

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3421

By Delegate Hanshaw (Mr. Speaker)

[Originating in the Committee on the Judiciary;

Reported on February 22, 2023]

1 A BILL to amend and reenact §3-1-30 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §8-12-17 of said code; to amend and reenact §8-13-5 of said code; to amend
3 and reenact §12-7-12 of said code; to amend and reenact §16-5V-2 of said code; to amend
4 and reenact §18-8-1a of said code; to amend and reenact §18A-3-2a, of said code; to
5 amend and reenact §21-5-1 of said code; to amend and reenact §22C-9-4 of said code; to
6 amend and reenact §24-2-1 of said code; to amend and reenact §24A-2-2b of said code; to
7 amend and reenact §29-6-4 of said code; to amend and reenact §46A-8-101 of said code;
8 to amend and reenact §61-12-3 of said code; all relating to recodifying portions of the code
9 to eliminate conflicts.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

1 (a) For any primary, general, or special election held throughout a county, poll clerks and
2 election commissioners may be nominated as follows:

3 (1) The county executive committee for each of the two major political parties may, by a
4 majority vote of the committee at a duly called meeting, nominate one qualified person for each
5 team of poll clerks and one qualified person for each team of election commissioners to be
6 appointed for the election;

7 (2) The appointing body shall select one qualified person as the additional election
8 commissioner for each board of election officials;

9 (3) Each county executive committee shall also nominate qualified persons as alternates
10 for at least 10 percent of the poll clerks and election commissioners to be appointed in the county
11 and is authorized to nominate as many qualified persons as alternates as there are precincts in the

12 county to be called upon to serve in the event any of the persons originally appointed fail to accept
13 appointment or fail to appear for the required training or for the preparation or execution of their
14 duties;

15 (4) When an executive committee nominates qualified persons as poll clerks, election
16 commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in
17 writing with the appointing body, no later than the 70th day before the election, a list of those
18 persons nominated and the positions for which they are designated.

19 (b) For any municipal primary, general, or special election, the poll clerks and election
20 commissioners may be nominated as follows:

21 (1) In municipalities which have municipal executive committees for the two major political
22 parties in the municipality, each committee may nominate election officials in the manner provided
23 for the nomination of election officials by county executive committees in subsection (a) of this
24 section;

25 (2) In municipalities which do not have executive committees, the governing body shall
26 provide by ordinance for a method of nominating election officials or shall nominate as many
27 eligible persons as are required, giving due consideration to any recommendations made by
28 voters of the municipality or by candidates on the ballot.

29 (c) The governing body responsible for appointing election officials is:

30 (1) The county commission for any primary, general, or special election ordered by the
31 county commission and any joint county and municipal election;

32 (2) The municipal governing body for any primary, general or special municipal election
33 ordered by the governing body.

34 (d) The qualifications for persons nominated to serve as election officials may be confirmed
35 prior to appointment by the clerk of the county commission for any election ordered by the county
36 commission or for any joint county and municipal election and by the official recorder of the
37 municipality for a municipal election.

38 (e) The appropriate governing body shall appoint the election officials for each designated
39 election board no later than the 49th day before the election as follows:

40 (1) Those eligible persons whose nominations for poll clerk and election commissioner
41 were timely filed by the executive committees and those additional persons selected to serve as
42 an election commissioner are to be appointed; and

43 (2) The governing body shall fill any positions for which no nominations were filed.

44 (f) At the same time as the appointment of election officials or at a subsequent meeting the
45 governing body shall appoint persons as alternates: *Provided*, That no alternate may be eligible for
46 compensation for election training unless the alternate is subsequently appointed as an election
47 official or is instructed to attend and actually attends training as an alternate and is available to
48 serve on election day. Alternates shall be appointed and serve as follows:

49 (1) Those alternates nominated by the executive committees shall be appointed;

50 (2) The governing body may appoint additional alternates who may be called upon to fill
51 vacancies after all alternates designated by the executive committees have been assigned, have
52 declined to serve or have failed to attend training; and

53 (3) The governing body may determine the number of persons who may be instructed to
54 attend training as alternates.

55 (g) The clerk of the county commission shall appoint qualified persons to fill all vacancies
56 existing after all previously appointed alternates have been assigned, have declined to serve, or
57 have failed to attend training.

58 (h) Within seven days following appointment, the clerk of the county commission shall
59 notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their
60 appointment and include with the notice a response notice form for the appointed person to return
61 indicating whether or not he or she agrees to serve in the specified capacity in the election.

62 (i) The position of any person notified of appointment who fails to return the response
63 notice or otherwise confirm to the clerk of the county commission his or her agreement to serve

64 within 14 days following the date of appointment is considered vacant and the clerk shall proceed
65 to fill the vacancies according to the provisions of this section.

66 (j) If the governing body and the clerk of the county commission are unable to nominate a
67 sufficient number of qualified persons agreeing to serve on a standard receiving board for each
68 precinct, the clerk may assign members of one precinct's standard receiving board to serve
69 simultaneously on the standard receiving board of another precinct where the polling places of
70 both precincts are located within the same physical building or facility: *Provided*, That no more
71 than three precincts within the same building or facility may share board members in this manner.

72 (k) On election day, if an appointed election official or a poll clerk working a full day fails to
73 appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, later than a time
74 designated by the clerk of the county commission, the election officials present shall contact the
75 office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall
76 proceed as follows:

77 (1) The clerk may attempt to contact the person originally appointed, may assign an
78 alternate nominated by the same political party as the person absent if one is available or, if no
79 alternate is available, may appoint another eligible person;

80 (2) If the election officials present are unable to contact the clerk within a reasonable time,
81 they shall diligently attempt to fill the position with an eligible person of the same political party as
82 the party that nominated the person absent until a qualified person has agreed to serve;

83 (3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the
84 polling place, the person appointed to fill a vacancy in the position of the additional commissioner
85 may be of either political party.

86 (l) In a municipal election, the recorder or other official designated by charter or ordinance
87 to perform election responsibilities shall perform the duties of the clerk of the county commission
88 as provided in this section.

89 (m) Nothing in this section shall be construed to require any county executive committee or
90 county commission to offer half-day shifts for poll clerks during any election.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality owns a gas system, an electric system, a waterworks
2 system, a sewer system, or other public utility and a majority of not less than 60 percent of the
3 members of the governing body thereof determines it for the best interest of the municipality that
4 the utility be sold or leased, the governing body may so sell or lease the gas system, electric
5 system, waterworks system, sewer system, or other public utility upon such terms and conditions
6 as the governing body in its discretion considers in the best interest of the municipality: *Provided,*
7 That the sale or lease may be made only upon: (1) The publication of notice of a hearing before the
8 governing body of the municipality, as a Class I legal advertisement in compliance with §59-3-1 *et*
9 *seq.* of this code, in a newspaper published and of general circulation in the municipality, the
10 publication to be made not earlier than 20 days and not later than seven days prior to the hearing;
11 and (2) the approval by the Public Service Commission of West Virginia. The governing body,
12 upon the approval of the sale or lease by a majority of its members of not less than 60 percent of
13 the members of the governing body, shall have full power and authority to proceed to execute or
14 effect the sale or lease in accordance with the terms and conditions prescribed in the ordinance
15 approved as aforesaid, and shall have power to do any and all things necessary or incident
16 thereto: *Provided, however,* That if at any time after the approval and before the execution of the
17 authority under the ordinance, any person should present to the governing body an offer to buy the
18 public utility at a price which exceeds by at least five percent the sale price which shall have been

19 so approved and authorized or to lease the same upon terms which the governing body, in its
20 discretion, shall consider more advantageous to the municipality than the terms of the lease which
21 shall have been previously approved as aforesaid, the governing body shall have the power to
22 accept the subsequent offer, and to make the sale or the lease to the person making the offer,
23 upon approval of the offer by a majority of not less than 60 percent of the members of the
24 governing body; but, if a sale shall have been approved by the governing body as aforesaid, and
25 the subsequent proposition be for a lease, or, if a lease shall have been approved by the governing
26 body, and the subsequent proposition shall be for a sale, the governing body shall have the
27 authority to accept the same upon approval of the offer by a majority of not less than 60 percent of
28 the members of the governing body. The person making the proposition shall furnish bond, with
29 security to be approved by the governing body, in a penalty of not less than 25 percent of the
30 proposed bid, conditioned to carry the proposition into execution, if the same shall be approved by
31 the governing body. In any case where any such public utility shall be sold or leased by the
32 governing body as hereinabove provided, no part of the moneys derived from the sale or lease
33 shall be applied to the payment of current expenses of the municipality, but the proceeds of the
34 sale or lease may be applied in payment and discharge of any indebtedness created in respect to
35 the public utility, and in case there be no indebtedness, the governing body, in its discretion, shall
36 have the power and authority to expend all such moneys when received for the purchase or
37 construction of firefighting equipment and buildings for housing the equipment, a municipal
38 building, or city hall, and the necessary land upon which to locate the same, for capital investments
39 in public works projects, vehicles and equipment and law-enforcement vehicles and equipment,
40 for the demolition of dilapidated and abandoned buildings, or for the construction of paved streets,
41 avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like
42 permanent improvements, for fulfilling municipal pension and other post-employment benefit
43 obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the
44 payment of the indebtedness, the surplus shall be used as aforesaid.

