

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2015

Volume II
Chapters 109 - 244



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WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE TIM ARMSTEAD
SPEAKER OF THE HOUSE

* * * * *

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CHARLESTON, WEST VIRGINIA

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2015

OFFICERS

Speaker – Tim Armstead, Elkview
Clerk – Stephen J. Harrison, Cross Lanes
Sergeant-at-Arms – Marshall Clay, Fayetteville
Doorkeeper – Frank Larese, Belle

District	Name	Address	Occupation or Profession	Legislative Service
First.	Pat McGeehan (R)	Chester	Business Sales/Author	79 th ; 82 nd
	Mark Zatezalo (R)	Wierton	Hydrogeologist	82 nd
Second.	Ryan W. Weld (R)	Wellsburg	Legal Assistant	82 nd
Third.	Shawn Fluharty (D)	Wheeling	Attorney	82 nd
	Erikka Storch (R)	Wheeling	Businesswoman	80 th - 82 nd
Fourth.	David A. Evans (R)	Cameron	Retired Teacher	81 st - 82 nd
	Michael T. Ferro (D)	McMechen	Retired Educator/Coach	79 th - 82 nd
Fifth.	Dave Pethel (D)	Hundred	Retired Teacher	69 th - 71 st ;
				74 th - 82 nd
Sixth.	William Roger Romine (R)	Sistersville	Retired School Administrator	75 th - 82 nd
Seventh.	Lynwood "Woody" Ireland (R)	Pullman	Retired Chemical Engineer/Farmer	78 th - 82 nd
				71 st - 82 nd
Eighth.	W. "Bill" Anderson, Jr. (R)	Williamstown	Educator	71 st - 82 nd
Ninth.	Anna Border Sheppard (R)	Davisville	Educator	Appt. 6/21/11, 80 th - 82 nd
Tenth.	Mike Azinger (R)	Parkersburg	Manager	82 nd
	Frank Deem (R)	Vienna	Businessman	52 nd - 58 th ; 82 nd
	John R. Kelly (R)	Parkersburg	Retired	82 nd
Eleventh.	Bob Ashley (R)	Spencer	Insurance Agent	67 th - 73 rd ;
				75 th - 82 nd
Twelfth.	Steve Westfall (R)	Ripley	Insurance Agent	81 st - 82 nd
Thirteenth.	Scott Cadle (R)	Letart	Trucking/Excavating	81 st - 82 nd
	Michael Ihle (R)	Ravenswood	Mayor	82 nd
Fourteenth.	Jim Butler (R)	Henderson	Excavating Contractor	81 st - 82 nd
Fifteenth.	Geoff Foster (R)	Winfield	Construction Supply	82 nd
Sixteenth.	Sean Hornbuckle (D)	Huntington	Financial Services Broker	82 nd
				Small Business Owner/ Buffalo Farmer
	Jim Morgan (D)	Huntington	Retired	69 th - 70 th ; Appt. 2/23/2001, 75 th ;
	76 th - 82 nd			
Seventeenth.	Doug Reynolds (D)	Huntington	Engineering and Construction Executive	78 th - 82 nd
			Physician	82 nd
	Matthew Rohrbach (R)	Huntington		

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Eighteenth . . .	Kelli Sobonya (R)	Barboursville.	Realtor.	76 th - 82 nd
Nineteenth . . .	Kenneth Paul Hicks (D)	Kenova.	Attorney.	82 nd
	Don C. Perdue (D)	Prichard.	Pharmacist.	74 th - 82 nd
Twentieth . . .	Justin J. Marcum (D)	Williamson.	Attorney.	Appt. 1/18/12, 80 th - 82 nd
Twenty-first . .	Harry Keith White (D)	Gilbert.	Businessman.	Appt. 9/11/1992, 70 th ; 71 st - 82 nd
Twenty-second.	Jeff Eldridge (D)	Alum Creek.	Self Employed.	77 th - 79 th - 82 nd
	Michel Moffatt (R)	Hurricane.	Former Manufacturing Manager.	82 nd
Twenty-third..	Joshua Nelson (R)	Danville.	Coal Miner.	81 st - 82 nd
Twenty-fourth.	Rupert Phillips, Jr. (D)	Lorado.	Sales Manager.	80 th - 82 nd
	Ralph Rodighiero (D)	Logan.	UPS Delivery Driver.	78 th - 80 th ; 82 nd
Twenty-fifth. .	Linda Goode Phillips (D)	Pineville.	Retired Elementary School Counselor.	79 th - 82 nd
Twenty-sixth..	Clif Moore (D)	Thorpe.	Administrator.	77 th - 82 nd
Twenty-seventh.	Joe Ellington (R)	Princeton.	Physician.	80 th - 82 nd
	Marty Gearheart (R)	Bluefield.	Businessman.	80 th - 82 nd
	John H. Shott (R)	Bluefield.	Attorney.	79 th , Resigned 5/ /2010; 82 nd
Twenty-eighth.	Roy G. Cooper (R)	Wayside.	Retired U. S. Navy.	81 st - 82 nd
	John D. O'Neal, IV (R)	Beckley.	Businessman.	80 th - 82 nd
Twenty-ninth..	Ricky Moye (D)	Crab Orchard.	Businessman/School Bus Operator.	78 th - 82 nd
Thirtieth. . . .	Mick Bates (D)	Beckley.	Physical Therapist.	82 nd
Thirty-first. . .	Karen "Lynne" Arvon (R)	Beckley.	Businesswoman.	81 st - 82 nd
Thirty-second.	Tom Fast (R)	Fayetteville.	Attorney.	82 nd
	Kayla Kessinger (R)	Mount Hope.	Director of Human Resources.	82 nd
	David G. Perry (D)	Oak Hill.	Educator.	75 th - 82 nd
Thirty-third. . .	Roger Hanshaw (R)	Wallback.	Attorney.	82 nd
Thirty-fourth..	Brent Boggs (D)	Gassaway.	Railroad Engineer.	73 rd - 82 nd
Thirty-fifth. . .	Andrew D. Byrd (D)	South Charleston.	Attorney.	82 nd
	John B. McCuskey (R)	Charleston.	Attorney.	81 st - 82 nd
	Eric Nelson (R)	Charleston.	Businessman.	80 th - 82 nd
	Chris Stansbury (R)	Charleston.	Doctor of Optometry	82 nd
Thirty-sixth . . .	Nancy Peoples Guthrie (D)	Charleston.	Former Small Business Owner.	78 th - 82 nd
	Larry L. Rowe (D)	Charleston.	Attorney.	73 rd - 75 th ; 82 nd
	Brad White (R)	Charleston.	Insurance Agent.	82 nd
Thirty-seventh..	Mike Pushkin (D)	Charleston.	Taxi Driver / Musician.	82 nd
Thirty-eighth..	Patrick Lane (R)	Cross Lanes.	Attorney/Entrepreneur.	77 th - 82 nd
Thirty-ninth.. .	Ron Walters (R)	Charleston.	Insurance Executive/ President.	71 st - 73 rd ; 75 th - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fortieth.	Tim Armstead (R).	Elkview.	Attorney.	Appt. 9/5/98, 73 rd ; 74 th - 82 nd
Forty-first.	Jordan Hill (R).	Mt. Nebo.	Human Resources.	82 nd
Forty-second.	George "Boogie" Ambler (R).	Fort Springs.	Businessman/ Educator/Farmer	81 st - 82 nd 75 th - 82 nd
	Ray Canterbury (R).	Ronceverte.	Internet Entrepreneur.	75 th - 82 nd
Forty-third.	Denise L. Campbell (D).	Elkins.	Licensed Nursing Home Administrator.	80 th - 82 nd
	William G. Hartman (D)	Elkins.	Retired Independent Insurance Agent.	76 th - 82 nd
Forty-fourth.	Dana L. Lynch (D).	Webster Springs.	Retired.	81 st - 82 nd
Forty-fifth.	Bill Hamilton (R).	Buckhannon.	Independent Insurance Agency Owner.	76 th - 82 nd
Forty-sixth.	Peggy Donaldson Smith (D).	Weston.	Attorney.	79 th - 82 nd
Forty-seventh.	Danny Wagner (R).	Philippi.	Retired Educator.	82 nd
Forty-eighth.	Danny Hamrick (R).	Clarksburg.	Consulting / Media Production.	81 st - 82 nd
	Tim Miley (D).	Clarksburg.	Attorney.	77 th - 82 nd
	Patsy Samuel Trecost II (D).	Clarksburg.	Frontier Communications.	82 nd
	Theresa Waxman (R).	Bridgeport.	Homemaker.	82 nd
Forty-ninth.	Amy Summers (R).	Flemington.	Registered Nurse.	82 nd
Fiftieth.	Mike Caputo (D).	Fairmont.	UMWA, District 31 Vice-President.	73 rd - 82 nd
	Linda Longstreth (D).	Fairmont.	Administrator/Educator.	77 th - 82 nd
	Tim Manchin (D).	Fairmont.	Attorney.	76 th - 82 nd
Fifty-first.	Barbara Evans Fleischauer (D).	Morgantown.	Attorney/Small Business Owner.	72 nd - 75 th ; 78 th - 82 nd
	Cindy Frich (R).	Morgantown.	Sales/Writer/Consultant.	76 th - 77 th ; 81 st - 82 nd
	Brian Kurcaba (R).	Morgantown.	Financial Advisor.	82 nd
	Amanda Pasdon (R).	Morgantown.	Business Development Director.	80 th - 82 nd
	Joe Statler (R).	Core.	Retired.	82 nd
Fifty-second.	Larry A. Williams (D).	Tunnelton.	Businessman/Farmer.	Appt. 10/8/1993, 71 st ; 72 nd - 82 nd
Fifty-third.	Randy E. Smith (R).	Terra Alta.	Coal Miner.	81 st - 82 nd
Fifty-fourth.	Allen V. Evans (R).	Petersburg.	Poultry Producer/Farmer.	70 th - 82 nd
Fifty-fifth.	Isaac Sponaugle (D).	Franklin.	Attorney.	81 st - 82 nd
Fifty-sixth.	Gary G. Howell (R).	Keyser.	Small Business Owner.	80 th - 82 nd
Fifty-seventh.	Ruth Rowan (R).	Points.	Retired Educator.	77 th - 82 nd
Fifty-eighth.	Daryl E. Cowles (R).	Berkeley Springs.	Businessman.	78 th - 82 nd
Fifty-ninth.	Saira Blair (R).	Martinsburg.	Student.	82 nd
Sixtieth.	Larry W. Faircloth (R).	Inwood.	Small Business Consulting.	81 st - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Sixty-first. . . .	Walter E. Duke (R).	Martinsburg.	Retired Educator.	76 th - 80 th ; 82 nd
Sixty-second..	John Overington (R).	Martinsburg.	Public Relations/ Former Educator.	67 th - 82 nd
Sixty-third. . . .	Michael "Mike" Folk (R).	Martinsburg.	Airline Pilot; Farmer.	81 st - 82 nd
Sixty-fourth. . .	Eric L. Householder (R).	Martinsburg.	Small Business Owner.	80 th - 82 nd
Sixty-fifth. . . .	Jill Upson (R).	Charles Town.	Former Retail Manager / Student.	82 nd
Sixty-sixth. . . .	Paul Espinosa (R).	Charles Town.	General Manager, Frontier Communications.	81 st - 82 nd
Sixty-seventh.	Stephen Skinner (D).	Shepherdstown.	Attorney.	81 st - 82 nd

MEMBERS OF THE SENATE

REGULAR SESSION, 2015

OFFICERS

President – William P. Cole, III, Bluefield

Clerk – Clark S. Barnes, French Creek

Sergeant-at-Arms – Howard L. Wellman, Bluefield

Doorkeeper – Anthony Gallo, Charleston

District	Name	Address	Occupation or Profession	Legislative Service
First.	Ryan Ferns (R).....	Wheeling.	Physical Therapist.	82 nd
	Jack Yost (D).....	Wellsburg.....	Retired.	(House 76 th - 78 th); 79 th - 82 nd
Second.	Jeffrey V. Kessler (D).	Glen Dale.	Attorney.....	Appt. 11/1997,73 rd ; 74 th - 82 nd
	Kent Leonhardt (R).....	Fairview.	Retired USMC/ farmer..	82 nd
Third.	Donna J. Boley (R).	St. Marys.	Retired.	Appt. 5/14/1985, 67 th ; 68 th - 82 nd
	David C. Nohe (R).....	Vienna.	Businessman/Contractor/ Real Estate Broker.	80 th - 82 nd
Fourth.	Mitch B. Carmichael (R).	Ripley.....	Director of Commercial Sales.	(House 75 th - 80 th); 82 nd
	Mike Hall (R).....	Winfield.	Businessman.	(House 72 nd - 74 th); 78 th - 82 nd
Fifth.	Robert H. Plymale (D).....	Huntington.....	Businessman.	72 nd - 82 nd
	Mike Woelfel (D).....	Huntington	Lawyer	82 nd
Sixth.	Bill Cole (R).	Bluefield.....	Automobile Dealer.....	(House Appt. 5/28/10, 79 th); 82 nd
	Mark R. Maynard (R).	Genoa	Automobile Dealer.....	82 nd
Seventh.	Art Kirkendoll (D).....	Chapmanville.	Self Employed.	Appt. 11/14/11, 80 th ; 82 nd
	Ron Stollings (D).....	Madison.	Physician.	78 th - 82 nd
Eighth.	Ed Gaunch.	Charleston.	Retired.	82 nd
	Chris Walters (R).....	Nitro	Insurance.	81 st - 82 nd
Ninth.	Daniel Hall (R).	Oceana.	Account Executive.....	(House 79 th - 80 th); 81 st - 82 nd
	Jeff Mullins	Shady Springs	Insurance.	82 nd
Tenth.	William Laird IV (D).....	Oak Hill.	Retired/Self-Employed..	(House 73 rd - 75 th); 79 th - 82 nd
	Ronald F. Miller (D).	Lewisburg.....	Self-Employed.	80 th - 82 nd
Eleventh.	Greg Boso (R).	Summersville.	Civil Engineer	82 nd (appt. 1/16/2015)

MEMBERS OF THE SENATE - Continued

District	Name	Address	Occupation or Profession	Legislative Service
	Robert L. Karnes (R)	Tallmansville	Information and Technology Field Services	82 nd
Twelfth	Mike Romano (D)	Clarksburg	Attorney/ CPA	82 nd
	Douglas Facemire (D)	Sutton	Grocery Chain Owner	79 th - 82 nd
Thirteenth	Robert D. Beach (D)	Morgantown	Executive Director of College Foundation	(House, Appt. 5/1998, 73 rd ; 74 th - 79 th); 80 th - 82 nd
	Roman W. Prezioso, Jr. (D)	Fairmont	Administrator	(House 69 th - 72 nd); 73 rd - 82 nd
Fourteenth	Dave Sypolt (R)	Kingwood	Professional Land Surveyor	78 th - 82 nd
	Bob Williams (D)	Grafton	Real Estate Appraiser	79 th - 82 nd
Fifteenth	Craig P. Blair (R)	Martinsburg	Businessman	(House 76 th - 79 th); 81 st - 82 nd
	Charles S. Trump IV	Berkeley Springs	Lawyer	(House 71 st - 78 th); 82 nd
Sixteenth	Herb Snyder (D)	Shenandoah Junction	Director, Environmental Chemistry	73 rd - 76 th ; 79 th - 82 nd
	John R. Unger II (D)	Martinsburg	Businessman/ Economic Development	74 th - 82 nd
Seventeenth	Corey Palumbo (D)	Charleston	Attorney	(House 76 th - 78 th); 79 th - 82 nd
	Tom Takubo (R)	Charleston	Physician	82 nd

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2015

STANDING

AGRICULTURE AND NATURAL RESOURCES

Evans, Chair (*Agriculture*), Hamilton, Chair (*Natural Resources*), Romine, Vice Chair (*Agriculture*), Ambler, Vice Chair (*Natural Resources*), Eldridge, Minority Chair (*Agriculture*), Lynch, Minority Chair (*Natural Resources*), Phillips, Minority Vice Chair (*Agriculture*), Guthrie, Minority Vice Chair (*Natural Resources*), Anderson, Border-Sheppard, Cadle, Canterbury, Cooper, Folk, Ireland, Miller, Smith, R., Summers, Wagner, Zatezalo, Campbell, Fluharty, Rodighiero, White, H., Williams

BANKING AND INSURANCE

Walters, Chair (*Banking*), McCuskey, Chair (*Insurance*), Frich, Vice Chair (*Banking*), Westfall, Vice Chair (*Insurance*), Moore, Minority Chair (*Banking*), Skinner, Minority Chair (*Insurance*), Morgan, Minority Vice Chair (*Banking*), Bates, Minority Vice Chair (*Insurance*), Ashley, Azinger, Deem, Kurcaba, McGeehan, Nelson, E., O'Neal, Pasdon, Shott, Upson, Waxman, White, B., Hicks, Manchin, Perdue, Perry, Rowe

EDUCATION

Pasdon, Chair, Duke, Vice Chair, Perry, Minority Chair, Moyer, Minority Vice Chair, Ambler, Cooper, Ellington, Espinosa, Evans, D., Hamrick, Kelly, Kurcaba, Rohrbach, Romine, Rowan, Statler, Upson, Wagner, Campbell, Hornbuckle, Perdue, Pushkin, Reynolds, Rodighiero, Trecost

HOUSE OF DELEGATES COMMITTEES

ENERGY

Ireland, Chair, Smith, Vice Chair, Caputo, Minority Chair, Pethtel, Minority Vice Chair, Ambler, Anderson, Border, Cadle, Canterbury, Evans, D., Kessinger, McCuskey, Nelson, J., Romine, Statler, Storch, Upson, Zatezalo, Boggs, Eldridge, Lynch, Miley, Phillips, L., Reynolds, White, H.

ENROLLED BILLS

McCusky, Chair, Westfall, Vice Chair, Hanshaw, Marcum, Sponaugle

FINANCE

Nelson, Chair, Ashley, Vice Chair, Boggs, Minority Chair, Williams, Minority Vice Chair, Anderson, Butler, Canterbury, Espinosa, Evans, A., Frich, Gearheart, Hamilton, Householder, Miller, O'Neal, Storch, Walters, Westfall, Bates, Guthrie, Longstreth, Moye, Pethtel, Phillips, L., White, H.

GOVERNMENT ORGANIZATION

Howell, Chair, Arvon, Vice Chair, Morgan, Minority Chair, Smith, Minority Vice Chair, Blair, Border, Cadle, Faircloth, Hamrick, Hill, Ihle, Kessinger, McGeehan, Moffatt, Nelson, J., Smith, R., Stansbury, Zatezalo, Caputo, Eldridge, Ferro, Hartman, Marcum, Phillips, R., Sponaugle

HEALTH and HUMAN RESOURCES

Ellington, Chair, Householder, Vice Chair, Fleischauer, Minority Chair, Campbell, Minority Vice Chair, Arvon, Ashley, Cooper, Faircloth, Hill, Kurcaba, Lane, Pasdon, Rohrbach, Sobonya, Stansbury, Summers, Waxman, Westfall, Bates, Fluharty, Guthrie, Moore, Pushkin, Rodighiero, Skinner

HOUSE OF DELEGATES COMMITTEES

INDUSTRY and LABOR

Overington, Chair, Sobonya, Vice Chair, Ferro, Minority Chair, Fluharty, Minority Vice Chair, Azinger, Blair, Cowles, Ellington, Fast, Householder, Ihle, Kurcaba, McCuskey, Nelson, J., Shott, Smith, R., Statler, White, B., Byrd, Caputo, Hicks, Manchin, Pushkin, Reynolds, Rowe

INTERSTATE COOPERATION

Storch, Chair, Faircloth, Vice Chair, Ellington, Hamrick, Romine, Ferro, Smith, P.

JUDICIARY

Shott, Chair, Lane, Vice Chair, Manchin, Minority Chair, Skinner, Minority Vice Chair, Azinger, Deem, Fast, Folk, Foster, Hanshaw, Ireland, McCuskey, Overington, Sobonya, Summers, Waxman, Weld, White, B., Byrd, Fleischauer, Fluharty, Hicks, Lynch, Moore, Rowe

PENSIONS and RETIREMENT

Canterbury, Chair, Folk, Vice Chair, Pethel, Minority Chair, Hamilton, Kurcaba, Walters, Marcum

POLITICAL SUBDIVISIONS

Storch, Chair, Butler, Vice Chair, Moye, Minority Chair, Trecost, Minority Vice Chair, Anderson, Cowles, Duke, Folk, Gearheart, Hanshaw, Householder, Ihle, Lane, Moffatt, O'Neal, Sobonya, Stansbury, Weld, Boggs, Byrd, Hartman, Hornbuckle, Manchin, Morgan, Perry

HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Gearheart, Chair, Hamrick, Vice Chair, Phillips, Minority Chair, Guthrie, Minority Vice Chair, Ambler, Arvon, Butler, Cadle, Espinosa, Evans, A., Evans, D., Fast, Howell, Moffatt, Rohrbach, Statler, Summers, Wagner, Boggs, Longstreth, Moye, Reynolds, Smith, P., Sponaugle, Trecost

RULE-MAKING REVIEW

Sobonya, Chair, Frich, Vice Chair, Hanshaw, Moffatt, Fleischauer, Rowe

RULES

Armstead, Chair, Anderson, Ashley, Cowles, Howell, Lane, Miller, C., Nelson, E., O'Neal, Overington, Pasdon, Shott, Sobonya, Boggs, Caputo, Guthrie, Manchin, Miley, White, H.

SENIOR CITIZEN ISSUES

Rowan, Chair, Border, Vice Chair, Larry Williams, Minority Chair, Moye, Minority Vice Chair, Canterbury, Deem, Duke, Faircloth, Hamilton, Hill, Kelly, Nelson, E., Overington, Rohrbach, Romine, Walters, White, B., Zatezalo, Campbell, Ferro, Moore, Perry, Pethtel, Phillips, R., Rodighiero

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Miller, Chair, Espinosa, Vice Chair, Skinner, Minority Chair, Rowe, Minority Vice Chair, Ashley, Blair, Ellington, Faircloth, Foster, Hanshaw, Hill, Kessinger, Lane, Pasdon, Stansbury, Storch, Waxman, Westfall, Bates, Hornbuckle, Manchin, Miley, Morgan, White, H., Williams

HOUSE OF DELEGATES COMMITTEES

VETERANS' AFFAIRS and HOMELAND SECURITY

Nelson, Chair (*Veterans Affairs*), Evans, Chair, (*Homeland Security*) Cooper, Vice Chair (*Veterans Affairs*), McGeehan, Vice Chair (*Homeland Security*), Longstreth, Minority Chair (*Veterans Affairs*), Smith, Minority Chair (*Homeland Security*), Hornbuckle, Minority Vice Chair (*Veterans Affairs*), Pushkin, Minority Vice Chair (*Homeland Security*), Arvon, Ashley, Foster, Frich, Howell, Ireland, Kelly, Kessinger, Rowan, Upson, Wagner, Weld, Byrd, Ferro, Fleischauer, Lynch, Trecost

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2015

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Senators D. Hall (*Chair*), Trump (*Vice Chair*), Blair, Karnes, Maynard, Sypolt, Beach, Laird, Miller, Williams and Woelfel.

