

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4820**

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

[Originating in the Committee on Government

Organization; February 17, 2020.]



1 A BILL to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §5-16B-5 of said code; to amend said code by adding thereto a new section,  
3 designated §5A-3-35a; to amend and reenact §5A-3-47 of said code; to amend and  
4 reenact §5B-1-1a of said code; to amend and reenact §5B-2-4 of said code; to amend and  
5 reenact §8-22-18a of said code; to amend and reenact §9-2-9a of said code; to amend  
6 and reenact §9-5-15 of said code; to amend and reenact §12-3A-3 of said code; to amend  
7 and reenact §12-5-7 of said code; to amend and reenact §12-6-4 of said code; to amend  
8 and reenact §12-6C-7 of said code; to amend and reenact §15-2D-3 of said code; to  
9 amend and reenact §15A-3-14 of said code; to amend and reenact §16-29G-3 of said  
10 code; to amend and reenact §17-16A-13 of said code; to amend and reenact §20-1-7 of  
11 said code; to amend and reenact §22C-1-6 of said code; to amend and reenact §23-1-1f  
12 of said code; to amend and reenact §23-2C-3 of said code; to amend and reenact §29-  
13 12-8 of said code; to amend and reenact §29-18-6 of said code; to amend and reenact  
14 §29-22A-19 of said code; to amend and reenact §31A-8A-8 of said code; to amend and  
15 reenact §33-2-9 of said code; to amend and reenact §33-20E-7 of said code; and to amend  
16 and reenact §51-1-17 of said code, all relating to inventory of firearms owned by state  
17 agencies; providing for exempted agencies of the requirements of the purchasing division  
18 be required to submit to the director an inventory of all firearms owned by the agency;  
19 providing that an agency is not exempt from a limited number of sections relating to  
20 inventory; providing that agencies exempt from the requirements of the purchasing  
21 division be required to comply with certain sections for a limited purpose; providing that  
22 all agencies currently exempt from the requirement of the purchasing division remain  
23 exempt from the requirements; and providing for an effective date.

*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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance, and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.**

1           (a) The director is hereby given exclusive authorization to execute such contract or  
2 contracts as are necessary to carry out the provisions of this article and to provide the plan or  
3 plans of group hospital and surgical insurance coverage, group major medical insurance  
4 coverage, group prescription drug insurance coverage, and group life and accidental death  
5 insurance coverage selected in accordance with the provisions of this article, such contract or  
6 contracts to be executed with one or more agencies, corporations, insurance companies or  
7 service organizations licensed to sell group hospital and surgical insurance, group major medical  
8 insurance, group prescription drug insurance and group life and accidental death insurance in this  
9 state.

10           (b) The group hospital or surgical insurance coverage and group major medical insurance  
11 coverage herein provided shall include coverages and benefits for x-ray and laboratory services  
12 in connection with mammogram and pap smears when performed for cancer screening or  
13 diagnostic services and annual checkups for prostate cancer in men age 50 and over. Such  
14 benefits shall include, but not be limited to, the following:

15           (1) Mammograms when medically appropriate and consistent with the current guidelines  
16 from the United States Preventive Services Task Force;

17           (2) A pap smear, either conventional or liquid-based cytology, whichever is medically  
18 appropriate and consistent with the current guidelines from the United States Preventive Services

19 Task Force or The American College of Obstetricians and Gynecologists, for women age 18 and  
20 over;

21 (3) A test for the human papilloma virus (HPV) for women age 18 or over, when medically  
22 appropriate and consistent with the current guidelines from either the United States Preventive  
23 Services Task Force or the American College of Obstetricians and Gynecologists for women age  
24 18 and over;

25 (4) A checkup for prostate cancer annually for men age 50 or over; and

26 (5) Annual screening for kidney disease as determined to be medically necessary by a  
27 physician using any combination of blood pressure testing, urine albumin or urine protein testing,  
28 and serum creatinine testing as recommended by the National Kidney Foundation.

29 (6) Coverage for general anesthesia for dental procedures and associated outpatient  
30 hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals  
31 in conjunction with dental care if the covered person is:

32 (A) Seven years of age or younger or is developmentally disabled and is either an  
33 individual for whom a successful result cannot be expected from dental care provided under local  
34 anesthesia because of a physical, intellectual, or other medically compromising condition of the  
35 individual and for whom a superior result can be expected from dental care provided under  
36 general anesthesia; or

37 (B) A child who is 12 years of age or younger with documented phobias, or with  
38 documented mental illness, and with dental needs of such magnitude that treatment should not  
39 be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss  
40 of teeth or other increased oral or dental morbidity and for whom a successful result cannot be  
41 expected from dental care provided under local anesthesia because of such condition and for  
42 whom a superior result can be expected from dental care provided under general anesthesia.

43 (7) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019,  
44 and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-

45 based formula for the treatment of severe protein-allergic conditions or impaired absorption of  
46 nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the  
47 gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder  
48 by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*  
49 *seq.* of this code:

- 50 (i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food  
51 proteins;
- 52 (ii) Severe food protein-induced enterocolitis syndrome;
- 53 (iii) Eosinophilic disorders as evidenced by the results of a biopsy; and
- 54 (iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface,  
55 function, length, and motility of the gastrointestinal tract (short bowel).

56 (B) The coverage required by §15-16-9(b)(7)(A) of this code shall include medical foods  
57 for home use for which a physician has issued a prescription and has declared them to be  
58 medically necessary, regardless of methodology of delivery.

59 (C) For purposes of this subdivision, “medically necessary foods” or “medical foods” shall  
60 mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided,*  
61 That these foods are specifically designated and manufactured for the treatment of severe allergic  
62 conditions or short bowel.

63 (D) The provisions of this subdivision shall not apply to persons with an intolerance for  
64 lactose or soy.

65 (c) The group life and accidental death insurance herein provided shall be in the amount  
66 of \$10,000 for every employee. The amount of the group life and accidental death insurance to  
67 which an employee would otherwise be entitled shall be reduced to \$5,000 upon such employee  
68 attaining age 65.

69 (d) All of the insurance coverage to be provided for under this article may be included in  
70 one or more similar contracts issued by the same or different carriers.

71           (e) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of  
72 the Department of Finance and Administration, shall not apply to any contracts for any insurance  
73 coverage or professional services authorized to be executed under the provisions of this article.  
74 Before entering into any contract for any insurance coverage, as authorized in this article, the  
75 director shall invite competent bids from all qualified and licensed insurance companies or  
76 carriers, who may wish to offer plans for the insurance coverage desired: *Provided*, That the  
77 director shall negotiate and contract directly with healthcare providers and other entities,  
78 organizations and vendors in order to secure competitive premiums, prices, and other financial  
79 advantages. The director shall deal directly with insurers or healthcare providers and other  
80 entities, organizations, and vendors in presenting specifications and receiving quotations for bid  
81 purposes. No commission or finder's fee, or any combination thereof, shall be paid to any  
82 individual or agent; but this shall not preclude an underwriting insurance company or companies,  
83 at their own expense, from appointing a licensed resident agent, within this state, to service the  
84 companies' contracts awarded under the provisions of this article. Commissions reasonably  
85 related to actual service rendered for the agent or agents may be paid by the underwriting  
86 company or companies: *Provided, however*, That in no event shall payment be made to any agent  
87 or agents when no actual services are rendered or performed. The director shall award the  
88 contract or contracts on a competitive basis. In awarding the contract or contracts the director  
89 shall take into account the experience of the offering agency, corporation, insurance company, or  
90 service organization in the group hospital and surgical insurance field, group major medical  
91 insurance field, group prescription drug field, and group life and accidental death insurance field,  
92 and its facilities for the handling of claims. In evaluating these factors, the director may employ  
93 the services of impartial, professional insurance analysts or actuaries or both. Any contract  
94 executed by the director with a selected carrier shall be a contract to govern all eligible employees  
95 subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance

96 carrier from soliciting employees covered hereunder to purchase additional hospital and surgical,  
97 major medical or life and accidental death insurance coverage.

98 (f) The director may authorize the carrier with whom a primary contract is executed to  
99 reinsure portions of the contract with other carriers which elect to be a reinsurer and who are  
100 legally qualified to enter into a reinsurance agreement under the laws of this state.

101 (g) Each employee who is covered under any contract or contracts shall receive a  
102 statement of benefits to which the employee, his or her spouse and his or her dependents are  
103 entitled under the contract, setting forth the information as to whom the benefits are payable, to  
104 whom claims shall be submitted and a summary of the provisions of the contract or contracts as  
105 they affect the employee, his or her spouse and his or her dependents.

106 (h) The director may at the end of any contract period discontinue any contract or contracts  
107 it has executed with any carrier and replace the same with a contract or contracts with any other  
108 carrier or carriers meeting the requirements of this article.

109 (i) The director shall provide by contract or contracts entered into under the provisions of  
110 this article the cost for coverage of children's immunization services from birth through age 16  
111 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles,  
112 rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Additional  
113 immunizations may be required by the Commissioner of the Bureau for Public Health for public  
114 health purposes. Any contract entered into to cover these services shall require that all costs  
115 associated with immunization, including the cost of the vaccine, if incurred by the healthcare  
116 provider, and all costs of vaccine administration be exempt from any deductible, per visit charge  
117 and/or copayment provisions which may be in force in these policies or contracts. This section  
118 does not require that other healthcare services provided at the time of immunization be exempt  
119 from any deductible and/or copayment provisions.

120 (j) The director is not exempt from the provisions of §5A-3-35a of this code.



**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

**§5-16B-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.**

1 (a) The purpose of the finance board created by this article is to bring fiscal stability to the  
2 Public Employees Insurance Agency through development of annual financial plans and long-  
3 range plans designed to meet the agency's estimated total financial requirements, taking into  
4 account all revenues projected to be made available to the agency and apportioning necessary  
5 costs equitably among participating employers, employees and retired employees and providers  
6 of health care services.

7 (b) The finance board shall retain the services of an impartial, professional actuary, with  
8 demonstrated experience in analysis of large group health insurance plans, to estimate the total  
9 financial requirements of the Public Employees Insurance Agency for each fiscal year and to  
10 review and render written professional opinions as to financial plans proposed by the finance  
11 board. The actuary shall also assist in the development of alternative financing options and  
12 perform any other services requested by the finance board or the director. All reasonable fees  
13 and expenses for actuarial services shall be paid by the Public Employees Insurance Agency.  
14 Any financial plan or modifications to a financial plan approved or proposed by the finance board  
15 pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally  
16 approved and submitted to the Governor and to the Legislature without the actuary's written  
17 professional opinion that the plan may be reasonably expected to generate sufficient revenues to  
18 meet all estimated program and administrative costs of the agency, including incurred but  
19 unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the  
20 financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to  
21 be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include  
22 a requirement for establishment of a reserve fund.

23 (c) All financial plans required by this section shall establish:

24 (1) Maximum levels of reimbursement which the Public Employees Insurance Agency  
25 makes to categories of health care providers;

26 (2) Any necessary cost-containment measures for implementation by the director;

27 (3) The levels of premium costs to participating employers; and

28 (4) The types and levels of cost to participating employees and retired employees.

29 The financial plans may provide for different levels of costs based on the insureds' ability  
30 to pay. The finance board may establish different levels of costs to retired employees based upon  
31 length of employment with a participating employer, ability to pay or other relevant factors. The  
32 financial plans may also include optional alternative benefit plans with alternative types and levels  
33 of cost. The finance board may develop policies which encourage the use of West Virginia health  
34 care providers.

35 In addition, the finance board may allocate a portion of the premium costs charged to  
36 participating employers to subsidize the cost of coverage for participating retired employees, on  
37 such terms as the finance board determines are equitable and financially responsible.

38 (d)(1) The finance board shall prepare an annual financial plan for each fiscal year during  
39 which the finance board remains in existence. The finance board chairman shall request the  
40 actuary to estimate the total financial requirements of the Public Employees Insurance Agency  
41 for the fiscal year.

42 (2) The finance board shall prepare a proposed financial plan designed to generate  
43 revenues sufficient to meet all estimated program and administrative costs of the Public  
44 Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no  
45 more than thirty days of accounts payable to be carried over into the next fiscal year. Before final  
46 adoption of the proposed financial plan, the finance board shall request the actuary to review the  
47 plan and to render a written professional opinion stating whether the plan will generate sufficient  
48 revenues to meet all estimated program and administrative costs of the Public Employees  
49 Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If

50 the actuary concludes that the proposed financial plan will not generate sufficient revenues to  
51 meet all anticipated costs, then the finance board shall make necessary modifications to the  
52 proposed plan to ensure that all actuarially determined financial requirements of the agency will  
53 be met.

54 (3) Upon obtaining the actuary's opinion, the finance board shall conduct one or more  
55 public hearings in each congressional district to receive public comment on the proposed financial  
56 plan, shall review the comments and shall finalize and approve the financial plan.

57 (4) Any financial plan shall be designed to allow thirty days or less of accounts payable to  
58 be carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or  
59 her estimate of total revenues to the finance board no later than October 15, of the preceding  
60 fiscal year: *Provided, That*, for the prospective financial plans required by this section, the  
61 Governor shall estimate the revenues available for each fiscal year of the plans based on the  
62 estimated percentage of growth in general fund revenues. The finance board shall submit its final,  
63 approved financial plan, after obtaining the necessary actuary's opinion and conducting one or  
64 more public hearings in each congressional district, to the Governor and to the Legislature no  
65 later than January 1, preceding the fiscal year. The financial plan for a fiscal year becomes  
66 effective and shall be implemented by the director on July 1, of the fiscal year. In addition to each  
67 final, approved financial plan required under this section, the finance board shall also  
68 simultaneously submit financial statements based on generally accepted accounting practices  
69 (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall  
70 include allowances for incurred but not reported claims: *Provided, however, That* the financial  
71 statements and the accrual-based financial plan restatement shall not affect the approved  
72 financial plan.

73 (e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation,  
74 approval and implementation of the financial plans required by this section.

75 (f) By January 1, of each year the finance board shall submit to the Governor and the  
76 Legislature a prospective financial plan, for a period not to exceed five years, for the programs  
77 provided in this article. Factors that the board shall consider include, but are not limited to, the  
78 trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of  
79 services; and specific information such as average age of employee population, active to retiree  
80 ratios, the service delivery system and health status of the population.

81 (g) The prospective financial plans shall be based on the estimated revenues submitted  
82 in accordance with subdivision (4), subsection (d) of this section and shall include an average of  
83 the projected cost-sharing percentages of premiums and an average of the projected deductibles  
84 and copays for the various programs. Beginning in the plan year which commences on July 1,  
85 2002, and in each plan year thereafter, until and including the plan year which commences on  
86 July 1, 2006, the prospective plans shall include incremental adjustments toward the ultimate level  
87 required in this subsection, in the aggregate cost-sharing percentages of premium between  
88 employers and employees, including the amounts of any subsidization of retired employee  
89 benefits. Effective in the plan year commencing on July 1, 2006, and in each plan year thereafter,  
90 the aggregate premium cost-sharing percentages between employers and employees, including  
91 the amounts of any subsidization of retired employee benefits, shall be at a level of eighty percent  
92 for the employer and twenty percent for employees, except for the employers provided in  
93 subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be  
94 governed by that subsection. After the submission of the initial prospective plan, the board may  
95 not increase costs to the participating employers or change the average of the premiums,  
96 deductibles and copays for employees, except in the event of a true emergency as provided in  
97 this section: *Provided*, That if the board invokes the emergency provisions, the cost shall be borne  
98 between the employers and employees in proportion to the cost-sharing ratio for that plan year:  
99 *Provided, however*, That for purposes of this section, "emergency" means that the most recent  
100 projections demonstrate that plan expenses will exceed plan revenues by more than one percent

101 in any plan year: *Provided further*, That the aggregate premium cost-sharing percentages  
102 between employers and employees, including the amounts of any subsidization of retired  
103 employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

104 (h) The finance board shall meet on at least a quarterly basis to review implementation of  
105 its current financial plan in light of the actual experience of the Public Employees Insurance  
106 Agency. The board shall review actual costs incurred, any revised cost estimates provided by the  
107 actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make  
108 any additional modifications to the plan necessary to ensure that the total financial requirements  
109 of the agency for the current fiscal year are met. The finance board may not increase the types  
110 and levels of cost to employees during its quarterly review except in the event of a true  
111 emergency.

112 (i) For any fiscal year in which legislative appropriations differ from the Governor's  
113 estimate of general and special revenues available to the agency, the finance board shall, within  
114 thirty days after passage of the budget bill, make any modifications to the plan necessary to  
115 ensure that the total financial requirements of the agency for the current fiscal year are met.