45 The requirements of this section shall not apply to the sale or lease of any part of the
46 properties of any such public utility determined by the governing body to be unnecessary for the
47 efficient rendering of the service of the utility.

ARTICLE 13. TAXATION AND FINANCE.

**§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax;
 exemptions; activity in two or more municipalities; administrative provisions.**

1 (a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for
2 which the state imposed its annual business and occupation or privilege tax under article thirteen,
3 chapter eleven of this code, prior to July 1, 1987, is engaged in or carried on within the corporate
4 limits of any municipality, the governing body thereof shall have plenary power and authority,
5 unless prohibited by general law, to impose a similar business and occupation tax thereon for the
6 use of the municipality.

7 (2) Municipalities may impose a business and occupation or privilege tax upon every
8 person engaging or continuing within the municipality in the business of aircraft repair, remodeling,
9 maintenance, modification and refurbishing services to any aircraft or to an engine or other
10 component part of any aircraft as a separate business activity.

11 (b) *Maximum tax rates.* — In no case shall the rate of such municipal business and
12 occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state,
13 exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b,
14 two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such
15 rates were in effect under said article thirteen, on January 1, 1959, or in excess of one percent of
16 gross income under section two-k of said article thirteen, or in excess of three tenths of one
17 percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The
18 rate of municipal business and occupation or privilege tax on the activity described in subdivision
19 (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal
20 business and occupation or privilege tax on the activity of a health maintenance organization

21 holding a certificate of authority under the provisions of article twenty-five-a, chapter thirty-three of
22 this code, shall not exceed one half of one percent to be applied solely to that portion of gross
23 income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the
24 state employee programs administered by the Public Employees Insurance Agency pursuant to
25 article sixteen, chapter five of this code, and other federal programs, for health care items or
26 services provided directly or indirectly by the health maintenance organization, that is expended
27 for administrative expenses; and shall not exceed one half of one percent to be applied to the
28 gross income received from enrollees, or from employers on behalf of enrollees, from sources
29 other than Medicaid, state employee programs administered by the Public Employees Insurance
30 Agency and other federal programs for health care items or services provided directly or indirectly
31 by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to
32 that part of the gross income of health maintenance organizations which is received from the use
33 of real property other than property in which any such company maintains its office or offices in this
34 state, whether such income is in the form of rentals or royalties. This provision concerning the
35 maximum municipal business and occupation tax rate on the activities of health maintenance
36 organizations is effective beginning after December 31, 1996. Any payments of business and
37 occupation tax made by a health maintenance organization to a municipality for calendar year
38 1997 shall not be subject to recovery by the health maintenance organization. Administrative
39 expenses shall include all expenditures made by a health maintenance organization other than
40 expenses paid for claims incurred or payments made to providers for the benefits received by
41 enrollees.

42 (c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section
43 may be made operative as of the first day of the then current fiscal year or any date thereafter:
44 *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business,
45 occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross
46 income derived from contracts entered into after the effective date of such imposition of tax or rate

47 increase, and which effective date shall not be retroactive in any respect: *Provided, however,* That
48 no tax imposed or revised under this section upon public utility services may be effective unless
49 and until the municipality provides written notice of the same by certified mail to said public utility at
50 least sixty days prior to the effective date of said tax or revision thereof.

51 (d) *Exemptions.* –

52 (1) A municipality shall not impose its business and occupation or privilege tax on any
53 activity that was exempt from the state’s business and occupation tax under the provisions of
54 section three, article thirteen of said chapter eleven, prior to July 1, 1987, and determined without
55 regard to any annual or monthly monetary exemption also specified therein: *Provided,* That on and
56 after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any
57 activity of a corporation, association or society organized and operated exclusively for religious or
58 charitable purposes that was exempt from the state’s business and occupation tax under the
59 provisions of section three, article thirteen of chapter eleven, prior to July 1, 1987, but only to the
60 extent that the income generated by the activity is subject to taxation under the provisions of
61 section 511 of the Internal Revenue Code of 1986, as amended.

62 (2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the
63 sale of new automobiles that have never been registered in the name of an individual shall be
64 reduced by 50% percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the
65 remaining municipal business and occupation or privilege tax on the sale of new automobiles that
66 have never been registered in the name of an individual shall be reduced by an additional 50% of
67 the total amount of the tax: *Provided, however,* That effective July 1, 2025, the municipal business
68 and occupation or privilege tax on the sale of new automobiles that have never been registered in
69 the name of an individual shall be completely eliminated. For the purposes of this section an
70 automobile is a self-propelled vehicle used primarily for the transportation of passengers and their
71 effects and operated on the roads and highways by the use of motor vehicle fuel or propelled by
72 one or more electric motors using energy stored in batteries or a combination thereof. An

73 automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the
74 rear and a sport utility vehicle. An automobile does not include a motorcycle.

75 (e) *Activity in two or more municipalities.* — Whenever the business activity or occupation
76 of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of
77 gross income, or gross proceeds of sales, taxable by each municipality shall be determined in
78 accordance with ~~such legislative regulations as~~ rules as prescribed by the Tax Commissioner. ~~may~~
79 ~~prescribe.~~ It being the intent of the Legislature that multiple taxation of the same gross income, or
80 gross proceeds of sale, under the same classification by two or more municipalities shall not be
81 allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or
82 carried on within this state, that is presently subject to state tax under section two-c or two-h,
83 article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality
84 of this state, may be included in the measure of tax for any municipality in this state, from which the
85 activity was directed, or in the absence thereof, the municipality in this state in which the principal
86 office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any
87 municipality to tax gross income or gross proceeds of sales in violation of the Constitution and
88 laws of this state or the United States, or as permitting a municipality to tax any activity that has a
89 definite situs outside its taxing jurisdiction.

90 (f) Where the governing body of a municipality imposes a tax authorized by this section,
91 such governing body ~~shall have the authority to~~ may offer tax credits from such tax as incentives
92 for new and expanding businesses located within the corporate limits of the municipality.

93 (g) *Administrative provisions.* — The ordinance of a municipality imposing a business and
94 occupation or privilege tax shall provide procedures for the assessment and collection of such tax,
95 which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in
96 existence on June 30, 1978, or to those procedures in article ten, chapter eleven of this code, and
97 shall conform with such provisions as they relate to waiver of penalties and additions to tax.

98 (h) Timely payment. — Payments for taxes due under this section that are postmarked
99 after the due date by which they are owed shall be considered late and may be subject to late fees
100 or penalties: *Provided*, That payments that are received by the municipality after the due date, but
101 that were postmarked on or before the due date shall be considered to be on time and shall not be
102 assessed any late fees or penalties.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-12. Reports of board; report of housing development fund.

1 (a) The board shall prepare annually, or more frequently if deemed necessary by the
2 board, a report of its operations and the performance of the various investments administered by
3 it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of
4 the House of Delegates, the Legislative Auditor, and, upon request, to any legislative committee.
5 Such report shall be kept available for inspection by any citizen of this state. The report required in
6 this subsection may be made available electronically on the board's website or through the
7 website of the West Virginia Economic Development Authority. The report may be submitted to the
8 Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative
9 Auditor, or to any legislative committee electronically and paper copies must be provided upon
10 request.

