100 nor more than \$1,000, or be
252 confined in jail for not more than one year, or both fined and
253 confined. For each subsequent offense, the fine may be increased
254 to not more than \$2,000, with confinement in jail not more than
255 one year, or both fined and confined.

256 (2) Failure of the seller to transfer a certificate of title upon
257 sale or transfer of the factory-built home gives rise to a cause of
258 action, upon prosecution thereof, and allows for the recovery of
259 damages, costs and reasonable attorney fees.

260 (3) This subsection does not apply to a mobile or
261 manufactured home for which a certificate of title has been
262 canceled pursuant to section twelve-b of this article.

263 (h) Notwithstanding any other provision to the contrary,
264 whenever reference is made to the application for or issuance of
265 any title or the recordation or release of any lien, it includes the
266 application, transmission, recordation, transfer of ownership and
267 storage of information in an electronic format.

268 (i) Notwithstanding any other provision contained in this
269 section, nothing herein shall be considered to include modular
270 homes as defined in subsection (i), section two, article fifteen,
271 chapter thirty-seven of this code and built to the state Building
272 Code as established by legislative rules promulgated by the state
273 Fire Commission pursuant to section five-b, article three, chapter
274 twenty-nine of this code.

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1a. Preschool programs for severely disabled children; rules and regulations.

1 (a) During the school year beginning on July 1, 1985, each
2 county board of education shall develop a coordinated service
3 delivery plan in accordance with standards for preschool
4 programs for severely disabled children to be developed by the
5 state Board of Education and begin services where plans are
6 already developed.

7 (b) Only in any year in which funds are made available by
8 legislative appropriation, and only to the extent of such funding,
9 each county board of education shall establish and maintain a
10 special educational program, including, but not limited to,
11 special classes and home-teaching and visiting-teacher services
12 for all severely disabled children between the ages of three and
13 five according to the following schedule:

14 (1) By the school year beginning on July 1, 1986, and
15 thereafter, for severely disabled children who are age four before
16 September 1, 1986;

17 (2) By the school year beginning on July 1, 1987, and
18 thereafter, for severely disabled children who are age three
19 before September 1, 1987.

20 As used in this section, the term "severely disabled children"
21 means those children who fall in any one of the following
22 categories as defined or to be defined in the state Board of
23 Education standards for the education of exceptional children:
24 Severe behavioral disorders, severely speech and language
25 impaired, deaf-blind, hearing impaired, autistic, physically
26 disabled profoundly intellectually disabled, trainable
27 intellectually disabled or visually impaired.

28 Before August 1, 1985, the state Board of Education shall
29 adopt rules and regulations to advance and accomplish this
30 program and to assure that an appropriate educational program
31 is available to all such children in the state, including children in
32 mental health facilities, residential institutions and private
33 schools.

34 This section does not prevent county boards of education
35 from providing special education programs, including, but not
36 limited to, special schools, classes, regular class programs and
37 home-teaching or visiting-teacher services for severely disabled

38 preschool children prior to such times as are required by this
39 section. In addition, county boards of education may provide
40 these services to preschool exceptional children in disability
41 categories other than those listed above.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

1 (a) Any male youth between the ages of ten and eighteen
2 years may be committed to the custody of the commissioner of
3 corrections by a circuit court of this state in the manner
4 prescribed in article five, chapter forty-nine of this code; and
5 further, any male youth who has been adjudged delinquent
6 pursuant to subdivision (1), section four, article one, chapter
7 forty-nine of this code, who, as a result thereof, was placed on
8 probation and has been found, in a proceeding pursuant to the
9 procedural requirements of article five, chapter forty-nine of this
10 code, to have violated a term of probation, prior to the attainment
11 of his or her twentieth birthday, which constitutes a criminal
12 offense, may be committed to the custody of the commissioner
13 of corrections as a youthful offender.

14 (b) Every youth committed hereunder shall, following the
15 dispositional proceeding, be transferred to the place or places
16 designated by the commissioner of corrections for complete
17 physical, educational and psychological examinations, including
18 all appropriate tests, to be completed as soon as possible, the
19 completion of the physical examinations to be within twenty
20 days. Such youth shall be housed in a manner so as to prevent
21 the spread of infectious disease. Following disposition and prior

22 to transfer to the custody of the commissioner of corrections,
23 each youth shall be allowed to visit with his or her relatives,
24 without being committed to jail for a period of not less than one
25 hour. The cost of the examinations herein shall be borne by the
26 committing county. The youth shall be provided all treatment
27 and rehabilitation indicated by such examinations.