116 (j) The finance board is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-35a. Exempt agencies are required to submit annual inventories of firearms.**

1 (a) Any agency exempted from the provisions of this article in §5-16-9, §5-16B-5, §5A-1-  
2 8, §5A-3-1, §5A-3-3, §5A-3-3a, §5A-3-3b, §5A-3-3c, §5A-3-47, §5B-1-1a, §5B-2-4, §8-22-18a,  
3 §9-2-9a, §9-5-15, §12-3A-3, §12-5-7, §12-6-4, §12-6C-7, §15-2D-3, §15A-3-14, §16-29G-3, §17-  
4 16A-13, §20-1-7, §22C-1-6, §23-1-1f, §23-1-1g, §23-2C-3, §29-12-8, §29-18-6, §29-22A-19,  
5 §31A-8A-8, §33-2-9, §33-2-21a, §33-20E-7, or §51-1-17 of this code is not exempt from this  
6 section, §5A-3-34, §5A-3-35, and §5A-3-36 of this code and shall submit to the director an annual

7 inventory of firearms owned by the agency. If any agency does not own any firearms, the agency  
8 shall submit an annual inventory to the director indicating that the agency does not own firearms.

9 (b) All agencies currently exempt from the requirements of this article shall remain exempt  
10 except for the limited purpose of submitting to the director an inventory of the firearms owned by  
11 the agency.

12 (c) The requirements in this section, §5A-3-34, §5A-3-35, and §5A-3-36 shall take effect  
13 on July 1, 2020. The director shall communicate with agencies to ensure timely and accurate  
14 inventory reporting of firearms owned by the agency.

**§5A-3-47. Department of agriculture and other agencies exempted.**

1 Notwithstanding any provisions or limitations of this article, the state Department of  
2 Agriculture and any other state departments or agencies hereafter so designated are authorized  
3 and empowered to distribute food, food stamps, surplus commodities and agricultural products  
4 under contracts and agreements with the federal government or any of its departments or  
5 agencies, and the state Department of Agriculture and any other state departments or agencies  
6 hereafter so designated are authorized and empowered to adopt rules and regulations in order to  
7 conform with federal requirements and standards for such distribution and also for the proper  
8 distribution of such food, food stamps, commodities and agricultural products. To the extent set  
9 forth in this section, the provisions of this article shall not apply to the state Department of  
10 Agriculture and any other state departments or agencies hereafter so designated for the purposes  
11 set forth in this section. The Department is not exempt from the provisions of §5A-3-35a of this  
12 code.

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**ARTICLE 1. DEPARTMENT OF COMMERCE.**

**§5B-1-1a. Marketing and Communications Office.**

1 (a) There is continued in the Department of Commerce the Marketing and  
2 Communications Office. The office is created to provide marketing and communications goods

3 and services to other state agencies, departments, units of state or local government or other  
4 entity or person.

5 (b) The office is authorized to charge for goods and services it provides to other state  
6 agencies. The Secretary of the Department of Commerce shall approve a fee schedule  
7 determining the amounts that may be charged for goods and services provided by the office to  
8 other state agencies. At the discretion of and with the approval of the Secretary of the Department  
9 of Commerce, the office may also sell partnerships, sponsorships or advertising in its publications,  
10 events or promotions to help offset the cost of producing and distributing its products and services.

11 (c) All moneys collected shall be deposited in a special account in the State Treasury to  
12 be known as the Department of Commerce Marketing and Communications Operating Fund.  
13 Expenditures from the fund shall be for the operation of the office and are not authorized from  
14 collections but are to be made only in accordance with appropriation by the Legislature and in  
15 accordance with the provisions of article two, chapter eleven-b of this code.

16 (d) Any balance remaining at the end of any fiscal year shall not revert to the General  
17 Revenue Fund, but shall remain in the fund for expenditures in accordance with the purposes set  
18 forth in this section.

19 (e) The Department of Commerce shall develop and maintain a system of annual or more  
20 frequent performance measures useful in gauging the efficiency and effectiveness of the office's  
21 marketing and communications activities. The measures shall also reflect the office's efficiency  
22 and effectiveness with respect to commercially available marketing and communications services  
23 and any private sector benchmarks which might be identified or created. For the purposes of this  
24 section, "performance measures" means income, output, quality, self-sufficiency and outcome  
25 metrics.

26 (f) On January 1 of each year the Secretary of the Department of Commerce shall report  
27 to the Joint Committee on Government and Finance, the Joint Standing Committee on Finance  
28 and the Joint Commission on Economic Development on the performance of the office. This report

29 is to include a statement of the performance measurements for the office developed by the  
30 Secretary of the Department of Commerce and an analysis of the office's performance.

31 (g) The Department is not exempt from the provisions of §5A-3-35a of this code.

## **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

### **§5B-2-4. Public-private partnerships.**

1 The West Virginia Development Office is authorized to enter into contractual or joint  
2 venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the  
3 state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code  
4 and for purposes of the economic development of West Virginia, and funded from sources other  
5 than the state. The contract shall include provisions relating to the employment of economic  
6 development representatives assigned to the West Virginia Development Office to be paid a base  
7 salary by the state and performance-based economic incentives from private funds of the  
8 nonprofit corporation. Provisions relating to hiring practices with respect to economic development  
9 representatives, job descriptions, accountability, public-private liaison and performance standards  
10 may be the subject of contract negotiations. The contract shall include provision for continuing  
11 education and certification in the field of economic or industrial development for persons  
12 employed as economic development representatives. Agreements providing for the payment of  
13 performance-based incentives to the Executive Director of the West Virginia Development Office  
14 are authorized. Agreements providing for the payment of travel and expenses to the Executive  
15 Director of the West Virginia Development Office or to economic development representatives  
16 from private funds by the nonprofit corporation are authorized. The prohibitions of subdivisions  
17 (b) and (d), section five, article two, chapter six-b of this code are not applicable to the receipt by  
18 economic development representatives or by the executive director of performance-based  
19 incentives and other payments made by the nonprofit corporation and specifically authorized  
20 pursuant to this section.



21 From time to time the executive director may enter into joint ventures wherein the West  
22 Virginia Development Office and the nonprofit corporation share in the development and funding  
23 of economic development programs.

24 All contracts and joint venture agreements must be approved by the executive director.  
25 Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in  
26 substance, a provision that the contract shall be considered cancelled without further obligation  
27 on the part of the state if the State Legislature or, where appropriate, the federal government,  
28 shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be  
29 cancelled.

30 The Development Office is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

#### **§8-22-18a. West Virginia Municipal Pensions Oversight Board created; powers and duties; management; composition; terms; quorum; expenses; reports.**

1 (a)(1) The West Virginia Municipal Pensions Oversight Board, established in 2009, is  
2 hereby continued as a public body corporate for the purpose of monitoring and improving the  
3 performance of municipal policemen's and firemen's pension and relief funds to assure prudent  
4 administration, investment and management of the funds. Management of the oversight board  
5 shall be vested solely in the members of the oversight board. Duties of the oversight board shall  
6 include, but not be limited to, assisting municipal boards of trustees in performing their duties,  
7 assuring the funds' compliance with applicable laws, providing for actuarial studies, distributing  
8 tax revenues to the funds, initiating or joining legal actions on behalf of active or retired pension

9 fund members or municipal boards of trustees to protect interests of the members in the funds  
10 and taking other actions as may be reasonably necessary to provide for the security and fiscal  
11 integrity of the pension funds. The oversight board's authority to initiate legal action does not  
12 preempt the authority of municipalities, municipal policemen's and firemen's boards of trustees or  
13 pension fund active members, beneficiaries or others to initiate legal action to protect interests in  
14 the funds. Further, the oversight board may, in its discretion, investigate the actions or practices  
15 of municipal boards of trustees or of their administrators or employees that, in the oversight  
16 board's judgment, have the potential to threaten the security or fiscal integrity of the pension  
17 funds, and the boards of trustees, administrators and employees shall cooperate with the  
18 oversight board in any investigation. Regardless of whether it has previously conducted an  
19 investigation, the oversight board may initiate or intervene in legal actions to challenge or prevent  
20 any action or practice which, in the oversight board's judgment, has the potential to threaten the  
21 security or fiscal integrity of the pension funds. Establishment of the oversight board does not  
22 relieve the municipal funds' boards of trustees from their fiduciary and other duties to the funds,  
23 nor does it create any liability for the funds on the part of the state. The failure of the oversight  
24 board to investigate or initiate legal actions regarding the actions or practices of municipal boards  
25 of trustees, their administrators or employees does not render the oversight board liable for the  
26 actions or practices. Members and employees of the oversight board are not liable personally,  
27 either jointly or severally, for debts or obligations of the municipal pension and relief funds. Except  
28 as otherwise provided herein, members and employees of the oversight board have a fiduciary  
29 duty toward the municipal pension and relief funds and are liable for malfeasance or gross  
30 negligence. Employees of the oversight board are classified-exempt state employees.

31 (2) The oversight board shall consist of nine members. The Executive Director of the  
32 state's Investment Management Board and the Executive Director of the state's Consolidated  
33 Public Retirement Board, or their designees, shall serve as voting ex officio members. The other  
34 seven members shall be citizens of the state who have been qualified electors of the state for a

35 period of at least one year next preceding their appointment and shall be as follows: An active or  
36 retired member of a Municipal Policemen's Pension and Relief Fund chosen from a list of three  
37 persons submitted to the Governor by the state's largest professional municipal police officers  
38 organization, an active or retired member of a Municipal Firemen's Pension and Relief Fund  
39 chosen from a list of three persons submitted to the Governor by the state's largest professional  
40 firefighters organization, an attorney experienced in finance and investment matters related to  
41 pensions management, two persons experienced in pension funds management, one person who  
42 is a certified public accountant experienced in auditing and one person chosen from a list of three  
43 persons submitted to the Governor by the state's largest association of municipalities.

44 (3) On the effective date of the enactment of this section as amended during the fourth  
45 extraordinary session of the Legislature in 2009, the Governor shall forthwith appoint the  
46 members, with the advice and consent of the Senate. The Governor may remove any member  
47 from the oversight board for neglect of duty, incompetency or official misconduct.

48 (b) The oversight board has the power to:

49 (1) Enter into contracts, to sue and be sued, to implead and be impleaded;

50 (2) Promulgate and enforce bylaws and rules for the management and conduct of its  
51 affairs;

52 (3) Maintain accounts and invest those funds which the oversight board is charged with  
53 receiving and distributing. Investment of those funds may be with the Board of Treasury  
54 Investments or the Investment Management Board at the discretion of the oversight board;

55 (4) Make, amend and repeal bylaws, rules and procedures consistent with the provisions  
56 of this article and chapter thirty-three of this code;

57 (5) Notwithstanding any other provision of law, retain or employ, fix compensation,  
58 prescribe duties and pay expenses of legal, accounting, financial, investment, management and  
59 other staff, advisors or consultants as it considers necessary, including the hiring of legal counsel  
60 and actuary; and

61           (6) Do all things necessary and appropriate to implement and operate the board in  
62 performance of its duties. Expenses shall be paid from the moneys in the Municipal Pensions  
63 Security Fund created in section eighteen-b of this article or, prior to the transition provided in  
64 section eighteen-b of this article, the Municipal Pensions and Protection Fund: *Provided*, That the  
65 board may request special appropriation for special projects. The oversight board is exempt from  
66 provisions of article three, chapter five-a of this code for the purpose of contracting for actuarial  
67 services, including the services of a reviewing actuary.

68           (c) Except for ex officio members, the terms of oversight board members shall be  
69 staggered initially from January 1, 2010. The Governor shall appoint initially one member for a  
70 term of one year, one member for a term of two years, two members for terms of three years, one  
71 member for a term of four years and two members for terms of five years. Subsequent  
72 appointments shall be for terms of five years. A member serving two full consecutive terms may  
73 not be reappointed for one year after completion of his or her second full term. Each member  
74 shall serve until that member's successor is appointed and qualified. Any member may be  
75 removed by the Governor in case of incompetency, neglect of duty, gross immorality or  
76 malfeasance in office. Any vacancy on the oversight board shall be filled by appointment by the  
77 Governor for the balance of the unexpired term.

78           (d) A majority of the full authorized membership of the oversight board constitutes a  
79 quorum. The board shall meet at least quarterly each year, but more often as duties require, at  
80 times and places that it determines. The oversight board shall elect a chairperson and a vice  
81 chairperson from their membership who shall serve for terms of two years and shall select  
82 annually a secretary/treasurer who may be either a member or employee of the board. The  
83 oversight board shall employ an executive director and other staff as needed and shall fix their  
84 duties and compensation. The compensation of the executive director shall be subject to approval  
85 of the Governor. Except for any special appropriation as provided in subsection (b) of this section,  
86 all personnel and other expenses of the board shall be paid from revenue collected and allocated

87 for municipal policemen's or municipal firemen's pension and relief funds pursuant to section  
88 fourteen-d, article three, chapter thirty-three of this code and distributed through the Municipal  
89 Pensions and Protection Fund or the Municipal Pensions Security Fund created in section  
90 eighteen-b of this article. Expenses during the initial year of the board's operation shall be from  
91 proceeds of the allocation for the municipal pensions and relief funds. Expenditures in years  
92 thereafter shall be by appropriation from the Municipal Pensions Security Fund. Money allocated  
93 for municipal policemen's and firemen's pension and relief funds to be distributed from the  
94 Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund shall be first  
95 allocated to pay expenses of the oversight board and the remainder in the fund distributed among  
96 the various municipal pension and relief funds as provided in section fourteen-d, article three,  
97 chapter thirty-three of this code. The board is exempt from the provisions of sections seven and  
98 eleven, article three, chapter twelve of this code relating to compensation and expenses of  
99 members, including travel expenses.

100 (e) Members of the oversight board shall serve the board without compensation for their  
101 services: *Provided*, That no public employee member may suffer any loss of salary or wages on  
102 account of his or her service on the board. Each member of the board shall be reimbursed, on  
103 approval of the board, for any necessary expenses actually incurred by the member in carrying  
104 out his or her duties. All reimbursement of expenses shall be paid out of the Municipal Pensions  
105 Security Fund.

106 (f) The board may contract with other state boards or state agencies to share offices,  
107 personnel and other administrative functions as authorized under this article: *Provided*, That no  
108 provision of this subsection may be construed to authorize the board to contract with other state  
109 boards or state agencies to otherwise perform the duties or exercise the responsibilities imposed  
110 on the board by this code.

111 (g) The board shall propose rules for legislative approval in accordance with the provisions  
112 of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of

113 this article, and may initially promulgate emergency rules pursuant to the provisions of section  
114 fifteen, article three, chapter twenty-nine-a of this code.

115 (h) The oversight board shall report annually to the Legislature's Joint Committee on  
116 Government and Finance and the Joint Committee on Pensions and Retirement concerning the  
117 status of municipal policemen's and firemen's pension and relief funds and shall present  
118 recommendations for strengthening and protecting the funds and the benefit interests of the funds'  
119 members.

120 (i) The oversight board shall cooperate with the West Virginia Investment Management  
121 Board and the Board of Treasury Investments to educate members of the local pension boards  
122 of trustees on the services offered by the two state investment boards. No later than October 31,  
123 2013, the board shall report to the Joint Committee on Government and Finance and the Joint  
124 Committee on Pensions and Retirement a detailed comparison of returns on long-term  
125 investments of moneys held by or allocated to municipal pension and relief funds managed by  
126 the West Virginia Investment Management Board and those managed by others than the  
127 Investment Management Board. The oversight board shall also report at that time on short-term  
128 investment returns by local pension boards using the West Virginia Board of Treasury  
129 Investments compared to short-term investment returns by those local boards of trustees not  
130 using the Board of Treasury Investments.

131 (j) The oversight board shall establish minimum requirements for training to be completed  
132 by each member of the board of trustees of a municipal policemen's or firemen's pension and  
133 relief fund. The requirements should include, but not be limited to, training in ethics, fiduciary duty  
134 and investment responsibilities.

135 (k) The oversight board is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 9. HUMAN SERVICES.**

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

**§9-2-9a. Agreements between the Secretary and three higher education institutions.**

1 Any contract, agreement or memorandum of understanding between the secretary and  
2 West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for  
3 services is exempt from the provisions of article three, chapter five-a of this code: *Provided*, That  
4 any contract entered into under the provisions of subsection five, section six of this article, for the  
5 provision of Medicaid services by a risk-bearing entity, is not exempt from the provisions of article  
6 three, chapter five-a of this code.

7 The Secretary is not exempt from the provisions of §5A-3-35a of this code.

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-15. Medicaid program; preferred drug list and drug utilization review.**

1 The Legislature finds that it is a public necessity that trade secrets, rebate amounts,  
2 percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in  
3 records, as well as any meetings at which this information is negotiated or discussed need  
4 confidentiality to insure the most significant rebates available for the state. Information pertaining  
5 to similar agreements with the federal government and negotiated by pharmaceutical  
6 manufacturers is confidential pursuant to 42 U.S.C. 1396r-8. A rebate as a percentage of average  
7 manufacture price is confidential under federal law and the federal rebate could be made known  
8 if not protected by state law. Because of the protection afforded by federal law, if this information  
9 is not protected by state law, manufacturers will not be willing to offer a rebate in West Virginia.  
10 Further, the Legislature finds that the number and value of supplemental rebates obtained by the  
11 department will increase, to the benefit of Medicaid recipients, if information related to the  
12 supplemental rebates is protected in the records of the department and in meetings in which this  
13 information is disclosed because manufacturers will be assured they will not to be placed at a  
14 competitive disadvantage by exposure of this information.

15 The secretary of the Department of Health and Human Resources has the authority to  
16 develop a preferred drug list, in accordance with federal law, which shall consist of federally

17 approved drugs. The department, through administration of the Medicaid program, may  
18 reimburse, where applicable and in accordance with federal law, entities providing and dispensing  
19 prescription drugs from the preferred drug list.