BANKING AND INSURANCE

Senators Nohe (*Chair*), Gaunch (*Vice Chair*), Ferns, D. Hall, M. Hall, Mullins, Trump, Facemire, Palumbo, Prezioso, Romano, Snyder and Woelfel.

CONFIRMATIONS

Senators Boley (*Chair*), Boso, Mullins, Nohe, Takubo, Kessler, Miller, Palumbo and Plymale.

ECONOMIC DEVELOPMENT

Senators Takubo (*Chair*), Ferns (*Vice Chair*), Blair, D. Hall, Leonhardt, Maynard, Mullins, Walters, Kessler, Plymale, Romano, Stollings, Woelfel and Yost.

EDUCATION

Senators Sypolt (*Chair*), Boley (*Vice Chair*), Carmichael, D. Hall, M. Hall, Karnes, Takubo, Trump, Beach, Laird, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Senators Mullins (*Chair*), Nohe (*Vice Chair*), Blair, Boley, D. Hall, Maynard, Sypolt, Facemire, Kirkendoll, Snyder, Williams, Woelfel and Yost.

SENATE COMMITTEES

ENROLLED BILLS

Senators Maynard (*Chair*), Gaunch (*Vice Chair*), Boso, Miller and Unger.

FINANCE

Senators M. Hall (*Chair*), Walters (*Vice Chair*), Blair, Boley, Boso, Carmichael, Mullins, Sypolt, Takubo, Facemire, Kessler, Laird, Plymale, Prezioso, Stollings, Unger and Yost.

GOVERNMENT ORGANIZATION

Senators Blair (*Chair*), Walters (*Vice Chair*), Boso, Ferns, Gaunch, Leonhardt, Maynard, Mullins, Facemire, Miller, Palumbo, Snyder, Williams and Yost.

HEALTH AND HUMAN RESOURCES

Senators Ferns (*Chair*), Takubo (*Vice Chair*), Gaunch, Karnes, Leonhardt, Trump, Walters, Laird, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

Senators Gaunch (*Chair*), Karnes (*Vice Chair*), Boso, Maynard, Kirkendoll, Palumbo and Unger.

JUDICIARY

Senators Trump (*Chair*), Nohe (*Vice Chair*), Carmichael, Ferns, Gaunch, D. Hall, Karnes, Leonhardt, Maynard, Beach, Kirkendoll, Miller, Palumbo, Romano, Snyder, Williams and Woelfel.

LABOR

Senators D. Hall (*Chair*), Ferns (*Vice Chair*), Blair, Gaunch, Karnes, Maynard, Laird, Prezioso, Stollings, Williams and Yost.

SENATE COMMITTEES

MILITARY

Senators Leonhardt (*Chair*), Boley (*Vice Chair*), Nohe, Sypolt, Walters, Facemire, Laird, Romano and Yost.

NATURAL RESOURCES

Senators Karnes (*Chair*), Maynard (*Vice Chair*), Boso, M. Hall, Leonhardt, Nohe, Takubo, Beach, Facemire, Laird, Miller, Snyder and Williams.

PENSIONS

Senators Gaunch (*Chair*), Trump (*Vice Chair*), M. Hall, Mullins, Kirkendoll, Plymale and Unger.

RULES

Senators Cole (*Chair*), Blair, Carmichael, M. Hall, Sypolt, Trump, Kessler, Plymale, Prezioso, Stollings and Williams.

TRANSPORTATION AND INFRASTRUCTURE

Senators Walters (*Chair*), Leonhardt (*Vice Chair*), Boley, Gaunch, Mullins, Beach, Kirkendoll, Plymale and Woelfel.

CHAPTER 109

**(Com. Sub. for H. B. 2004 - By Delegate(s) J. Nelson,
Howell, Statler, Walters, Foster, Zatezalo, B. White,
Moffatt, Stansbury, Gearheart and Butler)**

[Passed February 19, 2015; in effect from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to the development of a state plan under Section 111(d) of the Clean Air Act; setting forth legislative findings; prohibiting submission of a state plan without authority; requiring the Department of Environmental Protection to study the feasibility of a state plan; requiring the Department of Environmental Protection to submit a report to the Legislature determining whether a state plan is feasible; allowing for the development of a proposed state plan; requiring the state plan to be on a unit-specific basis; allowing for the plan to be on either a rate-based or meter-based standard; allowing for legislative review and consideration prior to submission of a state plan to the Environmental Protection Agency; and creating exceptions to the legal effect of the state plan.

Be it enacted by the Legislature of West Virginia:

That §22-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

1 (a) *Legislative Findings-*

2 (1) The United States Environmental Protection Agency has
3 proposed a Federal Rule pursuant to Section 111(d) of the Clean
4 Air Act, 42 U.S.C. § 7411(d), to regulate carbon dioxide
5 emissions from electric generating units.

6 (2) The Rule is expected to go into effect on or about June
7 30, 2015, and will require each state to submit a state plan
8 pursuant to Section 111(d) that sets forth laws, policies and
9 regulations that will be enacted by the State to meet the federal
10 guidelines in the Rule.

11 (3) The creation of this state plan necessitates establishment
12 and creation of law affecting the economy and energy policy of
13 this State.

14 (4) The Environmental Protection Agency has stated that any
15 state plan it ultimately approves shall become enforceable
16 federal law upon that State.

17 (5) The State disputes the jurisdiction and purported binding
18 nature asserted by the Environmental Protection Agency through
19 this Rule, and reserves to itself those rights and responsibilities
20 properly reserved to the State of West Virginia.

21 (6) Given the economic impact and potentially legally
22 binding nature of the submission of a State Plan, there is a
23 compelling state interest to require appropriate legislative review
24 and passage of law prior to submission, if any, of a state plan
25 pursuant to Section 111(d) of the Clean Air Act.

26 (b) *Submission of a State Plan*- Absent specific legislative
27 enactment granting such powers or rulemaking authority, the
28 Department of Environmental Protection or any other agency or
29 officer of state government is not authorized to submit to the
30 Environmental Protection Agency a state plan under this section,
31 or otherwise pursuant to Section 111(d) of the Clean Air Act:
32 *Provided, however*, the Department of Environmental Protection,

33 in consultation with the Department of Environmental Protection
34 Advisory Council and other necessary and appropriate agencies
35 and entities, may develop a proposed state plan in accordance
36 with this section.

37 (c) *Development of a Proposed State Plan-* (1) The
38 Department of Environmental Protection shall, no later than one
39 hundred eighty days after a rule is finalized by the
40 Environmental Protection Agency that requires the state to
41 submit a state plan under Section 111(d) of the Clean Air Act, 42
42 U.S.C. § 7411(d), submit to the Legislature a report regarding
43 the feasibility of the state's compliance with the Section 111(d)
44 Rule. The report must include a comprehensive analysis of the
45 effect of the Section 111(d) Rule on the state, including, but not
46 limited to, the need for legislative or other changes to state law,
47 and the factors referenced in subsection (g) of this section. The
48 report must make at least two feasibility determinations: (i)
49 Whether the creation of a state plan is feasible based on the
50 comprehensive analysis; and (ii) whether the creation of a state
51 plan is feasible before the deadline to submit a state plan to
52 Environmental Protection Agency under the Section 111(d)
53 Rule, assuming no extensions of time are granted by
54 Environmental Protection Agency. If the department determines
55 that a state plan is or is not feasible under clause (i) of this
56 subsection, the report must explain why. If the department
57 determines that a state plan is not feasible under clause (ii) of
58 this subsection, it shall explain how long it requires to create a
59 state plan and then endeavor to submit such a state plan to the
60 Legislature as soon as practicable. Such state plan shall be on a
61 unit-specific performance basis and shall be based upon either a
62 rate-based model or a meter-based model.

63 (2) If the department determines that the creation of a state
64 plan is feasible, it shall develop and submit the proposed state
65 plan to the Legislature sitting in Regular Session, or in an
66 extraordinary session convened for the purpose of consideration

67 of the state plan, in sufficient time to allow for the consideration
68 of the state plan prior to the deadline for submission to the
69 Environmental Protection Agency.

70 (3) In addition to submitting the proposed state plan to the
71 Legislature, the department shall publish the report and any
72 proposed state plan on its website.

73 (d) If the department proposes a state plan to the Legislature
74 in accordance with subsection (c) of this section, the department
75 shall propose separate standards of performance for carbon
76 dioxide emissions from existing coal-fired electric generating
77 units in accordance with subsection (e) of this section and from
78 existing natural gas-fired electric generating units in accordance
79 with subsection (f) of this section. The standards of performance
80 developed and proposed under any state plan to comply with
81 Section 111 of the Clean Air Act should allow for greater
82 flexibility and take into consideration the additional factors set
83 forth in subsection (g) of this section as a part of any state plan
84 to achieve targeted reductions in greenhouse gas emissions
85 which are equivalent or comparable to the goals and marks
86 established by federal guidelines.

87 (e) *Standards of performance for existing coal-fired electric*
88 *generating units.* – Except as provided under subsection (g) of
89 this section, the standard of performance proposed for existing
90 coal-fired electric generating units under subsection (c) of this
91 section may be based upon:

92 (1) The best system of emission reduction which, taking into
93 account the cost of achieving the reduction and any nonair
94 quality health and environmental impact and energy
95 requirements, has been adequately demonstrated for coal-fired
96 electric generating units that are subject to the standard of
97 performance;

98 (2) Reductions in emissions of carbon dioxide that can
99 reasonably be achieved through measures undertaken at each
100 coal-fired electric generating unit; and

101 (3) Efficiency and other measures that can be undertaken at
102 each coal-fired electric generating unit to reduce carbon dioxide
103 emissions from the unit without switching from coal to other
104 fuels or limiting the economic utilization of the unit.

105 (f) *Standards of performance for existing natural gas-fired*
106 *electric generating units.* – Except as provided in subsection (g)
107 of this section, the standard of performance proposed for existing
108 gas-fired electric generating units under subsection (c) of this
109 section, may be based upon:

110 (1) The best system of emission reduction which, taking into
111 account the cost of achieving the reduction and any nonair
112 quality health and environmental impact and energy
113 requirements, has been adequately demonstrated for natural
114 gas-fired electric generating units that are subject to the standard
115 of performance;

116 (2) Reductions in emissions of carbon dioxide that can
117 reasonably be achieved through measures at each natural
118 gas-fired electric generating unit; and

119 (3) Efficiency and other measures that can be undertaken at
120 the unit to reduce carbon dioxide emissions from the unit
121 without switching from natural gas to other lower-carbon fuels
122 or limiting the economic utilization of the unit.

123 (g) *Flexibility in establishing standards of per-*
124 *formance.* – In developing a flexible state plan to achieve
125 targeted reductions in greenhouse gas emissions, the department
126 shall endeavor to establish an achievable standard of
127 performance for any existing fossil fuel-fired electric generating
128 unit, and examine whether less stringent performance standards

129 or longer compliance schedules may be implemented or adopted
130 for existing fossil fuel-fired electric generating units in
131 comparison to the performance standards established for new,
132 modified or reconstructed generating units, based on the
133 following:

134 (1) Consumer impacts, including any disproportionate
135 impacts of energy price increases on lower income populations;

136 (2) Nonair quality health and environmental impacts;

137 (3) Projected energy requirements;

138 (4) Market-based considerations in achieving performance
139 standards;

140 (5) The costs of achieving emission reductions due to factors
141 such as plant age, location or basic process design;

142 (6) Physical difficulties with or any apparent inability to
143 feasibly implement certain emission reduction measures;

144 (7) The absolute cost of applying the performance standard
145 to the unit;

146 (8) The expected remaining useful life of the unit;

147 (9) The impacts of closing the unit, including economic
148 consequences such as expected job losses at the unit and
149 throughout the state in fossil fuel production areas including
150 areas of coal production and natural gas production and the
151 associated losses to the economy of those areas and the state, if
152 the unit is unable to comply with the performance standard;

153 (10) Impacts on the reliability of the system; and

154 (11) Any other factors specific to the unit that make
155 application of a modified or less stringent standard or a longer
156 compliance schedule more reasonable.

157 (h) *Legislative consideration of proposed state plan under*
158 *Section 111(d) of the Clean Air Act.* – (1) If the department
159 submits a proposed state plan to the Legislature under this
160 section, the Legislature may by act, including presentment to the
161 Governor, (i) authorize the department to submit the proposed
162 state plan to the Environmental Protection Agency, (ii) authorize
163 the department to submit the state plan with amendment, or (iii)
164 not grant such rulemaking or other authority to the department
165 for submission and implementation of the state plan.

166 (2) If the Legislature fails to enact or approve all or part of
167 the proposed state plan, the department may propose a new or
168 modified state plan to the Legislature in accordance with the
169 requirements of this section.

170 (3) If the Environmental Protection Agency does not
171 approve the state plan, in whole or in part, the department shall
172 as soon as practicable propose a modified state plan to the
173 Legislature in accordance with the requirements of this section.

174 (i) *Legal effect.* – Any obligation created by this section and
175 any state plan submitted to the Environmental Protection Act
176 pursuant to this section shall have no legal effect if:

177 (1) the Environmental Protection Agency fails to issue, or
178 withdraws, its federal rules or guidelines for reducing carbon
179 dioxide emissions from existing fossil fuel-fired electrical
180 generating units under 42 U.S.C. §7411(d); or,

181 (2) a court of competent jurisdiction invalidates the
182 Environmental Protection Agency’s federal rules or guidelines
183 issued to regulate emissions of carbon dioxide from existing
184 fossil fuel-fired electrical generating units under 42 U.S.C.
185 §7411(d).

186 (j) *Effective date.* — All provisions of this section are
187 effective immediately upon passage.

CHAPTER 110

**(Com. Sub. for S. B. 280 - By Senators Cole (Mr. President),
Boley, Ferns, Mullins, Nohe, Sypolt, Prezioso, Facemire, D. Hall,
Williams, Kessler, Palumbo and Beach)**

[Passed January 28, 2015; in effect from passage.]
[Approved by the Governor on February 4, 2015.]

AN ACT to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing transfer of well work permits upon prior written approval of the Secretary of the Department of Environmental Protection; providing for forms prescribed by the secretary; requiring transferee to give notice of transfer; requiring transferee to update their emergency point of contact; and providing for permit transfer fee.

Be it enacted by the Legislature of West Virginia:

That §22-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

- 1 (a) It is unlawful for any person to commence any well
- 2 work, including site preparation work which involves any

3 disturbance of land, for a horizontal well without first securing
4 from the secretary a well work permit pursuant to this article.

5 (b) Every permit application filed under this section shall be
6 on a form as may be prescribed by the secretary, shall be verified
7 and shall contain the following information:

8 (1) The names and addresses of: (i) The well operator; (ii)
9 the agent required to be designated under subsection (h) of this
10 section; and (iii) every person whom the applicant shall notify
11 under any section of this article, together with a certification and
12 evidence that a copy of the application and all other required
13 documentation has been delivered to all such persons;

14 (2) The names and addresses of every coal operator
15 operating coal seams under the tract of land on which the well is
16 or may be located, and the coal seam owner of record and lessee
17 of record required to be given notice by subdivision (6),
18 subsection (a), section five of this article, if any, if the owner or
19 lessee is not yet operating the coal seams;

20 (3) The number of the well or other identification the
21 secretary may require;

22 (4) The well work for which a permit is requested;

23 (5) The approximate total depth to which the well is to be
24 drilled or deepened, or the actual depth if the well has been
25 drilled; the proposed angle and direction of the well; the actual
26 depth or the approximate depth at which the well to be drilled
27 deviates from vertical, the angle and direction of the nonvertical
28 well bore until the well reaches its total target depth or its actual
29 final depth; and the length and direction of any actual or
30 proposed horizontal lateral or well bore;

31 (6) Each formation in which the well will be completed if
32 applicable;

- 33 (7) A description of any means used to stimulate the well;
- 34 (8) If the proposed well work will require casing or tubing
35 to be set, the entire casing program for the well, including the
36 size of each string of pipe, the starting point and depth to which
37 each string is to be set and the extent to which each such string
38 is to be cemented;
- 39 (9) If the proposed well work is to convert an existing well,
40 all information required by this section, all formations from
41 which production is anticipated and any plans to plug any
42 portion of the well;
- 43 (10) If the proposed well work is to plug or replug the well,
44 all information necessary to demonstrate compliance with the
45 legislative rules promulgated by the secretary in accordance with
46 section thirteen of this article;
- 47 (11) If the proposed well work is to stimulate a horizontal
48 well, all information necessary to demonstrate compliance with
49 the requirements of subdivision (7), subsection (a), section five
50 of this article;
- 51 (12) The erosion and sediment control plan required under
52 subsection (c) of this section for applications for permits to drill;
- 53 (13) A well site safety plan to address proper safety
54 measures to be employed for the protection of persons on the site
55 as well as the general public. The plan shall encompass all
56 aspects of the operation, including the actual well work for
57 which the permit was obtained, completion activities and
58 production activities, and shall provide an emergency point of
59 contact for the well operator. The well operator shall provide a
60 copy of the well site safety plan to the local emergency planning
61 committee established pursuant to section seven, article five-a,
62 chapter fifteen of this code for the emergency planning district
63 in which the well work will occur at least seven days before

64 commencement of well work or site preparation work that
65 involves any disturbance of land;

66 (14) A certification from the operator that: (i) It has provided
67 the owners of the surface described in subdivisions (1), (2) and
68 (4), subsection (b), section ten of this article, the information
69 required by subsections (b) and (c), section sixteen of this
70 article; (ii) that the requirement was deemed satisfied as a result
71 of giving the surface owner notice of entry to survey pursuant to
72 subsection (a), section ten of this article; or (iii) the notice
73 requirements of subsection (b), section sixteen of this article
74 were waived in writing by the surface owner; and

75 (15) Any other relevant information which the secretary may
76 reasonably require.

77 (c) (1) An erosion and sediment control plan shall
78 accompany each application for a well work permit under this
79 article. The plan shall contain methods of stabilization and
80 drainage, including a map of the project area indicating the
81 amount of acreage disturbed. The erosion and sediment control
82 plan shall meet the minimum requirements of the West Virginia
83 Erosion and Sediment Control Manual as adopted and from time
84 to time amended by the department. The erosion and sediment
85 control plan shall become part of the terms and conditions of any
86 well work permit that is issued pursuant to this article and the
87 provisions of the plan shall be carried out where applicable in the
88 operation. The erosion and sediment control plan shall set out the
89 proposed method of reclamation which shall comply with the
90 requirements of section fourteen of this article.

91 (2) For well sites that disturb three acres or more of surface,
92 excluding pipelines, gathering lines and roads, the erosion and
93 sediment control plan submitted in accordance with this section
94 shall be certified by a registered professional engineer.

195 (d) For well sites that disturb three acres or more of surface,
196 excluding pipelines, gathering lines and roads, the operator shall
197 submit a site construction plan that shall be certified by a
198 registered professional engineer and contains information that
199 the secretary may require by rule.

200 (e) In addition to the other requirements of this section, if the
201 drilling, fracturing or stimulating of the horizontal well requires
202 the use of water obtained by withdrawals from waters of this
203 state in amounts that exceed two hundred ten thousand gallons
204 during any thirty-day period, the application for a well work
205 permit shall include a water management plan, which may be
206 submitted on an individual well basis or on a watershed basis,
207 and which shall include the following information:

208 (1) The type of water source, such as surface or groundwater,
209 the county of each source to be used by the operation for water
210 withdrawals and the latitude and longitude of each anticipated
211 withdrawal location;

212 (2) The anticipated volume of each water withdrawal;

213 (3) The anticipated months when water withdrawals will be
214 made;

215 (4) The planned management and disposition of wastewater
216 after completion from fracturing, refracturing, stimulation and
217 production activities;

218 (5) A listing of the anticipated additives that may be used in
219 water utilized for fracturing or stimulating the well. Upon well
220 completion, a listing of the additives that were actually used in
221 the fracturing or stimulating of the well shall be submitted as
222 part of the completion log or report required by subdivision (14),
223 subsection (a), section five of this article;

124 (6) For all surface water withdrawals, a water management
125 plan that includes the information requested in subdivisions (1)
126 through (5) of this subsection and the following:

127 (A) Identification of the current designated and existing
128 water uses, including any public water intakes within one mile
129 downstream of the withdrawal location;

130 (B) For surface waters, a demonstration, using methods
131 acceptable to the secretary, that sufficient in-stream flow will be
132 available immediately downstream of the point of withdrawal.
133 A sufficient in-stream flow is maintained when a pass-by flow
134 that is protective of the identified use of the stream is preserved
135 immediately downstream of the point of withdrawal; and

136 (C) Methods to be used for surface water withdrawal to
137 minimize adverse impact to aquatic life; and

138 (7) This subsection is intended to be consistent with and
139 does not supersede, revise, repeal or otherwise modify article
140 eleven, twelve or twenty-six of this chapter and does not revise,
141 repeal or otherwise modify the common law doctrine of riparian
142 rights in West Virginia law.

143 (f) An application may propose and a permit may approve
144 two or more activities defined as well work; however, a separate
145 permit shall be obtained for each horizontal well drilled.

146 (g) The application for a permit under this section shall be
147 accompanied by the applicable bond as required by section
148 fifteen of this article, the applicable plat required by subdivision
149 (6), subsection (a), section five of this article and a permit fee of
150 \$10,000 for the initial horizontal well drilled at a location and a
151 permit fee of \$5,000 for each additional horizontal well drilled
152 on a single well pad at the same location.

153 (h) The well operator named in the application shall
154 designate the name and address of an agent for the operator who
155 is the attorney-in-fact for the operator and who is a resident of
156 the State of West Virginia upon whom notices, orders or other
157 communications issued pursuant to this article or article eleven
158 of this chapter may be served, and upon whom process may be
159 served. Every well operator required to designate an agent under
160 this section shall, within five days after the termination of the
161 designation, notify the secretary of the termination and designate
162 a new agent.

163 (i) The well owner or operator shall install the permit
164 number as issued by the secretary and a contact telephone
165 number for the operator in a legible and permanent manner to the
166 well upon completion of any permitted work. The dimensions,
167 specifications and manner of installation shall be in accordance
168 with the rules of the secretary.

169 (j) The secretary may waive the requirements of this section
170 and sections eight, ten, eleven and twenty-four of this article in
171 any emergency situation if the secretary considers the action
172 necessary. In that case the secretary may issue an emergency
173 permit which is effective for not more than thirty days, unless
174 reissued by the secretary.

175 (k) The secretary shall deny the issuance of a permit if the
176 secretary determines that the applicant has committed a
177 substantial violation of a previously issued permit for a
178 horizontal well, including the applicable erosion and sediment
179 control plan associated with the previously issued permit, or a
180 substantial violation of one or more of the rules promulgated
181 under this article, and in each instance has failed to abate or seek
182 review of the violation within the time prescribed by the
183 secretary pursuant to the provisions of subdivisions (1) and (2),

184 subsection (a), section five of this article and the rules
185 promulgated hereunder, which time may not be unreasonable.

186 (l) If the secretary finds that a substantial violation has
187 occurred and that the operator has failed to abate or seek review
188 of the violation in the time prescribed, the secretary may suspend
189 the permit on which the violation exists, after which suspension
190 the operator shall forthwith cease all well work being conducted
191 under the permit. However, the secretary may reinstate the
192 permit without further notice, at which time the well work may
193 be continued. The secretary shall make written findings of the
194 suspension and may enforce the same in the circuit courts of this
195 state. The operator may appeal a suspension pursuant to the
196 provisions of subdivision (23), subsection (a), section five of this
197 article. The secretary shall make a written finding of any such
198 determination.