11 (b) The West Virginia Economic Development Authority shall prepare annually and submit
12 to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor,
13 and, upon request, any legislative committee, a report on the performance of the board and the
14 quality of its investments for the preceding year. The report required in this subsection may be
15 made available electronically on the West Virginia Economic Development Authority's website.
16 The report may be submitted to the Governor, the President of the Senate, the Speaker of the

17 House of Delegates, the Legislative Auditor, or to any legislative committee electronically and
18 paper copies must be provided upon request.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and six 10ths percent per year
4 of the member's final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one and one-half percent per year for each year over
6 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may
7 not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions
8 of §16-5V-12 of this code.

9 (1) The board may, upon the recommendation of the board's actuary, increase the
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-
12 half percent once the plan funding reaches the 70 percent support objective as of any later
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the
16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to
17 90 percent.

18 (b) "Accumulated contributions" means the sum of all retirement contributions deducted
19 from the compensation of a member, or paid on his or her behalf as a result of covered
20 employment, together with regular interest on the deducted amounts.

21 (c) "Active military duty" means full-time active duty with any branch of the armed forces of
22 the United States, including service with the National Guard or reserve military forces when the
23 member has been called to active full-time duty and has received no compensation during the
24 period of that duty from any board or employer other than the armed forces.

25 (d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the
26 mortality table and interest rates as set and adopted by the board in accordance with the
27 provisions of this article.

28 (e) "Annual compensation" means the wages paid to the member during covered
29 employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined
30 without regard to any rules that limit the remuneration included in wages based upon the nature or
31 location of employment or services performed during the plan year plus amounts excluded under
32 section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
33 allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits.
34 Annual compensation for determining benefits during any determination period may not exceed
35 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
36 this code and section 401(a)(17) of the Internal Revenue Code.

37 (f) "Annual leave service" means accrued annual leave.

38 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
39 after submission of a retirement application. For purposes of this subsection, if retirement income
40 payments commence after the normal retirement age, "retirement" means the first day of the
41 month following or coincident with the latter of the last day the member worked in covered
42 employment or the member's normal retirement age and after completing proper written
43 application for retirement on an application supplied by the board.

44 (h) "Board" means the Consolidated Public Retirement Board.

45 (i) "Contributing service" or "contributory service" means service rendered by a member
46 while employed by a participating public employer for which the member made contributions to the
47 plan.

48 (j) "County commission or political subdivision" has the meaning ascribed to it in this code.

49 (k) "Covered employment" means either: (1) Employment as a full-time emergency
50 medical technician, emergency medical technician/paramedic or emergency medical
51 services/registered nurse and the active performance of the duties required of emergency medical
52 services officers; or (2) the period of time during which active duties are not performed but
53 disability benefits are received under this article; or (3) concurrent employment by an emergency
54 medical services officer in a job or jobs in addition to his or her employment as an emergency
55 medical services officer where the secondary employment requires the emergency medical
56 services officer to be a member of another retirement system which is administered by the
57 Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency
58 medical services officer contributes to the fund created in this article the amount specified as the
59 member's contribution in §16-5V-8 of this code.

60 (l) "Credited service" means the sum of a member's years of service, active military duty,
61 disability service and accrued annual and sick leave service.

62 (m) "Dependent child" means either:

63 (1) An unmarried person under age 18 who is:

64 (A) A natural child of the member;

65 (B) A legally adopted child of the member;

66 (C) A child who at the time of the member's death was living with the member while the
67 member was an adopting parent during any period of probation; or

68 (D) A stepchild of the member residing in the member's household at the time of the
69 member's death; or

70 (2) Any unmarried child under age 23:

71 (A) Who is enrolled as a full-time student in an accredited college or university;

72 (B) Who was claimed as a dependent by the member for federal income tax purposes at
73 the time of the member's death; and

74 (C) Whose relationship with the member is described in paragraph (A), (B) or (C),
75 subdivision (1) of this subsection.

76 (n) "Dependent parent" means the father or mother of the member who was claimed as a
77 dependent by the member for federal income tax purposes at the time of the member's death.

78 (o) "Disability service" means service received by a member, expressed in whole years,
79 fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during
80 which time a member receives disability benefits under this article.

81 (p) "Early retirement age" means age 45 or over and completion of 20 years of contributory
82 service.

83 (q) "Effective date" means January 1, 2008.

84 (r) "Emergency medical services officer" means an individual employed by the state,
85 county or other political subdivision as a medical professional who is qualified to respond to
86 medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as
87 defined by the West Virginia Office of Emergency Medical Services. This definition is construed to
88 include employed ambulance providers and other services such as law enforcement, rescue or
89 fire department personnel who primarily perform these functions and are not provided any other
90 credited service benefits or retirement plans. These persons may hold the rank of emergency
91 medical technician/basic, emergency medical technician/paramedic, emergency medical
92 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
93 Services and the Consolidated Public Retirement Board.

94 (s) "Employer error" means an omission, misrepresentation or deliberate act in violation of
95 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
96 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by

97 the participating public employer that has resulted in an underpayment or overpayment of
98 contributions required.

99 (t) "Final average salary" means the average of the highest annual compensation received
100 for covered employment by the member during any five consecutive plan years within the
101 member's last 10 years of service while employed, prior to any disability payment. If the member
102 did not have annual compensation for the five full plan years preceding the member's attainment
103 of normal retirement age and during that period the member received disability benefits under this
104 article, then "final average salary" means the average of the monthly salary determined paid to the
105 member during that period as determined under §16-5V-19 of this code multiplied by 12. Final
106 average salary does not include any lump sum payment for unused, accrued leave of any kind or
107 character.

108 (u) "Full-time employment" means permanent employment of an employee by a
109 participating public employer in a position which normally requires 12 months per year service and
110 requires at least 1040 hours per year service in that position.

111 (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created
112 by this article.

113 (w) "Hour of service" means:

114 (1) Each hour for which a member is paid or entitled to payment for covered employment
115 during which time active duties are performed. These hours shall be credited to the member for the
116 plan year in which the duties are performed; and

117 (2) Each hour for which a member is paid or entitled to payment for covered employment
118 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
119 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and
120 without regard to whether the employment relationship has terminated. Hours under this
121 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A

122 member will not be credited with any hours of service for any period of time he or she is receiving
123 benefits under §16-5V-19 or §16-5V-20 of this code; and

124 (3) Each hour for which back pay is either awarded or agreed to be paid by the employing
125 county commission or political subdivision, irrespective of mitigation of damages. The same hours
126 of service shall not be credited both under subdivision (1) or (2) of this subsection and under this
127 subdivision. Hours under this paragraph shall be credited to the member for the plan year or years
128 to which the award or agreement pertains, rather than the plan year in which the award,
129 agreement or payment is made.

130 (x) "Member" means a person first hired as an emergency medical services officer by an
131 employer which is a participating public employer of the Public Employees Retirement System or
132 the Emergency Medical Services Retirement System after the effective date of this article, as
133 defined in subsection (q) of this section, or an emergency medical services officer of an employer
134 which is a participating public employer of the Public Employees Retirement System first hired
135 prior to the effective date and who elects to become a member pursuant to this article. A member
136 shall remain a member until the benefits to which he or she is entitled under this article are paid or
137 forfeited.

138 (y) "Monthly salary" means the W-2 reportable compensation received by a member during
139 the month.

140 (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the
141 member's accrued benefit which is payable for the member's life. If the member dies before the
142 sum of the payments he or she receives equals his or her accumulated contributions on the
143 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
144 the accumulated contributions at the annuity starting date and the total of the retirement income
145 payments made to the member.

146 (aa) "Normal retirement age" means the first to occur of the following:

147 (1) Attainment of age 50 years and the completion of 20 or more years of regular
148 contributory service, excluding active military duty, disability service and accrued annual and sick
149 leave service;

150 (2) While still in covered employment, attainment of at least age 50 years and when the
151 sum of current age plus regular contributory years of service equals or exceeds 70 years;

152 (3) While still in covered employment, attainment of at least age 60 years and completion
153 of 10 years of regular contributory service; or

154 (4) Attainment of age 62 years and completion of five or more years of regular contributory
155 service.

156 (bb) "Participating public employer" means any county commission or political subdivision
157 in the state which has elected to cover its emergency medical services officers, as defined in this
158 article, under the West Virginia Emergency Medical Services Retirement System.