20 The secretary of the department is hereby authorized to negotiate and enter into  
21 agreements with pharmaceutical manufacturers for supplemental rebates for Medicaid  
22 reimbursable drugs.

23 The provisions of article three, chapter five-a of this code shall not apply to any contract  
24 or contracts entered into under this section.

25 Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and  
26 supplemental rebates which are contained in the department's records and those of its agents  
27 with respect to supplemental rebate negotiations and which are prepared pursuant to a  
28 supplemental rebate agreement are confidential and exempt from all of article one, chapter  
29 twenty-nine-b of this code.

30 Those portions of any meetings of the committee at which trade secrets, rebate amounts,  
31 percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed for  
32 discussion or negotiation of a supplemental rebate agreement are exempt from all of article nine-  
33 a, chapter six of this code.

34 The secretary of the department will monitor and evaluate the effects of this provision on  
35 Medicaid recipients, the Medicaid program, physicians and pharmacies.

36 The commissioner shall implement a drug utilization review program to assure that  
37 prescribing and dispensing of drug products result in the most rational cost-effective medication  
38 therapy for Medicaid patients.

39 Any moneys received in supplemental rebates will be deposited in the medical services  
40 fund established in section two, article four, chapter nine of this code.

41 The department is not exempt from the provisions of §5A-3-35a of this code.



## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

#### **§12-3A-3. Financial electronic commerce.**

1           (a) The State Auditor and the State Treasurer shall implement electronic commerce  
2 capabilities for each of their offices to facilitate the performance of their duties under this code.  
3 The State Treasurer shall competitively bid the selection of vendors needed to provide the  
4 necessary banking, investment and related goods and services, and the provisions of article one-  
5 b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless  
6 requested by the State Treasurer.

7           (b) A document or a signature received, issued or used by the Auditor or the Treasurer  
8 shall be considered an original and may not be denied legal effect on the ground that it is in  
9 electronic form.

10           (c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or  
11 submitted to his or her respective office be filed or submitted in a prescribed electronic format.

12           (d) The Auditor or Treasurer, in his or her discretion, may waive:

13           (1) Any requirements for a document filed or submitted in an electronic format; or

14           (2) Any requirements for the certification, notarization or verification of a document filed or  
15 submitted in an electronic format.

16           (e) The head of each spending unit is responsible for adopting and implementing security  
17 procedures to ensure adequate integrity, security, confidentiality and auditability of the business  
18 transactions of his or her spending unit when utilizing electronic commerce.

19           (f) The Auditor and Treasurer are not exempt from the provisions of §5A-3-35a of this code.

### **ARTICLE 5. PUBLIC SECURITIES.**

#### **§12-5-7. Treasurer as financial advisor; selection of necessary parties; employment of bond counsel.**

1           Unless otherwise specifically provided by law, the treasurer may select or serve as  
2 financial advisor for all bonds, notes, certificates of participation, certificate transactions and all  
3 other forms of securities and indebtedness issued by the state through its departments,  
4 commissions, boards or agencies after July 1, 1997. Unless otherwise specifically provided by  
5 law, the Governor shall coordinate the issuance of all bonds issued by the state and its  
6 departments, commissions, boards and agencies, through the Department of Administration and  
7 the Governor shall select all other necessary parties, including, but not limited to, bond, disclosure  
8 or other counsel, underwriters, trustee, verification agent and any other professionals necessary  
9 to effectuate the issuance of the bonds: *Provided*, That this section shall not apply to the Housing  
10 Development Fund created pursuant to article eighteen, chapter thirty-one of this code; and the  
11 hospital finance authority created pursuant to article twenty-nine-a, chapter sixteen of this code;  
12 the West Virginia economic development authority created pursuant to article fifteen, chapter  
13 thirty-one of this code; the West Virginia Parkways, Economic Development and Tourism  
14 Authority created pursuant to article sixteen-a, chapter seventeen of this code; the West Virginia  
15 public energy authority created pursuant to article one, chapter five-d of this code; the West  
16 Virginia solid waste management board created pursuant to article three, chapter twenty-two-c of  
17 this code; the West Virginia water development authority created pursuant to article one, chapter  
18 twenty-two-c of this code; the infrastructure and jobs development council created pursuant to  
19 article fifteen-a, chapter thirty-one of this code; the School Building Authority created pursuant to  
20 article nine-d, chapter eighteen of this code; and the governing boards of higher education:  
21 *Provided, however*, That these entities shall be governed by those provisions of law specifically  
22 designating financial and other professional counsel and personnel for bond issuances. All  
23 selections of professionals shall be competitive, but the bidding shall not be required to comply  
24 with the provisions of article three, chapter five-a of this code. The Treasurer is not exempt from  
25 the provisions of §5A-3-35a of this code.

**ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

**§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.**

1 (a) The management and control of the board shall be vested solely in the trustees in  
2 accordance with the provisions of this article.

3 (b) The Governor shall be the chairman of the board and the trustees shall elect a vice  
4 chairman who may not be a constitutional officer or his or her designee to serve for a term of two  
5 years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman  
6 to a new two-year term. The vice chairman shall preside at all meetings in the absence of the  
7 chairman. Annually, the trustees shall elect a secretary, who need not be a member of the board,  
8 to keep a record of the proceedings of the board.

9 (c) The trustees shall appoint a chief executive officer of the board and shall fix his or her  
10 duties and compensation. The chief executive officer shall have five years' experience in  
11 investment management with public or private funds within the ten years next preceding the date  
12 of appointment. The chief executive officer additionally shall have academic degrees, professional  
13 designations and other investment management or investment oversight or institutional  
14 investment experience in a combination the trustees consider necessary to carry out the  
15 responsibilities of the chief executive officer position as defined by the trustees.

16 (d) The trustees shall retain an internal auditor to report directly to the trustees and shall  
17 fix his or her compensation. The internal auditor shall be a certified public accountant with at least  
18 three years' experience as an auditor. The internal auditor shall develop an internal audit plan,  
19 with board approval, for the testing of procedures and the security of transactions.

20 (e) The board shall procure and maintain in effect commercially customary property,  
21 liability, crime and other insurance to cover risks of loss from its operations. The types and  
22 amounts of the insurance coverages shall be determined by the board, from time to time, in its  
23 reasonable discretion, with reference to the types and amounts of insurance coverages

24 purchased or maintained by other public institutions performing functions similar to those  
25 performed by the board: *Provided*, That the board shall purchase a blanket bond for the faithful  
26 performance of its duties in the amount of at least \$10 million. The board may require that  
27 appropriate types and amounts of insurance be procured and maintained by, or a fiduciary or  
28 surety bond from a surety company qualified to do business in this state for, any person who has  
29 charge of, or access to, any securities, funds or other moneys held by the board and the amount  
30 of the fiduciary or surety bond shall be fixed by the board. The premiums payable on any  
31 insurance or fiduciary or surety bonds that the board may require, from time to time, shall be an  
32 expense of the board. In connection with the duties of the board under this subsection, the board  
33 may establish, fund and maintain a self-insurance account. If established, the board shall deposit  
34 and maintain moneys in the self-insurance account in amounts as may be determined by the  
35 board in consultation with one or more qualified insurance or actuarial consultants, and all moneys  
36 in any self-insurance account may be used only for the purpose of providing self-insurance,  
37 establishing reserves in connection with insurance deductibles, self-insured retentions or self-  
38 insurance, or helping to defray the costs of insurance procured under this subsection, and for no  
39 other purpose. The board may procure any and all insurance coverages and bonds deemed  
40 appropriate by the board or required by the provisions of this article, either through the state Board  
41 of Risk and Insurance Management or in the commercial markets, in the discretion of the board.

42 (f) The trustees and employees of the board are not liable personally, either jointly or  
43 severally, for any debt or obligation created by the board: *Provided*, That the trustees and  
44 employees of the board are liable for acts of misfeasance or gross negligence.

45 (g) The board is exempt from the provisions of sections seven and eleven, article three of  
46 this chapter and article three, chapter five-a of this code: *Provided*, That the trustees and  
47 employees of the board are subject to purchasing policies and procedures which shall be  
48 promulgated by the board. The purchasing policies and procedures may be promulgated as  
49 emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

50 (h) Any employee of the West Virginia Trust Fund who previously was an employee of  
51 another state agency may return to the Public Employees Retirement System pursuant to section  
52 eighteen, article ten, chapter five of this code and may elect to either: (1) Transfer to the Public  
53 Employees Retirement System his or her employee contributions, with accrued interest and, if  
54 vested, his or her employer contributions, with accrued interest and retain as credited state  
55 service all time served as an employee of the West Virginia Trust Fund; or (2) retain all employee  
56 contributions with accrued interest and, if vested, his or her employer contributions with interest  
57 and forfeit all service credit for the time served as an employee of the West Virginia Trust Fund.

58 (i) The West Virginia Trust Fund is not exempt from the provisions of §5A-3-35a of this  
59 code.

**ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.**

**§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for  
directors; liability of directors.**

1 (a) The management and control of the Consolidated Fund is vested solely in the Board  
2 in accordance with the provisions of this article.

3 (b) The State Treasurer is the chairperson of the Board. The Board shall elect a vice  
4 chairperson. Annually, the directors shall elect a secretary to keep a record of the proceedings of  
5 the Board and provide any other duties required by the board. The board may elect a person who  
6 is not a member of the board as secretary.

7 (c) The board may use the staff of the State Treasurer, employ personnel and contract  
8 with any person or entity needed to perform the tasks related to operating the Consolidated Fund.

9 (d) The Board shall retain an internal auditor to report directly to the Board and shall fix  
10 his or her compensation. As a minimum qualification, the internal auditor shall be a certified public  
11 accountant with at least three years' experience as an auditor. The internal auditor shall develop  
12 an internal audit plan, with board approval, for the testing of procedures, internal controls and the  
13 security of transactions.

14 (e) The Board may retain one employee with a chartered financial analyst designation or  
15 an employee who is a certified treasury manager.

16 (f) Each director shall give a separate fiduciary or surety bond from a surety company  
17 qualified to do business within this State in a penalty amount of one million dollars for the faithful  
18 performance of his or her duties as a director. The Board shall purchase a blanket bond for the  
19 faithful performance of its duties in the amount set by the board of at least \$10 million. The amount  
20 of the blanket bond is in addition to the \$1 million individual bond required of each director by the  
21 provisions of this section. The Board may require a fiduciary or surety bond from a surety company  
22 qualified to do business in this state for any person who has charge of, or access to, any  
23 securities, funds or other moneys held by the board and the amount of the fiduciary or surety bond  
24 are fixed by the board. The premiums payable on all fiduciary or surety bonds are expenses of  
25 the board.

26 (g) The directors, employees of the Board and employees of the State Treasurer  
27 performing work for or on behalf of the Board are not liable personally, either jointly or severally,  
28 for any debt or obligation created by the Board: *Provided*, That the directors and employees of  
29 the Board are liable for acts of misfeasance or gross negligence.

30 (h) The board is exempt from the provisions of article three, chapter five-a, and sections  
31 seven and eleven, article three, chapter twelve of this code. However, the board is subject to the  
32 purchasing policies and procedures of the State Treasurer's Office: *Provided*, That the board is  
33 not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.**

#### **§15-2D-3. Duties and powers of the director and officers.**

1 (a) The director is responsible for the control and supervision of the division. The director  
2 and any officer of the division specified by the director may carry designated weapons and have  
3 the same powers of arrest and law enforcement in Kanawha County as members of the West

4 Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and  
5 designated officers shall also have such powers throughout the State of West Virginia in  
6 investigating and performing law-enforcement duties for offenses committed on the Capitol  
7 Complex or related to the division's security and protection duties at the Capitol Complex and  
8 throughout the state relating to offenses and activities occurring on any property owned, leased,  
9 or operated by the State of West Virginia when undertaken at the request of the agency occupying  
10 the property: *Provided*, That nothing in this article shall be construed as to obligate the director or  
11 the division to provide, or be responsible for providing, security at state facilities outside the  
12 Capitol Complex.

13 (b) Any officer of the division shall be certified as a law-enforcement officer by the  
14 Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed  
15 as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this  
16 code.

17 (c) The director may:

18 (1) Employ necessary personnel, all of whom shall be classified exempt, assign them the  
19 duties necessary for the efficient management and operation of the division, and specify members  
20 who may carry, without license, weapons designated by the director;

21 (2) Contract for security and other services;

22 (3) Purchase equipment as necessary to maintain security at the Capitol Complex and  
23 other state facilities as may be determined by the Secretary of the Department of Military Affairs  
24 and Public Safety. The provisions of §5A-3-3 of this code do not apply to purchases made  
25 pursuant to this subdivision;

26 (4) Establish and provide standard uniforms, arms, weapons, and other enforcement  
27 equipment authorized for use by members of the division and shall provide for the periodic  
28 inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property

29 furnished to members of the division by the State of West Virginia is and remains the property of  
30 the state;

31 (5) Appoint security officers to provide security on premises owned or leased by the State  
32 of West Virginia;

33 (6) Upon request by the Superintendent of the West Virginia State Police, provide security  
34 for the Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice  
35 of the Supreme Court of Appeals;

36 (7) Gather information from a broad base of employees at and visitors to the Capitol  
37 Complex to determine their security needs and develop a comprehensive plan to maintain and  
38 improve security at the Capitol Complex based upon those needs; and

39 (8) Assess safety and security needs and make recommendations for safety and security  
40 at any proposed or existing state facility as determined by the Secretary of the Department of  
41 Military Affairs and Public Safety, upon request of the secretary of the department to which the  
42 facility is or will be assigned: *Provided*, That records of such assessments, and any other records  
43 determined by the Secretary of the Department of Military Affairs and Public Safety to compromise  
44 the safety and security at any proposed or existing state facility, are not public records and are  
45 not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 *et*  
46 *seq.* of this code.

47 (d) The director shall:

48 (1) On or before July 1, 1999, propose legislative rules for promulgation in accordance  
49 with the provisions of §29A-3-1 *et seq.* of this code. The rules shall, at a minimum, establish ranks  
50 and the duties of officers within the membership of the division.

51 (2) On or before July 1, 1999, enter into an interagency agreement with the Secretary of  
52 the Department of Military Affairs and Public Safety and the Secretary of the Department of  
53 Administration, which delineates their respective rights and authorities under any contracts or  
54 subcontracts for security personnel. A copy of the interagency agreement shall be delivered to



55 the Governor, the President of the Senate, and the Speaker of the House of Delegates, and a  
56 copy shall be filed in the office of the Secretary of State and shall be a public record.

57 (3) Deliver a monthly status report to the Speaker of the House of Delegates and the  
58 President of the Senate.

59 (4) Require any service provider whose employees are regularly employed on the  
60 grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical  
61 information, to have its employees submit to a fingerprint-based state and federal background  
62 inquiry through the state repository, and require a new employee who is employed to provide  
63 services on the grounds or in the building of the Capitol Complex to submit to an employment  
64 eligibility check through E-verify.

65 (i) After the contract for such services has been approved, but before any such employees  
66 are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to  
67 sensitive or critical information, the service provider shall submit a list of all persons who will be  
68 physically present and working at the Capitol Complex for purposes of verifying compliance with  
69 this section.

70 (ii) All current service providers shall, within 90 days of the amendment and reenactment  
71 of this section by the 80th Legislature, ensure that all of its employees who are providing services  
72 on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or  
73 critical information submit to a fingerprint-based state and federal background inquiry through the  
74 state repository.

75 (iii) Any contract entered into, amended, or renewed by an agency or entity of state  
76 government with a service provider shall contain a provision reserving the right to prohibit specific  
77 employees thereof from accessing sensitive or critical information or to be present at the Capitol  
78 Complex based upon results addressed from a criminal background check.

79 (iv) For purposes of this section, the term "service provider" means any person or  
80 company that provides employees to a state agency or entity of state government to work on the

81 grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or  
82 critical information.

83 (v) In accordance with the provisions of Public Law 92-544 the criminal background check  
84 information will be released to the Director of the Division of Protective Services.

85 (5) Be required to provide his or her approval prior to the installation of any and all  
86 electronic security systems purchased by any state agency which are designed to connect to the  
87 division's command center.

88 (e) Effective July 1, 2017, the Director of Security and security officers of the Department  
89 of Arts, Culture, and History shall be made part of, and be under the supervision and direction of,  
90 the Division of Protective Services. Security for all Capitol Complex properties of the Department  
91 of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

92 (f) The division is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.**

### **ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.**

#### **§15A-3-14. Exempt from Purchasing Division; purchasing procedures.**

1 (a) The provisions established in §5A-3-1 *et seq.* of this code do not apply to the division  
2 or any institution under the control of the division.