199 (m) Any well work permit issued in accordance with this
200 section may be transferred with the prior written approval of the
201 secretary upon his or her finding that the proposed transferee
202 meets all requirements for holding a well work permit,
203 notwithstanding any other provision of this article or rule
204 adopted pursuant to this article. Application for the transfer of
205 any well work permit shall be upon forms prescribed by the
206 secretary and submitted with a permit transfer fee of \$500.
207 Within ninety days of the receipt of approval by the secretary,
208 the transferee shall give notice of the transfer to those persons
209 entitled to notice in subsection (b), section ten of this article by
210 personal service or by registered mail or by any method of
211 delivery that requires a receipt or signature confirmation, and
212 shall further update the emergency point of contact provided
213 pursuant to subdivision (13), subsection (b) of this section.

CHAPTER 111

(H. B. 2626 - By Delegate(s) Ashley, Ireland and Frich)
[By Request of the Environmental Protection, Department of]

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended, relating to use of the Abandoned Land Reclamation Fund.

Be it enacted by the Legislature of West Virginia:

That §22-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

1 (a) All abandoned land reclamation funds available under
2 Title IV of the federal Surface Mining Control and Reclamation
3 Act of 1977, as amended, private donations received, any state
4 appropriated or transferred funds, or funds received from the sale
5 of land by the secretary under this article shall be deposited with
6 the Treasurer of the State of West Virginia to the credit of the
7 abandoned land reclamation fund heretofore created, and
8 expended pursuant to the requirements of this article.

9 (b) Moneys in the fund may be used by the secretary for the
10 following:

11 (1) Reclamation and restoration of land and water resources
12 adversely affected by past coal surface-mining operations,
13 including, but not limited to, reclamation and restoration of
14 abandoned surface mine areas, abandoned coal processing areas
15 and abandoned coal processing waste areas; sealing and filling
16 abandoned deep mine entries and voids; planting of land
17 adversely affected by past coal surface-mining operations to
18 prevent erosion and sedimentation; prevention, abatement,
19 treatment and control of water pollution created by coal mine
20 drainage, including restoration of stream beds and construction
21 and operation of water treatment plants; prevention, abatement
22 and control of burning coal processing waste areas and burning
23 coal in situ; prevention, abatement and control of coal mine
24 subsidence; and payment of administrative expenses and all
25 other necessary expenses incurred to accomplish the purpose of
26 this article: *Provided*, That all expenditures from this fund shall
27 reflect the following priorities in the order stated:

28 (A) The protection of public health, safety, general welfare
29 and property from extreme danger of adverse effects of past
30 surface-mining practices;

31 (B) The protection of public health, safety and general
32 welfare from adverse effects of past coal surface-mining
33 practices;

34 (C) The restoration of land and water resources and
35 environment previously degraded by adverse effects of past coal
36 surface-mining practices, including measures for the
37 conservation and development of soil, water (excluding
38 channelization), woodland, fish and wildlife, recreation
39 resources and agricultural productivity;

40 (D) Research and demonstration projects relating to the
41 development of surface-mining reclamation and water quality
42 control program methods and techniques;

43 (E) The protection, repair, replacement, construction or
44 enhancement of public facilities such as utilities, roads,
45 recreation and conservation facilities adversely affected by past
46 coal surface-mining practices; and

47 (F) The development of publicly owned land adversely
48 affected by past coal surface-mining practices, including land
49 acquired as provided in this article for recreation and historic
50 purposes, conservation and reclamation purposes and open space
51 benefits.

52 (2) (A) The secretary may expend the funds allocated to the
53 state in any year through the grants made available under
54 paragraphs (1) and (5), subsection (g) of Section 402 of the
55 federal Surface Mining Control and Reclamation Act of 1977, as
56 amended, for the purpose of protecting, repairing, replacing,
57 constructing or enhancing facilities relating to water supply,
58 including water distribution facilities and treatment plants, to
59 replace water supplies adversely affected by coal surface-mining
60 practices.

61 (B) If the adverse effects on water supplies referred to in this
62 subdivision occurred both prior to and after the August 3, 1977,
63 subsection (c) of this section does not prohibit the state from
64 using funds for the purposes of this subdivision if the secretary
65 determines that the adverse effects occurred predominantly prior
66 to August 3, 1977.

67 (3) The secretary may receive and retain up to thirty percent
68 of the total of the grants made annually to the state under
69 paragraphs (1) and (5), subsection (g) of Section 402 of the
70 federal Surface Mining Control and Reclamation Act of 1977, as
71 amended, if the amounts are deposited to the credit of either:

72 (A) The special account in the State Treasury designated the
73 "Reclamation and Restoration Fund" is hereby continued.

74 Moneys in the fund may be expended by the secretary to achieve
75 the priorities stated in subdivision (1) of this subsection after
76 September 30, 1995 and for associated administrative and
77 personnel expenses; or

78 (B) The special account in the State Treasury designated the
79 “Acid Mine Drainage Abatement and Treatment Fund” is hereby
80 continued. Moneys in the fund may be expended by the secretary
81 to implement, in consultation with the United States soil
82 conservation service, acid mine drainage abatement and
83 treatment plans approved by the secretary of the United States
84 department of interior and for associated administrative and
85 personnel expenses. The plans shall provide for the
86 comprehensive abatement of the causes and treatment of the
87 effects of acid mine drainage within qualified hydrologic units
88 affected by coal surface-mining practices. The moneys accrued
89 in this fund, any earnings thereon, and yield from investments by
90 the State Treasurer or West Virginia Investment Management
91 Board are reserved solely and exclusively for the purposes set
92 forth in this section of the code. Any interest accrued on any
93 moneys deposited into the Acid Mine Drainage Abatement and
94 Treatment Fund which previously defaulted from that account
95 into general revenue shall be credited back to the fund on or
96 before July 1, 2014.

97 (c) Except as provided for in this subsection, lands and water
98 eligible for reclamation or drainage abatement expenditures
99 under this article are those which were mined for coal or which
100 were affected by the mining, wastebanks, coal processing or
101 other coal mining processes, and abandoned or left in an
102 inadequate reclamation status prior to August 3, 1977, and for
103 which there is no continuing reclamation responsibility:
104 *Provided,* That moneys from the funds made available by the
105 secretary of the United States department of interior pursuant to
106 paragraphs (1) and (5), subsection (g), Section 402 of the federal
107 Surface Mining Control and Reclamation Act of 1977, as

108 amended, may be expended for the reclamation or drainage
109 abatement of a site that: (1) The surface-mining operation
110 occurred during the period beginning on August 4, 1977, and
111 ending on or before January 21, 1981, and that any funds for
112 reclamation or abatement which are available pursuant to a bond
113 or other financial guarantee or from any other source, and not
114 sufficient to provide for adequate reclamation or abatement of
115 the site; or (2) the surface-mining operation occurred during the
116 period beginning on August 4, 1977, and ending on or before
117 November 5, 1990, and that the surety of the surface-mining
118 operation became insolvent during that period, and as of
119 November 5, 1990, funds immediately available from
120 proceeding relating to the insolvency or from any financial
121 guarantees or other sources are not sufficient to provide for
122 adequate reclamation of the site: *Provided, however,* That the
123 secretary, with the concurrence of the secretary of the United
124 States department of interior, makes either of the above-stated
125 findings, and that the site is eligible, or more urgent than the
126 reclamation priorities set forth in paragraphs (A) and (B),
127 subdivision (1), subsection (b) of this section.

128 (d) One purpose of this article is to provide additional and
129 cumulative remedies to abate the pollution of the waters of the
130 state, and nothing contained in this article abridges or alters
131 rights of action or remedies now or hereafter existing, nor do any
132 provisions in this article or any act done by virtue of this article
133 estop the state, municipalities, public health officers or persons
134 as riparian owners or otherwise in the exercise of their rights to
135 suppress nuisances or to abate any pollution now or hereafter
136 existing or to recover damages.

137 (e) Where the Governor certifies that the above objectives of
138 the fund have been achieved and there is a need for construction
139 of specific public facilities in communities impacted by coal
140 development, and other sources of federal funds are inadequate
141 and the secretary of the United States department of interior

142 concurs, then the secretary may expend money from the fund for
143 the construction.

CHAPTER 112

(H. B. 2625 - By Delegate(s) Ashley and Ireland)
[By Request of the Environmental Protection, Department of]

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to the Hazardous Waste Management Fee Fund, by extending its sunset provision from June 30, 2015 to June 30, 2020.

Be it enacted by the Legislature of West Virginia:

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

- 1 (a) The net proceeds of all fines, penalties and forfeitures
- 2 collected under this article shall be appropriated as directed by
- 3 section five, article XII of the Constitution of West Virginia. For
- 4 the purposes of this section, the net proceeds of the fines,
- 5 penalties and forfeitures are considered the proceeds remaining
- 6 after deducting therefrom those sums appropriated by the
- 7 Legislature for defraying the cost of administering this article.
- 8 All permit application fees collected under this article shall be

9 paid into the State Treasury into a special fund designated the
10 Hazardous Waste Management Fund. In making the
11 appropriation for defraying the cost of administering this article,
12 the Legislature shall first take into account the sums included in
13 that special fund prior to deducting additional sums as may be
14 needed from the fines, penalties and forfeitures collected
15 pursuant to this article.

16 (b) Effective on July 1, 2003, there is imposed an annual
17 certification fee for facilities that manage hazardous waste, as
18 defined by the federal Resource Conservation and Recovery Act,
19 as amended. The secretary shall propose a rule for legislative
20 approval in accordance with the provisions of article three,
21 chapter twenty-nine-a of this code to establish the certification
22 fee. The rule shall be a product of a negotiated rule-making
23 process with the facilities subject to the rule. The rule shall, at a
24 minimum, establish different fee rates for facilities based on
25 criteria established in the rule. The total amount of fees
26 generated raise no more funds than are necessary and adequate
27 to meet the matching requirements for all federal grants which
28 support the hazardous waste management program, but shall not
29 exceed \$700,000 per year.

30 (c) The revenues collected from the annual certification fee
31 shall be deposited in the State Treasury to the credit of the
32 Hazardous Waste Management Fee Fund, which is continued.
33 Moneys of the fund, together with any interest or other return
34 earned on the fund, shall be expended to meet the matching
35 requirements of federal grant programs which support the
36 hazardous waste management program. Expenditures from the
37 fund are for the purposes set forth in this article and are not
38 authorized from collections, but are to be made only in
39 accordance with appropriation by the Legislature and in
40 accordance with the provisions of article three, chapter twelve of
41 this code and upon the fulfillment of the provisions set forth in
42 article two, chapter five-a of this code. Amounts collected which

43 are found, from time to time, to exceed the funds needed for
44 purposes set forth in this article may be transferred to other
45 accounts by appropriation of the Legislature.

46 (d) The fee provided in subsection (b) of this section and the
47 fund established in subsection (c) of this section shall terminate
48 on June 30, 2020. The department shall, by December 31 of each
49 year, report to the Joint Committee on Government and Finance
50 regarding moneys collected into the Hazardous Waste
51 Management Fee Fund and expenditures by the agency,
52 including any federal matching moneys received and providing
53 an accounting on the collection of the fee by type of permit
54 activity, funds being expended and current and future projected
55 balances of the fund.

CHAPTER 113

**(Com. Sub. for H. B. 2266 - By Delegate(s) Shott,
Ellington and Gearheart)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5-9a; to amend and reenact §44-1-14a of said code; to amend said code by adding thereto a new section, designated §44-1-30; and to amend and reenact §44-2-1 of said code, all relating generally to administration of estates; repealing provision requiring fiduciary commissioner to publish notice of time for receiving claims against decedents' estates; changing requirements for publication by county clerk; requiring legal residences to be included on certificates of death; reducing

creditors claim period from ninety to sixty days; increasing value of estates for which a fiduciary commissioner need not be appointed; and authorizing clerk of the county commission to require a certified copy of a decedent's certificate of death or other proof of death and residence.

Be it enacted by the Legislature of West Virginia:

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-9a. Legal residences to be included on certificates of death.

- 1 In order to assist clerks of county commission fulfill their
- 2 responsibilities under chapter forty-four of this code, the State
- 3 Registrar shall require persons completing certificates of death,
- 4 to include any known legal residences of the decedent, if
- 5 different than the place of death.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

- 1 (a) Within thirty days of the filing of the appraisal of
- 2 any estate or within one hundred twenty days of the date of

3 qualification of the personal representative if an appraisal is
4 not filed as required in section fourteen of this article, the clerk
5 of the county commission shall publish, once a week for two
6 successive weeks, in a newspaper of general circulation within
7 the county of the administration of the estate, a notice, which is
8 to include:

9 (1) The name of the decedent;

10 (2) The name and address of the county commission before
11 whom the proceedings are pending;

12 (3) The name and address of the personal representative;

13 (4) The name and address of any attorney representing the
14 personal representative;

15 (5) The name and address of the fiduciary commissioner, if
16 any;

17 (6) The date of first publication;

18 (7) A statement that claims against the estate must be filed
19 within sixty days of the date of first publication in accordance
20 with article two or article three-a of this chapter;

21 (8) A statement that any person seeking to impeach or
22 establish a will must make a complaint in accordance with
23 section eleven, twelve or thirteen, article five, chapter forty-one
24 of this code;

25 (9) A statement that an interested person objecting to the
26 qualifications of the personal representative or the venue or
27 jurisdiction of the court must be filed with the county
28 commission within sixty days after the date of first publication
29 or thirty days of service of the notice, whichever is later; and

30 (10) If the appraisal of the assets of the estate shows the
31 value to be \$200,000 or less, exclusive of real estate specifically
32 devised and nonprobate assets, or, if it appears to the clerk that
33 there is only one beneficiary of the probate estate and that the
34 beneficiary is competent at law, a statement substantially as
35 follows: “Settlement of the estate of the following named
36 decedents will proceed without reference to a fiduciary
37 commissioner unless within sixty days from the first publication
38 of this notice a reference is requested by a party in interest or an
39 unpaid creditor files a claim and good cause is shown to support
40 reference to a fiduciary commissioner”. If a party in interest
41 requests the fiduciary commissioner to conclude the
42 administration of the estate or an unpaid creditor files a claim, no
43 further notice to creditors shall be published in the newspaper,
44 and the personal representative shall be required to pay no
45 further fees, except to the fiduciary commissioner for conducting
46 any hearings, or performing any other duty as a fiduciary
47 commissioner. The time period for filing claims against the
48 estate shall expire upon the time period set out in the notice to
49 creditors published by the clerk of the county commission as
50 required in this subsection (a). If an unpaid creditor files a claim,
51 the fiduciary commissioner shall conduct a hearing on the claim
52 filed by the creditor, otherwise, the fiduciary commissioner shall
53 conclude the administration of the estate as requested by the
54 interested party.

55 (11) This notice shall be published as a Class II legal
56 advertisement in compliance with the provisions of article three,
57 chapter fifty-nine of this code. The publication of such notice
58 shall be equivalent to personal service on creditors, distributees
59 and legatees.

60 (b) If no appraisal is filed within the time period
61 established pursuant to section fourteen of this article, the county
62 clerk shall send a notice to the personal representative by first
63 class mail, postage prepaid, indicating that the appraisal has
64 not been filed.

65 (c) The personal representative shall promptly make a
66 diligent search to determine the names and addresses of creditors
67 of the decedent who are reasonably ascertainable.

68 (d) The personal representative shall, within sixty days after
69 the date of first publication, serve a copy of the notice, published
70 pursuant to subsection (a) of this section, by first class mail,
71 postage prepaid, or by personal service on the following persons:

72 (1) If the personal representative is not the decedent's
73 surviving spouse and not the sole beneficiary or sole heir, the
74 decedent's surviving spouse, if any;

75 (2) If there is a will and the personal representative is not the
76 sole beneficiary, any beneficiaries;

77 (3) If there is not a will and the personal representative is not
78 the sole heir, any heirs;

79 (4) The trustee of any trust in which the decedent was a
80 grantor, if any; and

81 (5) All creditors identified under subsection (c) of this
82 section, other than a creditor who filed a claim as provided in
83 article two of this chapter or a creditor whose claim has been
84 paid in full.

85 (e) Any person interested in the estate who objects to the
86 qualifications of the personal representative or the venue or
87 jurisdiction of the court, shall file notice of an objection with the
88 county commission within ninety days after the date of the first
89 publication as required in subsection (a) of this section or within
90 thirty days after service of the notice as required by subsection
91 (d) of this section, whichever is later. If an objection is not
92 timely filed, the objection is forever barred.

93 (f) A personal representative acting in good faith is not
94 personally liable for serving notice under this section,

95 notwithstanding a determination that notice was not required by
96 this section. A personal representative acting in good faith who
97 fails to serve the notice required by this section is not personally
98 liable. The service of the notice in accordance with this
99 subsection may not be construed to admit the validity or
100 enforceability of a claim.

101 (g) The clerk of the county commission shall collect a fee of
102 \$20 for the publication of the notice required in this section.

103 (h) For purposes of this section, the term beneficiary means
104 a person designated in a will to receive real or personal property.

**§44-1-30. Death certificate or other proof of death and residence
may be required.**

1 The clerk of the county commission may require a certified
2 copy of a decedents death certificate or other proof of death and
3 residence prior to fulfilling the clerk's responsibilities under this
4 chapter.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisal by the personal
2 representative to the county clerk, the estate of his or her
3 decedent, by order of the county commission, must be referred
4 to a fiduciary commissioner for proof and determination of debts
5 and claims, establishment of their priority, determination of the
6 amount of the respective shares of the legatees and distributees,
7 and any other matter necessary for the settlement of the estate:
8 *Provided*, That in counties where there are two or more
9 commissioners, the estates of decedents must be referred to the
10 commissioners in rotation, so there may be an equal division of
11 the work. Notwithstanding any other provision of this code to the

12 contrary, a fiduciary commissioner may not charge to the estate
13 a fee greater than \$300 and expenses for the settlement of an
14 estate, except upon: (i) Approval of the personal representative;
15 or (ii) a determination by the county commission that the fee is
16 based upon the actual time spent and actual services rendered
17 pursuant to a schedule of fees or rate of compensation for
18 fiduciary commissioners promulgated by the commission in
19 accordance with the provisions of section nine, article one,
20 chapter fifty-nine of this code.

21 (b) If the personal representative delivers to the clerk an
22 appraisal of the assets of the estate showing their value to be
23 \$200,000 or less, exclusive of real estate specifically devised and
24 nonprobate assets, or if it appears to the clerk that there is only
25 one beneficiary of the probate estate and that the beneficiary is
26 competent at law, the clerk shall record the appraisal. If an
27 unpaid creditor files a claim against the estate, the personal
28 representative has twenty days after the date of the filing of a
29 claim against the estate of the decedent to approve or reject the
30 claim before the estate is referred to a fiduciary commissioner.
31 If the personal representative approves all claims as filed, then
32 no reference may be made.

33 The personal representative shall, within a reasonable time
34 after the date of recordation of the appraisal: (i) File a
35 waiver of final settlement in accordance with the provisions of
36 section twenty-nine of this article; or (ii) make a report to the
37 clerk of his or her receipts, disbursements and distribution and
38 submit an affidavit stating that all claims against the estate for
39 expenses of administration, taxes and debts of the decedent have
40 been paid in full. Upon receipt of the waiver of final settlement
41 or report, the clerk shall record the waiver or report and mail
42 copies to each beneficiary and creditor by first-class mail,
43 postage prepaid. The clerk shall retain the report for ten days to
44 allow any beneficiary or creditor to appear before the county
45 commission to request reference to a fiduciary commissioner.

46 The clerk shall collect a fee of \$10 for recording and mailing the
47 waiver of final settlement or report.

48 If no request or objection is made to the clerk or to the
49 county commission, the county commission may confirm the
50 report of the personal representative, the personal representative
51 and his or her surety shall be discharged; but if an objection or
52 request is made, the county commission may confirm and record
53 the accounting or may refer the estate to its fiduciary
54 commissioners: *Provided*, That the personal representative has
55 twenty days after the date of the filing of a claim against the
56 estate of the decedent to approve or reject the claim before the
57 estate is referred to a fiduciary commissioner and if all claims
58 are approved as filed, then no reference may be made.

59 (c) For purposes of this section, the term beneficiary means
60 a person designated in a will to receive real or personal property.

CHAPTER 114

**(S. B. 304 - By Senators Miller, Williams, Beach,
D. Hall, Nohe, Sypolt, Snyder and Stollings)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3 and §19-35-4, all relating to farmers markets; stating purpose and definitions; requiring a uniform farmers market vendor permit; establishing annual permit fees; providing exemptions; allowing inspection by local health departments; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-35-1, §19-35-2, §19-35-3 and §19-35-4, all to read as follows:

ARTICLE 35. FARMERS MARKETS.

§19-35-1. Legislative findings.

1 (a) Farmers markets are critical incubators for small farm
2 and food businesses because they offer an inexpensive,
3 accessible, entry-level market for reaching consumers directly,
4 though research has shown that the average vendor makes only
5 a nominal dollar amount in sales on any given market day;

6 (b) The number of farmers markets and the variety of
7 products sold at farmers markets has increased significantly in
8 the past ten years, adding millions of dollars to the state's
9 economy;

10 (c) Encouraging locally grown and raised food is important
11 to the health and welfare of the citizens of West Virginia;

12 (d) Permit fees and requirements for farmers market vendors
13 can vary widely from county to county and from one regulatory
14 official to the other. Current food permit categories are not
15 designed for farmers markets and their vendors, but rather for
16 restaurants, grocery stores or concessioners;

17 (e) Food permits required for farmers market vendors are
18 currently not recognized across county lines.

§19-35-2. Definitions.

1 For purposes of this article:

2 (a) "Consignment farmers market" means a farmers market
3 in which two or more vendors deliver their own farm and food

4 products to a common location maintained by a third party that
5 markets the vendors' products and receives a percentage share
6 of the profits from sales, with the individual vendor retaining
7 ownership of the farm and food product until it is sold.

8 (b) "Farm and food product" means any agriculture,
9 horticulture, agroforestry, animal husbandry, dairy, livestock,
10 cottage food, beekeeping or other similar product. Farm and food
11 products are to be properly labeled.

12 (c) "Farmers market" means:

13 (1) A traditional farmers market in which two or more
14 vendors gather to sell farm and food products directly to
15 consumers at a fixed location;

16 (2) An on-farm market or farm stand run by an individual
17 producer that sells farm and food products;

18 (3) An online farmers market in which two or more vendors
19 collectively market farm and food products and retain ownership
20 of those products until they are sold; or

21 (4) A consignment farmers market.

22 (d) "Farmers market vendor" or "vendor" means a person or
23 entity that sells farm and food products at a farmers market.

§19-35-3. Farmers market vendor permit; scope.

1 (a) Vendors at a farmers market selling farm and food
2 products that require a food establishment permit shall apply for
3 a uniform farmers market vendor permit and pay the annual
4 permit fee to the local health department in the jurisdiction in
5 which the farmers market is located. The permit is valid in all
6 counties in this state, and vendors are not required to apply to
7 more than one local health department for a uniform farmers

8 market vendor permit. The uniform farmers market vendor
9 permit shall be required in lieu of the food establishment permit,
10 notwithstanding any other provisions of code or rule that require
11 a food establishment permit or any other permit from a local
12 health department.