159 (cc) "Plan" means the West Virginia Emergency Medical Services Retirement System
160 established by this article.

161 (dd) "Plan year" means the 12-month period commencing on January 1 of any designated
162 year and ending the following December 31.

163 (ee) "Political subdivision" means a county, city or town in the state; any separate
164 corporation or instrumentality established by one or more counties, cities or towns, as permitted by
165 law; any corporation or instrumentality supported in most part by counties, cities or towns; and any
166 public corporation charged by law with the performance of a governmental function and whose
167 jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public
168 corporation established under §7-15-4 of this code is considered a political subdivision solely for
169 the purposes of this article.

170 (ff) "Public Employees Retirement System" means the West Virginia Public Employee's
171 Retirement System created by West Virginia Code.

172 (gg) "Regular interest" means the rate or rates of interest per annum, compounded
173 annually, as the board adopts in accordance with the provisions of this article.

174 (hh) "Required beginning date" means April 1 of the calendar year following the later of: (1)
175 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if
176 born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
177 separates from covered employment.

178 (ii) "Retirant" means any member who commences an annuity payable by the plan.

179 (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a
180 participating public employer and the commencement of an annuity by the plan.

181 (kk) "Retirement income payments" means the monthly retirement income payments
182 payable under the plan.

183 (ll) "Spouse" means the person to whom the member is legally married on the annuity
184 starting date.

185 (mm) "Surviving spouse" means the person to whom the member was legally married at
186 the time of the member's death and who survived the member.

187 (nn) "Totally disabled" means a member's inability to engage in substantial gainful activity
188 by reason of any medically determined physical or mental impairment that can be expected to
189 result in death or that has lasted or can be expected to last for a continuous period of not less than
190 12 months.

191 For purposes of this subsection:

192 (1) A member is totally disabled only if his or her physical or mental impairment or
193 impairments is so severe that he or she is not only unable to perform his or her previous work as an
194 emergency medical services officer but also cannot, considering his or her age, education and
195 work experience, engage in any other kind of substantial gainful employment which exists in the
196 state regardless of whether: (A) The work exists in the immediate area in which the member lives;

197 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.
198 For purposes of this article, substantial gainful employment is the same definition as used by the
199 United States Social Security Administration.

200 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
201 physiological or psychological abnormality that is demonstrated by medically accepted clinical and
202 laboratory diagnostic techniques. The board may require submission of a member's annual tax
203 return for purposes of monitoring the earnings limitation.

204 (oo) "Year of service" means a member shall, except in his or her first and last years of
205 covered employment, be credited with years of service credit based upon the hours of service
206 performed as covered employment and credited to the member during the plan year based upon
207 the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

208 During a member's first and last years of covered employment, the member shall be
209 credited with one twelfth of a year of service for each month during the plan year in which the
210 member is credited with an hour of service for which contributions were received by the fund. A
211 member is not entitled to credit for years of service for any time period during which he or she
212 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically
213 excluded, years of service include covered employment prior to the effective date.

214 Years of service which are credited to a member prior to his or her receipt of accumulated
215 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of
216 this code, shall be disregarded for all purposes under this plan unless the member repays the
217 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to
218 the effective date made the repayment pursuant to §5-10-18 of this code.

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

1 (a) Compulsory school attendance begins with the school year in which the sixth birthday is
2 reached prior to July 1 of such year or upon enrolling in a full-time publicly funded kindergarten
3 program, and continues to the 17th birthday or for as long as the student continues to be enrolled
4 in a school system after the 17th birthday.

5 (1) A child may be removed from such kindergarten program when the parent or guardian
6 determines that the best interest of the child would not be served by requiring further attendance.

7 (2) The compulsory school attendance provision of this article shall be enforced against a
8 person 18 years of age or older for as long as the person continues to be enrolled in a school
9 system and may not be enforced against the parent, guardian, or custodian of the person.

10 (b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a
11 publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her
12 child as set forth in §18-31-1 *et seq.* of this code. Every year thereafter, a parent shall have the
13 option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-
14 8 of this code.

15 (c) Attendance at a state-approved, nonpublic kindergarten program, including a
16 Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten
17 program, Hope Scholarship kindergarten program, or private, parochial, or church kindergarten
18 program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes
19 of this section. Students entering the public school system after such kindergarten program shall
20 be placed in the developmentally and academically appropriate grade level.

21 (d) Notwithstanding the provisions of this section and §18-5-18 of this code, a county board
22 may provide for advanced entrance or placement under policies adopted by said board for any
23 child who has demonstrated sufficient mental and physical competency for such entrance or
24 placement.

25 (e) A student from another state, or who is eligible to enroll in a public school in this state,
26 shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled
27 at the school or program from which the student transferred. A transcript or other credential
28 provided by a public school program, private school program, homeschool program or HOPE
29 scholarship program shall be accepted by a public school in this state as a record of a student's
30 previous academic performance for the purposes of placement and credit assignment.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.

1 In accordance with state board rules for the education of professional educators adopted
2 pursuant to §18A-3-1 if this code and subject to the limitations and conditions of that section, the
3 State Superintendent may issue the following certificates valid in the public schools of the state:

4 (a) *Professional teaching certificates.* —

5 (1) A professional teaching certificate for teaching in the public schools may be issued to a
6 person who meets the following conditions: (A) Holds at least a bachelor's degree from a
7 regionally accredited institution of higher education, and:

8 (i) Has passed appropriate state board approved basic skills and subject matter tests in the
9 area for which licensure is being sought; and

10 (ii) Has completed a program for the education of teachers which meets the requirements
11 approved by the state board; or

12 (iii) Has met equivalent standards at institutions in other states; or

13 (iv) Has completed three years of successful teaching experience within the last seven
14 years under a license issued by another state in the area for which licensure is being sought; or

15 (v) Has completed an alternative program approved by another state; or

16 (B) Holds at least a bachelor's degree from an accredited institution of higher education,

17 and:

18 (i) Has passed appropriate state board approved basic skills and subject matter tests; and

19 (ii) Has completed an alternative program for teacher education as provided in this article;

20 and

21 (iii) Is recommended for a certificate in accordance with the provisions of §18A-3-1i of this
22 code relating to the program; and

23 (iv) Is recommended by the State Superintendent based on documentation submitted; or

24 (C) Holds a bachelor's degree from an accredited institution of higher education, and:

25 (i) Submits to a criminal history check pursuant to §18A-3-10 of this code: *Provided*, That
26 information discovered during the criminal history check may form the basis for the denial of a
27 certificate for just cause; and

28 (ii) Successfully completes pedagogical training or a pedagogical course or courses in
29 substantive alignment with nationally recognized pedagogical standards, or approved or
30 established by the state board; and

31 (iii) Passes the same subject matter and competency test or tests required by the state
32 board for traditional program applicants for licensure.

33 (2) The certificate shall be endorsed to indicate the grade level or levels or areas of
34 specialization in which the person is certified to teach or to serve in the public schools.

35 (3) The initial professional certificate is issued provisionally for a period of three years from
36 the date of issuance:

37 (A) The certificate may be converted to a professional certificate valid for five years subject
38 to successful completion of a beginning teacher induction program, if applicable; or

39 (B) The certificate may be renewed subject to rules adopted by the state board.

40 (4) Teaching certificates granted pursuant to §18A-3-2a(a)(1)(C) of this code shall be
41 equivalent to certificates granted to graduates of teacher preparation programs at public higher
42 education institutions.

43 (b) *Alternative program teacher certificate.* — An alternative program teacher certificate
44 may be issued to a candidate who is enrolled in an alternative program for teacher education
45 approved by the state board.

46 (1) The certificate is valid only for the alternative program position in which the candidate is
47 employed and is subject to enrollment in the program.

48 (2) The certificate is valid while the candidate is enrolled in the alternative program, up to a
49 maximum of three years, and may not be renewed.

50 (c) *Professional administrative certificate.* —

51 (1) A professional administrative certificate, endorsed for serving in the public schools, with
52 specific endorsement as a principal, vocational administrator, supervisor of instructions, or
53 superintendent, may be issued to a person who has completed requirements all to be approved by
54 the state board as follows:

55 (A) Holds at least a master's degree from an institution of higher education accredited to
56 offer a master's degree, and:

57 (i) Has successfully completed an approved program for administrative certification
58 developed by the state board in cooperation with the chancellor for higher education; and

59 (ii) Has successfully completed education and training in evaluation skills through the
60 Center for Professional Development, or equivalent education and training in evaluation skills
61 approved by the state board; and

62 (iii) Possesses three years of management level experience.