3 (b) When the cost under any contract or agreement entered into by the division, other than  
4 compensation for personal services, involves an expenditure of more than \$2,500 and less than  
5 \$25,000, the division shall solicit at least three bids, if possible, from vendors and make a written  
6 contract, or agreement, with the lowest responsible bidder. When the cost under any contract or  
7 agreement entered into by the division, other than compensation for personal services, involves  
8 an expenditure of \$25,000 or more, the division shall make a written contract with the lowest  
9 responsive, responsible bidder after public notice is published, which notice shall state the general

10 character of the work and general character of the materials to be furnished, the place where  
11 plans and specifications therefor may be examined, and the time and place of receiving bids. The  
12 notice may be published by an advertising medium the division deems advisable. The division  
13 may also solicit sealed bids by sending requests by mail or electronic transmission to prospective  
14 vendors. But a contract for lease of a correctional facility is not subject to the foregoing  
15 requirements and the division may enter into the contract for lease pursuant to negotiation upon  
16 the terms and conditions and for the period as it finds to be reasonable and proper under the  
17 circumstances and in the best interests of proper operation or efficient acquisition or construction  
18 of the projects. The division may reject any and all bids. A bond with good and sufficient surety,  
19 approved by the division, may be required by the division. The good and sufficient surety may be  
20 in the form of a bid bond, performance bond, payment bond, maintenance bond, labor and  
21 materials bond, or any other type of surety deemed necessary by the division.

22 (c) The division may use best value procurement to enter into a contract when the  
23 commissioner determines in writing that it is advantageous to the state.

24 (1) A solicitation for bids under best value procurement shall be made in the same manner  
25 as provided in this section.

26 (2) Best value procurement awards shall be based on criteria set forth in the solicitation  
27 and information contained in the proposals submitted in response to the solicitation. Those criteria  
28 include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and  
29 supporting a commodity or service over its projected lifetime, as well as technical criteria. The  
30 technical criteria may include, but are not limited to, the evaluated technical merit of the bidder's  
31 bid or proposal, the bidder's past performance, the degree to which a proposal exceeds other  
32 proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the  
33 evaluated probability of performing the requirements stated in the solicitation on time, with high  
34 quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

35           (3) The award must be made to the highest scoring responsive and responsible bidder  
36 whose bid is determined, in writing, to be most advantageous to the state, taking into  
37 consideration all evaluation factors set forth in the best value solicitation.

38           (4) The division may not use best value procurement to enter into government construction  
39 contracts, including, but not limited to, those set forth in §5-22-1 *et seq.* of this code.

40           (d)(1) The division may make a direct award of a contract without competitive bidding if:

41           (A) The commissioner shall make a written determination that the direct award is in the  
42 best interest of the state;

43           (B) The division documents in writing that competition is not available because there is no  
44 other source for the commodity or service, or that no other source would be willing or able to  
45 replace the existing source without a detrimental effect on the division, the existence of a  
46 detrimental effect being determined by the commissioner in his or her sole discretion;

47           (C) The division publicly advertises a notice of intent to make a direct award without  
48 competition in the state's official bid notification system, as well as any other public advertisement  
49 that the division deems appropriate, for no less than 10 business days; and

50           (D) No other vendor expresses an interest in providing the commodity or service in  
51 question.

52           (2) If a vendor expresses an interest in providing the commodity or service described in  
53 the notice of intent to make a direct award, then the division must convert the direct award to a  
54 competitive bid, unless the commissioner determines that the interest expressed by a vendor is  
55 unreasonable. The competitive bid may, at the discretion of the commissioner, be either a request  
56 for quotation or request for proposal.

57           (3) The notice of intent to make a direct award shall contain the following information:

58           (A) A description of the commodity or service for which a direct award will be made;

59           (B) A time period by which delivery must be made or performance must occur;

60           (C) The price that will be paid for the commodity or service;

61 (D) Any limitations that a competing vendor would need to satisfy;

62 (E) An invitation to all vendors interested in providing the commodity or service to make  
63 that interest known; and

64 (F) Contact information for the commissioner or his or her designee, and instructions to  
65 submit a statement of interest to the commissioner or his or her designee.

66 (e) The commissioner, or division, shall not award a contract or renew a contract to any  
67 vendor or prospective vendor when the vendor or prospective vendor, or a related party to the  
68 vendor or prospective vendor, is a debtor and:

69 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

70 (2) The debtor is in employer default.

71 (f) The division has the authority to run criminal background checks, financial background  
72 checks, a licensing check, and a credit check, and any vendor, or any and all principals in a  
73 company or corporation, must submit to said checks to be eligible to be awarded a contract for  
74 the division. The commissioner, or division, shall not award a contract to a vendor if any of the  
75 following are present:

76 (1) Conviction of an offense involving fraud or a felony offense in connection with obtaining  
77 or attempting to obtain a public contract or subcontract;

78 (2) Conviction of any federal or state antitrust statute relating to the submission of offers;

79 (3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or  
80 destruction of records, making false statements, or receiving stolen property in connection with  
81 the performance of a contract;

82 (4) Conviction of a felony offense demonstrating a lack of business integrity or business  
83 honesty that affects the present responsibility of the vendor or subcontractor;

84 (5) Default on obligations owed to the state, including, but not limited to, obligations owed  
85 to the Workers' Compensation Fund, as defined in §23-2C-1 *et seq.* of this code, and obligations  
86 under the West Virginia Unemployment Compensation Act and West Virginia state tax and

87 revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the  
88 vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into  
89 a repayment agreement with the appropriate agency of the state or has entered into a repayment  
90 agreement but does not remain in compliance with its obligations under the repayment  
91 agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a  
92 vendor granted an exemption under any rule of the Bureau of Employment Programs or the  
93 Insurance Commission, the commissioner may award a contract: *Provided*, That in no event may  
94 the contract be awarded to any vendor who has not paid all current state obligations for at least  
95 the four most recent calendar quarters, excluding the current calendar quarter, or with respect to  
96 any vendor who is in default on a repayment agreement with an agency of the state;

97 (6) The vendor is not in good standing with a licensing board, in that the vendor is not  
98 licensed when licensure is required by the law of this state, or the vendor has been found to be  
99 in violation of an applicable licensing law after notice, opportunity to be heard, and other due  
100 process required by law;

101 (7) The vendor is an active and knowing participant in dividing or planning procurements  
102 to circumvent the \$25,000 threshold requiring a sealed bid or otherwise avoid the use of a sealed  
103 bid; or

104 (8) Violation of the terms of public contracts or subcontracts for:

105 (A) Willful failure to substantially perform in accordance with the terms of one or more  
106 public contracts;

107 (B) Performance in violation of standards established by law or generally accepted  
108 standards of the trade or profession amounting to intentionally deficient or grossly negligent  
109 performance on one or more public contracts;

110 (C) Use of substandard materials on one or more public contracts or defects in  
111 construction in one or more public construction projects amounting to intentionally deficient or

112 grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a  
113 construction project and expiration of any warranty thereunder;

114 (D) A repeated pattern or practice of failure to perform so serious and compelling as to  
115 justify disqualification; or

116 (E) Any other cause of a serious and compelling nature amounting to knowing and willful  
117 misconduct of the vendor that demonstrates a wanton indifference to the interests of the public  
118 and that caused, or that had a substantial likelihood of causing, serious harm to the public.

119 (g) Unless the context clearly requires a different meaning, for the purposes of this section,  
120 the term:

121 (1) "Debt" means any assessment, premium, penalty, fine, tax, or other amount of money  
122 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,  
123 license assessment, amounts owed to the Workers' Compensation Fund as defined in §23-2C-1  
124 *et seq.* of this code, penalty, or other assessment or surcharge presently delinquent or due and  
125 required to be paid to the state or any of its political subdivisions, including any interest or  
126 additional penalties accrued thereon;

127 (2) "Debtor" means any individual, corporation, partnership, association, limited liability  
128 company, or any other form of business association owing a debt to the state or any of its political  
129 subdivisions, and includes any person or entity that is in employer default;

130 (3) "Employer default" means having an outstanding balance or liability to the Old Fund or  
131 to the Uninsured Employers' Fund or being in policy default, as defined in §23-2C-2 of this code,  
132 failure to maintain mandatory workers' compensation coverage, or failure to fully meet its  
133 obligations as a workers' compensation self-insured employer. An employer is not in employer  
134 default if it has entered into a repayment agreement with the Insurance Commissioner and  
135 remains in compliance with the obligations under the repayment agreement;

136 (4) "Political subdivision" means any county commission; municipality; county board of  
137 education; any instrumentality established by a county or municipality; any separate corporation

138 or instrumentality established by one or more counties or municipalities, as permitted by law; or  
139 any public body charged by law with the performance of a government function and whose  
140 jurisdiction is coextensive with one or more counties or municipalities; and

141 (5) "Related party" means a party, whether an individual, corporation, partnership,  
142 association, limited liability company, or any other form of business association or other entity  
143 whatever, related to any vendor by blood, marriage, ownership, or contract through which the  
144 party has a relationship of ownership or other interest with the vendor so that the party will actually,  
145 or by effect, receive or control a portion of the benefit, profit, or other consideration from  
146 performance of a vendor contract with the party receiving an amount that meets or exceeds five  
147 percent of the total contract amount.

148 (h) The prohibitions of subdivision (5), subsection (f) of this section do not apply where a  
149 vendor has contested any tax administered pursuant to chapter 11 of this code, amount owed to  
150 the Workers' Compensation Fund as defined in §23-2C-1 *et seq.* of this code, permit fee, or  
151 environmental fee or assessment and the matter has not become final, or where the vendor has  
152 entered into a payment plan or agreement and the vendor is not in default of any of the provisions  
153 of such plan or agreement.

154 (i) The division may disqualify a vendor if award to the vendor would jeopardize the safe,  
155 secure, and orderly operations of the division.

156 (j) All bids, contract proposals, or contracts with the state or any of its political subdivisions  
157 submitted or approved under the provisions of this code shall include an affidavit that the vendor,  
158 prospective vendor, or a related party to the vendor or prospective vendor is not in employer  
159 default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is owed, that the  
160 provisions of subsection (h) of this section apply.

161 (k) If the division has to make a purchase under emergency conditions, or an emergency  
162 situation, that jeopardizes the safe, secure, and orderly operations of the division, as deemed by



163 the commissioner, and approved by the Secretary of the Department of Military Affairs and Public  
164 Safety, subsection (b) of this section shall not apply.

165 (l) The commissioner may enter into agreements with medical schools and institutions of  
166 higher education in this state to develop standards for appropriate and innovative medical  
167 programming and care for inmates: *Provided*, That the division will follow the procedures set forth  
168 in subsection (b) of this section for delivery of regular and normal medical care within the facilities.

169 (m) Notwithstanding any other provision of this code to the contrary, any records obtained  
170 in response to solicitations for bids from the division shall not be subject to disclosure pursuant to  
171 §29B-1-1 *et seq.* of this code, until and unless the time frame for submission of bids has closed:  
172 *Provided*, That once bids close, the records may be exempt from disclosure pursuant to §29B-1-  
173 4 of this code. Any record relating to any solicitation for, or purchase of, any item related to the  
174 safe and secure running of any facility under the jurisdiction of the Commissioner of the Division  
175 of Corrections and Rehabilitation is not subject to disclosure pursuant to §29B-1-1 *et seq.* of this  
176 code.

177 (n) The division is not exempt from the provisions of §5A-3-35a of this code.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

#### §16-29G-3. Powers and duties.

1 The network shall have the following duties:

2 (1) To develop a community-based health information network to facilitate communication  
3 of patient clinical and financial information designed to:

4 (A) Promote more efficient and effective communication among multiple health care  
5 providers, including, but not limited to, hospitals, physicians, payers, employers, pharmacies,  
6 laboratories and other health care entities;

7 (B) Create efficiencies in health care costs by eliminating redundancy in data capture and  
8 storage and reducing administrative, billing and data collection costs;

9 (C) Create the ability to monitor community health status; and

10 (D) Provide reliable information to health care consumers and purchasers regarding the  
11 quality and cost-effectiveness of health care, health plans and health care providers;

12 (2) To develop or design other initiatives in furtherance of the network's purpose;

13 (3) To report and make recommendations to the Health Care Authority.

14 The network is granted all other incidental powers, including, but not limited to, the  
15 following:

16 (A) Make and enter into all contracts and agreements and execute all instruments  
17 necessary or incidental to the performance of its duties and the execution of its powers, subject  
18 to the availability of funds: *Provided*, That the provisions of article three, chapter five-a of this code  
19 do not apply to the agreements and contracts executed under the provisions of this article;

20 (B) Acquire by gift or purchase, hold or dispose of real and personal property in the  
21 exercise of its powers and performance of its duties as set forth in this article;

22 (C) Receive and dispense funds appropriated for its use by the Legislature or other funding  
23 sources or solicit, apply for and receive any funds, property or services from any person,  
24 governmental agency or organization to carry out its statutory duties;

25 (D) Represent the state with respect to national health information network initiatives;

26 (E) Perform any and all other activities in furtherance of its purpose or as directed by the  
27 Health Care Authority.

28 (3) The network is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.**

#### **§17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.**

1 (a) The Parkways Authority is hereby authorized to fix, revise, charge and collect tolls and  
2 fees for the use of each parkway project and the different parts or sections thereof and to fix,

3 revise, charge and collect rents, fees, charges and other revenues, of whatever kind or character,  
4 for the use of each economic development project or tourism project, or any part or section  
5 thereof, and to contract with any person, partnership, association or corporation desiring the use  
6 of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon  
7 telephone, fiber optic or other data transmission lines or devices, electric light, power or other  
8 utility lines, gas stations, garages, stores, hotels, restaurants and advertising signs, or for any  
9 other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents  
10 and rates of charges for such use: *Provided*, That the Parkways Authority may not charge tolls or  
11 fees for transit over an existing road without express legislative authorization for the charging of  
12 such tolls or fees: *Provided, however*, That an existing road does not include the West Virginia  
13 Turnpike, new lanes or new sections of an existing road, the replacement or construction of any  
14 bridge or tunnel, or related facilities. Such tolls, rents, fees and charges shall be so fixed and  
15 adjusted in respect of the aggregate of tolls, or in respect of the aggregate rents, fees and  
16 charges, from the project or projects in connection with which the bonds of any issue shall have  
17 been issued as to provide a fund sufficient with other revenues, if any: (1) To pay the cost of  
18 acquiring, constructing, reconstructing, maintaining, repairing, improving and operating such  
19 project or projects and to create reserves therefor; (2) to pay the principal of and the interest on  
20 such bonds and related costs and expenses as the same shall become due and payable, and to  
21 create reserves for such purposes; and (3) to comply with any covenants under any trust  
22 agreement securing any bonds issued by the Parkways Authority, or any predecessor thereof, or  
23 to maintain bond credit ratings. Such tolls, rents, fees and other charges shall not be subject to  
24 supervision or regulation by any other commission, board, bureau, department or agency of the  
25 state. The tolls, rents, fees, charges and all other revenues derived from the project or projects in  
26 connection with which the bonds of any issue shall have been issued, except such part thereof  
27 as may be necessary to pay the cost of acquiring, constructing, reconstructing, maintaining,  
28 improving, repairing and operating such project or projects and to provide such reserves therefor

29 as may be provided in the resolution authorizing the issuance of such bonds or in the trust  
30 agreement securing the same, shall be set aside at regular intervals as may be provided in the  
31 resolution or the trust agreement in a sinking fund which is hereby pledged to, and charged with,  
32 the payment of: (i) The interest upon the bonds as such interest shall fall due; (ii) the principal of  
33 the bonds as the same shall fall due; (iii) the necessary charges of paying agents and trustees for  
34 paying principal and interest; and (iv) the redemption price or the purchase price of bonds retired  
35 by call or purchase as therein provided. The use and disposition of moneys to the credit of such  
36 sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the  
37 bonds or of the trust agreement. Except as may otherwise be provided in the resolution or the  
38 trust agreement, such sinking fund shall be a fund for all bonds without distinction or priority of  
39 one over another. The moneys in the sinking fund, less such reserve as may be provided in the  
40 resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for  
41 cancellation as above provided, shall be applied to the redemption of bonds at the redemption  
42 price then applicable.

43 (b) The Parkways Authority shall cause, as soon as it is legally able to do so, all contracts  
44 to which it is a party and which relate to the operation, maintenance or use of any restaurant,  
45 motel or other lodging facility, truck and automobile service facility, food vending facility or any  
46 other service facility located along the West Virginia Turnpike, to be renewed on a competitive bid  
47 basis. All contracts relating to any facility or services entered into by the Parkways Authority with  
48 a private party with respect to any project constructed after the effective date of this legislation  
49 shall be let on a competitive bid basis only. If the Parkways Authority receives a proposal for the  
50 development of a project, except for a parkway project, such proposal shall be made available to  
51 the public in a convenient location in the county wherein the proposed facility may be located.  
52 The Parkways Authority shall publish a notice of the proposal by a Class I legal advertisement in  
53 accordance with the provisions of article three, chapter fifty-nine of this code. The publication area  
54 shall be the county in which the proposed facility would be located. Any citizen may communicate

55 by writing to the Parkways Authority his or her opposition to or approval to such proposal within a  
56 period of time not less than forty-five days from the publication of the notice. No contract for the  
57 development of an economic development project or a tourism project may be entered into by the  
58 Parkways Authority until a public hearing is held in the vicinity of the location of the proposed  
59 economic development project or tourism project with at least twenty days' notice of such hearing  
60 by a Class I publication pursuant to section two of said article. The Parkways Authority shall make  
61 written findings of fact prior to rendering a decision on any such proposed project. All studies,  
62 records, documents and other materials which are considered by the Parkways Authority in  
63 making such findings shall be made available for public inspection at the time of the publication  
64 of the notice of public hearing and at a convenient location in the county where the proposed  
65 economic development project or tourism project may be located. The Parkways Authority shall  
66 promulgate rules in accordance with chapter twenty-nine-a of this code for the conduct of any  
67 hearing required by this section. Persons attending any such hearing shall be afforded a  
68 reasonable opportunity to speak and be heard on the proposed economic development project or  
69 tourism project.