13 (b) The application must include any other farmers market
14 locations under the jurisdiction of another local health
15 department that the vendor will sell farm and food products
16 subject to the permit. The local health department which
17 approves the application for the uniform farmers market vendor
18 permit shall provide notice of the approval to any other local
19 health departments that the vendor will be subject to, as
20 indicated on the application.

21 (c) (1) The annual permit fee for the uniform farmers market
22 vendor permit is as follows:

23 (A) For vendors selling farm and food products under the
24 jurisdiction of only one local health department, the annual fee
25 is \$15.

26 (B) For vendors selling farm and food products under the
27 jurisdiction of more than one local health department, the annual
28 fee is \$25.

29 (2) The annual permit fee shall be collected and deposited in
30 accordance with subsection (6), section eleven, article two,
31 chapter sixteen of this code.

32 (d) The following vendors are exempt from the requirements
33 of the uniform farmers market vendor permit:

34 (1) Vendors delivering their products to a consignment
35 farmers market; or

36 (2) Vendors selling fresh, uncut produce or other any other
37 farm and food product not subject to a permit by a local health
38 department through rule or regulation.

39 (e) A consignment farmers market shall obtain a food
40 establishment permit issued by the local health department.

41 (f) Every uniform farmers market vendor permit shall be
42 displayed in a conspicuous manner.

43 (g) Notwithstanding the provisions of article two, chapter
44 sixteen of this code, a local health department has the right to
45 inspect and suspend the uniform farmers market vendor permit
46 for violation of rules or the local health department regulations
47 of a vendor at any farmers market in its jurisdiction, or at the
48 vendor's home or business address, if it is in the inspecting local
49 health department's jurisdiction, regardless of what local health
50 department issued the uniform farmers market vendor permit.

51 (h) Nothing in this article eliminates or limits other state and
52 federal rules and regulations that apply to certain farm and food
53 products sold at a farmers market or a consignment farmers
54 market.

§19-35-4. Legislative rules.

1 (a) The West Virginia Department of Health and Human
2 Resources shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter twenty-
4 nine-a of this code for the purposes of implementing this article.

5 (b) The West Virginia Department of Health and Human
6 Resources shall consult with the West Virginia Department of
7 Agriculture and shall consider the guidelines established in the
8 Farmers Market Vendor Guide and Memorandum F-16, Food
9 Permits at Farmers Markets in promulgating the rules.

CHAPTER 115

**(Com. Sub. for H. B. 2636 - By Delegate(s) Folk, R. Phillips,
Faircloth, McGeehan, J. Nelson, Householder, Butler,
Marcum, Frich, H. White and Shott)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term “public record”; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State’s website; directing public bodies to report Freedom of Information request information to the Secretary of State; authorizing emergency and legislative rule-making authority to the Secretary of State; establishing a presumption of public accessibility to public records; exempting information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency; protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §29B-1-3a; that §29B-1-4 of said code be amended and reenacted, and that §61-7-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 29B. FREEDOM OF INFORMATION.**ARTICLE 1. PUBLIC RECORDS.****§29B-1-2. Definitions.**

1 As used in this article:

2 (1) “Custodian” means the elected or appointed official
3 charged with administering a public body.

4 (2) “Person” includes any natural person, corporation,
5 partnership, firm or association.

6 (3) “Public body” means every state officer, agency,
7 department, including the executive, legislative and judicial
8 departments, division, bureau, board and commission; every
9 county and city governing body, school district, special district,
10 municipal corporation, and any board, department, commission
11 council or agency thereof; and any other body which is created
12 by state or local authority or which is primarily funded by the
13 state or local authority.

14 (4) “Public record” includes any writing containing
15 information prepared or received by a public body, the content
16 or context of which, judged either by content or context, relates
17 to the conduct of the public’s business.

18 (5) “Writing” includes any books, papers, maps,
19 photographs, cards, tapes, recordings or other documentary
20 materials regardless of physical form or characteristics.

**§29B-1-3. Inspection and copying of public record; requests of
Freedom of Information Act requests registry.**

1 (a) Every person has a right to inspect or copy any public
2 record of a public body in this state, except as otherwise
3 expressly provided by section four of this article.

4 (b) A request to inspect or copy any public record of a public
5 body shall be made directly to the custodian of such public
6 record.

7 (c) The custodian of any public records, unless otherwise
8 expressly provided by statute, shall furnish proper and
9 reasonable opportunities for inspection and examination of the
10 records in his or her office and reasonable facilities for making
11 memoranda or abstracts therefrom, during the usual business
12 hours, to all persons having occasion to make examination of
13 them. The custodian of the records may make reasonable rules
14 and regulations necessary for the protection of the records and to
15 prevent interference with the regular discharge of his or her
16 duties. If the records requested exist in magnetic, electronic or
17 computer form, the custodian of the records shall make copies
18 available on magnetic or electronic media, if so requested.

19 (d) All requests for information must state with reasonable
20 specificity the information sought. The custodian, upon demand
21 for records made under this statute, shall as soon as is practicable
22 but within a maximum of five days not including Saturdays,
23 Sundays or legal holidays:

24 (1) Furnish copies of the requested information;

25 (2) Advise the person making the request of the time and
26 place at which he or she may inspect and copy the materials; or

27 (3) Deny the request stating in writing the reasons for such
28 denial. A denial shall indicate that the responsibility of the
29 custodian of any public records or public body to produce the
30 requested records or documents is at an end, and shall afford the
31 person requesting them the opportunity to institute proceedings
32 for injunctive or declaratory relief in the circuit court in the
33 county where the public record is kept.

34 (e) The public body may establish fees reasonably calculated
35 to reimburse it for its actual cost in making reproductions of
36 records. A public body may not charge a search or retrieval fee
37 or otherwise seek reimbursement based on a man-hour basis as
38 part of costs associated with making reproduction of records.

39 (f) The Secretary of State shall maintain an electronic data
40 base of notices of requests as required by section three-a of this
41 article. The database shall be made available to the public via the
42 Internet and shall list each freedom of information request
43 received and the outcome of the request. The Secretary of State
44 shall provide on the website a form for use by a public body to
45 report the results of the freedom of information request,
46 providing the nature of the request and the public body's
47 response thereto, whether the request was granted, and if not, the
48 exemption asserted under section four of this article to deny the
49 request.

§29B-1-3a. Reports to Secretary of State by public bodies.

1 (a) Beginning January 1, 2016, each public body that is in
2 receipt of a freedom of information request shall provide
3 information to the Secretary of State relating to, at a minimum,
4 the nature of the request, the nature of the public body's
5 response, the time-frame that was necessary to comply in full
6 with the request; and the amount of reimbursement charged to
7 the requester for the freedom of information request: *Provided*,
8 That the public body shall not provide to the Secretary of State
9 the public records that were the subject of the FOIA request.

10 (b) Pursuant to article three, chapter twenty-nine-a of this
11 code, the Secretary of State shall propose rules and emergency
12 rules for legislative approval relating to the creation and
13 maintenance of a publically accessible database available on the
14 Secretary of State's website; the establishment of forms and
15 procedures for submission of information to the Secretary of

- 16 State by the public body; and for other procedures and policies
17 consistent with this section.

§29B-1-4. Exemptions.

1 (a) There is a presumption of public accessibility to all
2 public records, subject only to the following categories of
3 information which are specifically exempt from disclosure under
4 the provisions of this article:

5 (1) Trade secrets, as used in this section, which may include,
6 but are not limited to, any formula, plan pattern, process, tool,
7 mechanism, compound, procedure, production data or
8 compilation of information which is not patented which is
9 known only to certain individuals within a commercial concern
10 who are using it to fabricate, produce or compound an article or
11 trade or a service or to locate minerals or other substances,
12 having commercial value, and which gives its users an
13 opportunity to obtain business advantage over competitors;

14 (2) Information of a personal nature such as that kept in a
15 personal, medical or similar file, if the public disclosure of the
16 information would constitute an unreasonable invasion of
17 privacy, unless the public interest by clear and convincing
18 evidence requires disclosure in this particular instance: *Provided,*
19 That this article does not preclude an individual from inspecting
20 or copying his or her own personal, medical or similar file;

21 (3) Test questions, scoring keys and other examination data
22 used to administer a licensing examination, examination for
23 employment or academic examination;

24 (4) Records of law-enforcement agencies that deal with the
25 detection and investigation of crime and the internal records and
26 notations of such law-enforcement agencies which are
27 maintained for internal use in matters relating to law
28 enforcement;

29 (5) Information specifically exempted from disclosure by
30 statute;

31 (6) Records, archives, documents or manuscripts describing
32 the location of undeveloped historic, prehistoric, archaeological,
33 paleontological and battlefield sites or constituting gifts to any
34 public body upon which the donor has attached restrictions on
35 usage or the handling of which could irreparably damage the
36 record, archive, document or manuscript;

37 (7) Information contained in or related to examination,
38 operating or condition reports prepared by, or on behalf of, or for
39 the use of any agency responsible for the regulation or
40 supervision of financial institutions, except those reports which
41 are by law required to be published in newspapers;

42 (8) Internal memoranda or letters received or prepared by
43 any public body;

44 (9) Records assembled, prepared or maintained to prevent,
45 mitigate or respond to terrorist acts or the threat of terrorist acts,
46 the public disclosure of which threaten the public safety or the
47 public health;

48 (10) Those portions of records containing specific or unique
49 vulnerability assessments or specific or unique response plans,
50 data, databases and inventories of goods or materials collected
51 or assembled to respond to terrorist acts; and communication
52 codes or deployment plans of law-enforcement or emergency
53 response personnel;

54 (11) Specific intelligence information and specific
55 investigative records dealing with terrorist acts or the threat of
56 a terrorist act shared by and between federal and international
57 law-enforcement agencies, state and local law-enforcement and
58 other agencies within the Department of Military Affairs and
59 Public Safety;

60 (12) National security records classified under federal
61 executive order and not subject to public disclosure under federal
62 law that are shared by federal agencies and other records related
63 to national security briefings to assist state and local government
64 with domestic preparedness for acts of terrorism;

65 (13) Computing, telecommunications and network security
66 records, passwords, security codes or programs used to respond
67 to or plan against acts of terrorism which may be the subject of
68 a terrorist act;

69 (14) Security or disaster recovery plans, risk assessments,
70 tests or the results of those tests;

71 (15) Architectural or infrastructure designs, maps or other
72 records that show the location or layout of the facilities where
73 computing, telecommunications or network infrastructure used
74 to plan against or respond to terrorism are located or planned to
75 be located;

76 (16) Codes for facility security systems; or codes for secure
77 applications for facilities referred to in subdivision (15) of this
78 subsection;

79 (17) Specific engineering plans and descriptions of existing
80 public utility plants and equipment;

81 (18) Customer proprietary network information of other
82 telecommunications carriers, equipment manufacturers and
83 individual customers, consistent with 47 U.S.C. §222;

84 (19) Records of the Division of Corrections, Regional Jail
85 and Correctional Facility Authority and the Division of Juvenile
86 Services relating to design of corrections, jail and detention
87 facilities owned or operated by the agency, and the policy
88 directives and operational procedures of personnel relating to the
89 safe and secure management of inmates or residents, that if

90 released, could be used by an inmate or resident to escape a
91 facility, or to cause injury to another inmate, resident or to
92 facility personnel; and

93 (20) Information related to applications under section four,
94 article seven, chapter sixty-one of this code, including
95 applications, supporting documents, permits, renewals, or any
96 other information that would identify an applicant for or holder
97 of a concealed weapon permit: *Provided*: That information in the
98 aggregate that does not identify any permit holder other than by
99 county or municipality is not exempted: *Provided, however*, That
100 information or other records exempted under this subdivision
101 may be disclosed to a law enforcement agency or officer: (i) to
102 determine the validity of a permit, (ii) to assist in a criminal
103 investigation or prosecution, or (iii) for other lawful law-
104 enforcement purposes.

105 (b) As used in subdivisions (9) through (16), inclusive,
106 subsection (a) of this section, the term “terrorist act” means an
107 act that is likely to result in serious bodily injury or damage to
108 property or the environment and is intended to:

109 (1) Intimidate or coerce the civilian population;

110 (2) Influence the policy of a branch or level of government
111 by intimidation or coercion;

112 (3) Affect the conduct of a branch or level of government by
113 intimidation or coercion; or

114 (4) Retaliate against a branch or level of government for a
115 policy or conduct of the government.

116 (c) The provisions of subdivisions (9) through (16),
117 inclusive, subsection (a) of this section do not make subject to
118 the provisions of this chapter any evidence of an immediate
119 threat to public health or safety unrelated to a terrorist act or the

120 threat of a terrorist act which comes to the attention of a public
121 entity in the course of conducting a vulnerability assessment
122 response or similar activity.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this section, any
2 person desiring to obtain a state license to carry a concealed
3 deadly weapon shall apply to the sheriff of his or her county for
4 the license, and pay to the sheriff, at the time of application, a
5 fee of \$75, of which \$15 of that amount shall be deposited in the
6 Courthouse Facilities Improvement Fund created by section six,
7 article twenty-six, chapter twenty-nine of this code. Concealed
8 weapons permits may only be issued for pistols or revolvers.
9 Each applicant shall file with the sheriff a complete application,
10 as prepared by the Superintendent of the West Virginia State
11 Police, in writing, duly verified, which sets forth only the
12 following licensing requirements:

13 (1) The applicant's full name, date of birth, Social Security
14 number, a description of the applicant's physical features, the
15 applicant's place of birth, the applicant's country of citizenship
16 and, if the applicant is not a United States citizen, any alien or
17 admission number issued by the United States Bureau of
18 Immigration and Customs Enforcement, and any basis, if
19 applicable, for an exception to the prohibitions of 18 U. S. C.
20 § 922(g)(5)(B);

21 (2) That, on the date the application is made, the applicant is
22 a bona fide resident of this state and of the county in which the
23 application is made and has a valid driver's license or other
24 state-issued photo identification showing the residence;

25 (3) That the applicant is twenty-one years of age or older:
26 *Provided*, That any individual who is less than twenty-one years
27 of age and possesses a properly issued concealed weapons
28 license as of the effective date of this article shall be licensed to
29 maintain his or her concealed weapons license notwithstanding
30 the provisions of this section requiring new applicants to be at
31 least twenty-one years of age: *Provided, however*, That upon a
32 showing of any applicant who is eighteen years of age or older
33 that he or she is required to carry a concealed weapon as a
34 condition for employment, and presents satisfactory proof to the
35 sheriff thereof, then he or she shall be issued a license upon
36 meeting all other conditions of this section. Upon discontinuance
37 of employment that requires the concealed weapons license, if
38 the individual issued the license is not yet twenty-one years of
39 age, then the individual issued the license is no longer eligible
40 and must return his or her license to the issuing sheriff;

41 (4) That the applicant is not addicted to alcohol, a controlled
42 substance or a drug and is not an unlawful user thereof as
43 evidenced by either of the following within the three years
44 immediately prior to the application:

45 (A) Residential or court-ordered treatment for alcoholism or
46 alcohol detoxification or drug treatment; or

47 (B) Two or more convictions for driving while under the
48 influence or driving while impaired;

49 (5) That the applicant has not been convicted of a felony
50 unless the conviction has been expunged or set aside or the
51 applicant's civil rights have been restored or the applicant has
52 been unconditionally pardoned for the offense;

53 (6) That the applicant has not been convicted of a
54 misdemeanor crime of violence other than an offense set forth in
55 subsection (7) of this section in the five years immediately
56 preceding the application;

57 (7) That the applicant has not been convicted of a misde-
58 meanor crime of domestic violence as defined in 18 U. S. C.
59 § 921(a)(33), or a misdemeanor offense of assault or battery
60 either under the provisions of section twenty-eight, article two of
61 this chapter or the provisions of subsection (b) or (c), section
62 nine, article two of this chapter in which the victim was a current
63 or former spouse, current or former sexual or intimate partner,
64 person with whom the defendant cohabits or has cohabited, a
65 parent or guardian, the defendant's child or ward or a member of
66 the defendant's household at the time of the offense, or a
67 misdemeanor offense with similar essential elements in a
68 jurisdiction other than this state;

69 (8) That the applicant is not under indictment for a felony
70 offense or is not currently serving a sentence of confinement,
71 parole, probation or other court-ordered supervision imposed by
72 a court of any jurisdiction or is the subject of an emergency or
73 temporary domestic violence protective order or is the subject of
74 a final domestic violence protective order entered by a court of
75 any jurisdiction;

76 (9) That the applicant has not been adjudicated to be
77 mentally incompetent or involuntarily committed to a mental
78 institution. If the applicant has been adjudicated mentally
79 incompetent or involuntarily committed the applicant must
80 provide a court order reflecting that the applicant is no longer
81 under such disability and the applicant's right to possess or
82 receive a firearm has been restored;

83 (10) That the applicant is not prohibited under the provisions
84 of section seven of this article or federal law, including 18
85 U.S.C. § 922(g) or (n), from receiving, possessing or
86 transporting a firearm;

87 (11) That the applicant has qualified under the minimum
88 requirements set forth in subsection (d) of this section for

89 handling and firing the weapon: *Provided*, That this requirement
90 shall be waived in the case of a renewal applicant who has
91 previously qualified; and

92 (12) That the applicant authorizes the sheriff of the county,
93 or his or her designee, to conduct an investigation relative to the
94 information contained in the application.

95 (b) For both initial and renewal applications, the sheriff shall
96 conduct an investigation including a nationwide criminal
97 background check consisting of inquiries of the National Instant
98 Criminal Background Check System, the West Virginia criminal
99 history record responses and the National Interstate
100 Identification Index and shall review the information received in
101 order to verify that the information required in subsection (a) of
102 this section is true and correct. A license may not be issued
103 unless the issuing sheriff has verified through the National
104 Instant Criminal Background Check System that the information
105 available to him or her does not indicate that receipt or
106 possession of a firearm by the applicant would be in violation of
107 the provisions of section seven of this article or federal law,
108 including 18 U.S.C. § 922(g) or (n).

109 (c) Sixty dollars of the application fee and any fees for
110 replacement of lost or stolen licenses received by the sheriff
111 shall be deposited by the sheriff into a concealed weapons
112 license administration fund. The fund shall be administered by
113 the sheriff and shall take the form of an interest-bearing account
114 with any interest earned to be compounded to the fund. Any
115 funds deposited in this concealed weapon license administration
116 fund are to be expended by the sheriff to pay the costs associated
117 with issuing concealed weapons licenses. Any surplus in the
118 fund on hand at the end of each fiscal year may be expended for
119 other law-enforcement purposes or operating needs of the
120 sheriff's office, as the sheriff considers appropriate.

121 (d) All persons applying for a license must complete a
122 training course in handling and firing a handgun. The successful
123 completion of any of the following courses fulfills this training
124 requirement:

125 (1) Any official National Rifle Association handgun safety
126 or training course;

127 (2) Any handgun safety or training course or class available
128 to the general public offered by an official law-enforcement
129 organization, community college, junior college, college or
130 private or public institution or organization or handgun training
131 school utilizing instructors certified by the institution;

132 (3) Any handgun training or safety course or class conducted
133 by a handgun instructor certified as such by the state or by the
134 National Rifle Association;

135 (4) Any handgun training or safety course or class conducted
136 by any branch of the United States Military, Reserve or National
137 Guard or proof of other handgun qualification received while
138 serving in any branch of the United States Military, Reserve or
139 National Guard.

140 A photocopy of a certificate of completion of any of the
141 courses or classes or an affidavit from the instructor, school,
142 club, organization or group that conducted or taught the course
143 or class attesting to the successful completion of the course or
144 class by the applicant or a copy of any document which shows
145 successful completion of the course or class is evidence of
146 qualification under this section.

147 (e) All concealed weapons license applications must be
148 notarized by a notary public duly licensed under article four,
149 chapter twenty-nine of this code. Falsification of any portion of
150 the application constitutes false swearing and is punishable
151 under the provisions of section two, article five, chapter sixty-
152 one of this code.

153 (f) The sheriff shall issue a license unless he or she
154 determines that the application is incomplete, that it contains
155 statements that are materially false or incorrect or that applicant
156 otherwise does not meet the requirements set forth in this
157 section. The sheriff shall issue, reissue or deny the license within
158 forty-five days after the application is filed if all required
159 background checks authorized by this section are completed.

160 (g) Before any approved license is issued or is effective, the
161 applicant shall pay to the sheriff a fee in the amount of \$25
162 which the sheriff shall forward to the Superintendent of the West
163 Virginia State Police within thirty days of receipt. The license is
164 valid for five years throughout the state, unless sooner revoked.

165 (h) Each license shall contain the full name and address of
166 the licensee and a space upon which the signature of the licensee
167 shall be signed with pen and ink. The issuing sheriff shall sign
168 and attach his or her seal to all license cards. The sheriff shall
169 provide to each new licensee a duplicate license card, in size
170 similar to other state identification cards and licenses, suitable
171 for carrying in a wallet, and the license card is considered a
172 license for the purposes of this section.

173 (i) The Superintendent of the West Virginia State Police
174 shall prepare uniform applications for licenses and license cards
175 showing that the license has been granted and shall do any other
176 act required to be done to protect the state and see to the
177 enforcement of this section.

178 (j) If an application is denied, the specific reasons for the
179 denial shall be stated by the sheriff denying the application. Any
180 person denied a license may file, in the circuit court of the
181 county in which the application was made, a petition seeking
182 review of the denial. The petition shall be filed within thirty days
183 of the denial. The court shall then determine whether the
184 applicant is entitled to the issuance of a license under the criteria
185 set forth in this section. The applicant may be represented by

186 counsel, but in no case is the court required to appoint counsel
187 for an applicant. The final order of the court shall include the
188 court's findings of fact and conclusions of law. If the final order
189 upholds the denial, the applicant may file an appeal in
190 accordance with the Rules of Appellate Procedure of the
191 Supreme Court of Appeals. If the findings of fact and
192 conclusions of law of the court fail to uphold the denial, the
193 applicant may be entitled to reasonable costs and attorney's fees,
194 payable by the sheriff's office which issued the denial.

195 (k) If a license is lost or destroyed, the person to whom the
196 license was issued may obtain a duplicate or substitute license
197 for a fee of \$5 by filing a notarized statement with the sheriff
198 indicating that the license has been lost or destroyed.

199 (l) Whenever any person after applying for and receiving a
200 concealed handgun license moves from the address named in the
201 application to another county within the state, the license
202 remains valid for the remainder of the five years unless the
203 sheriff of the new county has determined that the person is no
204 longer eligible for a concealed deadly weapon license under this
205 article, and the sheriff shall issue a new license bearing the
206 person's new address and the original expiration date for a fee
207 not to exceed \$5: *Provided*, That the licensee within twenty days
208 thereafter notifies the sheriff in the new county of residence in
209 writing of the old and new addresses.

210 (m) The sheriff shall, immediately after the license is
211 granted as aforesaid, furnish the Superintendent of the West
212 Virginia State Police a certified copy of the approved
213 application. The sheriff shall furnish to the Superintendent of the
214 West Virginia State Police at any time so requested a certified
215 list of all licenses issued in the county. The Superintendent of the
216 West Virginia State Police shall maintain a registry of all
217 persons who have been issued concealed weapons licenses.

218 (n) The sheriff shall deny any application or revoke any
219 existing license upon determination that any of the licensing
220 application requirements established in this section have been
221 violated by the licensee.