28 In lieu of the physical examinations and tests provided for
29 herein, the court may, in the absence of objection, have the
30 county health officer or other local health care facility perform
31 physical and mental examinations and tests, so long as such
32 examinations and tests are performed prior to the dispositional
33 proceeding. Except as otherwise provided by law, no child shall
34 be committed to a jail following a dispositional proceeding
35 solely to await a physical, educational or mental examination or
36 the results thereof.

37 (c) All such examinations shall be private. No youth who is
38 mentally ill or significantly intellectually disabled shall be
39 committed to, or retained by, the commissioner of corrections,
40 but shall be returned to the committing court for further
41 disposition. No youth who has a serious infectious disease shall
42 be retained in the custody of the commissioner of corrections,
43 but shall be transferred to an appropriate treatment facility.
44 Detailed medical records shall be kept of every youth.

45 (d) The results of any such physical, educational and
46 psychological examinations, together with a copy of the petition,
47 the adjudicatory order and the dispositional order shall
48 accompany every youth committed to the commissioner of
49 corrections, without which such youth shall not be accepted. The
50 commissioner, or his or her designated representative, shall
51 review the records of each youth committed to assure that no
52 youth is illegally detained in an inappropriate facility or
53 custodial situation.

54 (e) The commissioner of corrections shall have the authority
55 to transfer and place such youth in any of the centers or homes
56 or halfway programs which shall be established, and in less
57 restrictive settings, whether under his or her jurisdiction or
58 private nonprofit residential facilities, as he or she may deem
59 appropriate to promote the rehabilitation of such youth. To the
60 extent possible, no youth under the age of fifteen shall be in
61 regular contact with youths between the ages of sixteen and
62 eighteen.

ARTICLE 5. THE PENITENTIARY.

**§28-5-31. Mentally diseased convicts; treatment; transfer between
penal and mental health facilities; penal facility
procedures.**

1 (a) No person who is, or was considered to be, mentally ill,
2 intellectually disabled or addicted shall be denied parole or a
3 parole hearing based upon such past or present condition. In the
4 event a convicted person is deemed to be an appropriate
5 candidate for parole, but for a condition warranting involuntary
6 hospitalization such person shall be paroled and proceedings
7 instituted pursuant to section four, article five, chapter
8 twenty-seven of this code. Any time spent in such facility shall
9 be considered part of the term, and any person whose sentence
10 expires while receiving treatment for a mental condition shall be
11 discharged unless proceedings have been instituted and a
12 determination made pursuant to section four, article five, chapter
13 twenty-seven of this code.

14 (b) When a convicted person in a jail, prison, or other
15 facility is believed to be mentally ill, intellectually disabled or
16 addicted, as those terms are defined in article one, chapter
17 twenty-seven of this code, and in need of treatment, training or
18 other services, the facts relating to such illness, shall be
19 presented to the chief administrative officer of the facility. Such

20 facts may be presented by a correctional officer, member of a
21 correctional institution medical staff, relative, or the convicted
22 person. Immediately upon receipt of such facts, the chief
23 administrative officer shall arrange for psychiatric or
24 psychological examination of the person alleged to be so
25 afflicted. If the report of the examination is to the effect that the
26 individual is mentally ill, intellectually disabled, or addicted and
27 that treatment, training or other services are required which
28 cannot reasonably be provided at the correctional facility, the
29 chief administrative officer shall file within twenty days after
30 presentation of the facts an application for transfer with the clerk
31 of the circuit court of the county of location of the correctional
32 facility. Such application for transfer shall include a statement of
33 the nature of the treatment which the person's condition warrants
34 and the facility to which transfer is sought.

35 Within ten days of receipt of the application from the chief
36 administrative officer, the mental hygiene commissioner or
37 circuit judge shall appoint counsel for the convicted person if the
38 person is indigent.