70 The Parkways Authority is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

#### **§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibilities granted and assigned to the  
2 director in this chapter and elsewhere by law, the director may:

3 (1) With the advice of the commission, prepare and administer, through the various  
4 divisions created by this chapter, a long-range comprehensive program for the conservation of  
5 the natural resources of the state which best effectuates the purpose of this chapter and which  
6 makes adequate provisions for the natural resources laws of the state;

7           (2) Sign and execute in the name of the state by the Division of Natural Resources any  
8 contract or agreement with the federal government or its departments or agencies, subdivisions  
9 of the state, corporations, associations, partnerships or individuals: *Provided*, That  
10 intergovernmental cooperative agreements and agreements with nongovernmental organizations  
11 in furtherance of providing a comprehensive program for the exploration, conservation,  
12 development, protection, enjoyment and use of the natural resources of the state are exempt from  
13 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That repair, renovation, and  
14 rehabilitation of existing facilities, buildings, amenities, and infrastructure necessary to protect  
15 public health or safety or to provide uninterrupted enjoyment and public use of state parks, state  
16 forests, wildlife management areas and state natural areas under the jurisdiction of the Division  
17 of Natural Resources are exempt from the provisions of §5A-3-1 *et seq.* of this code. Nothing in  
18 this section authorizes new construction of buildings and new construction of recreational facilities  
19 as defined in §20-5-4 of this code without complying with the provisions of §5A-3-1 *et seq.* of this  
20 code: *Provided further*, That the Division of Natural Resources is not exempt from the provisions  
21 of §5A-3-35a of this code.

22           (3) Conduct research in improved conservation methods and disseminate information  
23 matters to the residents of the state;

24           (4) Conduct a continuous study and investigation of the habits of wildlife and, for purposes  
25 of control and protection, to classify by regulation the various species into such categories as may  
26 be established as necessary;

27           (5) Prescribe the locality in which the manner and method by which the various species of  
28 wildlife may be taken, or chased, unless otherwise specified by this chapter.

29           (6) Hold at least six meetings each year at such time and at such points within the state,  
30 as in the discretion of the Natural Resources Commission may appear to be necessary and proper  
31 for the purpose of giving interested persons in the various sections of the state an opportunity to

32 be heard concerning open season for their respective areas, and report the results of the meetings  
33 to the Natural Resources Commission before the season and bag limits are fixed by it;

34 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state  
35 with the prior approval of the Governor in case of an emergency such as a drought, forest fire  
36 hazard or epizootic disease among wildlife. The suspension shall continue during the existence  
37 of the emergency and until rescinded by the director. Suspension, or reopening after such  
38 suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy  
39 of the order of suspension or reopening to the wire press agencies at the state capitol;

40 (8) Supervise the fiscal affairs and responsibilities of the division;

41 (9) Designate such localities as he or she shall determine to be necessary and desirable  
42 for the perpetuation of any species of wildlife;

43 (10) Enter private lands to make surveys or inspections for conservation purposes, to  
44 investigate for violations of provisions of this chapter, to serve and execute warrants and  
45 processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

46 (11) Acquire for the state in the name of the Division of Natural Resources by purchase,  
47 condemnation, lease or agreement, or accept or reject for the state, in the name of the Division  
48 of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or  
49 property, both real and personal, and any interest in such property, including lands and waters,  
50 which he or she deems suitable for the following purposes:

51 (a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing  
52 or protecting watersheds or providing public recreation;

53 (b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic,  
54 scientific, cultural, archaeological or historical values or natural wonders, or providing public  
55 recreation;

56 (c) For public hunting, trapping or fishing grounds or waters for the purpose of providing  
57 areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter and  
58 the rules issued hereunder;

59 (d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

60 (e) For the extension and consolidation of lands or waters suitable for the above purposes  
61 by exchange of other lands or waters under his or her supervision;

62 (f) For such other purposes as may be necessary to carry out the provisions of this chapter;

63 (12) Capture, propagate, transport, sell or exchange any species of wildlife as may be  
64 necessary to carry out the provisions of this chapter;

65 (13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser  
66 appointed by the director, from all lands under the jurisdiction and control of the director, except  
67 those lands that are designated as state parks and those in the Kanawha State Forest. The  
68 appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the  
69 office of the director and shall be available for public inspection. The director must obtain the  
70 written permission of the Governor to sell timber when the appraised value is more than \$5,000.  
71 The director shall receive sealed bids therefor, after notice by publication as a Class II legal  
72 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication  
73 area for the publication shall be each county in which the timber is located. The timber so  
74 advertised shall be sold at not less than the appraised value to the highest responsible bidder,  
75 who shall give bond for the proper performance of the sales contract as the director shall  
76 designate; but the director may reject any and all bids and readvertise for bids. If the foregoing  
77 provisions of this section have been complied with and no bid equal to or in excess of the  
78 appraised value of the timber is received, the director may, at any time, during a period of six  
79 months after the opening of the bids, sell the timber in such manner as he or she deems  
80 appropriate, but the sale price may not be less than the appraised value of the timber advertised.  
81 No contract for sale of timber made pursuant to this section may extend for a period of more than



82 ten years. And all contracts heretofore entered into by the state for the sale of timber may not be  
83 validated by this section if a contract is otherwise invalid. The proceeds arising from the sale of  
84 the timber so sold shall be paid to the Treasurer of the State of West Virginia and shall be credited  
85 to the division and used exclusively for the purposes of this chapter: *Provided*, That nothing  
86 contained herein may prohibit the sale of timber which otherwise would be removed from right-of-  
87 way's necessary for and strictly incidental to the extraction of minerals;

88 (14) Sell or lease, with the approval in writing of the Governor, coal, oil, gas, sand, gravel  
89 and any other minerals that may be found in the lands under the jurisdiction and control of the  
90 director, except those lands that are designated as state parks. The director, before making sale  
91 or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal  
92 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
93 publication area for such publication shall be each county in which such lands are located. The  
94 minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give  
95 bond for the proper performance of the sales contract or lease as the director shall designate; but  
96 the director may reject any and all bids and readvertise for bids. The proceeds arising from any  
97 such sale or lease shall be paid to the Treasurer of the State of West Virginia and shall be credited  
98 to the division and used exclusively for the purposes of this chapter;

99 (15) Exercise the powers granted by this chapter for the protection of forests and regulate  
100 fires and smoking in the woods or in their proximity at such times and in such localities as may be  
101 necessary to reduce the danger of forest fires;

102 (16) Cooperate with departments and agencies of state, local and federal governments in  
103 the conservation of natural resources and the beautification of the state;

104 (17) Report to the Governor each year all information relative to the operation and  
105 functions of the division and the director shall make such other reports and recommendations as  
106 may be required by the Governor, including an annual financial report covering all receipts and  
107 disbursements of the division for each fiscal year, and he or she shall deliver the report to the

108 Governor on or before December 1, next after the end of the fiscal year so covered. A copy of the  
109 report shall be delivered to each house of the Legislature when convened in January next  
110 following;

111 (18) Keep a complete and accurate record of all proceedings, record and file all bonds  
112 and contracts taken or entered into and assume responsibility for the custody and preservation of  
113 all papers and documents pertaining to his or her office, except as otherwise provided by law;

114 (19) Offer and pay, in his or her discretion, rewards for information respecting the violation,  
115 or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

116 (20) Require such reports as he or she may determine to be necessary from any person  
117 issued a license or permit under the provisions of this chapter, but no person may be required to  
118 disclose secret processes or confidential data of competitive significance;

119 (21) Purchase as provided by law all equipment necessary for the conduct of the division;

120 (22) Conduct and encourage research designed to further new and more extensive uses  
121 of the natural resources of this state and to publicize the findings of the research;

122 (23) Encourage and cooperate with other public and private organizations or groups in  
123 their efforts to publicize the attractions of the state including, completing the feasibility study for  
124 the Beech Fork State Park Lodge as follows:

125 (A) The director shall convene, prior to October 1, 2019, two public hearings:

126 (i) An initial public hearing shall be for the purpose of seeking public input regarding  
127 options for the construction of a lodge and a conference center, including all available public,  
128 private, or public-private partnership (PPP) funding and financing options; and

129 (ii) A subsequent public hearing at which the feasibility study and any recommendation  
130 shall be available for public comment;

131 (B) The public hearings required by this subdivision must be held in a suitable location  
132 reasonably close to Beech Fork State Park so as to accommodate public participation from the  
133 citizens of Cabell, Lincoln, and Wayne counties; and

134 (C) Upon completion of the feasibility study it shall be submitted by the director to the Joint  
135 Committee on Government and Finance on or before December 1, 2019;

136 (24) Accept and expend, without the necessity of appropriation by the Legislature, any gift  
137 or grant of money made to the division for all purposes specified in this chapter and he or she  
138 shall account for and report on all such receipts and expenditures to the Governor;

139 (25) Cooperate with the state historian and other appropriate state agencies in conducting  
140 research with reference to the establishment of state parks and monuments of historic, scenic  
141 and recreational value and to take such steps as may be necessary in establishing the  
142 monuments or parks as he or she deems advisable;

143 (26) Maintain in his or her office at all times, properly indexed by subject matter and also  
144 in chronological sequence, all rules made or issued under the authority of this chapter. The  
145 records shall be available for public inspection on all business days during the business hours of  
146 working days;

147 (27) Delegate the powers and duties of his or her office, except the power to execute  
148 contracts not related to land and stream management, to appointees and employees of the  
149 division, who shall act under the direction and supervision of the director and for whose acts he  
150 or she shall be responsible;

151 (28) Conduct schools, institutions and other educational programs, apart from or in  
152 cooperation with other governmental agencies, for instruction and training in all phases of the  
153 natural resources programs of the state;

154 (29) Authorize the payment of all or any part of the reasonable expenses incurred by an  
155 employee of the division in moving his or her household furniture and effects as a result of a  
156 reassignment of the employee: *Provided*, That no part of the moving expenses of any one such  
157 employee may be paid more frequently than once in twelve months;

158 (30) Establishing procedures and fee schedule for individuals applying for limited permit  
159 hunts; and

160 (31) Promulgate rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code,  
161 to implement and make effective the powers and duties vested in him or her by the provisions of  
162 this chapter and take such other steps as may be necessary in his or her discretion for the proper  
163 and effective enforcement of the provisions of this chapter.

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

**ARTICLE 1. WATER DEVELOPMENT AUTHORITY.**

**§22C-1-6. Powers, duties and responsibilities of authority generally.**

1 The Water Development Authority has and may exercise all powers necessary or  
2 appropriate to carry out and effectuate its corporate purpose. The authority has the power and  
3 capacity to:

4 (1) Adopt and, from time to time, amend and repeal bylaws necessary and proper for the  
5 regulation of its affairs and the conduct of its business and rules to implement and make effective  
6 its powers and duties, such rules to be promulgated in accordance with the provisions of chapter  
7 twenty-nine-a of this code.

8 (2) Adopt an official seal.

9 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly  
10 designated or provided.

11 (4) Sue and be sued in its own name and plead and be impleaded in its own name and  
12 particularly to enforce the obligations and covenants made under sections nine, ten and sixteen  
13 of this article. Any actions against the authority shall be brought in the circuit court of Kanawha  
14 County in which the principal office of the authority shall be located.

15 (5) Make loans and grants to governmental agencies for the acquisition or construction of  
16 water development projects by any such governmental agency and, in accordance with the  
17 provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such  
18 loans and grants.

19           (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair,  
20 operate, lease or rent to, or contract for operation by a governmental agency or person, water  
21 development projects and, in accordance with the provisions of chapter twenty-nine-a of this code,  
22 adopt rules for the use of such projects.

23           (7) Make available the use or services of any water development project to one or more  
24 persons, one or more governmental agencies or any combination thereof.

25           (8) Issue water development revenue bonds and notes and water development revenue  
26 refunding bonds of the state, payable solely from revenues as provided in section nine of this  
27 article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part  
28 of the cost of, or financing by loans to governmental agencies, one or more water development  
29 projects or parts thereof.

30           (9) Acquire by gift or purchase, hold and dispose of real and personal property in the  
31 exercise of its powers and the performance of its duties as set forth in this article.

32           (10) Acquire in the name of the state, by purchase or otherwise, on such terms and in  
33 such manner as it deems proper, or by the exercise of the right of eminent domain in the manner  
34 provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights  
35 therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying  
36 out the provisions of this article, but excluding the acquisition by the exercise of the right of  
37 eminent domain of any public water facilities, stormwater systems or wastewater facilities,  
38 operated under permits issued pursuant to the provisions of article eleven, chapter twenty-two of  
39 this code and owned by any person or governmental agency, and compensation shall be paid for  
40 public or private lands so taken.

41           (11) Make and enter into all contracts and agreements and execute all instruments  
42 necessary or incidental to the performance of its duties and the execution of its powers. When  
43 the cost under any such contract or agreement, other than compensation for personal services,  
44 involves an expenditure of more than \$2,000, the authority shall make a written contract with the

45 lowest responsible bidder after public notice published as a Class II legal advertisement in  
46 compliance with the provisions of article three, chapter fifty-nine of this code, the publication area  
47 for such publication to be the county wherein the work is to be performed or which is affected by  
48 the contract, which notice shall state the general character of the work and the general character  
49 of the materials to be furnished, the place where plans and specifications therefor may be  
50 examined and the time and place of receiving bids, but a contract or lease for the operation of a  
51 water development project constructed and owned by the authority or an agreement for  
52 cooperation in the acquisition or construction of a water development project pursuant to section  
53 sixteen of this article is not subject to the foregoing requirements and the authority may enter into  
54 such contract or lease or such agreement pursuant to negotiation and upon such terms and  
55 conditions and for such period as it finds to be reasonable and proper under the circumstances  
56 and in the best interests of proper operation or of efficient acquisition or construction of such  
57 project. The authority may reject any and all bids. A bond with good and sufficient surety,  
58 approved by the authority, is required of all contractors in an amount equal to at least fifty percent  
59 of the contract price, conditioned upon the faithful performance of the contract.

60 (12) Employ managers, superintendents and other employees, who are covered by the  
61 state civil service system, and retain or contract with consulting engineers, financial consultants,  
62 accounting experts, architects, attorneys and such other consultants and independent contractors  
63 as are necessary in its judgment to carry out the provisions of this article and fix the compensation  
64 or fees thereof. All expenses thereof are payable solely from the proceeds of water development  
65 revenue bonds or notes issued by the authority, from revenues and from funds appropriated for  
66 such purpose by the Legislature.

67 (13) Receive and accept from any federal agency, subject to the approval of the Governor,  
68 grants for or in aid of the construction of any water development project or for research and  
69 development with respect to public water facilities, stormwater systems or wastewater facilities  
70 and receive and accept aid or contributions from any source of money, property, labor or other

71 things of value to be held, used and applied only for the purposes for which such grants and  
72 contributions are made.

73 (14) Engage in research and development with respect to public water facilities,  
74 stormwater systems or wastewater facilities.

75 (15) Purchase property coverage and liability insurance for any water development project  
76 and for the principal office and suboffices of the authority, insurance protecting the authority and  
77 its officers and employees against liability, if any, for damage to property or injury to or death of  
78 persons arising from its operations and any other insurance the authority may agree to provide  
79 under any resolution authorizing the issuance of water development revenue bonds or in any trust  
80 agreement securing the same.

81 (16) Charge, alter and collect rentals and other charges for the use or services of any  
82 water development project as provided in this article and charge and collect reasonable interest,  
83 fees and charges in connection with the making and servicing of loans to governmental agencies  
84 in the furtherance of the purposes of this article.

85 (17) Establish or increase reserves from moneys received or to be received by the  
86 authority to secure or to pay the principal of and interest on the bonds and notes issued by the  
87 authority pursuant to this article.

88 (18) Administer on behalf of the Department of Environmental Protection the Dam Safety  
89 Rehabilitation Revolving Fund Loan Program pursuant to the provisions of article fourteen of  
90 chapter twenty-two of this code. Revenues or moneys designated by this code or otherwise  
91 appropriated for use by the authority pursuant to the provisions of this article may not be used for  
92 the Dam Safety Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety  
93 Rehabilitation Revolving Fund shall be kept separate from all revenues and moneys of the  
94 authority.

95 (19) Do all acts necessary and proper to carry out the powers expressly granted to the  
96 authority in this article.