222 (o) A person who is engaged in the receipt, review or in the
223 issuance or revocation of a concealed weapon license does not
224 incur any civil liability as the result of the lawful performance of
225 his or her duties under this article.

226 (p) Notwithstanding the provisions of subsection (a) of this
227 section, with respect to application by a former law-enforcement
228 officer honorably retired from agencies governed by article
229 fourteen, chapter seven of this code; article fourteen, chapter
230 eight of this code; article two, chapter fifteen of this code; and
231 article seven, chapter twenty of this code, an honorably retired
232 officer is exempt from payment of fees and costs as otherwise
233 required by this section. All other application and background
234 check requirements set forth in this shall be applicable to these
235 applicants.

236 (q) Information collected under this section, including
237 applications, supporting documents, permits, renewals, or any
238 other information that would identify an applicant for or holder
239 of a concealed weapon permit, is confidential: *Provided*, That
240 such information may be disclosed to a law enforcement agency
241 or officer: (i) To determine the validity of a permit; (ii) to assist
242 in a criminal investigation or prosecution; or (iii) for other lawful
243 law-enforcement purposes. A person who violates this
244 subsection is guilty of a misdemeanor and, upon conviction
245 thereof, shall be fined not less than \$50 or more than \$200 for
246 each offense.

247 (r) Except as restricted or prohibited by the provisions of this
248 article or as otherwise prohibited by law, the issuance of a
249 concealed weapon permit issued in accordance with the
250 provisions of this section authorizes the holder of the permit to

251 carry a concealed pistol or revolver on the lands or waters of this
252 state.

CHAPTER 116

**(Com. Sub. for S. B. 409 - By Senators Carmichael, Blair, Boso,
Gaunch, M. Hall, Walters and Williams)**

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-3, relating to establishing the Fair and Open Competition in Governmental Construction Act; providing legislative findings; defining terms; prohibiting project labor agreements from being part of the competitive bid process on governmental construction projects; prohibiting project labor agreements from being a condition for receiving a grant, tax abatement or tax credit for construction projects; providing exclusions; and establishing a process for an exemption.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-22-3, to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.

- 1 (a) This section may be known and cited as The Fair and
- 2 Open Competition in Governmental Construction Act.

3 (b) *Legislative findings.* — The Legislature finds that to
4 promote and ensure fair competition on governmental,
5 governmental funded or governmental assisted construction
6 projects that open competition in governmental construction
7 contracts is necessary. The Legislature also finds that when a
8 governmental entity awards a grant, tax abatement or tax credit
9 that it should be an open and fair process. Therefore, to prevent
10 discrimination against governmental bidders, offerors,
11 contractors or subcontractors based upon labor affiliation or the
12 lack thereof, the Legislature declares that project labor
13 agreements should not be part of the competitive bid process or
14 be a condition for a grant, tax abatement or tax credit.

15 (c) *Definitions.* — For purposes of this section:

16 (1) “Construction” means the act, trade or process of
17 building, erecting, constructing, adding, repairing, remodeling,
18 rehabilitating, reconstructing, altering, converting, improving,
19 expanding or demolishing of a building, structure, facility, road
20 or highway, and includes the planning, designing and financing
21 of a specific construction project.

22 (2) “Governmental entity” means the state, a political
23 subdivision or any agency or spending unit thereof.

24 (3) “Project labor agreement” means any pre-hire collective
25 bargaining agreement with one or more labor organizations that
26 establishes the terms and conditions of employment for a
27 specific construction project.

28 (d) *Prohibition - Competitive bid.* — Commencing July 1,
29 2015, a governmental entity or a construction manager acting on
30 behalf of a governmental entity, seeking a construction bid
31 solicitation, awarding a construction contract or obligating funds
32 to a construction contract, shall not include the following in the
33 bid specifications, bid requests, project agreements or any other
34 controlling documents for the construction project:

35 (1) A requirement or prohibition that a bidder, offeror,
36 contractor or subcontractor must enter into or adhere to a project
37 labor agreement;

38 (2) A term, clause or statement that infers, either directly or
39 indirectly, that a bidder, offeror, contractor or subcontractor
40 must enter into or adhere to a project labor agreement;

41 (3) A term, clause or statement that rewards or punishes a
42 bidder, offeror, contractor or subcontractor for becoming or
43 remaining, or refusing to become or remain a signatory to, or for
44 adhering or refusing to adhere to, a project labor agreement; or

45 (4) Any other provision dealing with project labor
46 agreements.

47 (e) *Prohibition - Grant, tax abatement or tax credit.* —
48 Commencing July 1, 2015, a governmental entity may not award
49 a grant, tax abatement or tax credit for construction that is
50 conditioned upon a requirement that the awardee include any
51 prohibited provision set out in subsection (d) of this section.

52 (f) *Exclusions.* — This section does not:

53 (1) Prohibit a governmental entity from awarding a contract,
54 grant, tax abatement or tax credit to a private owner, bidder,
55 contractor or subcontractor who enters into or who is party to an
56 agreement with a labor organization, if being or becoming a
57 party or adhering to an agreement with a labor organization is
58 not a condition for award of the contract, grant, tax abatement or
59 tax credit, and if the governmental entity does not discriminate
60 against a private owner, bidder, contractor or subcontractor in
61 the awarding of that contract, grant, tax abatement or tax credit
62 based upon the status as being or becoming, or the willingness
63 or refusal to become, a party to an agreement with a labor
64 organization.

65 (2) Prohibit a private owner, bidder, contractor or
66 subcontractor from voluntarily entering into or complying with
67 an agreement entered into with one or more labor organizations
68 in regard to a contract with a governmental entity or funded, in
69 whole or in part, from a grant, tax abatement or tax credit from
70 the governmental entity.

71 (3) Prohibit employers or other parties from entering into
72 agreements or engaging in any other activity protected by the
73 National Labor Relations Act, 29 U. S. C. §§151 to 169.

74 (4) Interfere with labor relations of parties that are left
75 unregulated under the National Labor Relations Act, 29 U. S. C.
76 §§151 to 169.

77 (g) *Exemptions.* — The head of a governmental entity may
78 exempt a particular project, contract, subcontract, grant, tax
79 abatement or tax credit from the requirements of any or all of the
80 provisions of subsections (d) and (e) of this section if the
81 governmental unit finds, after public notice and a hearing, that
82 special circumstances require an exemption to avert an imminent
83 threat to public health or safety. A finding of special
84 circumstances under this subsection may not be based on the
85 possibility or presence of a labor dispute concerning the use of
86 contractors or subcontractors who are nonsignatories to, or
87 otherwise do not adhere to, agreements with one or more labor
88 organizations or concerning employees on the project who are
89 not members of or affiliated with a labor organization.

CHAPTER 117

**(S. B. 508 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed March 2, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to repeal §20-14-6 and §20-14-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-10-3 and §15-10-4 of said code; to amend and reenact §20-7-1 of said code; to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8 and §20-14-9 of said code; to amend said code by adding thereto four new sections, designated §20-14-4a, §20-14-10, §20-14-11 and §20-14-12; to amend and reenact §20-15-2 and §20-15-5 of said code; to amend and reenact §30-29-1 of said code; and to amend and reenact §61-7-6 of said code, all relating to reorganization of Hatfield-McCoy Regional Recreation Authority; removing rangers as law-enforcement officers; providing for law-enforcement services to be provided by natural resources police officers under reimbursement by authority; converting authority to a joint development entity of counties; altering composition of authority's board; removing authorization to issue revenue bonds and create security interests; providing for financial review and oversight of public funds; defining prohibited uses and conduct in recreation area; establishing requirements for bidding and purchasing; prohibiting conflicts of interest; creating criminal penalties and civil remedies; and declaring responsibilities of participants to landowners and lessors in the recreation area.

Be it enacted by the Legislature of West Virginia:

That §20-14-6 and §20-14-7 of the Code of West Virginia, 1931, as amended, be repealed; that §15-10-3 and §15-10-4 of said code be amended and reenacted; that §20-7-1 of said code be amended and reenacted; that §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8 and §20-14-9 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §20-14-4a, §20-14-10, §20-14-11 and §20-14-12; that §20-15-2 and §20-15-5 of said code be amended and reenacted; that §30-29-1 of said code be amended and reenacted; and that §61-7-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

1 For purposes of this article only, and unless a different
2 meaning plainly is required:

3 (1) “Criminal justice enforcement personnel” means those
4 persons within the state criminal justice system who are actually
5 employed as members of the State Police, members of the
6 Division of Protective Services, natural resources police officers,
7 chiefs of police and police of incorporated municipalities, and
8 county sheriffs and their deputies and whose primary duties are
9 the investigation of crime and the apprehension of criminals.

10 (2) “Head of a law-enforcement agency” means the
11 Superintendent of the State Police, the Director of the Division
12 of Protective Services, the chief natural resources police officer
13 of the Division of Natural Resources, a chief of police of an
14 incorporated municipality, a county sheriff or the Director of the
15 Division of Forestry.

16 (3) “State or local law-enforcement officer” means any duly
17 authorized member of a law-enforcement agency who is
18 authorized to maintain public peace and order, prevent and
19 detect crime, make arrests and enforce the laws of the state or
20 any county or municipality thereof, other than parking
21 ordinances, and includes persons employed as campus police
22 officers at state institutions of higher education in accordance
23 with the provisions of section five, article four, chapter
24 eighteen-b of this code, although those institutions may not be
25 considered law-enforcement agencies.

26 (4) “Head of campus police” means the superintendent or
27 administrative head of state or local law-enforcement officers
28 employed as campus police officers at state institutions of higher
29 education in accordance with the provisions of section five,
30 article four, chapter eighteen-b of this code.

**§15-10-4. Cooperation between law-enforcement agencies and
other groups of state or local law-enforcement
officers.**

1 (a) The head of any law-enforcement agency, or the head of
2 any campus police, as those terms are defined in section three of
3 this article, may temporarily provide assistance and cooperation
4 to another agency of the state criminal justice system or to a
5 federal law-enforcement agency in investigating crimes or
6 possible criminal activity if requested to do so in writing by the
7 head of another law-enforcement agency or federal
8 law-enforcement agency. Such assistance may also be provided
9 upon the request of the head of the law-enforcement agency or
10 federal law-enforcement agency without first being reduced to
11 writing in emergency situations involving the imminent risk of
12 loss of life or serious bodily injury. The assistance may include,
13 but is not limited to, entering into a multijurisdictional task force
14 agreement to integrate federal, state, county and municipal

15 law-enforcement agencies or other groups of state or local
16 law-enforcement officers, or any combination thereof, for the
17 purpose of enhancing interagency coordination, intelligence
18 gathering, facilitating multijurisdictional investigations,
19 providing criminal justice enforcement personnel of the
20 law-enforcement agency to work temporarily with personnel of
21 another agency, including in an undercover capacity, and making
22 available equipment, training, technical assistance and
23 information systems for the more efficient investigation,
24 apprehension and adjudication of persons who violate the
25 criminal laws of this state or the United States and to assist the
26 victims of such crimes. When providing the assistance under this
27 article, a head of a law-enforcement agency shall comply with all
28 applicable statutes, ordinances, rules, policies or guidelines
29 officially adopted by the state or the governing body of the city
30 or county by which he or she is employed and any conditions or
31 restrictions included therein.

32 (b) While temporarily assigned to work with another
33 law-enforcement agency or agencies, criminal justice
34 enforcement personnel and other state and local law-enforcement
35 officers shall have the same jurisdiction, powers, privileges and
36 immunities, including those relating to the defense of civil
37 actions, as such criminal justice enforcement personnel would
38 enjoy if actually employed by the agency to which they are
39 assigned, in addition to any corresponding or varying
40 jurisdiction, powers, privileges and immunities conferred by
41 virtue of their continued employment with the assisting agency.

42 (c) While assigned to another agency or to a
43 multijurisdictional task force, criminal justice enforcement
44 personnel and other state and local law-enforcement officers
45 shall be subject to the lawful operational commands of the
46 superior officers of the agency or task force to which they are
47 assigned, but for personnel and administrative purposes,

48 including compensation, they shall remain under the control of
49 the assisting agency. These assigned personnel shall continue to
50 be covered by all employee rights and benefits provided by the
51 assisting agency, including workers' compensation, to the same
52 extent as though such personnel were functioning within the
53 normal scope of their duties.

54 (d) No request or agreement between the heads of
55 law-enforcement agencies, or the heads of campus police, made
56 or entered into pursuant to this article shall remain in force or
57 effect until a copy of said request or agreement is filed with the
58 office of the circuit clerk of the county or counties in which the
59 law-enforcement agencies, or the campus police, involved
60 operate. Agreements made pursuant to this article shall remain
61 in effect unless and until the agreement is changed or withdrawn
62 in writing by the head of one of the law-enforcement agencies.
63 Upon filing, the requests or agreements may be sealed, subject
64 to disclosure pursuant to an order of a circuit court directing
65 disclosure for good cause. Nothing in this article shall be
66 construed to limit the authority of the head of a law-enforcement
67 agency or the head of campus police to withdraw from any
68 agreement at any time.

69 (e) Nothing contained in this article shall be construed so as
70 to grant, increase, decrease or in any manner affect the civil
71 service protection or the applicability of civil service laws as to
72 any criminal justice enforcement personnel, or as to any state or
73 local law-enforcement officer or agency operating under the
74 authority of this article, nor shall this article in any way reduce
75 or increase the jurisdiction or authority of any criminal justice
76 enforcement personnel, or of any state or local law-enforcement
77 officer or agency, except as specifically provided herein.

78 (f) Nothing contained in this article shall be construed so as
79 to authorize the permanent consolidation or merger or the

80 elimination of operations of participating federal, state, county
81 and municipal law-enforcement agencies, or other groups of
82 state and local law-enforcement officers, or campus police.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

1 (a) The division's law-enforcement policies, practices and
2 programs are under the immediate supervision and direction of
3 the division law-enforcement officer selected by the director and
4 designated as chief natural resources police officer as provided
5 in section thirteen, article one of this chapter.

6 (b) Under the supervision of the director, the chief natural
7 resources police officer shall organize, develop and maintain
8 law-enforcement practices, means and methods geared, timed
9 and adjustable to seasonal, emergency and other needs and
10 requirements of the division's comprehensive natural resources
11 program. All division personnel detailed and assigned to
12 law-enforcement duties and services under this section shall be
13 known and designated as natural resources police officers and
14 are under the immediate supervision and direction of the chief
15 natural resources police officer except as otherwise provided. All
16 natural resources police officers shall be trained, equipped and
17 conditioned for duty and services wherever and whenever
18 required by division law-enforcement needs. The chief natural
19 resources police officer may also assign natural resources police
20 officers to perform law-enforcement duties on any trail, grounds,

21 appurtenant facility or other areas accessible to the public within
22 the Hatfield-McCoy Recreation Area, under agreement that the
23 Hatfield-McCoy Regional Recreation Authority, created
24 pursuant to article fourteen of this chapter, shall reimburse the
25 division for salaries paid to the officers and shall either pay
26 directly or reimburse the division for all other expenses of the
27 officers in accordance with actual or estimated costs determined
28 by the chief natural resources police officer.

29 (c) The chief natural resources police officer, acting under
30 supervision of the director, is authorized to select and appoint
31 emergency natural resources police officers for a limited period
32 for effective enforcement of the provisions of this chapter when
33 considered necessary because of emergency or other unusual
34 circumstances. The emergency natural resources police officers
35 shall be selected from qualified civil service personnel of the
36 division, except in emergency situations and circumstances when
37 the director may designate officers, without regard to civil
38 service requirements and qualifications, to meet
39 law-enforcement needs. Emergency natural resources police
40 officers shall exercise all powers and duties prescribed in section
41 four of this article for full-time salaried natural resources police
42 officers except the provisions of subdivision (8), subsection (b)
43 of said section.

44 (d) The chief natural resources police officer, acting under
45 supervision of the director, is also authorized to select and
46 appoint as special natural resources police officers any full-time
47 civil service employee who is assigned to, and has direct
48 responsibility for management of, an area owned, leased or
49 under the control of the division and who has satisfactorily
50 completed a course of training established and administered by
51 the chief natural resources police officer, when the action is
52 considered necessary because of law-enforcement needs. The
53 powers and duties of a special natural resources police officer,

54 appointed under this provision, is the same within his or her
55 assigned area as prescribed for full-time salaried natural
56 resources police officers. The jurisdiction of the person
57 appointed as a special natural resources police officer, under this
58 provision, shall be limited to the division area or areas to which
59 he or she is assigned and directly manages.

60 (e) The Director of the Division of Forestry is authorized to
61 appoint and revoke Division of Forestry special natural resources
62 police officers who are full-time civil service personnel who
63 have satisfactorily completed a course of training as required by
64 the Director of the Division of Forestry. The jurisdiction, powers
65 and duties of Division of Forestry special natural resources
66 police officers are set forth by the Director of the Division of
67 Forestry pursuant to article three of this chapter and articles
68 one-a and one-b, chapter nineteen of this code.

69 (f) The chief natural resources police officer, with the
70 approval of the director, has the power and authority to revoke
71 any appointment of an emergency natural resources police
72 officer or of a special natural resources police officer at any
73 time.

74 (g) Natural resources police officers are subject to seasonal
75 or other assignment and detail to duty whenever and wherever
76 required by the functions, services and needs of the division.

77 (h) The chief natural resources police officer shall designate
78 the area of primary residence of each natural resources police
79 officer, including himself or herself. Since the area of business
80 activity of the division is actually anywhere within the territorial
81 confines of the state of West Virginia, actual expenses incurred
82 shall be paid whenever the duties are performed outside the area
83 of primary assignment and still within the state.

84 (i) Natural resources police officers shall receive, in addition
85 to their base pay salary, a minimum monthly subsistence

86 allowance for their required telephone service, dry cleaning or
87 required uniforms, and meal expenses while performing their
88 regular duties in their area of primary assignment in the amount
89 of \$130 each month. This subsistence allowance does not apply
90 to special or emergency natural resources police officers
91 appointed under this section.

92 (j) After June 30, 2010, all those full-time law-enforcement
93 officers employed by the Division of Natural Resources as
94 conservation officers shall be titled and known as natural
95 resources police officers. Wherever used in this code the term
96 “conservation officer”, or its plural, means “natural resources
97 police officer”, or its plural, respectively.

98 (k) Notwithstanding any provision of this code to the
99 contrary, the provisions of subdivision (6), subsection c, section
100 twelve, article twenty-one, chapter eleven of this code are
101 inapplicable to pensions of natural resources police officers paid
102 through the Public Employees Retirement System.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

1 The West Virginia Legislature finds that there is a
2 significant need within the state and throughout the eastern
3 United States for well-managed facilities for trail-oriented
4 recreation for off-highway motor vehicle enthusiasts. The
5 Legislature further finds that under an appropriate contractual
6 and management scheme, well-managed, trail-oriented
7 recreation facilities could exist on private property without
8 diminishing the landowner’s interest, control or profitability in
9 the land and without increasing the landowner’s exposure to
10 liability.

11 The Legislature further finds that, with the cooperation of
12 private landowners, there is an opportunity to provide
13 trail-oriented recreation facilities primarily on private property
14 in the mountainous terrain of southern West Virginia and that the
15 facilities will provide significant economic and recreational
16 benefits to the state and to the communities in southern West
17 Virginia through increased tourism in the same manner as
18 whitewater rafting and snow skiing benefit the state and
19 communities surrounding those activities.

20 The Legislature further finds that the creation and
21 empowering of a joint development entity to work with the
22 landowners, county officials and community leaders, state and
23 federal government agencies, recreational user groups and other
24 interested parties to enable and facilitate the implementation of
25 the facilities will greatly assist in the realization of these
26 potential benefits.

27 The Legislature further finds that it is in the best interests of
28 the state to encourage private landowners to make available for
29 public use through the Hatfield-McCoy Regional Recreation
30 Authority land for these recreational purposes by limiting their
31 liability for injury to persons entering thereon, by limiting their
32 liability for injury to the property of persons entering thereon
33 and by limiting their liability to persons who may be injured or
34 otherwise damaged by the acts or omissions of persons entering
35 thereon.

§20-14-2. Definitions.

1 Unless the context clearly requires a different meaning, the
2 terms used in this section have the following meanings:

3 (a) “Authority” means the Hatfield-McCoy Regional
4 Recreational Authority;

5 (b) “Board” means the board of the Hatfield-McCoy
6 Regional Recreation Authority;

7 (c) “Charge” means, for purposes of limiting liability for
8 recreational purposes set forth in this article, the amount of
9 money asked in return for an invitation to enter or go upon the
10 land, including a one-time fee for a particular event, amusement,
11 occurrence, adventure, incident, experience or occasion as set by
12 the authority: *Provided*, That the authority may set charges in
13 differing amounts for different categories of participants,
14 including, but not limited to, in-state and out-of-state
15 participants, as the authority sees fit;

16 (d) “Hatfield-McCoy Recreation Area” means a system of
17 recreational trails and appurtenant facilities, including trail head
18 centers, parking areas, camping facilities, picnic areas,
19 recreational areas, historic or cultural interpretive sites and other
20 facilities that are a part of the system;

21 (e) “Land” includes, but is not limited to, roads, water,
22 watercourses, private ways and buildings, structures and
23 machinery or equipment thereon when attached to the realty;

24 (f) “Owner” means those vested with title to real estate and
25 those with the ability to exercise control over real estate and
26 includes, but is not limited to, tenant, lessee, licensee, holder of
27 a dominant estate or other lawful occupant;;

28 (g) “Participant” means any person using the land, trails and
29 facilities of the Hatfield-McCoy Recreation Area;

30 (h) “Participating county or counties” means the counties of
31 Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo,
32 Wayne and Wyoming that have agreed to operate the
33 Hatfield-McCoy Regional Recreation Authority as a joint
34 development entity and to participate in its governance; and

35 (i) "Recreational purposes" includes, but is not limited to,
36 any one or any combination of the following noncommercial
37 recreational activities: Hunting, fishing, swimming, boating,
38 camping, picnicking, hiking, pleasure driving, motorcycle or
39 motor vehicle driving and riding, bicycling, horseback riding,
40 nature study, water skiing, winter sports and visiting, viewing or
41 enjoying historical, archaeological, scenic or scientific sites or
42 otherwise using land for purposes of the user.

§20-14-3. Creation; appointment of board; terms.

1 (a) The public corporation, the Hatfield-McCoy Regional
2 Recreation Authority, previously created by this section is
3 hereby converted to a new public corporation created as a joint
4 development entity of the participating counties for the purpose
5 of enabling and facilitating the development and operation of a
6 system of trail-oriented recreation facilities for use by
7 off-highway motor vehicle enthusiasts.. This recreational trail
8 system shall be located in the counties of Boone, Kanawha,
9 Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and
10 Wyoming with significant portions of the recreational trail
11 system being located on private property made available for use
12 through lease, license, easement or other appropriate legal form
13 by a willing landowner.

14 (b) The authority shall be governed by a board of no more
15 than eighteen members who shall be representative of the
16 various interests involved in the Hatfield-McCoy Recreation
17 Area project in the participating counties and who shall be
18 appointed as follows:

19 (1) The county commission of each participating county, as
20 defined in section two of this article, shall appoint two members
21 of the board as follows:

22 (A) One member who represents and is associated with a
23 corporation or individual landowner whose land is being used or

24 is expected to be used in the future as part of the
25 Hatfield-McCoy Recreation Area project or their designee. This
26 member shall be appointed to a four-year term.