63 (2) Any person serving in the position of dean of students on June 4, 1992, is not required
64 to hold a professional administrative certificate.

65 (3) The initial professional administrative certificate is issued provisionally for a period of
66 five years. This certificate may be converted to a professional administrative certificate valid for
67 five years or renewed, subject to the regulations of the state board.

68 (d) *Paraprofessional certificate.* — A paraprofessional certificate may be issued to a
69 person who meets the following conditions:

70 (1) Has completed 36 semester hours of post-secondary education or its equivalent in
71 subjects directly related to performance of the job, all approved by the state board; and

72 (2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as
73 defined in §18A-4-8 of this code.

74 (e) *Other certificates; permits.* —

75 (1) Other certificates and permits may be issued, subject to the approval of the state board,
76 to persons who do not qualify for the professional or paraprofessional certificate.

77 (2) A certificate or permit may not be given permanent status and a person holding one of
78 these credentials shall meet renewal requirements provided by law and by regulation, unless the
79 state board declares certain of these certificates to be the equivalent of the professional certificate.

80 (3) Within the category of other certificates and permits, the State Superintendent may
81 issue certificates for persons to serve in the public schools as athletic coaches or coaches of other
82 extracurricular activities, whose duties may include the supervision of students, subject to the
83 following limitations:

84 (A) The person is employed under a contract with the county board of education.

85 (i) The contract specifies the duties to be performed, specifies a rate of pay that is
86 equivalent to the rate of pay for professional educators in the district who accept similar duties as
87 extra duty assignments, and provides for liability insurance associated with the activity; and

88 (ii) The person holding this certificate is not considered an employee of the board for salary
89 and benefit purposes other than as specified in the contract.

90 (B) The person completes an orientation program designed and approved in accordance
91 with state board rules.

92 (f) *Clinical Teacher of Record Permit.* —

93 (1) A clinical teacher of record permit may be issued to a candidate who is enrolled in a
94 clinical teacher of record program in accordance with an agreement between an institution of
95 higher education and a county board. The agreement is developed pursuant to §18A-3-1(e) of this
96 code and requires approval by the state board.

97 (2) The permit is valid only for the clinical teacher of record program position in which the
98 candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more
99 than one school year and may not be renewed.

100 (g) *Temporary teaching certificates for armed forces spouses.* —

101 (1) A temporary teaching certificate for an armed forces spouse may be issued to an
102 individual who meets the following criteria:

103 (A) He or she is married to a member of the armed forces of the United States who is on
104 active duty;

105 (B) He or she holds a current unencumbered teaching certificate or license issued by an
106 equivalent credentialing department, board, or authority, as determined by the State
107 Superintendent, in another state of the United States, the District of Columbia, Puerto Rico, the
108 United States Virgin Islands, another territory or protectorate of the United States or a foreign
109 country; and

110 (C) He or she provides proof acceptable to the State Superintendent that his or her spouse
111 is assigned to a duty station in this state or at a military installation within 50 air miles of the West
112 Virginia border and that he or she is also assigned to a duty station in this state or at a military
113 installation within 50 air miles of the West Virginia border under his or her spouse's official active
114 duty military orders.

115 (2) The State Superintendent shall deny a temporary teaching certificate to an individual
116 described in paragraph (1) of this subdivision for fraud, material misrepresentation or concealment
117 in the person's application for a temporary teaching certificate or for a conviction for which an
118 individual's teaching certificate may be revoked under §18A-3-6 of this code.

119 (3) A temporary teaching certificate issued under paragraph (1) of this subdivision is valid
120 for one year and may be renewed for additional one-year terms if the State Superintendent
121 determines the individual holding the temporary teaching certificate continues to meet the
122 requirements of paragraph (1) of this subdivision. The State Superintendent may revoke a
123 temporary teaching certificate for a conviction for which an individual's teaching certificate may be
124 revoked under §18A-3-6 of this code.

CHAPTER 21. LABOR

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term "firm" includes any partnership, association, joint-stock company, trust,
3 division of a corporation, the administrator or executor of the estate of a deceased individual, or
4 the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

5 (b) The term "employee" or "employees" includes any person suffered or permitted to work
6 by a person, firm, or corporation, except those classified as an independent contractor pursuant to
7 §21-5I-4 of this code.

8 (c) The term "wages" means compensation for labor or services rendered by an employee,
9 whether the amount is determined on a time, task, piece, commission, or other basis of
10 calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term
11 "wages" shall also include then accrued fringe benefits capable of calculation and payable directly
12 to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be
13 calculated contrary to any agreement between an employer and his or her employees which does
14 not contradict the provisions of this article.

15 (d) The term "commissioner" means Commissioner of Labor or his or her designated
16 representative.

17 (e) The term "railroad company" includes any firm or corporation engaged primarily in the
18 business of transportation by rail.

19 (f) The term "special agreement" means an arrangement filed with and approved by the
20 commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of
21 good cause to establish regular paydays less frequently than once in every two weeks: *Provided*,
22 That in no event shall the employee be paid in full less frequently than once each calendar month
23 on a regularly established schedule.

24 (g) The term "deductions" includes amounts required by law to be withheld, and amounts
25 authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans,
26 credit unions, charities, and any form of insurance offered by an employer: *Provided*, That for a
27 public employee, other than a municipal employee covered by a collective bargaining agreement
28 with a municipality which is in effect on July 1, 2021, the term "deductions" shall not include any
29 amount for union, labor organization, or club dues or fees.

30 (h) The term "officer" shall include officers or agents in the management of a corporation or
31 firm who knowingly permit the corporation or firm to violate the provisions of this article.

32 (i) The term "wages due" shall include at least all wages earned up to and including the
33 twelfth day immediately preceding the regular payday.

34 (j) The term "construction" means the furnishing of work in the fulfillment of a contract for
35 the construction, alteration, decoration, painting, or improvement of a new or existing building,
36 structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or
37 development of real property: *Provided*, That construction performed for the owner or lessee of a
38 single family dwelling or a family farming enterprise is excluded.

39 (k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand,
40 sandstone, shale, iron ore, and any other metallurgical ore.

41 (l) The term "fringe benefits" means any benefit provided an employee or group of
42 employees by an employer, or which is required by law, and includes regular vacation, graduated
43 vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses,
44 sickness and accident benefits, and benefits relating to medical and pension coverage.

45 (m) The term "employer" means any person, firm, or corporation employing any employee.

46 (n) The term "doing business in this state" means having employees actively engaged in
47 the intended principal activity of the person, firm, or corporation in West Virginia.

48 (o) The term "assignment", as used in §21-5-3 of this code, shall have the same meaning
49 as the term "assignment of earnings" set forth in §46A-2-116(2)(b) of this code.

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The "oil and gas conservation commission" is composed of seven members. The
2 director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas

3 are members of the commission ex officio. The remaining five members of the commission shall
4 be appointed by the Governor, by and with the advice and consent of the Senate, and may not be
5 employees of the Department of Environmental Protection. Of the five members appointed by the
6 Governor, one shall be an independent producer and at least one shall be a public member not
7 engaged in an activity under the jurisdiction of the Public Service Commission or the Federal
8 Energy Regulatory Commission. The third appointee shall possess a degree from an accredited
9 college or university in engineering or geology and must be a registered professional engineer with
10 particular knowledge and experience in the oil and gas industry and shall serve as commissioner
11 and as chair of the commission. The fourth appointee shall be an individual who has substantial
12 experience in the agricultural industry, who is engaged in the business of farming in this state, and
13 who is not and never has been, either himself or herself nor through a member of his or her
14 immediate family, engaged in the business of oil and gas other than as a royalty recipient. When
15 this member is to be appointed, the Governor shall request from the primary organization
16 representing the agriculture industry in this state a list of three nominees for the member to be
17 appointed. The fifth appointee shall be a resident owner of minerals in this state who is not and
18 never has been affiliated with an operator of oil or gas wells. The term "affiliated", as used in the
19 immediately preceding sentence, means someone who directly, or indirectly through one or more
20 intermediaries, controls, or is controlled by, or is under common control with an operator of oil and
21 gas wells by virtue of the power to direct or cause the direction of the management and policies of
22 that operator, whether through the ownership of voting shares, by contract or otherwise.