97           The Water Development Authority is not exempt from the provisions of §5A-3-35a of this  
98 code.

## **CHAPTER 23. WORKERS' COMPENSATION.**

### **ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.**

#### **§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.**

1           Notwithstanding any other provision of this code, upon termination of the commission, the  
2 Insurance Commissioner may:

3           (1) Exempt no more than twenty positions of the offices of the Insurance Commissioner  
4 from the classified service of the state, the employees of which positions shall serve at the will  
5 and pleasure of the commissioner: *Provided*, That such exempt positions shall be in addition to  
6 those positions in classified-exempt service under the classification plan adopted by the Division  
7 of Personnel. The Insurance Commissioner shall report all exemptions made under this section  
8 to the Director of the Division of Personnel no later than July 1, 2007, and thereafter as the  
9 commissioner determines to be necessary; and

10           (2) Expend such sums for professional services as he or she determines are necessary  
11 to perform those duties transferred to the Insurance Commissioner upon the termination of the  
12 commission. The provisions of article three, chapter five-a of this code relating to the Purchasing  
13 Division of the Department of Administration shall not apply to these contracts, and the Insurance  
14 Commissioner shall award the contract or contracts on a competitive basis.

15           (3) The Commission is not exempt from the provisions of §5A-3-35a of this code.

#### **§23-1-1g. Legislative intent to create a quasi-public entity.**

1           In recognition of the impact a state's workers' compensation premium levels may have on  
2 the state's ability to conduct economic development and the resulting need to operate the state's  
3 Workers' Compensation system in such a manner that will enable the lowest premiums to be  
4 charged employers while at the same time ensuring adequate benefit levels are provided to



5 injured workers, it is the intent of the Legislature that the Workers' Compensation Commission  
6 remain a commission of the state as provided in article two, chapter five-f of this code until the  
7 company created in article two-c of this chapter is created and operational and the New Fund  
8 created in article two-c of this chapter has been funded. Until the termination of the commission  
9 and in order for the commission to be able to capture the efficiencies associated with private  
10 sector operations, the Workers' Compensation Commission is exempt from the provisions of the  
11 following effective upon the date upon which this enactment is made effective by the Legislature:

12 (a) Article three, chapter five-a, related to the Department of Administration Purchasing  
13 Division; and

14 (b) Section eleven, article three, chapter twelve, relating to appropriations, expenditures  
15 and deductions.

16 The Workers' Compensation Commission is not exempt from the provisions of §5A-3-35a  
17 of this code.

## **ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.**

### **§23-2C-3. Creation of employers' mutual insurance company as successor organization of 2 the West Virginia Workers' Compensation Commission.**

1 (a) (1) On or before July 1, 2005, the executive director may take such actions as are  
2 necessary to establish an employers' mutual insurance company as a domestic, private, nonstock  
3 corporation to:

4 (A) Insure employers against liability for injuries and occupational diseases for which their  
5 employees may be entitled to receive compensation pursuant to this chapter and federal  
6 Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, *et seq.*;

7 (B) Provide employer's liability insurance incidental to, and provided in connection with,  
8 the insurance specified in paragraph (A) of this subdivision, including coal workers'  
9 pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

10 (C) Transact other kinds of property and casualty insurance for which the company is  
11 otherwise qualified under the provisions of this code.

12 (2) The company may not sell, assign or transfer substantial assets or ownership of the  
13 company.

14 (b) If the executive director establishes a domestic mutual insurance company pursuant  
15 to subsection (a) of this section:

16 (1) As soon as practical, the company established pursuant to the provisions of this article  
17 shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws  
18 with the Insurance Commissioner and apply for a license with the Insurance Commissioner to  
19 transact insurance in this state. Notwithstanding any other provision of this code, the Insurance  
20 Commissioner shall act on the documents within fifteen days of the filing by the company.

21 (2) In recognition of the workers' compensation insurance liability insurance crisis in this  
22 state at the time of enactment of this article and the critical need to expedite the initial operation  
23 of the company, the Legislature authorizes the Insurance Commissioner to review the  
24 documentation submitted by the company and to determine the initial capital and surplus  
25 requirements of the company, notwithstanding the provisions of section five-b, article three,  
26 chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all  
27 information and cooperate in all respects necessary for the Insurance Commissioner to perform  
28 the duties set forth in this section and in other provisions of this chapter and chapter thirty-three  
29 of this code. The Insurance Commissioner shall monitor the economic viability of the company  
30 during its initial operation on not less than a monthly basis, until the commissioner, in his or her  
31 discretion, determines that monthly reporting is not necessary. In all other respects the company  
32 shall comply with the applicable provisions of chapter thirty-three of this code.

33 (3) Subject to the provisions of subdivision (4) of this subsection, the Insurance  
34 Commissioner may waive other requirements imposed on mutual insurance companies by the  
35 provisions of chapter thirty-three of this code the Insurance Commissioner determines are

36 necessary to enable the company to begin insuring employers in this state at the earliest possible  
37 date.

38 (4) Within forty months of the date of the issuance of its license to transact insurance, the  
39 company shall comply with the capital and surplus requirements set forth in subsection (a),  
40 section five-b, article three, chapter thirty-three of this code in effect on the effective date of this  
41 enactment, unless the deadline is extended by the Insurance Commissioner.

42 (c) For the duration of its existence, the company is not a department, unit, agency or  
43 instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the  
44 company, whenever incurred, are the debts, claims, obligations and liabilities of the company only  
45 and not of the state or of any department, unit, agency, instrumentality, officer or employee of the  
46 state.

47 (d) The moneys of the company are not part of the General Revenue Fund of the state.  
48 The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge  
49 of the credit of the state.

50 (e) The company is not subject to provisions of article nine-a, chapter six of this code; the  
51 provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this  
52 code; the provisions of article three, chapter five-a of this code; the provisions of article six,  
53 chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

54 (f) If the commission has been terminated, effective upon the termination, private carriers,  
55 including the company, are not subject to payment of premium taxes, surcharges and credits  
56 contained in article three, chapter thirty-three of this code on premiums received for coverage  
57 under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the  
58 following:

59 (1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage  
60 surcharge to be collected by each private carrier from its policyholders. The surcharge percentage  
61 shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible

62 payments by all employers into the portion of the Insurance Commissioner's budget amount  
63 attributable to regulation of the private carrier market. This resulting percentage shall be applied  
64 to each policyholder's premium payment and deductible payments as a surcharge and remitted  
65 to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of  
66 premium payments;

67 (B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge  
68 set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount  
69 of five and five-tenths percent of the premium collected plus the total of all premium discounts  
70 based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and  
71 every five years thereafter, the commissioner shall review the percentage surcharge and  
72 determine a new percentage as he or she deems necessary;

73 (C) The amounts required to be collected under paragraph (B) of this subdivision shall be  
74 remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding  
75 the end of the quarter in which they are collected, except for the fourth quarter for which the  
76 surcharge shall be remitted on or before March 1 of the succeeding year.

77 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge  
78 to be remitted on a quarterly basis by self-insured employers and said percentage shall be  
79 calculated by dividing previous year's self-insured payroll in the state into the portion of the  
80 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer  
81 market. This resulting percentage shall be applied to each self-insured employer's payroll and the  
82 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The  
83 Industrial Council may promulgate a rule for implementation of this section. The company, all  
84 other private carriers and all self-insured employers shall furnish the Insurance Commissioner  
85 with all required information and cooperate in all respects necessary for the Insurance  
86 Commissioner to perform the duties set forth in this section and in other provisions of this chapter  
87 and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the

88 costs associated with the administration of this chapter and the funds raised shall not be used for  
89 any other purpose except as set forth in subdivision (4) of this subsection.

90 (3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as  
91 annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45  
92 million annually, of each policyholder's periodic premium amount for workers' compensation  
93 insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1,  
94 2008, shall be nine percent of the premium collected plus the total of all premium discounts based  
95 on deductible provisions that were applied.

96 (B) By May 1 each year, the self-insured employer community shall be assessed a  
97 cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and  
98 determined by exempt legislative rule issued by the Industrial Council. The amount collected  
99 pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the  
100 Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter:  
101 *Provided*, That, notwithstanding any provision of this subdivision or any other provision of this  
102 code to the contrary, if the budget shortfall, as determined by the state Budget Office as of  
103 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,  
104 redirect deposits of the amount collected pursuant to this subdivision, for any period commencing  
105 after February 29, 2016, and ending before July 1, 2016, to the General Revenue Fund, instead  
106 of to the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this  
107 code or in any other provision of this code: *Provided, however*, That, notwithstanding any  
108 provision of this subdivision or any other provision of this code to the contrary, the Governor may,  
109 by Executive Order, redirect one-half of the deposits of the amount collected pursuant to this  
110 subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to  
111 the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in  
112 article two-d, chapter twenty-three of this code or in any other provision of this code, until  
113 certification of the Governor to the Legislature that an independent actuary has determined that

114 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been  
115 paid or provided for in its entirety: *Provided further*, That, notwithstanding any provision of this  
116 subdivision or any other provision of this code to the contrary, the Governor may, by Executive  
117 Order, redirect seventy-five percent of the deposits of the amount collected pursuant to this  
118 subdivision, for any period commencing after June 30, 2017, and ending before July 1, 2018, to  
119 the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in  
120 article two-d, chapter twenty-three of this code or in any other provision of this code, until  
121 certification of the Governor to the Legislature that an independent actuary has determined that  
122 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been  
123 paid or provided for in its entirety: *And provided further*, That, notwithstanding any provision of  
124 this subdivision or any other provision of this code to the contrary, seventy-five percent of the  
125 deposits of the amount collected pursuant to this subdivision, for any period commencing after  
126 June 30, 2018, and ending before January 1, 2019, shall be deposited into the General Revenue  
127 Fund instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter  
128 twenty-three of this code or in any other provision of this code, until certification of the Governor  
129 to the Legislature that an independent actuary has determined that the unfunded liability of the  
130 Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its  
131 entirety.

132 (4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump  
133 sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B),  
134 subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of  
135 Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United  
136 States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to  
137 section four, article eight, chapter twenty-one-a of this code.

138 (g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3),  
139 subsection (f) of this section sunset and are not collectible with respect to workers' compensation

140 insurance premiums paid when the policy is renewed on or after the first day of the month  
141 following the month in which the Governor certifies to the Legislature that the revenue bonds  
142 issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of  
143 the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

144 (h) Notwithstanding any other provisions of this section to the contrary, after December  
145 31, 2018, no surcharges may be assessed under subdivision (3), subsection (f) of this section or  
146 subsection (g) of this section. Except as otherwise provided in this subsection, the provisions of  
147 subdivision (3), subsection (f) of this section and subsection (g) of this section are terminated and  
148 shall be of no force or effect beginning on and after January 1, 2019: *Provided*, That liability for  
149 surcharges assessed under subdivision (3), subsection (f) of this section for periods prior to  
150 January 1, 2019, shall continue until paid.

151 (i) The Insurance Commission is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 12. STATE INSURANCE.**

#### **§29-12-8. Powers, duties, etc., of department of purchases pertaining to state insurance transferred to board.**

1 On the effective date of this article, all powers, duties and functions vested in the  
2 department of purchases relating to insurance on state properties, activities and responsibilities  
3 and all records and equipment relating thereto shall be transferred by the department of  
4 purchases to the state board of insurance. The state board of insurance is not exempt from the  
5 provisions of §5A-3-35a of this code.

### **ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.**

#### **§29-18-6. Powers, duties and responsibilities of authority generally.**

1 The West Virginia State Rail Authority is hereby granted, has and may exercise all powers  
2 necessary or appropriate to carry out and effectuate its corporate purpose.

3 (a) The authority may:

4 (1) Adopt and, from time to time, amend and repeal bylaws necessary and proper for the  
5 regulation of its affairs and the conduct of its business and propose rules for legislative approval  
6 in accordance with the provisions of article three of this chapter to implement and make effective  
7 its powers and duties.

8 (2) Adopt an official seal.

9 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly  
10 designated or provided.

11 (4) Sue and be sued in its own name and plead and be impleaded in its own name and  
12 particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen  
13 of this article. Any actions against the authority shall be brought in the circuit court of Kanawha  
14 County. The location of the principal office of the authority shall be determined by the Governor.

15 (5) Make loans and grants to governmental agencies and persons for carrying out railroad  
16 projects by any governmental agency or person and, in accordance with chapter twenty-nine-a of  
17 this code, propose rules for legislative approval and procedures for making such loans and grants.

18 (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair,  
19 operate, lease or rent to or contract for operation by a governmental agency or person, railroad  
20 projects and, in accordance with chapter twenty-nine-a of this code, propose legislative rules for  
21 the use of these projects.

22 (7) Make available the use or services of any railroad project to one or more persons, one  
23 or more governmental agencies or any combination thereof.

24 (8) Issue State Rail Authority bonds and notes and refunding bonds of the state, payable  
25 solely from revenues as provided in section ten of this article unless the bonds are refunded by  
26 refunding bonds for the purpose of paying any part of the cost of one or more railroad projects or  
27 parts thereof.



28           (9) Acquire, by gift or purchase, hold and dispose of real and personal property in the  
29 exercise of its powers and the performance of its duties as set forth in this article.

30           (10) Acquire in the name of the state, by purchase or otherwise, on terms and in the  
31 manner it considers proper, or by the exercise of the right of eminent domain in the manner  
32 provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests  
33 necessary for carrying out railroad projects.

34           (11) (A) Make and enter into all contracts and agreements and execute all instruments  
35 necessary or incidental to the performance of its duties and the execution of its powers including,  
36 but not limited to, the power to make contracts and agreements in accordance with the provisions  
37 set forth in paragraph (B) of this subdivision.

38           (B) Make and enter into contracts and agreements to acquire rolling stock or equipment  
39 with a value of \$500,000 or less exempt from the provisions of article three, chapter five-a of this  
40 code.

41           The authority shall propose rules for legislative approval in accordance with the provisions  
42 of article three, chapter twenty-nine-a of this code which set forth the methods for determining  
43 value of rolling stock or equipment to be purchased in accordance with the provisions of paragraph  
44 (B) of this subdivision.

45           (C) Where rolling stock, equipment or trackage of the authority is in need of immediate  
46 maintenance, repair or reconstruction in order to avoid a cessation of its operations, economic  
47 loss, the inability to provide essential service to customers or danger to authority personnel or the  
48 public, the following requirements and procedures for entering into the contract or agreement to  
49 remedy the condition shall be in lieu of those provided in article three, chapter five-a of this code  
50 or any legislative rule promulgated pursuant thereto:

51           (i) If the cost under the contract or agreement involves an expenditure of more than  
52 \$1,000, but \$10,000 or less, the authority shall award the contract to or enter into the agreement

53 with the lowest responsible bidder based upon at least three oral bids made pursuant to the  
54 requirements of the contract or agreement.

55 (ii) If the cost under the contract or agreement, other than one for compensation for  
56 personal services, involves an expenditure of more than \$10,000, but \$100,000 or less, the  
57 authority shall award the contract to or enter into the agreement with the lowest responsible bidder  
58 based upon at least three bids, submitted to the authority in writing on letterhead stationery, made  
59 pursuant to the requirements of the contract or agreement.

60 (D) Notwithstanding any other provision of this code to the contrary, a contract or lease  
61 for the operation of a railroad project constructed and owned by the authority or an agreement for  
62 cooperation in the acquisition or construction of a railroad project pursuant to section sixteen of  
63 this article is not subject to the provisions of article three, chapter five-a of this code or any  
64 legislative rule promulgated pursuant thereto and the authority may enter into the contract or lease  
65 or the agreement pursuant to negotiation and upon such terms and conditions and for a period of  
66 time as it finds to be reasonable and proper under the circumstances and in the best interests of  
67 proper operation or of efficient acquisition or construction of the railroad project.

68 (E) The authority may reject any and all bids. A bond with good and sufficient surety,  
69 approved by the authority, is required of all contractors in an amount equal to at least fifty percent  
70 of the contract price, conditioned upon the faithful performance of the contract.

71 (12) Appoint a director and employ managers, superintendents and other employees and  
72 retain or contract with consulting engineers, financial consultants, accountants, attorneys and  
73 other consultants and independent contractors as are necessary in its judgment to carry out the  
74 provisions of this article and fix the compensation or fees thereof. All expenses thereof are  
75 payable from the proceeds of State Rail Authority revenue bonds or notes issued by the authority,  
76 from revenues and funds appropriated for this purpose by the Legislature or from grants from the  
77 federal government which may be used for such purpose.

78           (13) Receive and accept from any state or federal agency grants for or in aid of the  
79 construction of any railroad project or for research and development with respect to railroads and  
80 receive and accept aid or contributions from any source of money, property, labor or other things  
81 of value, to be held, used and applied only for the purposes for which the grants and contributions  
82 are made.

83           (14) Engage in research and development with respect to railroads.

84           (15) Purchase fire and extended coverage and liability insurance for any railroad project  
85 and for the principal office and suboffices of the authority, insurance protecting the authority and  
86 its officers and employees against liability, if any, for damage to property or injury to or death of  
87 persons arising from its operations and be a member of, and to participate in, the state workers'  
88 compensation program.

89           (16) Charge, alter and collect rates, rentals and other charges for the use or services of  
90 any railroad project as provided in this article.

91           (17) Do all acts necessary and proper to carry out the powers expressly granted to the  
92 authority in this article.

93           (b) In addition, the authority has the power to:

94           (1) Acquire rail properties both within and not within the jurisdiction of the Interstate  
95 Commerce Commission and rail properties within the purview of the federal Regional Rail  
96 Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

97           (2) Enter into agreements with owners of rail properties for the acquisition of rail properties  
98 or use, or both, of rail properties upon the terms, conditions, rates or rentals that can best  
99 effectuate the purposes of this article.