27 (B) One member who represents and is associated with
28 travel and tourism or economic development efforts within the
29 county or who is associated with a mining, logging, natural gas
30 or other resource-extraction industry or who is a licensed land
31 surveyor or licensed professional engineer. The initial
32 appointment shall be for a two-year term, but all subsequent
33 appointments shall be for a four-year term.

34 Any appointed member whose term has expired shall serve
35 until his or her successor has been duly appointed and qualified.
36 Any person appointed to fill a vacancy shall serve only for the
37 unexpired term. Any appointed member is eligible for
38 reappointment. The terms of the members serving as of the date
39 of enactment of the amendments of this section made during the
40 2015 regular session of the Legislature shall expire on June 30,
41 2015, and each participating county shall appoint two members
42 to the board of the newly converted public corporation with
43 terms to commence on July 1, 2015. Members of the board are
44 not entitled to compensation for services performed as members
45 but are entitled to reimbursement for all reasonable and
46 necessary expenses actually incurred in the performance of their
47 duties.

48 (c) The conversion of the Hatfield-McCoy Regional
49 Recreation Authority to a joint development entity does not
50 terminate or interrupt its status as a public corporation. The
51 amendments to this article made during the 2015 regular session
52 of the Legislature do not alter the debts, liabilities,
53 responsibilities or other obligations of any party with regard to
54 this public corporation.

55 (d) The Hatfield-McCoy Regional Recreation Authority is
56 a “public body” for purposes of the West Virginia Freedom of
57 Information Act, as provided in article one, chapter twenty-nine-
58 b of this code.

§20-14-4. Board; quorum; executive director; expenses.

1 The board is the governing body of the authority and the
2 board shall exercise all the powers given the authority in this
3 article.

4 The board shall meet quarterly, unless a special meeting is
5 called by its chairman: *Provided*, That at the first meeting of
6 each fiscal year beginning in an odd-numbered year, or as soon
7 thereafter as feasible, the board shall elect a chairman, secretary
8 and treasurer from among its own members.

9 A majority of the members of the board constitutes a quorum
10 and a quorum shall be present for the board to conduct business.

11 The board may prescribe, amend and repeal bylaws and rules
12 governing the manner in which the business of the authority is
13 conducted, rules governing the use of the trail system and the
14 safety of participants and shall review and approve an annual
15 budget. The fiscal year for the authority begins on July 1 and
16 ends on the thirtieth day of the following June.

17 The board shall appoint an executive director to act as its
18 chief executive officer, to serve at the will and pleasure of the
19 board. The board, acting through its executive director, may
20 employ any other personnel considered necessary and may
21 appoint counsel and legal staff for the authority and retain such
22 temporary engineering, financial and other consultants or
23 technicians as may be required for any special study or survey
24 consistent with the provisions of this article. The executive
25 director shall carry out plans to implement the provisions of this

26 article and to exercise those powers enumerated in the bylaws.
27 The executive director shall prepare annually a budget to be
28 submitted to the board for its review and approval prior to the
29 commencement of each fiscal year. The budget shall contain a
30 detailed account of all planned and proposed revenue and
31 expenditures for the authority for the upcoming fiscal year,
32 including a detailed list of employees by title, salary, cost of
33 projected benefits and total compensation. Before August 15 the
34 executive director shall provide to the board and the county
35 commission for each participating county a detailed list of actual
36 expenditures and revenue by account and recipient name for the
37 previous fiscal year and a copy of the approved budget for the
38 current fiscal year.

39 All costs incidental to the administration of the authority,
40 including office expenses, personal services expense and current
41 expense, shall be paid in accordance with guidelines issued by
42 the board from funds accruing to the authority.

43 All expenses incurred in carrying out the provisions of this
44 article shall be payable solely from funds provided under the
45 authority of this article and no liability or obligation may be
46 incurred by the authority under this article beyond the extent to
47 which moneys have been provided under the authority of this
48 article.

§20-14-4a. Financial review and oversight.

1 (a) The authority shall contract for and obtain an annual
2 financial audit to be conducted by a private accounting firm in
3 compliance with generally accepted government auditing
4 standards. When complete, the audit shall be transmitted to the
5 board, the president of the county commission of each
6 participating county and the Legislative Auditor. The cost of the
7 audit shall be paid by the authority.

8 (b) If the authority receives any funds from the Legislature
9 by appropriation or grant, the Legislative Auditor shall have the
10 power and authority to examine the revenues, expenditures and
11 performance of the Hatfield-McCoy Regional Recreation
12 Authority and for these purposes shall have the power to inspect
13 the properties, equipment, facilities of the authority and to
14 request, inspect and obtain copies of any records of the authority.
15 For each fiscal year in which the authority receives any funds
16 from the Legislature by appropriation or grant, the executive
17 director shall provide to the Legislative Auditor and Secretary of
18 Revenue a detailed list of actual expenditures and revenue by
19 account and recipient name for the previous fiscal year within
20 forty-five days of the close of that fiscal year.

§20-14-5. Powers of authority.

1 The authority, as a public corporation and joint development
2 entity, may exercise all powers necessary or appropriate to carry
3 out the purposes of this article, including, but not limited to, the
4 power:

5 (1) To acquire, own, hold and dispose of property, real and
6 personal, tangible and intangible;

7 (2) To lease property, whether as lessee or lessor, and to
8 acquire or grant through easement, license or other appropriate
9 legal form, the right to develop and use property and open it to
10 the use of the public;

11 (3) To mortgage or otherwise grant security interests in its
12 property;

13 (4) To procure insurance against any losses in connection
14 with its property, license or easements, contracts, including
15 hold-harmless agreements, operations or assets in such amounts
16 and from such insurers as the authority considers desirable;

17 (5) To maintain such sinking funds and reserves as the board
18 determines appropriate for the purposes of meeting future
19 monetary obligations and needs of the authority;

20 (6) To sue and be sued, implead and be impleaded and
21 complain and defend in any court;

22 (7) To contract for the provision of legal services by private
23 counsel and, notwithstanding the provisions of article three,
24 chapter five of this code, the counsel may, in addition to the
25 provisions of other legal services, represent the authority in
26 court, negotiate contracts and other agreements on behalf of the
27 authority, render advice to the authority on any matter relating
28 to the authority, prepare contracts and other agreements and
29 provide such other legal services as may be requested by the
30 authority;

31 (8) To adopt, use and alter at will a corporate seal;

32 (9) To make, amend, repeal and adopt bylaws for the
33 management and regulation of its affairs;

34 (10) To appoint officers, agents and employees and to
35 contract for and engage the services of consultants;

36 (11) To make contracts of every kind and nature and to
37 execute all instruments necessary or convenient for carrying on
38 its business, including contracts with any other governmental
39 agency of this state or of the federal government or with any
40 person, individual, partnership or corporation to effect any or all
41 of the purposes of this article;

42 (12) Without in any way limiting any other subdivision of
43 this section, to accept grants and loans from, and enter into
44 contracts and other transactions with, any federal agency;

45 (13) To maintain an office at such places within the state as
46 it may designate;

47 (14) To borrow money and to issue notes and to provide for
48 the payment of notes and to provide for the rights of the holders
49 of the notes and to purchase, hold and dispose of any of its notes;

50 (15) To issue notes payable solely from the revenues or other
51 funds available to the authority, and the authority may issue its
52 notes in such principal amounts as it considers necessary to
53 provide funds for any purpose under this article, including:

54 (A) The payment, funding or refunding of the principal of,
55 interest on or redemption premiums on notes issued by it
56 whether the notes or interest to be funded or refunded have or
57 have not become due;

58 (B) The establishment or increase of reserves to secure or to
59 pay notes or the interest on the notes and all other costs or
60 expenses of the authority incident to and necessary or convenient
61 to carry out its corporate purposes and powers. Notes may be
62 additionally secured by a pledge of any revenues, funds, assets
63 or moneys of the authority from any source whatsoever;

64 (16) To issue renewal notes, except that no renewal notes
65 may be issued to mature more than ten years from the date of
66 issuance of the notes renewed;

67 (17) To apply the proceeds from the sale of renewal notes to
68 the purchase, redemption or payment of the notes to be refunded;

69 (18) To accept gifts or grants of property, funds, security
70 interests, money, materials, labor, supplies or services from the
71 federal government or from any governmental unit or any
72 person, firm or corporation and to carry out the terms or
73 provisions of or make agreements with respect to or pledge any
74 gifts or grants and to do any and all things necessary, useful,

75 desirable or convenient in connection with the procuring,
76 acceptance or disposition of gifts or grants;

77 (19) To the extent permitted under its contracts with the
78 holders of notes of the authority, to consent to any modification
79 of the rate of interest, time of payment of any installment of
80 principal or interest, security or any other term of any note,
81 contract or agreement of any kind to which the authority is a
82 party;

83 (20) To construct, reconstruct, improve, maintain, repair,
84 operate and manage the Hatfield-McCoy Recreation Area at the
85 locations within the participating counties as may be determined
86 by the authority;

87 (21) To enter into an agreement with the West Virginia
88 Division of Natural Resources for natural resources police
89 officers to provide law-enforcement services within the
90 Hatfield-McCoy Recreation Area and to reimburse the Division
91 of Natural Resources for its costs therefor;

92 (22) To exercise all power and authority provided in this
93 article necessary and convenient to plan, finance, construct,
94 renovate, maintain and operate or oversee the operation of the
95 Hatfield-McCoy Recreation Area at such locations within the
96 participating counties as may be determined by the authority;

97 (23) To exercise such other and additional powers as may be
98 necessary or appropriate for the exercise of the powers conferred
99 in this section;

100 (24) To exercise all of the powers which a corporation may
101 lawfully exercise under the laws of this state;

102 (25) To develop, maintain and operate or to contract for the
103 development, maintenance and operation of the Hatfield-McCoy
104 Recreation Area;

105 (26) To enter into contract with landowners and other
106 persons holding an interest in the land being used for its
107 recreational facilities to hold those landowners and other persons
108 harmless with respect to any claim in tort growing out of the use
109 of the land for recreational purposes or growing out of the
110 recreational activities operated or managed by the authority from
111 any claim except a claim for damages proximately caused by the
112 willful or malicious conduct of the landowner or other person or
113 any of his or her agents or employees;

114 (27) To assess and collect a reasonable fee from those
115 persons who use the trails, parking facilities, visitor centers or
116 other facilities which are part of the Hatfield-McCoy Recreation
117 Area and to retain and utilize that revenue for any purposes
118 consistent with this article;

119 (28) To enter into contracts or other appropriate legal
120 arrangements with landowners under which their land is made
121 available for use as part of the Hatfield-McCoy Recreation Area;
122 and

123 (29) To directly operate and manage recreation activities and
124 facilities within the Hatfield-McCoy Recreation Area.

§20-14-8. Prohibited acts, penalty.

1 (a) A person may not enter or remain upon the
2 Hatfield-McCoy Recreation Area without a valid,
3 nontransferable user permit issued by the authority and properly
4 displayed, except properly identified landowners or leaseholders
5 or their officers, employees or agents while on the land that the
6 person owns or leases for purposes related to the ownership or
7 lease of the land and not for recreational purposes;

8 (b) A person may not consume or possess any alcoholic
9 liquor at any time or any location within the Hatfield-McCoy
10 Recreation Area.

11 (c) The operator or passenger of a motor vehicle within the
12 Hatfield-McCoy Recreation Area shall wear size-appropriate
13 protective helmets at all times. All operators and passengers
14 shall wear helmets that meet the current performance
15 specifications established by the American National Standards
16 Institute standard, z 90.1, the United States Department of
17 Transportation Federal Motor Vehicle Safety Standard no. 218
18 or Snell Memorial Foundation safety standards for protective
19 headgear for vehicle users.

20 (d) Each trail user shall obey all traffic laws, traffic-control
21 devices and signs within the Hatfield-McCoy Recreation Area,
22 including those which restrict trails to certain types of motor
23 vehicles, motorcycles or those equipped with roll cages.

24 (e) Each trail user shall at all times remain within and on a
25 designated and marked trail while within the Hatfield-McCoy
26 Recreation Area.

27 (f) A person may not be on any trail within the
28 Hatfield-McCoy Recreation Area at any time from one-half hour
29 after sunset until one-half hour before sunrise, except in an
30 emergency.

31 (g) Every person within the Hatfield-McCoy Recreation
32 Area who is under sixteen years of age shall at all times be under
33 the immediate supervision of, and within sight of, a person who
34 is at least eighteen years of age and who either is a parent or
35 guardian of the youth or has the express permission of a parent
36 or guardian to supervise the youth. No parent, guardian or
37 supervising adult may allow a child under the age of sixteen
38 years to leave that person's sight and supervision within the
39 Hatfield-McCoy Recreation Area.

40 (h) A person may not ignite or maintain any fire within the
41 Hatfield-McCoy Recreation Area except at a clearly marked
42 location at a trailhead center.

43 (i) A person within the Hatfield-McCoy Recreation Area
44 may not operate a motor vehicle in any competition or exhibition
45 of speed, acceleration, racing, test of physical endurance or
46 climbing ability unless in an event sanctioned by the authority.

47 (j) Every person operating a motor vehicle within the
48 Hatfield-McCoy Recreation Area shall be subject to all of the
49 duties applicable to the driver of a motor vehicle by the
50 provisions of chapter seventeen-c of this code except where
51 inconsistent with the provisions of this article and except as to
52 those provisions of chapter seventeen-c of this code which by
53 their nature can have no application and may not operate a motor
54 vehicle in violation of those duties.

55 (k) A person may not possess a glass container while riding
56 on a motor vehicle within the Hatfield-McCoy Recreation Area.

57 (l) A person may not operate or ride in a utility terrain
58 vehicle, as defined in article one, chapter seventeen-f of this
59 code, or any other motor vehicle with bench or bucket seating
60 and a steering wheel for control unless equipped with seat belts
61 meeting at a minimum federal motor vehicle safety standards
62 and properly worn by the driver and all passengers.

63 (m) A person who violates any provision of this section is
64 guilty of a misdemeanor and, upon conviction thereof, shall be
65 fined not more than \$100. Prosecution or conviction for the
66 misdemeanor described in this subsection shall not prevent or
67 disqualify any other civil or criminal remedies for the conduct
68 prohibited by this section.

§20-14-9. Limiting liability.

1 (a) An owner of land used by, or for the stated purposes of,
2 the Hatfield-McCoy Regional Recreation Authority, whether
3 with or without charge, owes no duty of care to keep the

4 premises safe for entry or use by others for recreational purposes
5 or to give any warning of a dangerous or hazardous condition,
6 use, structure or activity on the premises to persons entering for
7 those purposes.

8 (b) Unless otherwise agreed in writing, an owner who grants
9 a lease, easement or license of land to the authority for
10 recreational purposes, whether with or without charge, owes no
11 duty of care to keep that land safe for entry or use by others or
12 to give warning to persons entering or going upon the land of
13 any dangerous or hazardous conditions, uses, structures or
14 activities thereon. An owner who grants a lease, easement or
15 license of land to the authority for recreational purposes does not
16 by giving a lease, easement or license: (1) Extend any assurance
17 to any person using the land that the premises are safe for any
18 purpose; (2) confer upon those persons the legal status of an
19 invitee or licensee to whom a duty of care is owed; or (3) assume
20 responsibility for or incur liability for any injury to person or
21 property caused by an act or omission of a person who enters
22 upon the leased land. The provisions of this section apply
23 whether the person entering upon the land is an invitee, licensee,
24 trespasser or otherwise.

25 (c) Nothing herein limits in any way any liability which
26 otherwise exists for deliberate, willful or malicious infliction of
27 injury to persons or property: *Provided*, That nothing herein
28 limits in any way the obligation of a person entering upon or
29 using the land of another for recreational purposes to exercise
30 due care in his or her use of the land and in his or her activities
31 thereon, so as to prevent the creation of hazards or the
32 commission of waste by himself or herself.

§20-14-10. Purchasing and bidding procedures.

1 (a) Whenever the authority proposes to purchase or contract
2 for commodities or services reasonably anticipated to equal or

3 exceed \$2,500 in cost, the purchase or contract shall be based on
4 competitive bids. Where the purchase of particular commodities
5 or services is reasonably anticipated to be \$25,000 or less, the
6 executive director may, on behalf of the authority, solicit bids or
7 price quotes in any manner that the executive director deems
8 appropriate and the authority shall obtain its commodities or
9 services by the lowest bid. In lieu of seeking bids or quotes for
10 commodities or services in this price range, the authority may
11 purchase those commodities and services pursuant to state
12 master contracts as provided in section ten-e, article three,
13 chapter five-a of this code.

14 (b) Where the cost for the purchase of commodities or
15 services is reasonably anticipated to exceed \$25,000, the
16 executive director shall solicit sealed bids for the commodities
17 or services to be provided: *Provided*, That the executive director
18 may permit bids by electronic transmission be accepted in lieu
19 of sealed bids. Bids shall be solicited by public notice. The
20 notice shall be published as a Class II legal advertisement in all
21 participating counties in compliance with the provisions of
22 article three, chapter fifty-nine of this code and by such other
23 means as the executive director deems appropriate. The notice
24 shall state the general character of the work and general
25 character of the materials to be furnished, the place where plans
26 and specifications therefor may be examined and the time and
27 place of receiving bids. After all bids are received, the authority
28 shall enter into a written contract with the lowest responsible
29 bidder; however, the authority may reject any or all bids that fail
30 to meet the specifications required by the authority or that
31 exceed the authority's budget estimation for those commodities
32 or services. If the executive director determines in writing that
33 there is only one responsive and responsible bidder and that
34 there has been sufficient public notice to attract competitive bids,
35 he or she may negotiate the price for a noncompetitive award or

36 the specifications for a noncompetitive award based solely on the
37 original purpose of the solicitation.

38 (c) For any contract that exceeds \$25,000 in total cost, the
39 authority shall require the vendors to post a bond, with form and
40 surety to be approved by the authority, in an amount equal to at
41 least fifty percent of the contract price conditioned upon faithful
42 performance and completion of the contract.

43 (d) The bidding requirements specified in this section do not
44 apply to any leases for real property upon which the authority
45 makes improvements for public access to the recreation area,
46 information distribution and welcome centers. This exemption
47 does not apply to leases for offices, vehicle and heavy equipment
48 storage or administrative facilities.

49 (e) Any person who violates a provision of this section is
50 guilty of a misdemeanor and, upon conviction thereof, shall be
51 confined in jail not less than ten days nor more than one year, or
52 fined not less than \$10 nor more than \$1000, or both confined
53 and fined.

§20-14-11. Conflicts of interest prohibiting certain contracts.

1 (a) No contract, change order to a prior contract or renewal
2 of any contract may be awarded or entered by the authority to
3 any vendor or prospective vendor when the vendor or
4 prospective vendor is a member of the board or an employee of
5 the authority, or a spouse, sibling, child or parent of a member
6 of the board or an employee of the authority or to any vendor or
7 prospective vendor in which a member of the board or employee
8 of the authority, or a spouse, sibling, child or parent of a member
9 of the board or an employee of the authority has an ownership
10 interest of greater than five percent.

11 (b) No contract, change order to a prior contract or renewal
12 of any contract may be awarded or entered by the authority to

13 any vendor or prospective vendor when the vendor or
14 prospective vendor is a member of the West Virginia
15 Legislature, or a spouse, sibling, child or parent of a member of
16 the Legislature, or to any vendor or prospective vendor in which
17 a member of the Legislature or a spouse, sibling, child or parent
18 of a member of the Legislature, has an ownership interest of
19 greater than five percent.

20 (c) All responses to bid solicitations, requests for quotation,
21 requests for proposal, contracts, change orders and contract
22 renewals with the authority submitted or approved under the
23 provisions of this article shall include an affidavit that the vendor
24 or prospective vendor is not in violation of this section.

25 (d) Any person who violates a provision of this section is
26 guilty of a misdemeanor and, upon conviction thereof, shall be
27 confined in jail not less than ten days nor more than one year, or
28 fined not less than \$10 nor more than \$1000, or both confined
29 and fined.

§20-14-12. Civil remedies for unlawful purchasing and contracts.

1 The county commission of any participating county may
2 challenge the validity of any contract or purchase entered,
3 solicited or proposed by the authority in violation of section ten
4 or eleven of this article by seeking declaratory or injunctive
5 relief in the circuit court of the county of the challenging party.
6 If the court finds by a preponderance of evidence that the
7 provisions of section ten or eleven of this article have been
8 violated, the court may declare the contract or purchase to be
9 void and may grant any injunctive relief necessary to correct the
10 violations and protect the funds of the authority as a joint
11 development entity.

ARTICLE 15. ATV RESPONSIBILITY ACT.**§20-15-2. Definitions.**

1 The terms in this article have the following meaning, unless
2 the context clearly requires a different meaning:

3 (1) “All-terrain vehicle” or “ATV” means any motor vehicle
4 designed for off-highway use and designed to travel on not less
5 than three low-pressure tires, having a seat designed to be
6 straddled by the operator and handlebars for steering control and
7 intended by the manufacturer to be used by a single operator or
8 by an operator and no more than one passenger.

9 (2) “Authorized outfitter” or “licensee” means a commercial
10 outfitter, which is a person, partnership, limited liability
11 company (LLC), corporation, other organization, or any
12 combination thereof, licensed by the Hatfield-McCoy Regional
13 Recreation Authority, who operates from any temporary or
14 permanent camp, private or public lodge, or private home, who
15 provides guided tours or the rental of all-terrain vehicles,
16 utility-terrain vehicles or motorcycles for use on assigned lands
17 for monetary profit or gain.

18 (3) “Low-pressure tire” means every tire in which twenty
19 pounds per square inch or less of compressed air is designed to
20 support the load.

21 (4) “Motorcycle” means any motor vehicle manufactured
22 with no more than two wheels and having a seat or saddle for the
23 use of the operator.

24 (5) “Participant” means any person using the land, trails and
25 facilities of the Hatfield-McCoy Regional Recreation Authority.

26 (6) “Utility-terrain vehicle” or “UTV” means any motor
27 vehicle with four or more low-pressure tires designed for

28 off-highway use, having bench or bucket seating for each
29 occupant and a steering wheel for control.

§20-15-5. Duties of participants.

1 (a) All participants:

2 (1) Shall comply with any requirements established by law,
3 including those in section one, article one, chapter seventeen-f
4 of this code, which defines those acts prohibited by operators of
5 all-terrain vehicles;

6 (2) Shall comply with the rules or regulations established for
7 use of the Hatfield-McCoy Recreation Area;

8 (3) Shall, as to the Hatfield-McCoy Regional Recreation
9 Authority or to any recreation area landowner, lessor, authorized
10 outfitter or licensee, expressly assume the risk of and legal
11 responsibility for any injury, loss or damage to person or
12 property which results from participation in operating an
13 all-terrain vehicle, utility-terrain vehicle or motorcycle, and
14 caused by any of the following:

15 (A) Variations in terrain, slope or angle of terrain;

16 (B) Surface or subsurface conditions, including rocks, trees
17 or other forms of forest growth or debris;

18 (C) Collisions with signs, markers, width restrictors,
19 culverts, bridges, pipes, equipment, vehicles or any other objects
20 or fixtures used in trail management, maintenance, construction
21 or development;

22 (D) Collisions with signs, markers, pipes, equipment,
23 vehicles or any component thereof used in natural resource
24 maintenance, development or extraction;

25 (E) Collisions with electrical transmission poles, towers,
26 lines, guy wires or any component thereof;

27 (4) Shall obey all rules or instructions announced by the
28 Hatfield-McCoy Regional Recreation Authority, authorized
29 outfitter or licensee with regard to the operation of the all-terrain
30 vehicle or motorcycle he or she is operating; and

31 (5) Shall wear all safety equipment provided by the
32 authorized outfitter or licensee, or which might otherwise be
33 required by law.