23 (b) The members of the commission appointed by the Governor shall be appointed for
24 overlapping terms of six years each, except that any initial appointments shall be for terms of two,
25 four, or six years to achieve staggered ends of terms. Each member appointed by the Governor
26 shall serve until the members successor has been appointed and qualified. Members may be
27 appointed by the Governor to serve any number of terms. The members of the commission
28 appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the

29 oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the
30 membership appointed by the Governor shall be filled by appointment by the Governor for the
31 unexpired term of the member whose office is vacant and the appointment shall be made by the
32 Governor within 60 days of the occurrence of such vacancy. Any member appointed by the
33 Governor may be removed by the Governor in case of incompetency, neglect of duty, gross
34 immorality, or malfeasance in office. A commission member's appointment is terminated as a
35 matter of law if that member fails to attend three consecutive meetings. The Governor shall
36 appoint a replacement within 30 days of the termination.

37 (c) The commission shall meet at such times and places as are designated by the chair.
38 The chair may call a meeting of the commission at any time, and shall call a meeting of the
39 commission upon the written request of two members or upon the written request of the oil and gas
40 conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each meeting
41 shall be given in writing to each member by the chair at least 14 calendar days in advance of the
42 meeting. Four members of the commission, at least two of whom are appointed members,
43 constitute a quorum for the transaction of any business.

44 (d) The commission shall pay each member the same compensation as is paid to
45 members of the Legislature for their interim duties as recommended by the citizens legislative
46 compensation commission and authorized by law for each day or portion thereof engaged in the
47 discharge of official duties and shall reimburse each member for actual and necessary expenses
48 incurred in the discharge of official duties.

49 (e) The commission is hereby empowered and it is the commission's duty to execute and
50 carry out, administer, and enforce the provisions of this article in the manner provided herein.
51 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
52 over all persons and property necessary therefor. The commission is authorized to make such
53 investigation of records and facilities as the commission considers proper. In the event of a conflict

54 between the duty to prevent waste and the duty to protect correlative rights, the commission's duty
55 to prevent waste is paramount.

56 (f) Without limiting the commission's general authority, the commission has specific
57 authority to:

58 (1) Regulate the spacing of deep wells;

59 (2) Issue horizontal well unit orders;

60 (3) Make and enforce reasonable rules and orders reasonably necessary to prevent
61 waste, protect correlative rights, govern the practice and procedure before the commission and
62 otherwise administer the provisions of this article;

63 (4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
64 production of any books, records, maps, charts, diagrams, and other pertinent documents, and
65 administer oaths and affirmations to the witnesses, whenever, in the judgment of the commission,
66 it is necessary to do so for the effective discharge of the commission's duties under the provisions
67 of this article; and

68 (5) Serve as technical advisor regarding oil and gas to the Legislature, its members and
69 committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection
70 and to any other agency of state government having responsibility related to the oil and gas
71 industry.

72 (g) The commission may delegate to the commission staff the authority to approve or deny
73 an application for new well permits, to establish drilling units or special field rules if:

74 (1) The application conforms to the rules of the commission; and

75 (2) No request for hearing has been received.

76 (h) The commission may not delegate its authority to:

77 (1) Propose legislative rules;

78 (2) Approve or deny an application for new well permits, to establish drilling units or special
79 field rules if the conditions set forth in subsection (g) of this section are not met; or

80 (3) Approve or deny an application for the pooling of interests within a drilling unit.

81 (i) Any exception to the field rules or the spacing of wells which does not conform to the
82 rules of the commission, and any application for the pooling of interests within a drilling unit, must
83 be presented to and heard before the commission.

84 (j) The commission is hereby empowered and it is the commission's duty to execute and
85 carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code
86 concerning mineral development by covenants for all wells at all depths and §22-11B-1 *et seq.* of
87 this code concerning underground carbon dioxide sequestration storage facilities at all depths.
88 The commission has jurisdiction and authority over all persons and property necessary therefor.
89 The commission is authorized to make such investigation of records and facilities as the
90 commission deems proper.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission extends to all public utilities in this state and includes
2 any utility engaged in any of the following public services:

3 (1) Common carriage of passengers or goods, whether by air, railroad, street railroad,
4 motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by
5 land, water, or air;

6 (2) Transportation of oil, gas, or water by pipeline;

7 (3) Transportation of coal and its derivatives and all mixtures and combinations thereof
8 with other substances by pipeline;

9 (4) Sleeping car or parlor car services;

10 (5) Transmission of messages by telephone, telegraph, or radio;

11 (6) Generation and transmission of electrical energy by hydroelectric or other utilities for
12 service to the public, whether directly or through a distributing utility;

13 (7) Supplying water, gas, or electricity by municipalities or others: (A) *Provided*, That
14 natural gas producers who provide natural gas service to not more than 25 residential customers
15 are exempt from the jurisdiction of the commission with regard to the provisions of the residential
16 service; (B) *Provided however*, That upon request of any of the customers of the natural gas
17 producers, the commission may, upon good cause being shown, exercise authority as the
18 commission may consider appropriate over the operation, rates, and charges of the producer and
19 for the length of time determined proper by the commission; (C) *Provided further*, That the
20 provision of a solar photovoltaic energy facility located on and designed to meet only the electrical
21 needs of the premises of a retail electric customer, the output of which is subject to a power
22 purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service,
23 subject to the following conditions and limitations:

24 (i) PPAs must be 11 point font or larger.

25 (ii) The aggregate of all PPAs and net metering arrangements in the state for any utility
26 shall not exceed three percent (3%) of the utility's aggregate customer peak demand in the state
27 during the previous year;

28 (iii) There shall be individual customer on-site generator limits of designing the photovoltaic
29 energy facility to meet only the electrical needs of the premises of the retail electric customer and
30 which in no case shall exceed 25kW for residential customers, 500 kW for commercial customers,
31 and 2,000 kW for industrial customers;

32 (iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility
33 of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the
34 caps have been reached. If the utility does not respond within 30 days, the generator may proceed
35 and the caps will be presumed not to have been reached; and

36 (v) The Public Service Commission may promulgate rules to govern and implement the
37 provisions of interconnections for PPAs, except the PSC does not have authority over the power
38 rates for the arrangements between the on-site generator and the customer;

39 (8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer
40 systems; *Provided*, That if a public utility other than a political subdivision intends to provide sewer
41 service by an innovative, alternative method, as defined by the federal Environmental Protection
42 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
43 of the Public Service Commission, regardless of the number of customers served by the
44 innovative, alternative method;

45 (9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this
46 code, except that the Public Service Commission has no jurisdiction over the provision of
47 stormwater services by a public service district;

48 (10) Toll bridges located more than five miles from a toll-free bridge which crosses the
49 same body of water or obstacle, wharves, ferries; solid waste facilities; and

50 (11) Any other public service.

51 (b) The jurisdiction of the commission over political subdivisions of this state providing
52 separate or combined water and/or sewer services and having at least 4,500 customers and
53 annual combined gross revenues of \$3 million or more that are political subdivisions of the state is
54 limited to:

55 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

56 (2) Regulation of measurements, practices, acts, or services, as granted and described in
57 §24-2-7 of this code;

58 (3) Regulation of a system of accounts to be kept by a public utility that is a political
59 subdivision of the state, as granted and described in §24-2-8 of this code;

60 (4) Submission of information to the commission regarding rates, tolls, charges, or
61 practices, as granted and described in §24-2-9 of this code;

62 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
63 in any proceeding before or conducted by the commission, as granted and described in §24-2-10
64 of this code; and

65 (6) Investigation and resolution of disputes between a political subdivision of the state
66 providing wholesale water and/or wastewater treatment or other services, whether by contract or
67 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
68 charges, service areas and contested utility combinations: *Provided*, That any request for an
69 investigation related to a dispute that is based on the act or omission of the political subdivision
70 shall be filed within 30 days of the act or omission of the political subdivision and the commission
71 shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute
72 may be tolled by the commission until the necessary information showing the basis of the rates,
73 fees, and charges or other information required by the commission is filed: *Provided, however*,
74 That the disputed rates, fees, and charges fixed by the political subdivision providing separate or
75 combined water and/or sewer services shall remain in full force and effect until set aside, altered
76 or, amended by the commission in an order to be followed in the future.