100           (3) Acquire rail properties and other property of a railroad in concert with another state or  
101 states as is necessary to ensure continued rail service in this state.

102           (4) Administer and coordinate the state plan.

103 (5) Provide in the state plan for the equitable distribution of federal rail service continuation  
104 subsidies among state, local and regional transportation authorities.

105 (6) Promote, supervise and support safe, adequate and efficient rail services.

106 (7) Employ sufficiently trained and qualified personnel for these purposes.

107 (8) Maintain adequate programs of investigation, research, promotion and development in  
108 connection with the purposes and to provide for public participation therein.

109 (9) Provide satisfactory assurances on behalf of the state that fiscal control and fund  
110 accounting procedures will be adopted by the state necessary to assure proper disbursement of  
111 and accounting for federal funds paid to the state as rail service continuation subsidies.

112 (10) Comply with the regulations of the Secretary of Transportation of the United States  
113 Department of Transportation affecting federal rail service continuation programs.

114 (11) Do all things otherwise necessary to maximize federal assistance to the state under  
115 Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service  
116 continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.

117 (c) Additional authority in regard to the Maryland Area Regional Commuter.

118 (1) The Rail Authority is hereby granted, has and may exercise all aforementioned powers  
119 necessary or appropriate to coordinate all activities with the Maryland Transit Administration to  
120 assure the continued operation of the Maryland Area Regional Commuter into the eastern  
121 panhandle of the state.

122 (2) In addition to the authority provided in subdivision (1) of this subsection, the Rail  
123 Authority shall negotiate agreements with the State of Maryland or the Maryland Transit  
124 Administration for the continued operation of the commuter rail operation between Maryland and  
125 the Washington D. C. metropolitan area and West Virginia. A commuter rail operation agreement  
126 shall provide for quantity and quality of commuter rail service, including certain minimum daily  
127 service at least equivalent to the level service on the effective date of the amendments to this  
128 subsection enacted in the Regular Session of the Legislature, 2013, unless daily ridership

129 diminishes significantly from said date. The agreement may provide for the payment of track  
130 access fees attributed to commuter rail operation within the boundaries of the state. Any payments  
131 of track access fees pursuant to the agreement shall be paid from the special fund created in  
132 section twenty-four of this article as provided by appropriation of the Legislature.

133 (d) The State Rail Authority is not exempt from the provisions of §5A-3-35a of this code.

## **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

### **§29-22A-19. Compulsive Gambling Treatment Fund; contract requirements for compulsive gamblers treatment program.**

1 (a) There is hereby created and established a separate special account to be known as  
2 the "Compulsive Gambling Treatment Fund". The fund shall be appropriated from the  
3 Commission's administrative expense account and shall be not less than \$150,000 nor more than  
4 \$500,000 per fiscal year, as determined by the commission, as well as other amounts designated  
5 for in this chapter to provide funds for compulsive gambling treatment programs in the state.

6 (b) The Department of Health and Human Resources shall administer the grants and funds  
7 issued from the "Compulsive Gambling Treatment Fund".

8 (c) The Department of Health and Human Resources shall develop criteria consistent with  
9 this section which a treatment program for compulsive gamblers must meet in order to become  
10 eligible for a grant from the funds made available for treatment programs pursuant to this  
11 provision.

12 (d) The Department of Health and Human Resources is not subject to the purchasing  
13 requirements as set forth in the legislative rule of the Purchasing Division of the Department of  
14 Administration: *Provided*, That the Department of Health and Human Resources shall comply with  
15 all contract requirements set forth in this section.

16 (e) The Department of Health and Human Resources shall develop procedures for bidding  
17 and awarding the contract, which must include:

18 (1) The procedures to be followed for submitting bids and the procedures for making  
19 awards;

20 (2) The proposed general terms and conditions for the contract;

21 (3) The description of the commodities and services required for the contract, with  
22 sufficient clarity to assure that there is a comprehensive understanding of the project's scope and  
23 requirements, including, but not limited to, the following elements:

24 (A) Services to be provided, including education, prevention, crisis intervention, outreach,  
25 assessment, referral and treatment for problem gamblers, and protocols for emergency treatment;

26 (B) Requirements for the business and professional licensing of providers, parameters for  
27 media-related advertising and public service announcements;

28 (C) Training, licensing, monitoring, evaluation and reporting requirements;

29 (D) Requirements for maintaining the confidentiality of the client population; and

30 (E) Rights to conduct financial and performance audits;

31 (4) A proposed time schedule commencement and completion of the contract;

32 (5) A budget for the contract;

33 (6) Requirements or restrictions for the subletting of specific portions of the contract, if  
34 any; and

35 (7) Requirements for professional liability and other insurance coverage.

36 (f) The Department of Health and Human Resources may award the contract based on  
37 low bid, best value, sole source or other basis, or may choose to reject all bids and reissue an  
38 invitation for bids: *Provided*, That the Department of Health and Human Resources shall  
39 document the basis of its decisions under this subsection and shall report its decisions in the  
40 annual report required in subsection (j) of this section.

41 (g) The Department of Health and Human Resources shall hold a post award conference  
42 with the contractor to ensure a clear and mutual understanding of all contract terms and  
43 conditions, and the respective responsibilities of all parties. The agenda for the conference shall

44 include, at a minimum, the introduction of all participants and identification of department and  
45 contractor key personnel, and discussion of the following items:

46 (1) The scope of the contract, including specifications of requirements set forth in the bid  
47 request;

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

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

50 (4) The contract administration procedures, including contract monitoring and progress  
51 measurement;

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

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

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

58 (8) Invoicing requirements and payment procedures, with particular attention to whether  
59 payment will be made according to outcomes achieved by the contractor; and

60 (9) An explanation of the limits of authority of the personnel of both the department and  
61 the contractor.

62 (h) The Department of Health and Human Resources shall develop a comprehensive and  
63 objective monitoring checklist which:

64 (1) Measures treatment outcomes;

65 (2) Monitors compliance with contract requirements; and

66 (3) Assesses contractor performance on a quarterly and annual basis.

67 (i) The commission may not influence or interfere with the operation of the program or the  
68 advertising and marketing decisions of the contractor.

69 (j) The Department of Health and Human Resources may monitor contract performance,  
70 review compliance with the contract's terms and conditions, request and review pertinent  
71 information in support of tendered invoices and conduct other investigation so as to enable it to  
72 properly assess whether the project's objectives and the contract's terms and conditions are being  
73 met. However, the Department of Health and Human Resources may not unduly influence or  
74 interfere with the operation of the program or the advertising and marketing decisions of the  
75 contractor.

76 (k) Once any contract to render services under a compulsive gambling treatment program  
77 is awarded pursuant to this section, the contract shall be administrated by the Department of  
78 Health and Human Resources, and the department shall maintain all records pertaining to each  
79 request for reimbursement and disbursement for under said contract for a minimum of five (5)  
80 years.

81 (l) The contractor may prominently promote, display or advertise the Compulsive  
82 Gambler's Treatment Program, its purpose, its hotline or its program events in any location in  
83 which the Lottery Commission promotes, displays, advertises or conducts operations or in any  
84 other location: *Provided*, That the Lottery Commission's name, logo or other indicia may not  
85 appear on any advertising, marketing or promotional material of the contractor.

86 (m) The Department of Health and Human Resources shall report annually to the Joint  
87 Committee on Government and Finance on the amount of program funds distributed, the amount  
88 of administrative fee retained by the department and its use of the fee, the number of persons  
89 served by the program, and on each requirement set forth in this section.

90 (n) The Department of Health and Human Resources is not exempt from the provisions of  
91 §5A-3-35a of this code.

## **CHAPTER 31A. BANKS AND BANKING.**

### **ARTICLE 8A. ACQUISITIONS OF BANKS BY BANK HOLDING COMPANIES.**

#### **§31A-8A-8. Authority to issue rules; cooperative agreements; fees.**



1 In order to carry out the purposes of this article, the Commissioner may:

2 (1) Propose rules and issue orders;

3 (2) Enter into cooperative, coordinating or information-sharing agreements with any other  
4 bank supervisory agency or any organization affiliated with or representing one or more bank  
5 supervisory agencies;

6 (3) Accept any report of examination or investigation by another bank supervisory agency  
7 having concurrent jurisdiction over a West Virginia bank or a bank holding company that controls  
8 a West Virginia state bank in lieu of conducting the Commissioner's own examination or  
9 investigation of the bank holding company or bank;

10 (4) Enter into contracts with any bank supervisory agency having concurrent jurisdiction  
11 over a West Virginia state bank or a bank holding company that controls a West Virginia state  
12 bank to engage the services of the agency's examiners at a reasonable rate of compensation, or  
13 to provide the services of the Commissioner's examiners to any bank supervisory agency at a  
14 reasonable rate of compensation: *Provided*, That any contract for examiners shall be excluded  
15 from the requirements of article three, chapter five-a of this code;

16 (5) Enter into joint examinations or joint enforcement actions with any other bank  
17 supervisory agency having concurrent jurisdiction over any West Virginia state bank or any bank  
18 holding company that controls a West Virginia state bank: *Provided*, That the Commissioner may  
19 take any such action independently if he or she determines that the action is necessary to carry  
20 out the responsibilities set forth in this article to enforce compliance with the laws of this state:  
21 *Provided, however*, That in the case of an out-of-state bank holding company, the Commissioner  
22 shall recognize the authority of the home state regulator over corporate governance matters and  
23 the primary responsibility of the home state regulator with respect to safety and soundness  
24 matters; and

25 (6) Assess supervisory and examination fees that shall be payable by any bank holding  
26 company operating a bank or bank branch in West Virginia in connection with the Commissioner's

27 performance of his or her duties under this article. The Commissioner shall charge and collect  
28 from each bank holding company and pay into a special revenue account in the state Treasury  
29 for the Department of Banking an annual assessment payable on January 15, computed on total  
30 deposits in this state of the bank holding company as of June 30 of the previous year as is set out  
31 in section eight, article two of this chapter. The payment of the assessment fee shall be  
32 accompanied by the report prescribed by the Commissioner under subsection (a), section seven  
33 of this article. Examination fees may be shared with other bank supervisory agencies or  
34 organizations affiliated with or representing one or more bank supervisory agencies in accordance  
35 with agreements between them and the Commissioner.

36 The Commissioner is not exempt from the provisions of §5A-3-35a of this code.

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 2. INSURANCE COMMISSIONER.**

#### **§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.**

1 (a) The purpose of this section is to provide an effective and efficient system for examining  
2 the activities, operations, financial condition and affairs of all persons transacting the business of  
3 insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner.  
4 The provisions of this section are intended to enable the commissioner to adopt a flexible system  
5 of examinations which directs resources as may be considered appropriate and necessary for the  
6 administration of the insurance and insurance-related laws of this state.

7 (b) For purposes of this section, the following definitions shall apply:

8 (1) "Commissioner" means the Commissioner of Insurance of this state;

9 (2) "Company" or "insurance company" means any person engaging in or proposing or  
10 attempting to engage in any transaction or kind of insurance or surety business and any person  
11 or group of persons who may otherwise be subject to the administrative, regulatory or taxing

12 authority of the commissioner, including, but not limited to, any domestic or foreign stock  
13 company, mutual company, mutual protective association, farmers mutual fire companies,  
14 fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care  
15 corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit  
16 dental care corporation, health maintenance organization, captive insurance company, risk  
17 retention group or other insurer regardless of the type of coverage written, benefits provided or  
18 guarantees made by each;

19 (3) "Department" means the Department of Insurance of this state; and

20 (4) "Examiners" means the Commissioner of Insurance or any individual or firm having  
21 been authorized by the commissioner to conduct an examination pursuant to this section,  
22 including, but not limited to, the commissioner's deputies, other employees, appointed examiners  
23 or other appointed individuals or firms who are not employees of the Department of Insurance.

24 (c) The commissioner or his or her examiners may conduct an examination under this  
25 section of any company as often as the commissioner in his or her discretion considers  
26 appropriate. The commissioner or his or her examiners shall at least once every five years visit  
27 each domestic insurer and thoroughly examine its financial condition and methods of doing  
28 business and ascertain whether it has complied with all the laws and regulations of this state. The  
29 commissioner may also examine the affairs of any insurer applying for a license to transact any  
30 insurance business in this state.

31 (d) The commissioner or his or her examiners shall, at a minimum, conduct an examination  
32 of every foreign or alien insurer licensed in this state not less frequently than once every five  
33 years. The examination of an alien insurer may be limited to its United States business: *Provided,*  
34 That in lieu of an examination under this section of any foreign or alien insurer licensed in this  
35 state, the commissioner may accept an examination report on the company as prepared by the  
36 insurance department for the company's state of domicile or port-of-entry state until January 1,  
37 1994. Thereafter, the reports may only be accepted if:

38           (1) The insurance department was at the time of the examination accredited under the  
39 National Association of Insurance Commissioners' Financial Regulation Standards and  
40 Accreditation Program; or

41           (2) The examination is performed under the supervision of an accredited insurance  
42 department or with the participation of one or more examiners who are employed by an accredited  
43 state insurance department and who, after a review of the examination work papers and report,  
44 state under oath that the examination was performed in a manner consistent with the standards  
45 and procedures required by their insurance department.

46           (e) In scheduling and determining the nature, scope and frequency of examinations  
47 conducted pursuant to this section, the commissioner may consider such matters as the results  
48 of financial statement analyses and ratios, changes in management or ownership, actuarial  
49 opinions, reports of independent certified public accountants and other criteria as set forth in the  
50 examiners' handbook adopted by the National Association of Insurance Commissioners and in  
51 effect when the commissioner exercises discretion under this section.

52           (f) For purposes of completing an examination of any company under this section, the  
53 commissioner may examine or investigate any person, or the business of any person, insofar as  
54 the examination or investigation is, in the sole discretion of the commissioner, necessary or  
55 material to the examination of the company.

56           (g) The commissioner may also cause to be examined, at the times as he or she considers  
57 necessary, the books, records, papers, documents, correspondence and methods of doing  
58 business of any agent, broker, excess lines broker or solicitor licensed by this state. For these  
59 purposes, the commissioner or his or her examiners shall have free access to all books, records,  
60 papers, documents and correspondence of all the agents, brokers, excess lines brokers and  
61 solicitors wherever the books, records, papers, documents and records are situate. The  
62 commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who  
63 refuses to submit to the examination.

64 (h) In addition to conducting an examination, the commissioner or his or her examiners  
65 may, as the commissioner considers necessary, analyze or review any phase of the operations  
66 or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other  
67 individual or corporation transacting or attempting to transact an insurance business in the State  
68 of West Virginia. The commissioner may use the full resources provided by this section in carrying  
69 out these responsibilities, including any personnel and equipment provided by this section as the  
70 commissioner considers necessary.

71 (i) Examinations made pursuant to this section shall be conducted in the following manner:

72 (1) Upon determining that an examination should be conducted, the commissioner or his  
73 or her designee shall issue an examination warrant appointing one or more examiners to perform  
74 the examination and instructing them as to the scope of the examination. The appointment of any  
75 examiners pursuant to this section by the commissioner shall not be subject to the requirements  
76 of article three, chapter five-a of this code, except that the contracts and agreements shall be  
77 approved as to form and conformity with applicable law by the Attorney General. In conducting  
78 the examination, the examiner shall observe those guidelines and procedures set forth in the  
79 examiners' handbook adopted by the National Association of Insurance Commissioners. The  
80 commissioner may also employ any other guidelines or procedures as the commissioner may  
81 consider appropriate;

82 (2) Every company or person from whom information is sought, its officers, directors and  
83 agents shall provide to the examiners appointed under subdivision (1) of this subsection timely,  
84 convenient and free access at all reasonable hours at its offices to all books, records, accounts,  
85 papers, documents and any or all computer or other recordings relating to the property, assets,  
86 business and affairs of the company being examined. The officers, directors, employees and  
87 agents of the company or person shall facilitate the examination and aid in the examination so far  
88 as it is in their power to do so;

89           (3) The refusal of any company, by its officers, directors, employees or agents, to submit  
90 to examination or to comply with any reasonable written request of the examiners shall be grounds  
91 for suspension, revocation, refusal or nonrenewal of any license or authority held by the company  
92 to engage in an insurance or other business subject to the commissioner's jurisdiction. Any  
93 proceedings for suspension, revocation, refusal or nonrenewal of any license or authority shall be  
94 conducted pursuant to section eleven of this article;

95           (4) The commissioner or his or her examiners shall have the power to issue subpoenas,  
96 to administer oaths and to examine under oath any person as to any matter pertinent to the  
97 examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of  
98 section six of this article;

99           (5) When making an examination, analysis or review under this section, the commissioner  
100 may retain attorneys, appraisers, independent actuaries, independent certified public  
101 accountants, professionals or specialists with training or experience in reinsurance, investments  
102 or information systems or other professionals and specialists as examiners, the cost of which shall  
103 be borne by the company which is the subject of the examination, analysis or review or, in the  
104 commissioner's discretion, paid from the Commissioner's Examination Revolving Fund. The  
105 commissioner may recover costs paid from the Commissioner's Examination Revolving Fund  
106 pursuant to this subdivision from the company upon which the examination, analysis or review is  
107 conducted unless the subject of the examination, analysis or review is an individual described in  
108 subdivision (2), subsection (q) of this section;

109           (6) Nothing contained in this section may be construed to limit the commissioner's  
110 authority to terminate or suspend any examination, analysis or review in order to pursue other  
111 legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his or  
112 her examiners may at any time testify and offer other proper evidence as to information secured  
113 during the course of an examination, analysis or review whether or not a written report of the  
114 examination has at that time either been made, served or filed in the commissioner's office;

115           (7) Nothing contained in this section may be construed to limit the commissioner's  
116 authority to use and, if appropriate, to make public any final or preliminary examination report,  
117 any examiner or company workpapers or other documents or any other information discovered  
118 or developed during the course of any examination, analysis or review in the furtherance of any  
119 legal or regulatory action which the commissioner may, in his or her sole discretion, consider  
120 appropriate. An examination report, when filed, shall be admissible in evidence in any action or  
121 proceeding brought by the commissioner against an insurance company, its officers or agents  
122 and shall be prima facie evidence of the facts stated therein.