34 (b) Each participant shall have the sole individual
35 responsibility for:

36 (1) Knowing the range of his or her own ability to negotiate
37 any slope or trail;

38 (2) Operating the ATV, UTV or motorcycle within the limits
39 of the participant's own ability;

40 (3) Maintaining reasonable control of speed and course at all
41 times;

42 (4) Heeding all posted warnings;

43 (5) Operating only on trails designated by the
44 Hatfield-McCoy Regional Recreation Authority; and

45 (6) Refraining from acting in a manner which a reasonable
46 person would believe to be likely to cause or contribute to the
47 injury of any person.

48 (c) If while riding an ATV, UTV or motorcycle any
49 participant collides with any object or person, the responsibility
50 for the collision shall be solely that of the participant or

51 participants involved and not that of the Hatfield-McCoy
52 Regional Recreation Authority, any recreation area landowner,
53 lessor, authorized outfitter or licensee unless the
54 Hatfield-McCoy Regional Recreation Authority, recreation area
55 landowner, lessor, authorized outfitter or licensee or their agent
56 caused the collision in a tortious manner.

57 (d) After an accident, a participant may not leave the area
58 where the accident took place without:

59 (1) Leaving personal identification, including his or her
60 name and address;

61 (2) Notifying the proper authorities; and

62 (3) Obtaining assistance when he or she knows or reasonably
63 should know that any other person involved in the accident is in
64 need of medical or other assistance.

65 (e) Where a participant is a lawful passenger, that participant
66 may not distract or perform any act which might interfere with
67 the safe operation of the all-terrain vehicle, utility-terrain vehicle
68 or motorcycle of which he or she is a passenger.

69 (f) Any person under the age of sixteen years shall remain
70 under the direct supervision and within sight of a parent or
71 guardian both of whom must otherwise comply with state or
72 federal laws and any rules or regulations promulgated
73 thereunder.

74 (g) A participant may not make any alterations or tamper
75 with the all-terrain vehicle, utility-terrain vehicle or motorcycle
76 he or she is operating or of which he or she is a passenger in any
77 way which would interfere with the continued safe operation of
78 that machine.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND
CERTIFICATION.**

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning
2 clearly appears in the context:

3 (1) “Approved law-enforcement training academy” means
4 any training facility which is approved and authorized to conduct
5 law-enforcement training as provided in this article;

6 (2) “Chief executive” means the Superintendent of the State
7 Police; the chief natural resources police officer of the Division
8 of Natural Resources; the sheriff of any West Virginia county;
9 any administrative deputy appointed by the chief natural
10 resources police officer of the Division of Natural Resources; or
11 the chief of any West Virginia municipal law-enforcement
12 agency;

13 (3) “County” means the fifty-five major political
14 subdivisions of the state;

15 (4) “Exempt rank” means any noncommissioned or
16 commissioned rank of sergeant or above;

17 (5) “Governor’s Committee on Crime, Delinquency and
18 Correction” or “Governor’s committee” means the Governor’s
19 Committee on Crime, Delinquency and Correction established
20 as a state planning agency pursuant to section one, article nine,
21 chapter fifteen of this code;

22 (6) “Law-enforcement officer” means any duly authorized
23 member of a law-enforcement agency who is authorized to

24 maintain public peace and order, prevent and detect crime, make
25 arrests and enforce the laws of the state or any county or
26 municipality thereof, other than parking ordinances, and includes
27 those persons employed as campus police officers at state
28 institutions of higher education in accordance with the
29 provisions of section five, article four, chapter eighteen-b of this
30 code, and persons employed by the Public Service Commission
31 as motor carrier inspectors and weight enforcement officers
32 charged with enforcing commercial motor vehicle safety and
33 weight restriction laws although those institutions and agencies
34 may not be considered law-enforcement agencies. The term also
35 includes those persons employed as rangers by resort area
36 districts in accordance with the provisions of section
37 twenty-three, article twenty-five, chapter seven of this code,
38 although no resort area district may be considered a
39 law-enforcement agency: *Provided*, That the subject rangers
40 shall pay the tuition and costs of training. As used in this article,
41 the term “law-enforcement officer” does not apply to the chief
42 executive of any West Virginia law-enforcement agency or any
43 watchman or special natural resources police officer;

44 (7) “Law-enforcement official” means the duly appointed
45 chief administrator of a designated law-enforcement agency or
46 a duly authorized designee;

47 (8) “Municipality” means any incorporated town or city
48 whose boundaries lie within the geographic boundaries of the
49 state;

50 (9) “Subcommittee” or “law-enforcement professional
51 standards subcommittee” means the subcommittee of the
52 Governor’s Committee on Crime, Delinquency and Correction
53 created by section two of this article; and

54 (10) “West Virginia law-enforcement agency” means any
55 duly authorized state, county or municipal organization

56 employing one or more persons whose responsibility is the
57 enforcement of laws of the state or any county or municipality
58 thereof: *Provided*, That neither the Public Service Commission
59 nor any state institution of higher education nor any resort area
60 district is a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from licensing fees.

1 (a) The licensure provisions set forth in this article do not
2 apply to:

3 (1) Any person:

4 (A) Carrying a deadly weapon upon his or her own premises;

5 (B) Carrying a firearm, unloaded, from the place of purchase
6 to his or her home, residence or place of business or to a place of
7 repair and back to his or her home, residence or place of
8 business; or

9 (C) Possessing a firearm while hunting in a lawful manner
10 or while traveling from his or her home, residence or place of
11 business to a hunting site and returning to his or her home,
12 residence or place of business;

13 (2) Any person who is a member of a properly organized
14 target-shooting club authorized by law to obtain firearms by
15 purchase or requisition from this state or from the United States
16 for the purpose of target practice from carrying any pistol, as
17 defined in this article, unloaded, from his or her home, residence
18 or place of business to a place of target practice and from any

19 place of target practice back to his or her home, residence or
20 place of business, for using any such weapon at a place of target
21 practice in training and improving his or her skill in the use of
22 the weapons;

23 (3) Any law-enforcement officer or law-enforcement official
24 as defined in section one, article twenty-nine, chapter thirty of
25 this code;

26 (4) Any employee of the West Virginia Division of
27 Corrections duly appointed pursuant to the provisions of section
28 eleven-c, article one, chapter twenty-five of this code while the
29 employee is on duty;

30 (5) Any member of the armed forces of the United States or
31 the militia of this state while the member is on duty;

32 (6) Any resident of another state who holds a valid permit or
33 license to possess or carry a handgun issued by a state or a
34 political subdivision subject to the provisions and limitations set
35 forth in section six-a of this article;

36 (7) Any federal law-enforcement officer or federal police
37 officer authorized to carry a weapon in the performance of the
38 officer's duty; and

39 (8) Any parole officer appointed pursuant to section
40 fourteen, article twelve, chapter sixty-two of this code in the
41 performance of their duties.

42 (b) On and after July 1, 2013, the following judicial officers
43 and prosecutors and staff shall be exempted from paying any
44 application fees or licensure fees required under this article.
45 However, on and after that same date, they shall be required to
46 make application and satisfy all licensure and handgun safety

47 and training requirements set forth in section four of this article
48 before carrying a concealed handgun in this state:

49 (1) Any justice of the Supreme Court of Appeals of West
50 Virginia;

51 (2) Any circuit judge;

52 (3) Any retired justice or retired circuit judge designated
53 senior status by the Supreme Court of Appeals of West Virginia;

54 (4) Any family court judge;

55 (5) Any magistrate;

56 (6) Any prosecuting attorney;

57 (7) Any assistant prosecuting attorney; or

58 (8) Any duly appointed investigator employed by a
59 prosecuting attorney.

CHAPTER 118

(H. B. 2595 - By Delegate(s) McGeehan and Canterbury)

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

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §16-2D-2 and §16-2D-6 of the Code of West Virginia, 1931, as amended, relating to certificates of need for the development of health facilities in this state; eliminating out-of-state health care facilities or providers from the definition

of “affected persons” and from consideration in the state agency’s evaluation process.

Be it enacted by the Legislature of West Virginia:

That §16-2D-2 and §16-2D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f and
2 twenty-nine-b of this chapter are incorporated in this section
3 unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the
5 context:

6 (a) “Affected person” means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care
12 facilities within that geographic area;

13 (5) The health care facilities located within this state which
14 provide services similar to the services of the facility under
15 review and which will be significantly affected by the proposed
16 project;

17 (6) The health care facilities located within this state which,
18 before receipt by the state agency of the proposal being

19 reviewed, have formally indicated an intention to provide similar
20 services within this state in the future;

21 (7) Third-party payors who reimburse health care facilities
22 within this state similar to those proposed for services;

23 (8) Any agency that establishes rates for health care facilities
24 within this state similar to those proposed; or

25 (9) Organizations representing health care providers.

26 (b) “Ambulatory health care facility” means a free-standing
27 facility that provides health care to noninstitutionalized and
28 nonhomebound persons on an outpatient basis. For purposes of
29 this definition, a free-standing facility is not located on the
30 campus of an existing health care facility. This definition does
31 not include any facility engaged solely in the provision of
32 lithotripsy services or the private office practice of any one or
33 more health professionals licensed to practice in this state
34 pursuant to the provisions of chapter thirty of this code:
35 *Provided*, That this exemption from review may not be construed
36 to include practices where major medical equipment otherwise
37 subject to review under the provisions of this article is acquired,
38 offered or developed: *Provided, however*, That this exemption
39 from review may not be construed to include certain health
40 services otherwise subject to review under the provisions of
41 subdivision (1), subsection (a), section four of this article.

42 (c) “Ambulatory surgical facility” means a free-standing
43 facility that provides surgical treatment to patients not requiring
44 hospitalization. For purposes of this definition, a free-standing
45 facility is not physically attached to a health care facility. This
46 definition does not include the private office practice of any one
47 or more health professionals licensed to practice surgery in this
48 state pursuant to the provisions of chapter thirty of this code:
49 *Provided*, That this exemption from review may not be construed

50 to include practices where major medical equipment otherwise
51 subject to review under the provisions of this article is acquired,
52 offered or developed: *Provided, however,* That this exemption
53 from review may not be construed to include health services
54 otherwise subject to review under the provisions of subdivision
55 (1), subsection (a), section four of this article.

56 (d) “Applicant” means: (1) The governing body or the
57 person proposing a new institutional health service who is, or
58 will be, the health care facility licensee wherein the new
59 institutional health service is proposed to be located; and (2) in
60 the case of a proposed new institutional health service not to be
61 located in a licensed health care facility, the governing body or
62 the person proposing to provide the new institutional health
63 service. Incorporators or promoters who will not constitute the
64 governing body or persons responsible for the new institutional
65 health service may not be an applicant.

66 (e) “Bed capacity” means the number of beds licensed to a
67 health care facility or the number of adult and pediatric beds
68 permanently staffed and maintained for immediate use by
69 inpatients in patient rooms or wards in an unlicensed facility.

70 (f) “Campus” means the adjacent grounds and buildings, or
71 grounds and buildings not separated by more than a public right-
72 of-way, of a health care facility.

73 (g) “Capital expenditure” means:

74 (1) An expenditure made by or on behalf of a health care
75 facility, which:

76 (A) (i) Under generally accepted accounting principles is not
77 properly chargeable as an expense of operation and maintenance;
78 or (ii) is made to obtain either by lease or comparable
79 arrangement any facility or part thereof or any equipment for a
80 facility or part; and

81 (B) (i) Exceeds the expenditure minimum; (ii) is a substan-
82 tial change to the bed capacity of the facility with respect to
83 which the expenditure is made; or (iii) is a substantial change to
84 the services of such facility;

85 (2) The donation of equipment or facilities to a health care
86 facility, which if acquired directly by that facility would be
87 subject to review;

88 (3) The transfer of equipment or facilities for less than fair
89 market value if the transfer of the equipment or facilities at fair
90 market value would be subject to review; or

91 (4) A series of expenditures, if the sum total exceeds the
92 expenditure minimum and if determined by the state agency to
93 be a single capital expenditure subject to review. In making this
94 determination, the state agency shall consider: Whether the
95 expenditures are for components of a system which is required
96 to accomplish a single purpose; whether the expenditures are to
97 be made over a two-year period and are directed towards the
98 accomplishment of a single goal within the health care facility's
99 long-range plan; or whether the expenditures are to be made
100 within a two-year period within a single department such that
101 they will constitute a significant modernization of the
102 department.

103 (h) "Expenditure minimum" means \$2,700,000 for the
104 calendar year 2009. The state agency shall adjust the expenditure
105 minimum annually and publish an update of the amount on or
106 before December 31, of each year. The expenditure minimum
107 adjustment shall be based on the DRI inflation index published
108 in the *Global Insight DRI/WEFA Health Care Cost Review*, or its
109 successor or appropriate replacement index. This amount shall
110 include the cost of any studies, surveys, designs, plans, working
111 drawings, specifications and other activities, including staff
112 effort and consulting and other services essential to the

113 acquisition, improvement, expansion or replacement of any plant
114 or equipment.

115 (i) “Health”, used as a term, includes physical and mental
116 health.

117 (j) “Health care facility” means a publicly or privately
118 owned facility, agency or entity that offers or provides health
119 care services, whether a for-profit or nonprofit entity and
120 whether or not licensed, or required to be licensed, in whole or
121 in part, and includes, but is not limited to, hospitals; skilled
122 nursing facilities; kidney disease treatment centers, including
123 free-standing hemodialysis units; intermediate care facilities;
124 ambulatory health care facilities; ambulatory surgical facilities;
125 home health agencies; hospice agencies; rehabilitation facilities;
126 health maintenance organizations; and community mental health
127 and intellectual disability facilities. For purposes of this
128 definition, “community mental health and intellectual disability
129 facility” means a private facility which provides such
130 comprehensive services and continuity of care as emergency,
131 outpatient, partial hospitalization, inpatient or consultation and
132 education for individuals with mental illness, intellectual
133 disability or drug or alcohol addiction.

134 (k) “Health care provider” means a person, partnership,
135 corporation, facility, hospital or institution licensed or certified
136 or authorized by law to provide professional health care service
137 in this state to an individual during that individual’s medical,
138 remedial or behavioral health care, treatment or confinement.

139 (l) “Health maintenance organization” means a public or
140 private organization which:

141 (1) Is required to have a certificate of authority to operate in
142 this state pursuant to section three, article twenty-five-a, chapter
143 thirty-three of this code; or

144 (2) (A) Provides or otherwise makes available to enrolled
145 participants health care services, including substantially the
146 following basic health care services: Usual physician services,
147 hospitalization, laboratory, X ray, emergency and preventive
148 services and out-of-area coverage;

149 (B) Is compensated except for copayments for the provision
150 of the basic health care services listed in paragraph (A) of this
151 subdivision to enrolled participants on a predetermined periodic
152 rate basis without regard to the date the health care services are
153 provided and which is fixed without regard to the frequency,
154 extent or kind of health service actually provided; and

155 (C) Provides physicians' services: (i) Directly through
156 physicians who are either employees or partners of the
157 organization; or (ii) through arrangements with individual
158 physicians or one or more groups of physicians organized on a
159 group practice or individual practice basis.

160 (m) "Health services" means clinically related preventive,
161 diagnostic, treatment or rehabilitative services, including
162 alcohol, drug abuse and mental health services.

163 (n) "Home health agency" means an organization primarily
164 engaged in providing professional nursing services either
165 directly or through contract arrangements and at least one of the
166 following services: Home health aide services, other therapeutic
167 services, physical therapy, speech therapy, occupational therapy,
168 nutritional services or medical social services to persons in their
169 place of residence on a part-time or intermittent basis.

170 (o) "Hospice agency" means a private or public agency or
171 organization licensed in West Virginia for the administration or
172 provision of hospice care services to terminally ill persons in the
173 persons' temporary or permanent residences by using an
174 interdisciplinary team, including, at a minimum, persons

175 qualified to perform nursing services; social work services; the
176 general practice of medicine or osteopathy; and pastoral or
177 spiritual counseling.

178 (p) “Hospital” means a facility licensed as such pursuant to
179 the provisions of article five-b of this chapter, and any acute care
180 facility operated by the state government, that primarily provides
181 inpatient diagnostic, treatment or rehabilitative services to
182 injured, disabled or sick persons under the supervision of
183 physicians and includes psychiatric and tuberculosis hospitals.

184 (q) “Intermediate care facility” means an institution that
185 provides health-related services to individuals with mental or
186 physical conditions that require services above the level of room
187 and board, but do not require the degree of services provided in
188 a hospital or skilled-nursing facility.

189 (r) “Long-range plan” means a document formally adopted
190 by the legally constituted governing body of an existing health
191 care facility or by a person proposing a new institutional health
192 service which contains the information required by the state
193 agency in rules adopted pursuant to section eight of this article.

194 (s) “Major medical equipment” means a single unit of
195 medical equipment or a single system of components with
196 related functions which is used for the provision of medical and
197 other health services and costs in excess of \$2,700,000 in the
198 calendar year 2009. The state agency shall adjust the dollar
199 amount specified in this subsection annually and publish an
200 update of the amount on or before December 31, of each year.
201 The adjustment of the dollar amount shall be based on the DRI
202 inflation index published in the *Global Insight DRI/WEFA*
203 *Health Care Cost Review* or its successor or appropriate
204 replacement index. This term does not include medical
205 equipment acquired by or on behalf of a clinical laboratory to
206 provide clinical laboratory services if the clinical laboratory is

207 independent of a physician's office and a hospital and it has been
208 determined under Title XVIII of the Social Security Act to meet
209 the requirements of paragraphs ten and eleven, Section 1861(s)
210 of such act, Title 42 U.S.C. §1395x. In determining whether
211 medical equipment is major medical equipment, the cost of
212 studies, surveys, designs, plans, working drawings,
213 specifications and other activities essential to the acquisition of
214 such equipment shall be included. If the equipment is acquired
215 for less than fair market value, the term "cost" includes the fair
216 market value.

217 (t) "Medically underserved population" means the
218 population of an area designated by the state agency as having a
219 shortage of personal health services. The state agency may
220 consider unusual local conditions that are a barrier to
221 accessibility or availability of health services. The designation
222 shall be in rules adopted by the state agency pursuant to section
223 eight of this article, and the population so designated may
224 include the state's medically underserved population designated
225 by the federal Secretary of Health and Human Services under
226 Section 330(b)(3) of the Public Health Service Act, as amended,
227 Title 42 U.S.C. §254.

228 (u) "New institutional health service" means any service as
229 described in section three of this article.

230 (v) "Nonhealth-related project" means a capital expenditure
231 for the benefit of patients, visitors, staff or employees of a health
232 care facility and not directly related to preventive, diagnostic,
233 treatment or rehabilitative services offered by the health care
234 facility. This includes, but is not limited to, chapels, gift shops,
235 news stands, computer and information technology systems,
236 educational, conference and meeting facilities, but excluding
237 medical school facilities, student housing, dining areas,
238 administration and volunteer offices, modernization of structural
239 components, boiler repair or replacement, vehicle maintenance

240 and storage facilities, parking facilities, mechanical systems for
241 heating, ventilation systems, air conditioning systems and
242 loading docks.

243 (w) “Offer”, when used in connection with health services,
244 means that the health care facility or health maintenance
245 organization holds itself out as capable of providing, or as
246 having the means to provide, specified health services.

247 (x) “Person” means an individual, trust, estate, partnership,
248 committee, corporation, association and other organizations such
249 as joint-stock companies and insurance companies, a state or a
250 political subdivision or instrumentality thereof or any legal entity
251 recognized by the state.

252 (y) “Physician” means a doctor of medicine or osteopathy
253 legally authorized to practice by the state.

254 (z) “Proposed new institutional health service” means any
255 service as described in section three of this article.

256 (aa) “Psychiatric hospital” means an institution that
257 primarily provides to inpatients, by or under the supervision of
258 a physician, specialized services for the diagnosis, treatment and
259 rehabilitation of mentally ill and emotionally disturbed persons.

260 (bb) “Rehabilitation facility” means an inpatient facility
261 operated for the primary purpose of assisting in the rehabilitation
262 of disabled persons through an integrated program of medical
263 and other services which are provided under competent
264 professional supervision.

265 (cc) “Review agency” means an agency of the state,
266 designated by the Governor as the agency for the review of state
267 agency decisions.

268 (dd) “Skilled nursing facility” means an institution, or a
269 distinct part of an institution, that primarily provides inpatient

270 skilled nursing care and related services, or rehabilitation
271 services, to injured, disabled or sick persons.

272 (ee) “State agency” means the Health Care Authority
273 created, established and continued pursuant to article twenty-
274 nine-b of this chapter.

275 (ff) “State health plan” means the document approved by the
276 Governor after preparation by the former statewide health
277 coordinating council or that document as approved by the
278 Governor after amendment by the former health care planning
279 council or the state agency.

280 (gg) “Substantial change to the bed capacity” of a health care
281 facility means any change, associated with a capital expenditure,
282 that increases or decreases the bed capacity or relocates beds
283 from one physical facility or site to another, but does not include
284 a change by which a health care facility reassigns existing beds
285 as swing beds between acute care and long-term care categories:
286 *Provided*, That a decrease in bed capacity in response to federal
287 rural health initiatives is excluded from this definition.

288 (hh) “Substantial change to the health services” of a health
289 care facility means: (1) The addition of a health service offered
290 by or on behalf of the health care facility which was not offered
291 by or on behalf of the facility within the twelve-month period
292 before the month in which the service is first offered; or (2) the
293 termination of a health service offered by or on behalf of the
294 facility: *Provided*, That “substantial change to the health
295 services” does not include the providing of ambulance service,
296 wellness centers or programs, adult day care or respite care by
297 acute care facilities.