39 The clerk of the circuit court shall forthwith notify the
40 convicted person, by certified mail, return receipt requested,
41 delivered only to addressee, that such application has been filed,
42 enclosing therewith a copy of the application with an explanation
43 of the place and purpose of the transfer and the type of treatment
44 to be afforded, together with the name, address, and telephone
45 number of any appointed counsel. The person shall be afforded
46 reasonable telephone access to his or her counsel. The clerk shall
47 also notify the superintendent or other chief administrative
48 officer of the facility to which transfer is sought. Within fifteen
49 days after receipt of notice, the convicted person, through
50 counsel, shall file a verified return admitting or denying the
51 allegations and informing the court or mental hygiene
52 commissioner as to whether the respondent wishes to oppose the
53 transfer. Counsel shall file the return only after personal

54 consultation with the convicted person. The superintendent of
55 the facility to which transfer is sought shall also file a return
56 within fifteen days of the receipt of notice, informing the court
57 or mental hygiene commissioner as to whether the needed
58 treatment or other services can be provided within that facility.
59 If said superintendent objects to receiving the convicted person
60 for treatment or services, the reasons for such objection shall be
61 specified in detail.

62 If the transfer is opposed by either the convicted person or
63 by the superintendent of the facility to which transfer is sought,
64 the matter shall forthwith be set for hearing, in no event to
65 exceed thirty days from the date of the return opposing such
66 transfer, and the clerk shall provide to the convicted person, the
67 superintendent of the facility to which transfer is sought, and the
68 superintendent of the correctional facility, at least ten days'
69 written notice, by certified mail, return receipt requested, of the
70 purpose, time and place of the hearing.

71 The convicted person shall be present at the hearing, and be
72 afforded an opportunity to testify and to present and cross-
73 examine witnesses. Counsel for the convicted person shall be
74 entitled to copies of all medical reports upon request. The person
75 shall have the right to an examination by an independent expert
76 of the person's choice and testimony from such expert as a
77 medical witness on the person's behalf. The cost of providing
78 such medical expert shall be borne by the state if the person is
79 indigent. The person shall not be required to give testimony
80 which is self-incriminating. The circuit court or mental hygiene
81 commissioner shall hear evidence from all parties, in accord with
82 the rules of evidence. A transcript or recording shall be made of
83 all proceedings, and transcript made available to the person
84 within thirty days, if the same is requested for the purpose of
85 further proceedings, and without cost if the person is indigent.

86 Upon completion of the hearing, and consideration of the
87 evidence presented therein, the circuit court or mental hygiene

88 commissioner shall make findings of facts as to whether or not
89 (1) the individual is mentally ill, intellectually disabled or
90 addicted; (2) the individual because of mental illness, mental
91 retardation or addiction is likely to cause serious harm to self or
92 others; (3) the individual could not obtain the requisite treatment
93 or training at the correctional facility or another appropriate
94 correctional facility; and (4) the designated facility to which
95 transfer is sought could provide such treatment or training with
96 such security as the court finds appropriate; and, if all such
97 findings are in the affirmative, the circuit court may order the
98 transfer of such person to the appropriate facility. The findings
99 of fact shall be incorporated into the order entered by the circuit
100 court. In all proceedings hereunder, proof of mental condition
101 and of likelihood of serious harm must be established by clear,
102 cogent and convincing evidence, and the likelihood of serious
103 harm must be based upon evidence of recent overt acts.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman, House Committee



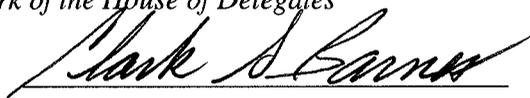
Chairman, Senate Committee

Originating in the House.

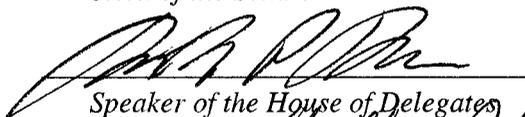
In effect ninety days from passage.



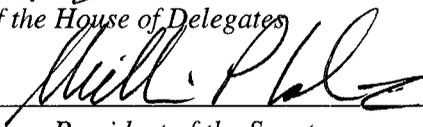
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 25th day of March, 2015.


Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 5:30 pm