123           (j) Examination reports prepared pursuant to the provisions of this section shall comply  
124 with the following requirements:

125           (1) All examination reports shall be comprised of only facts appearing upon the books,  
126 records or other documents of the company, its agents or other persons examined or as  
127 ascertained from the testimony of its officers or agents or other persons examined concerning its  
128 affairs and any conclusions and recommendations the examiners find reasonably warranted from  
129 the facts;

130           (2) No later than sixty days following completion of the examination the examiner in charge  
131 shall file with the commissioner a verified written report of examination under oath. Upon receipt  
132 of the verified report, the commissioner shall transmit the report to the company examined,  
133 together with a notice which shall afford the company examined a reasonable opportunity of not  
134 more than thirty days to make a written submission or rebuttal with respect to any matters  
135 contained in the examination report;

136           (3) Within thirty days of the end of the period allowed for the receipt of written submissions  
137 or rebuttals the commissioner shall fully consider and review the report, together with any written  
138 submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an  
139 order:

140 (A) Adopting the examination report as filed or with modification or corrections. If the  
141 examination report reveals that the company is operating in violation of any law, rule or prior order  
142 of the commissioner, the commissioner may order the company to take any action the  
143 commissioner considers necessary and appropriate to cure the violation; or

144 (B) Rejecting the examination report with directions to the examiners to reopen the  
145 examination for purposes of obtaining additional data, documentation or information and refile  
146 pursuant to subdivision (2) of this subsection; or

147 (C) Calling for an investigatory hearing with no less than twenty days' notice to the  
148 company for purposes of obtaining additional documentation, data, information and testimony;

149 (4) All orders entered pursuant to this subsection shall be accompanied by findings and  
150 conclusions resulting from the commissioner's consideration and review of the examination  
151 report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued  
152 pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final  
153 administrative decision and may be appealed pursuant to section fourteen of this article and shall  
154 be served upon the company by certified mail, together with a copy of the adopted examination  
155 report. Within thirty days of the issuance of the adopted report the company shall file affidavits  
156 executed by each of its directors stating under oath that they have received a copy of the adopted  
157 report and related orders.

158 (k) Hearings conducted pursuant to this section shall be subject to the following  
159 requirements:

160 (1) Any hearing conducted pursuant to this section by the commissioner or the  
161 commissioner's authorized representative shall be conducted as a nonadversarial, confidential  
162 investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or  
163 disputed issues apparent upon the face of the filed examination report or raised by or as a result  
164 of the commissioner's review of relevant workpapers or by the written submission or rebuttal of



165 the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter  
166 an order pursuant to paragraph (A), subdivision (3), subsection (j) of this section;

167 (2) The commissioner may not appoint an examiner as an authorized representative to  
168 conduct the hearing. The hearing shall proceed expeditiously with discovery by the company  
169 limited to the examiner's workpapers which tend to substantiate any assertions set forth in any  
170 written submission or rebuttal. The commissioner or the commissioner's representative may issue  
171 subpoenas for the attendance of any witnesses or the production of any documents considered  
172 relevant to the investigation whether under the control of the commissioner, the company or other  
173 persons. The documents produced shall be included in the record and testimony taken by the  
174 commissioner or the commissioner's representative shall be under oath and preserved for the  
175 record. Nothing contained in this section shall require the commissioner to disclose any  
176 information or records which would indicate or show the existence or content of any investigation  
177 or activity of a criminal justice agency;

178 (3) The hearing shall proceed with the commissioner or the commissioner's representative  
179 posing questions to the persons subpoenaed. Thereafter, the company and the department may  
180 present testimony relevant to the investigation. Cross-examination may be conducted only by the  
181 commissioner or the commissioner's representative. The company and the commissioner shall  
182 be permitted to make closing statements and may be represented by counsel of their choice.

183 (l) Adoption of the examination report shall be subject to the following requirements:

184 (1) Upon the adoption of the examination report under paragraph (A), subdivision (3),  
185 subsection (j) of this section, the commissioner may continue to hold the content of the  
186 examination report as private and confidential information for a period of ninety days except to  
187 the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner  
188 may open the report for public inspection so long as no court of competent jurisdiction has stayed  
189 its publication;

190 (2) Nothing contained in this section may prevent or be construed as prohibiting the  
191 commissioner from disclosing the content of an examination report, preliminary examination  
192 report or results or any matter relating thereto or the results of any analysis or review to the  
193 insurance department of this or any other state or country or to law-enforcement officials of this  
194 or any other state or agency of the federal government at any time, so long as the agency or office  
195 receiving the report or matters relating thereto agrees in writing to hold it confidential and in a  
196 manner consistent with this section;

197 (3) In the event the commissioner determines that regulatory action is appropriate as a  
198 result of any examination, analysis or review, he or she may initiate any proceedings or actions  
199 as provided by law;

200 (4) All working papers, recorded information, documents and copies thereof produced by,  
201 obtained by or disclosed to the commissioner or any other person in the course of an examination,  
202 analysis or review made under this section must be given confidential treatment and are not  
203 subject to subpoena and may not be made public by the commissioner or any other person,  
204 except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be  
205 granted in accordance with section nineteen of this article. The parties must agree in writing prior  
206 to receiving the information to provide to it the same confidential treatment as required by this  
207 section unless the prior written consent of the company to which it pertains has been obtained.

208 (m) The commissioner may require any examiner to furnish a bond in such amount as  
209 commissioner may determine to be appropriate and the bond shall be approved, filed and  
210 premium paid, with suitable proof submitted to the commissioner, prior to commencement of  
211 employment by the commissioner. No examiner may be appointed by the commissioner if the  
212 examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management  
213 of or owns a pecuniary interest in any person subject to examination under this section. This  
214 section shall not be construed to automatically preclude an examiner from being:

215 (1) A policyholder or claimant under an insurance policy;

216 (2) A grantor of a mortgage or similar instrument on the examiner's residence to a  
217 regulated entity if done under customary terms and in the ordinary course of business;

218 (3) An investment owner in shares of regulated diversified investment companies; or

219 (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings  
220 have been placed;

221 (5) Notwithstanding the requirements of this subsection, the commissioner may retain,  
222 from time to time, on an individual basis qualified actuaries, certified public accountants or other  
223 similar individuals who are independently practicing their professions even though these persons  
224 may, from time to time, be similarly employed or retained by persons subject to examination under  
225 this section.

226 (n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign  
227 or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The  
228 personnel shall also be reimbursed for their travel and living expenses at the rate set by the  
229 commissioner. Other individuals who are not employees of the Department of Insurance shall all  
230 be compensated for their work, travel and living expenses at rates approved by the commissioner  
231 or as otherwise provided by law. As used in this section, the costs of an examination, analysis or  
232 review means:

233 (1) The entire compensation for each day worked by all personnel, including those who  
234 are not employees of the Department of Insurance, the conduct of the examination, analysis or  
235 review calculated as hereinbefore provided;

236 (2) Travel and living expenses of all personnel, including those who are not employees of  
237 the Department of Insurance, directly engaged in the conduct of the examination, analysis or  
238 review calculated at the rates as hereinbefore provided for;

239 (3) All other incidental expenses incurred by or on behalf of the personnel in the conduct  
240 of any authorized examination, analysis or review.

241 (o) (1) All property and casualty insurers subject to the provisions of this section shall  
242 annually pay to the commissioner on or before July 1, 1991, and every July 1 thereafter an  
243 examination assessment fee of up to \$5,000. \$450 of this fee shall be paid to the Treasurer of the  
244 state to the credit of a special revolving fund to be known as the Commissioner's Examination  
245 Revolving Fund which is hereby established; up to \$4,200 shall be paid to the Treasurer of the  
246 state to the credit of the Unfair Claims Settlement Practice Trust Fund established in section four-  
247 b, article eleven of this chapter and \$350 shall be paid to the Treasurer of the state. If the trust  
248 fund has moneys in excess of \$1,000,000, the examination assessment fee shall be \$800 and  
249 the \$5,000 fee shall only be reinstated at whatever amount the commissioner deems necessary  
250 to maintain the fund, if the fund value goes below \$1,000,000. The commissioner may at his or  
251 her discretion, upon notice to the insurers subject to this subsection, increase this examination  
252 assessment fee or levy an additional examination assessment fee of \$250. In no event may the  
253 total examination assessment fee, including any additional examination assessment fee levied,  
254 exceed \$5,250 per insurer in any calendar year.

255 (2) All insurers other than property and casualty insurers subject to the provisions of this  
256 section shall annually pay to the commissioner on or before July 1, 1991, and every July 1  
257 thereafter an examination assessment fee of \$800. \$450 of this fee shall be paid to the Treasurer  
258 of the state to the credit the Commissioner's Examination Revolving Fund and \$350 shall be paid  
259 to the Treasurer of the state. The commissioner may at his or her discretion, upon notice to the  
260 insurers subject to this subsection, increase this examination assessment fee or levy an additional  
261 examination assessment fee of \$250. In no event may the total examination assessment fee,  
262 including any additional examination assessment fee levied, exceed \$1,500 per insurer in any  
263 calendar year.

264 (p) The moneys collected by the commissioner from an increase or additional examination  
265 assessment fee shall be paid to the Treasurer of the state to be credited to the Commissioner's  
266 Examination Revolving Fund. Any funds expended or obligated by the commissioner from the

267 Commissioner's Examination Revolving Fund may be expended or obligated solely for  
268 defrayment of the costs of examinations, analyses or reviews of the financial affairs and business  
269 practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other  
270 individuals or corporations transacting or attempting to transact an insurance business in this  
271 state made by the commissioner pursuant to this section or for the purchase of equipment and  
272 supplies, travel, education and training for the commissioner's deputies, other employees and  
273 appointed examiners necessary for the commissioner to fulfill the statutory obligations created by  
274 this section.

275 (q) The commissioner may require other individuals who are not employees of the  
276 Department of Insurance who have been appointed by the commissioner to conduct or participate  
277 in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors  
278 or other individuals or corporations transacting or attempting to transact an insurance business in  
279 this state to:

280 (1) Bill and receive payments directly from the insurance company being examined,  
281 analyzed or reviewed for their work, travel and living expenses as previously provided in this  
282 section; or

283 (2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill  
284 and receive payments directly from the Commissioner's Examination Revolving Fund for their  
285 work, travel and living expenses as previously provided in this section. The commissioner may  
286 recover costs paid from the Commissioner's Examination Revolving Fund pursuant to this  
287 subdivision from the person upon whom the examination, analysis or review is conducted.

288 (r) The commissioner and his or her examiners shall be entitled to immunity to the following  
289 extent:

290 (1) No cause of action shall arise nor shall any liability be imposed against the  
291 commissioner or his or her examiners for any statements made or conduct performed in good  
292 faith while carrying out the provisions of this section;

293 (2) No cause of action shall arise, nor shall any liability be imposed, against any person  
294 for the act of communicating or delivering information or data to the commissioner or his or her  
295 examiners pursuant to an examination, analysis or review made under this section if the act of  
296 communication or delivery was performed in good faith and without fraudulent intent or the intent  
297 to deceive;

298 (3) The commissioner or any examiner shall be entitled to an award of attorney's fees and  
299 costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other  
300 relevant tort arising out of activities in carrying out the provisions of this section and the party  
301 bringing the action was not substantially justified in doing so. For purposes of this section, a  
302 proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it  
303 was initiated;

304 (4) This subsection does not abrogate or modify in any way any Constitutional immunity  
305 or common law or statutory privilege or immunity heretofore enjoyed by any person identified in  
306 subdivision (1) of this subsection.

307 (s) The commissioner is not exempt from the provisions of §5A-3-35a of this code.

**ARTICLE 20E. WEST VIRGINIA MEDICAL PROFESSIONAL LIABILITY INSURANCE  
JOINT UNDERWRITING ASSOCIATION ACT.**

**§33-20E-7. Association's powers and duties.**

1 (a) The association has, for purposes of this article and to the extent approved by the  
2 commissioner, the general powers and authority granted under the laws of this state to insurers  
3 licensed to transact insurance as defined in article one, chapter thirty-three of this code.

4 (b) The association may take any necessary action to make medical professional liability  
5 insurance available including, but not limited to:

6 (1) Assessing member insurers amounts necessary to pay the obligations of the  
7 association, administration expenses, the cost of examinations and other expenses authorized  
8 under this article.

9 (2) Establishing underwriting standards and criteria.

10           (3) Requiring an eligible health care provider to purchase an extended reporting  
11 endorsement, if available, from his or her previous primary medical professional liability carrier  
12 with respect to claims arising during previous policy periods.

13           (4) Entering into such contracts as are necessary or proper to carry out the provisions and  
14 purposes of this article, including contracts authorizing competent third parties with experience  
15 with joint underwriting associations or the medical professional liability line of insurance to  
16 administer the plan of operation, issue policies, oversee risk management, oversee investment  
17 management, set rates, underwrite risk or process claims or any combination thereof. Any such  
18 third-party contract must be approved by the commissioner. The provisions of article three,  
19 chapter five-a of this code, relating to purchasing procedures, do not apply to any contracts or  
20 agreements executed by or on behalf of the association under this subsection.

21           (5) Suing, including taking legal action necessary to recover any assessments for, on  
22 behalf of, or against member insurers.

23           (6) Investigating claims brought against the association and adjusting, compromising,  
24 defending, settling, and paying covered claims, to the extent of the association's obligation, and  
25 denying all other claims.

26           (7) Classifying risks as may be applicable and equitable.

27           (8) Establishing actuarially sound rates, rate classifications and rating adjustments,  
28 subject to approval by the commissioner.

29           (9) Purchasing reinsurance in an amount as it may from time to time consider appropriate.

30           (10) Issuing and marketing policies of insurance providing coverage required by this article  
31 in its own name.

32           (11) Investing, reinvesting and administering all funds and moneys held by the association.

33           (12) Establishing accounts and funds, including a reserve fund, to effectuate the purposes  
34 of this article.

35 (13) Developing, effectuating and promulgating any loss prevention programs aimed at  
36 the best interests of the association and the insured public.

37 (c) The association is not exempt from the provisions of §5A-3-35a of this code.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 1. SUPREME COURT OF APPEALS.

#### §51-1-17. Administrative office of Supreme Court of Appeals — duties of director.

1 The director shall, when authorized by the Supreme Court of Appeals, be the  
2 administrative officer of said court and shall have charge, under the supervision and direction of  
3 the Supreme Court of Appeals, of:

4 (a) All administrative matters relating to the offices of the clerks of the circuit and  
5 intermediary courts and of the offices of justice of the peace and all other clerical and  
6 administrative personnel of said courts; but nothing contained in this article shall be construed as  
7 affecting the authority of the courts to appoint their administrative or clerical personnel;

8 (b) Examining the state of the dockets of the various courts and securing information as  
9 to their needs for assistance, if any, and the preparation of statistical data and reports of the  
10 business transacted by the courts;

11 (c) The preparation of a proper budget to secure the appropriation of moneys for the  
12 maintenance, support and operation of the courts;

13 (d) The purchase, exchange, transfer and distribution of equipment and supplies, as may  
14 be needful or desirable;

15 (e) Such other matters as may be assigned to him or her by the Supreme Court of Appeals.

16 The clerks of the circuit courts, intermediate courts and courts of the justices of the peace shall  
17 comply with any and all requests made by the director or his or her assistants for information and  
18 statistical data bearing on the state of the dockets of such courts, or such other information as  
19 may reflect the business transacted by them;



20 (f) *Annual report of activities and estimates of expenditures.* — The director, when required  
21 to do so by the Supreme Court of Appeals, shall submit annually to the court a report of the  
22 activities of the administrative office and of the state of business of the courts, together with the  
23 statistical data compiled by him or her, with his or her recommendations;

24 (g) Serve as the chair of the court security board created under the provisions of section  
25 fifteen, article three of this chapter.

26 The Supreme Court of Appeals is not exempt from the provisions of §5A-3-35a of this  
27 code.

Strike-throughs indicate language that would be stricken from a heading or the present law,  
and underscoring indicates new language that would be added.