77 (7) Customers of water and sewer utilities operated by a political subdivision of the state
78 may bring formal or informal complaints regarding the commission's exercise of the powers
79 enumerated in this section and the commission shall resolve these complaints: *Provided*, That any
80 formal complaint filed under this section that is based on the act or omission of the political
81 subdivision shall be filed within 30 days of the act or omission complained of and the commission
82 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
83 dispute may be tolled by the commission until the necessary information showing the basis of the
84 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the
85 commission finds any regulations, measurements, practices, acts, or service to be unjust,
86 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
87 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot

88 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
89 measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and
90 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
91 inadequate, or otherwise in violation of this chapter, and shall make an order that is just and
92 reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and
93 charges fixed by the political subdivision providing separate or combined water and/or sewer
94 services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or
95 amended by the commission in an order to be followed in the future.

96 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
97 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
98 Service Commission for any redress that will bring the accounts to current status or otherwise
99 resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged
100 deficiency or breach.

101 (c) The commission may, upon application, waive its jurisdiction and allow a utility
102 operating in an adjoining state to provide service in West Virginia when:

103 (1) An area of West Virginia cannot be practicably and economically served by a utility
104 licensed to operate within the State of West Virginia;

105 (2) The area can be provided with utility service by a utility which operates in a state
106 adjoining West Virginia;

107 (3) The utility operating in the adjoining state is regulated by a regulatory agency or
108 commission of the adjoining state; and

109 (4) The number of customers to be served is not substantial. The rates the out-of-state
110 utility charges West Virginia customers shall be the same as the rate the utility may charge in the
111 adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of
112 jurisdiction for good cause.

113 (d) Any other provisions of this chapter to the contrary notwithstanding:

114 (1) An owner or operator of an electric generating facility located or to be located in this
115 state that has been designated as an exempt wholesale generator under applicable federal law, or
116 will be so designated prior to commercial operation of the facility, for which the facility the owner or
117 operator holds a certificate of public convenience and necessity issued by the commission on or
118 before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate
119 of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c
120 of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions
121 of this chapter with respect to the facility except for the making or constructing of a material
122 modification thereof as provided in §24-2-1(d)(5) of this code.

123 (2) Any person, corporation, or other entity that intends to construct or construct and
124 operate an electric generating facility to be located in this state that has been designated as an
125 exempt wholesale generator under applicable federal law, or will be designated prior to
126 commercial operation of the facility, for which facility the owner or operator does not hold a
127 certificate of public convenience and necessity issued by the commission on or before July 1,
128 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
129 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
130 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
131 operator of an electric generating facility as is described in this subdivision for which a siting
132 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of
133 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of
134 this chapter with respect to the facility except for the making or constructing of a material
135 modification thereof as provided in §24-2-1(d)(5) of this code.

136 (3) An owner or operator of an electric generating facility located in this state that had not
137 been designated as an exempt wholesale generator under applicable federal law prior to
138 commercial operation of the facility that generates electric energy solely for sale at retail outside
139 this state or solely for sale at wholesale in accordance with any applicable federal law that

140 preempts state law or solely for both sales at retail and sales at wholesale and that had been
141 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to
142 the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,
143 regardless of whether the facility subsequent to its construction has been or will be designated as
144 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
145 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
146 constructed.

147 (4) Any person, corporation, or other entity that intends to construct or construct and
148 operate an electric generating facility to be located in this state that has not been or will not be
149 designated as an exempt wholesale generator under applicable federal law prior to commercial
150 operation of the facility that will generate electric energy solely for sale at retail outside this state or
151 solely for sale at wholesale in accordance with any applicable federal law that preempts state law
152 or solely for both sales at retail and sales at wholesale and that had not been constructed and had
153 not been engaged in commercial operation on or before July 1, 2003, shall, prior to
154 commencement of construction of the facility, obtain a siting certificate from the commission
155 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
156 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
157 electric generating facility as is described in this subdivision for which a siting certificate has been
158 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not
159 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
160 respect to the facility except for the making or constructing of a material modification thereof as
161 provided in §24-2-1(d)(5) of this code.

162 (5) An owner or operator of an electric generating facility described in this subsection shall,
163 before making or constructing a material modification of the facility that is not within the terms of
164 any certificate of public convenience and necessity or siting certificate previously issued for the
165 facility or an earlier material modification thereof, obtain a siting certificate for the modification from

166 the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public
167 convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code
168 and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction
169 of the commission or to the provisions of this chapter with respect to the modification.

170 (6) The commission shall consider an application for a certificate of public convenience
171 and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility
172 described in this subsection or to make or construct a material modification of the electric
173 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
174 application for the certificate of public convenience and necessity was filed with the commission
175 prior to July 1, 2003, and if the commission has not issued a final order as of that date.

176 (7) The limitations on the jurisdiction of the commission over, and on the applicability of the
177 provisions of this chapter to, the owner or operator of an electric generating facility as imposed by
178 and described in this subsection do not affect or limit the commission's jurisdiction over contracts
179 or arrangements between the owner or operator of the facility and any affiliated public utility
180 subject to the provisions of this chapter.

181 (e) The commission does not have jurisdiction of Internet protocol-enabled service or
182 voice-over Internet protocol-enabled service. As used in this subsection:

183 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
184 application provided using Internet protocol, or any successor protocol, that enables an end user
185 to send or receive a communication in Internet protocol format, or any successor format,
186 regardless of whether the communication is voice, data, or video.

187 (2) "Voice-over Internet protocol service" means any service that:

188 (i) Enables real-time, two-way voice communications that originate or terminate from the
189 user's location using Internet protocol or a successor protocol; and

190 (ii) Uses a broadband connection from the user's location.

191 (3) The term "voice-over Internet protocol service" includes any service that permits users
192 to receive calls that originate on the public-switched telephone network and to terminate calls on
193 the public-switched telephone network.

194 (f) Notwithstanding any other provisions of this article, the commission does not have
195 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
196 to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common
197 ownership.

198 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
199 systems are most fairly and effectively regulated by the local governing body. Therefore,
200 notwithstanding any other provisions of this article, the commission does not have jurisdiction over
201 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
202 jurisdiction of the Public Service Commission over municipal power systems is limited to that
203 granted specifically in this code.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.

1 (a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the
2 provisions of this article.

3 (b) The rules promulgated pursuant to the provisions of this section shall describe:

4 (1) Factors determining the fair, effective, and reasonable rates levied by a carrier for
5 recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission
6 shall consider, but shall not be limited to:

7 (A) Tow vehicle or vehicles and the special equipment required to complete recovery or
8 tow;

9 (B) Total time to complete the recovery or tow;

10 (C) Number of regular and extra employees required to complete the recovery or tow;

11 (D) Location of vehicle recovered or towed;

12 (E) Materials or cargo involved in recovery or tow;

13 (F) Comparison with reasonable prices in the region;

14 (G) Weather conditions; and

15 (H) Any other relevant information having a direct effect on the pricing of the recovery,
16 towing, and storage of a recovered or towed vehicle;

17 (2) The process for filing a complaint, and the review and investigation process to ensure it
18 is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a
19 third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable
20 is on the carrier;

21 (3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or
22 charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or
23 disabled vehicle where the commission determines that such charge or charges are not otherwise
24 just, fair, or reasonable; and

25 (4) The process to review existing maximum statewide wrecker rates and special rates for
26 the use of special equipment in towing and recovery work to ensure that rates are just, fair, and
27 reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for
28 ancillary equipment.

29 (c) All carriers regulated under this article shall list their approved rates, fares, and charges
30 on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

31 (d) The rules promulgated pursuant to this section shall sunset on July 1, 2023, unless
32 reauthorized.

33 (e) On or before December 31, 2022, the Legislative Auditor shall review the rules
34 promulgated by the Public Service Commission under this section. The audit shall evaluate the
35 rate-making policy for reasonableness, the complaint process for timeliness, the penalties for
36 effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative
37 Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

1 (a) The classified-exempt service includes all positions included in the classified-exempt
2 service on the effective date of this article.

3 (b) Except for the period commencing on July 1, 1992, and ending on the first Monday after
4 the second Wednesday of the following January and except for the same periods commencing in
5 the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the
6 written consent of the State Personnel Board and the appointing authority concerned, add to the
7 list of positions in the classified service, but the additions may not include any positions specifically
8 exempted from coverage as provided in this section.

9 (c) The following offices and positions are exempt from coverage under the classified
10 service:

11 (1) All judges, officers, and employees of the judiciary;

12 (2) All members, officers, and employees of the Legislature;

13 (3) All officers elected by popular vote and employees of the officer;

14 (4) All secretaries of departments and employees within the office of a secretary;

15 (5) Members of boards and commissions and heads of departments appointed by the
16 Governor or heads of departments selected by commissions or boards when expressly exempt by
17 law or board order;

18 (6) Excluding the policy-making positions in an agency, one principal assistant or deputy
19 and one private secretary for each board or commission or head of a department elected or
20 appointed by the Governor or Legislature;

21 (7) All policy-making positions, which includes newly hired Deputy Commissioners within
22 the Department of Health and Human Resources;

23 (8) Patients or inmates employed in state institutions;

24 (9) Persons employed in a professional or scientific capacity to make or conduct a
25 temporary and special inquiry, investigation, or examination on behalf of the Legislature or a
26 committee thereof, an executive department, or by authority of the Governor;

27 (10) All employees of the office of the Governor, including all employees assigned to the
28 executive mansion;

29 (11) Part-time professional personnel engaged in professional services without
30 administrative duties;

31 (12) Temporary employees;

32 (13) Members and employees of the board of trustees and board of directors or their
33 successor agencies;

34 (14) Uniformed personnel of the State Police;

35 (15) Temporary employees in the state forests, parks, and recreational areas; and

36 (16) Any person hired as an attorney beginning July 1, 2022.

37 (d) The Legislature finds that the holding of political beliefs and party commitments
38 consistent or compatible with those of the Governor contributes in an essential way to the effective
39 performance of and is an appropriate requirement for occupying certain offices or positions in state
40 government, such as the secretaries of departments and the employees within their offices, the
41 heads of agencies appointed by the Governor and, for each such head of agency, a private
42 secretary and one principal assistant or deputy, all employees of the office of the Governor
43 including all employees assigned to the executive mansion, as well as any persons appointed by

44 the Governor to fill policy-making positions, in that those offices or positions are confidential in
45 character and require their holders to act as advisors to the Governor or the Governor's
46 appointees, to formulate and implement the policies and goals of the Governor or the Governor's
47 appointees, or to help the Governor or the Governor's appointees communicate with and explain
48 their policies and views to the public, the Legislature, and the press.

49 (e) All county road supervisor positions are covered under the classified service effective
50 July 1, 1999. A person employed as a county road supervisor on the effective date of this section is
51 not required to take or pass a qualifying or competitive examination upon, or as a condition of,
52 becoming a classified service employee. All county road supervisors who become classified
53 service employees pursuant to this subsection who are severed, removed, or terminated in his or
54 her employment must be severed, removed, or terminated as if the person was a classified service
55 employee.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions; applicability and effective dates of amendments.

1 (a) Except as otherwise provided in this section, this chapter shall become operative at
2 12:01 a.m. on September 1, 1974.

3 (b) Notwithstanding the provisions of subsection (a) of this section, in order to allow
4 sufficient time to prepare for the implementation and operation of this chapter and to act on
5 applications for licenses to make regulated consumer loans under this chapter as amended, the
6 provisions of §46A-4-1 *et seq.* of this code relating to regulated consumer lenders, and the
7 provisions of §46A-7-1 *et seq.* of this code relating to their administration, shall, to the extent
8 necessary, become operative for such purposes at 12:01 a.m. on September 1, 1996.

9 (c) Transactions entered into before this chapter becomes operative and the rights, duties,
10 and interests flowing from them thereafter may be terminated, completed, consummated, or
11 enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or
12 modified by this chapter as though the repeal, amendment, or modification had not occurred, but
13 this chapter applies to:

14 (1) Refinancings and consolidations made after this chapter becomes operative of
15 consumer credit sales, consumer leases, and consumer loans whenever made;

16 (2) Consumer credit sales or consumer loans made after this chapter becomes operative
17 pursuant to revolving charge accounts or revolving loan accounts entered into, arranged, or
18 contracted for before this chapter becomes operative; and

19 (3) All consumer credit transactions made before this chapter becomes operative insofar
20 as this chapter limits the remedies of creditors.

21 (d) *Applicability.* —

22 (1) The amendments made during the regular session of the Legislature, 2017, to §46A-2-
23 105 of this code shall apply to consumer credit sales or consumer loans entered into on after the
24 effective date of those amendments. The amendments made during the regular session of the
25 Legislature, 2017, to §46A-2-128 and §46A-2-140 of this code, shall apply to all causes of
26 accruing on or after the effective date of those amendments. The amendments made during the
27 regular session of the Legislature, 2017, to §46A-2-122 and §46A-5-108 of this code shall apply to
28 all causes of action filed on or after the effective date of those amendments.

29 (2) The amendments made during the regular session of the Legislature, 2021, to §46A-5-
30 104, §46A-5-108, §46A-5-109, §46A-6-105, and §46A-6-106 of this code shall apply to all causes
31 of action filed on or after the effective date of those amendments.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.

1 (a) The Office of Chief Medical Examiner is continued within the Bureau of Public Health in
2 the Department of Health and Human Resources. The office shall be directed by a Chief Medical
3 Examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory
4 technicians, and other staff members as needed to fulfill the responsibilities set forth in this article.

5 (b) All persons employed by the Chief Medical Examiner shall be responsible to him or her
6 and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify the
7 qualifications required for each position in the Office of Chief Medical Examiner.

8 (c) The chief medical examiner shall be a physician licensed to practice medicine or
9 osteopathic medicine in the State of West Virginia, who is a diplomate of the American Board of
10 Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The
11 Chief Medical Examiner shall be appointed by the Commissioner for the Bureau of Public Health to
12 serve a five-year term unless sooner removed, but only for cause, by the Governor or by the
13 commissioner.

14 (d) The Chief Medical Examiner shall be responsible to the commissioner in all matters
15 except that the chief medical examiner shall operate with independent authority for the purposes
16 of:

17 (1) The performance of death investigations conducted pursuant to section eight of this
18 article;

19 (2) The establishment of cause and manner of death; and

20 (3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

21 (e) The Chief Medical Examiner, or his or her designee, shall be available at all times for
22 consultation as necessary for carrying out the functions of the Office of the Chief Medical
23 Examiner.

24 (f) The Chief Medical Examiner shall cooperate with procurement organizations as defined
25 in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of
26 transplantation, therapy, research, or education. The Chief Medical Examiner may enter into
27 contracts and agreements with a procurement organization when necessary to facilitate the
28 efficient and economical recovery of anatomical gifts, including contracts or agreements
29 authorizing persons approved or assigned by the procurement organization to perform a specific
30 type of duty or duties at the office of the chief medical examiner.

31 (g) The Secretary of the Department of Health and Human Resources shall propose
32 legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

33 (1) The proper conduct of medical examinations into the cause of death;

34 (2) The proper methods and procedures for postmortem inquiries conducted by county
35 medical examiners and coroners;

36 (3) The examination of substances taken from human remains in order to determine the
37 cause and manner of death;

38 (4) The training and certification of county medical examiners and coroners; and

39 (5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose
40 of transplantation, therapy, research, or education.

41 (h) The Chief Medical Examiner may prescribe specific forms for record books and official
42 papers which are necessary to the functions and responsibilities of the office of the Chief Medical
43 Examiner.

44 (i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy
45 in accordance with the provisions of this code. The Chief Medical Examiner, or his or her designee,
46 shall perform an autopsy upon the lawful request of any person authorized by the provisions of this
47 code to request the performance of the autopsy.

48 (j) The salary of the Chief Medical Examiner and the salaries of all assistants and
49 employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds

50 appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law.
51 The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal
52 medicine and other related subjects to the West Virginia University or Marshall University School
53 of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police,
54 other law-enforcement agencies and other interested groups.

NOTE: The purpose of this bill is to recodify certain portions of the code to eliminate conflicts.

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