298 (ii) “To develop”, when used in connection with health
299 services, means to undertake those activities which upon their
300 completion will result in the offer of a new institutional health

301 service or the incurring of a financial obligation in relation to the
302 offering of such a service.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 (a) Except as provided in subsection (f), section nine of this
2 article, in making its determination as to whether a certificate of
3 need shall be issued, the state agency shall, at a minimum,
4 consider all of the following criteria that are applicable:
5 *Provided*, That the criteria set forth in subsection (f) of this
6 section apply to all hospitals, nursing homes and health care
7 facilities when ventilator services are to be provided for any
8 nursing facility bed:

9 (1) The relationship of the health services being reviewed to
10 the state health plan;

11 (2) The relationship of services reviewed to the long-range
12 development plan of the person providing or proposing the
13 services;

14 (3) The need that the population served or to be served by
15 the services has for the services proposed to be offered or
16 expanded, and the extent to which all residents of the area, and
17 in particular low income persons, racial and ethnic minorities,
18 women, handicapped persons, other medically underserved
19 population and the elderly, are likely to have access to those
20 services;

21 (4) The availability within this state of less costly or more
22 effective alternative methods of providing the services to be
23 offered, expanded, reduced, relocated or eliminated;

24 (5) The immediate and long-term financial feasibility of the
25 proposal as well as the probable impact of the proposal on the
26 costs of and charges for providing health services by the person
27 proposing the new institutional health service;

28 (6) The relationship of the services proposed to the existing
29 health care system of the area within this state in which the
30 services are proposed to be provided;

31 (7) In the case of health services proposed to be provided,
32 the availability of resources within this state, including health
33 care providers, management personnel, and funds for capital and
34 operating needs, for the provision of the services proposed to be
35 provided and the need for alternative uses of these resources as
36 identified by the state health plan and other applicable plans;

37 (8) The appropriate and nondiscriminatory utilization of
38 existing and available health care providers within this state;

39 (9) The relationship, including the organizational relation-
40 ship, of the health services proposed to be provided to ancillary
41 or support services;

42 (10) Special needs and circumstances of those entities within
43 this state which provide a substantial portion of their services or
44 resources, or both, to individuals not residing in the health
45 service areas in which the entities are located or in adjacent
46 health service areas. The entities may include medical and other
47 health professional schools, multidisciplinary clinics and
48 specialty centers;

49 (11) In the case of a reduction or elimination of a service,
50 including the relocation of a facility or a service, the need that
51 the population presently served has for the service, the extent to
52 which that need will be met adequately by the proposed
53 relocation or by alternative arrangements, and the effect of the
54 reduction, elimination or relocation of the service on the ability
55 of low income persons, racial and ethnic minorities, women,
56 handicapped persons, other medically underserved population
57 and the elderly, to obtain needed health care;

58 (12) In the case of a construction project: (A) The cost and
59 methods of the proposed construction, including the costs and
60 methods of energy provision; and (B) the probable impact of the
61 construction project reviewed on the costs of providing health
62 services by the person proposing the construction project and on
63 the costs and charges to the public of providing health services
64 by other persons within this state;

65 (13) In the case of health services proposed to be provided,
66 the effect of the means proposed for the delivery of proposed
67 health services on the clinical needs of health professional
68 training programs in the area within this state in which the
69 services are to be provided;

70 (14) In the case of health services proposed to be provided,
71 if the services are to be available in a limited number of
72 facilities, the extent to which the schools in the area within this
73 state for health professions will have access to the services for
74 training purposes;

75 (15) In the case of health services proposed to be provided,
76 the extent to which the proposed services will be accessible to all
77 the residents of the area to be served by the services;

78 (16) In accordance with section five of this article, the
79 factors influencing the effect of competition on the supply of the
80 health services being reviewed;

81 (17) Improvements or innovations in the financing and
82 delivery of health services which foster competition , in
83 accordance with section five of this article, and serve to promote
84 quality assurance and cost effectiveness;

85 (18) In the case of health services or facilities proposed to be
86 provided, the efficiency and appropriateness of the use of
87 existing services and facilities within this state similar to those
88 proposed;

89 (19) In the case of existing services or facilities, the quality
90 of care provided by the services or facilities in the past;

91 (20) In the case where an application is made by an
92 osteopathic or allopathic facility for a certificate of need to
93 construct, expand or modernize a health care facility, acquire
94 major medical equipment or add services, the need for that
95 construction, expansion, modernization, acquisition of
96 equipment or addition of services shall be considered on the
97 basis of the need for and the availability in the community of
98 services and facilities within this state for osteopathic and
99 allopathic physicians and their patients. The state agency shall
100 consider the application in terms of its impact on existing and
101 proposed institutional training programs within this state for
102 doctors of osteopathy and medicine at the student, internship and
103 residency training levels;

104 (21) The special circumstances of health care facilities
105 within this state with respect to the need for conserving energy;

106 (22) The contribution of the proposed service in meeting the
107 health-related needs of members of medically underserved
108 populations which have traditionally experienced difficulties in
109 obtaining equal access to health services, particularly those
110 needs identified in the state health plan as deserving of priority.
111 For the purpose of determining the extent to which the proposed
112 service will be accessible, the state agency shall consider:

113 (A) The extent to which medically underserved populations
114 currently use the applicant's services in comparison to the
115 percentage of the population in the applicant's service area
116 which is medically underserved, and the extent to which
117 medically underserved populations are expected to use the
118 proposed services if approved;

119 (B) The performance of the applicant in meeting its
120 obligation, if any, under any applicable federal regulations

121 requiring provision of uncompensated care, community service
122 or access by minorities and handicapped persons to programs
123 receiving federal financial assistance, including the existence of
124 any civil rights access complaints against the applicant;

125 (C) The extent to which Medicare, Medicaid and medically
126 indigent patients are served by the applicant; and

127 (D) The extent to which the applicant offers a range of
128 means by which a person will have access to its services,
129 including, but not limited to, outpatient services, admission by
130 a house staff and admission by personal physician;

131 (23) The existence of a mechanism for soliciting consumer
132 input into the health care facility's decision-making process.

133 (b) The state agency may include additional criteria which
134 it prescribes by rules adopted pursuant to section eight of this
135 article: *Provided*, That the state agency will not consider the
136 services or interests of out-of-state facilities or providers in
137 reviewing an application for a certificate of need.

138 (c) Criteria for reviews may vary according to the purpose
139 for which a particular review is being conducted or the types of
140 health services being reviewed.

141 (d) An application for a certificate of need may not be made
142 subject to any criterion not contained in this article, in rules
143 adopted pursuant to section eight of this article or in the
144 certificate of need standards approved pursuant to section five of
145 this article.

146 (e) In the case of any proposed new institutional health
147 service, the state agency may not grant a certificate of need
148 under its certificate of need program unless, after consideration
149 of the appropriateness of the use of existing facilities within this
150 state providing services similar to those being proposed, the state

151 agency makes, in addition to findings required in section nine of
152 this article, each of the following findings in writing: (1) That
153 superior alternatives to the services in terms of cost, efficiency
154 and appropriateness do not exist within this state and the
155 development of alternatives is not practicable; (2) that existing
156 facilities providing services within this state similar to those
157 proposed are being used in an appropriate and efficient manner;
158 (3) that in the case of new construction, alternatives to new
159 construction, such as modernization or sharing arrangements,
160 have been considered and have been implemented to the
161 maximum extent practicable; (4) that patients will experience
162 serious problems in obtaining care within this state of the type
163 proposed in the absence of the proposed new service; and (5)
164 that in the case of a proposal for the addition of beds for the
165 provision of skilled nursing or intermediate care services, the
166 addition will be consistent with the plans of other agencies of the
167 state responsible for the provision and financing of long-term
168 care facilities or services including home health services.

169 (f) In the case where an application is made by a hospital,
170 nursing home or other health care facility to provide ventilator
171 services which have not previously been provided for a nursing
172 facility bed, the state agency shall consider the application in
173 terms of the need for the service and whether the cost exceeds
174 the level of current Medicaid services. No facility may, by
175 providing ventilator services, provide a higher level of service
176 for a nursing facility bed without demonstrating that the change
177 in level of service by provision of the additional ventilator
178 services will result in no additional fiscal burden to the state.

179 (g) In the case where application is made by any person or
180 entity to provide personal care services which are to be billed for
181 Medicaid reimbursement, the state agency shall consider the
182 application in terms of the need for the service and whether the
183 cost exceeds the level of the cost of current Medicaid services.
184 No person or entity may provide personal care services to be
185 billed for Medicaid reimbursement without demonstrating that

186 the provision of the personal care service will result in no
187 additional fiscal burden to the state: *Provided*, That a certificate
188 of need is not required for a person providing specialized foster
189 care personal care services to one individual and those services
190 are delivered in the provider's home. The state agency shall also
191 consider the total fiscal liability to the state for all applications
192 which have been submitted.

CHAPTER 119

(Com. Sub. for S. B. 88 - By Senators Stollings and Plymale)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §15-2-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8 and §16-49-9, all relating to requiring background checks for individuals who have direct access to residents, members or beneficiaries of covered providers participating in the West Virginia Clearance for Access: Registry and Employment Screening program; defining terms; requiring the Secretary of the Department of Health and Human Resources to develop a plan and a program for conducting background checks; requiring centralized database to maintain criminal history record information and results; establishing prescreening process conducted by covered providers; requiring applicants to provide fingerprints and undergo criminal background check; authorizing the State Police to assess a fee for conducting the criminal background check; providing for deposit of State Police collected fees into a nonappropriated special revenue fund; directing notification to be given to applicants regarding the retention of fingerprints; establishing procedures and criteria for obtaining and

reviewing criminal history record information; establishing criteria for approving applicants as covered individuals; authorizing contractors and fees; creating special revenue account for administrative fees; providing for protests of the secretary's decisions and permitting variances; creating exceptions; authorizing legislative rules; providing monetary penalties; and providing civil and criminal immunity.

Be it enacted by the Legislature of West Virginia:

That §15-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8 and §16-49-9, all to read as follows:

CHAPTER 15. PUBLIC SAFETY

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24. Criminal Identification Bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

1 (a) The superintendent of the department shall establish,
2 equip and maintain at the departmental headquarters a Criminal
3 Identification Bureau, for the purpose of receiving and filing
4 fingerprints, photographs, records and other information
5 pertaining to the investigation of crime and the apprehension of
6 criminals, as hereinafter provided. The superintendent shall
7 appoint or designate a supervisor to be in charge of the Criminal
8 Identification Bureau and such supervisor shall be responsible to
9 the superintendent for the affairs of the bureau. Members of the
10 department assigned to the Criminal Identification Bureau shall
11 carry out their duties and assignments in accordance with
12 internal management rules and regulations pertaining thereto
13 promulgated by the superintendent.

14 (b) The Criminal Identification Bureau shall cooperate with
15 identification bureaus of other states and of the United States to
16 develop and carry on a complete interstate, national and
17 international system of criminal identification.

18 (c) The Criminal Identification Bureau may furnish
19 fingerprints, photographs, records or other information to
20 authorized law-enforcement and governmental agencies of the
21 United States and its territories, of foreign countries duly
22 authorized to receive the same, of other states within the United
23 States and of the State of West Virginia upon proper request
24 stating that the fingerprints, photographs, records or other
25 information requested are necessary in the interest of and will be
26 used solely in the administration of official duties and the
27 criminal laws.

28 (d) The Criminal Identification Bureau may furnish, with the
29 approval of the superintendent, fingerprints, photographs,
30 records or other information to any private or public agency,
31 person, firm, association, corporation or other organization, other
32 than a law-enforcement or governmental agency as to which the
33 provisions of subsection (c) of this section shall govern and
34 control, but all requests under the provisions of this subsection
35 for such fingerprints, photographs, records or other information
36 must be accompanied by a written authorization signed and
37 acknowledged by the person whose fingerprints, photographs,
38 records or other information is to be released.

39 (e) The Criminal Identification Bureau may furnish
40 fingerprints, photographs, records and other information of
41 persons arrested or sought to be arrested in this state to the
42 identification bureau of the United States government and to
43 other states for the purpose of aiding law enforcement.

44 (f) Persons in charge of any penal or correctional institution,
45 including any city or county jail in this state, shall take, or cause
46 to be taken, the fingerprints and description of all persons

47 lawfully committed thereto or confined therein and furnish the
48 same in duplicate to the Criminal Identification Bureau,
49 Department of Public Safety. Such fingerprints shall be taken on
50 forms approved by the superintendent of the Department of
51 Public Safety. All such officials as herein named may, when
52 possible to do so, furnish photographs to the Criminal
53 Identification Bureau of such persons so fingerprinted.

54 (g) Members of the Department of Public Safety, and all
55 other state law-enforcement officials, sheriffs, deputy sheriffs
56 and each and every peace officer in this state, shall take or cause
57 to be taken the fingerprints and description of all persons
58 arrested or detained by them, charged with any crime or offense
59 in this state, in which the penalty provided therefor is
60 confinement in any penal or correctional institution, or of any
61 person who they have reason to believe is a fugitive from justice
62 or a habitual criminal, and furnish the same in duplicate to the
63 Criminal Identification Bureau of the Department of Public
64 Safety on forms approved by the superintendent of said
65 department. All such officials as herein named may, when
66 possible to do so, furnish to the Criminal Identification Bureau,
67 photographs of such persons so fingerprinted. For the purpose of
68 obtaining data for the preparation and submission to the
69 Governor and the Legislature by the Department of Public Safety
70 of an annual statistical report on crime conditions in the state, the
71 clerk of any court of record, the magistrate of any magistrate
72 court and the mayor or clerk of any municipal court before
73 which a person appears on any criminal charge shall report to the
74 Criminal Identification Bureau the sentence of the court or other
75 disposition of the charge and the prosecuting attorney of every
76 county shall report to the Criminal Identification Bureau such
77 additional information as the bureau may require for such
78 purpose, and all such reports shall be on forms prepared and
79 distributed by the Department of Public Safety, shall be
80 submitted monthly and shall cover the period of the preceding
81 month.

82 (h) All persons arrested or detained pursuant to the
83 requirements of this article shall give fingerprints and
84 information required by subsections (f) and (g) of this section.
85 Any person who has been fingerprinted or photographed in
86 accordance with the provisions of this section who is acquitted
87 of the charges upon which he or she was arrested and who has no
88 previous criminal record may, upon the presentation of
89 satisfactory proof to the department, have such fingerprints or
90 photographs, or both, returned to them.

91 (i) All state, county and municipal law-enforcement agencies
92 shall submit to the bureau uniform crime reports setting forth
93 their activities in connection with law enforcement. It shall be
94 the duty of the bureau to adopt and promulgate rules and
95 regulations prescribing the form, general content, time and
96 manner of submission of such uniform crime reports. Willful or
97 repeated failure by any state, county or municipal law-
98 enforcement official to submit the uniform crime reports
99 required by this article shall constitute neglect of duty in public
100 office. The bureau shall correlate the reports submitted to it and
101 shall compile and submit to the Governor and the Legislature
102 semiannual reports based on such reports. A copy of such reports
103 shall be furnished to all prosecuting attorneys and law-
104 enforcement agencies.

105 (j) Neglect or refusal of any person mentioned in this section
106 to make the report required herein, or to do or perform any act
107 on his or her part to be done or performed in connection with the
108 operation of this section, shall constitute a misdemeanor and,
109 such person shall, upon conviction thereof, be punished by a fine
110 of not less than \$25 nor more than \$200, or by imprisonment in
111 the county jail for a period of not more than sixty days, or both.
112 Such neglect shall constitute misfeasance in office and subject
113 such persons to removal from office. Any person who willfully
114 removes, destroys or mutilates any of the fingerprints,
115 photographs, records or other information of the Department of

116 Public Safety shall be guilty of a misdemeanor and such person
117 shall, upon conviction thereof, be punished by a fine of not more
118 than \$100, or by imprisonment in the county jail for a period of
119 not more than six months, or both.

120 (k) The Criminal Identification Bureau (CIB) and the
121 Federal Bureau of Investigation (FBI) shall retain applicant
122 fingerprints for the purpose of participating in the Rap Back
123 Program to determine suitability or fitness for a permit, license
124 or employment. Agencies participating in the program shall
125 notify applicants and employees subject to a criminal history
126 check that their fingerprint shall be retained by the CIB and the
127 FBI. Notification shall also be given to the applicant and
128 employee subject to the Rap Back Program.

129 (l) The State Police may assess a fee to applicants, covered
130 providers or covered contractors for conducting the criminal
131 background check and for collecting and retaining fingerprints
132 for Rap Back as authorized under article forty-six, chapter
133 sixteen of this code. The assessment shall be deposited into a
134 nonappropriated special revenue account within the State
135 Treasurer's office to be known as the WVSP Criminal History
136 Account. Expenditures from this account shall be made by the
137 superintendent for purposes set forth in this article and are
138 authorized from collections. The account shall be administered
139 by the superintendent and may not be deemed a part of the
140 general revenue of the state.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16-49-1. Definitions.

1 As used in this article:

2 (1) “Applicant” means an individual who is being considered
3 for employment or engagement with a covered provider or
4 covered contractor.

5 (2) “Background check” means a prescreening of registries
6 specified by the secretary by rule and a fingerprint-based search
7 of state and federal criminal history record information.

8 (3) “Covered contractor” means an individual or entity,
9 including their employees and subcontractors, that contracts with
10 a covered provider to perform services that include any direct
11 access services.

12 (4) “Covered provider” means the following facilities or
13 providers:

14 (i) A skilled nursing facility;

15 (ii) A nursing facility;

16 (iii) A home health agency;

17 (iv) A provider of hospice care;

18 (v) A long-term care hospital;

19 (vi) A provider of personal care services;

20 (vii) A provider of adult day care;

21 (viii) A residential care provider that arranges for, or directly
22 provides, long-term care services, including an assisted living
23 facility;

24 (ix) An intermediate care facility for individuals with
25 intellectual disabilities; and

26 (x) Any other facility or provider required to participate in
27 the West Virginia Clearance for Access: Registry and

28 Employment Screening program as determined by the secretary
29 by legislative rule.

30 (5) “Department” means the Department of Health and
31 Human Resources. (6) “Direct access” means physical contact
32 with a resident, member, beneficiary or client of a covered
33 provider, or access to their property, personally identifiable
34 information, protected health information or financial
35 information.

36 (7) “Direct access personnel” means an individual who has
37 direct access by virtue of ownership, employment, engagement
38 or agreement with a covered provider or covered contractor.
39 Direct access personnel does not include volunteers or students
40 performing irregular or supervised functions or contractors
41 performing repairs, deliveries, installations or similar services
42 for the covered provider. The secretary shall determine by
43 legislative rule whether the position in question involves direct
44 access.

45 (8) “Disqualifying offense” means:

46 (A) A conviction of any crime described in 42 U. S. C.
47 §1320a-7(a); or

48 (B) A conviction of any other crime specified by the
49 secretary in rule, which shall include crimes against care-
50 dependent or vulnerable individuals, crimes of violence, sexual
51 offenses and financial crimes.

52 (9) “Negative finding” means a finding in the prescreening
53 that excludes an applicant from direct access personnel positions.

54 (10) “Notice of ineligibility” means a notice pursuant to
55 section three of this article that the secretary’s review of the
56 applicant’s criminal history record information reveals a
57 disqualifying offense.

58 (11) “Prescreening” means a mandatory search of databases
59 and registries specified by the secretary in legislative rule for
60 exclusions and licensure status prior to the submission of
61 fingerprints for a criminal history record information check.

62 (12) “Rap back” means the notification to the department
63 when an individual who has undergone a fingerprint-based, state
64 or federal criminal history record information check has a
65 subsequent state or federal criminal history event.

66 (13) “Secretary” means the Secretary of the West Virginia
67 Department of Health and Human Resources, or his or her
68 designee.

69 (14) “State Police” means the West Virginia State Police
70 Criminal Identification Bureau.

§16-49-2. Background check program for covered providers and covered contractors.

1 (a) The secretary shall create and implement a background
2 check program to facilitate the processing and analysis of the
3 criminal history and background of applicants to covered
4 providers and covered contractors with direct access. This
5 program shall be called the West Virginia Clearance for Access:
6 Registry and Employment Screening.

7 (b) The purpose of the program is to protect West Virginia’s
8 vulnerable populations by requiring registry and criminal
9 background checks for all direct access personnel of covered
10 providers and covered contractors.

11 (c) The program shall include:

12 (1) A centralized Internet-based system of registries to allow
13 covered providers and covered contractors to perform a
14 mandatory prescreening of applicants;

15 (2) Fingerprint-based state and federal criminal background
16 checks on all direct access personnel; and

17 (3) An integrated Rap Back Program with the State Police to
18 allow retention of fingerprints and updates of state and federal
19 criminal information on all direct access personnel until such
20 time as the individual is no longer employed or engaged by the
21 covered provider or covered contractor.

22 (d) The department shall notify applicants subject to a
23 criminal history record check that their fingerprints shall be
24 retained by the State Police Criminal Identification Bureau and
25 the Federal Bureau of Investigation.

§16-49-3. Prescreening and criminal background checks.

1 (a) Except as otherwise permitted in this article, the covered
2 provider or covered contractor may not employ or engage an
3 applicant prior to completing the background check process.

4 (b) If the applicant has a negative finding on any required
5 prescreening registry or database, the employer shall notify the
6 individual of such finding.

7 (c) If the applicant has a negative finding on any required
8 prescreening registry or database, that individual may not
9 immediately be engaged by a covered provider or covered
10 contractor. However, that individual or the employer may apply
11 for a variance pursuant to section five of this article.

12 (d) If the applicant does not have a negative finding in the
13 prescreening process, the applicant shall submit to fingerprinting
14 for a state and federal criminal history record information check.

15 (e) The State Police shall notify the secretary of the results
16 of the criminal history record information check.

17 (f) If the secretary's review of the criminal history record
18 information reveals that the applicant does not have a

19 disqualifying offense, the secretary shall provide written notice
20 to the covered provider or covered contractor that the individual
21 may be engaged.

§16-49-4. Notice of ineligibility; prohibited participation as direct access personnel.

1 (a) If the secretary's review of the applicant's criminal
2 history record information reveals a disqualifying offense, the
3 secretary shall provide written notice to the covered provider or
4 covered contractor advising that the applicant is ineligible for
5 work. The secretary may not disseminate the criminal history
6 record information.

7 (b) The covered provider or covered contractor may not
8 engage an applicant with a disqualifying offense as direct access
9 personnel. If the applicant has been provisionally employed
10 pursuant to section six of this article, the employer shall
11 terminate the provisional employment upon receipt of the notice.

§16-49-5. Variance; appeals.

1 (a) If the prescreening process reveals a negative finding, or
2 if the secretary issues a notice of ineligibility, the applicant, or
3 the employer on the applicant's behalf, may file a written request
4 for a variance with the secretary not later than thirty days after
5 the date of the notice required by sections three or four of this
6 article.

7 (b) The secretary may grant a variance if:

8 (1) Mitigating circumstances surrounding the negative
9 finding or disqualifying offense is provided; and

10 (2) The secretary finds that the individual will not pose a
11 danger or threat to residents, members and their property.

12 (c) The secretary shall establish in legislative rule factors
13 that qualify as mitigating circumstances.

14 (d) The secretary shall mail to the applicant and the covered
15 provider or covered contractor a written decision within ninety
16 days of receipt of the request indicating whether a variance has
17 been granted or denied.

18 (e) If an applicant believes that their criminal history record
19 information within this state is incorrect or incomplete, they may
20 challenge the accuracy of such information by writing to the
21 State Police for a personal review. However, if the discrepancies
22 are at the charge or final disposition level, the applicant must
23 address this with the court or arresting agency that submitted the
24 record to the State Police.

25 (f) If an applicant believes that their criminal history record
26 information outside this state is incorrect or incomplete, they
27 may appeal the accuracy of such information by contacting the
28 Federal Bureau of Investigation for instructions.

29 (g) If any changes, corrections, or updates are made in the
30 criminal history record information, the State Police shall notify
31 the secretary that the applicant has appealed the accuracy of the
32 criminal history records and provide the secretary with the
33 updated results of the criminal history record information check,
34 which the secretary shall review de novo in accordance with the
35 provisions of this article.

§16-49-6. Provisional employment pending completion of background check.

1 (a) A covered provider or covered contractor may permit an
2 applicant to work on a provisional basis for not more than sixty
3 days pending notification from the secretary regarding the results
4 of the criminal background check if:

5 (1) The applicant is subject to direct on-site supervision, as
6 specified in rule by the secretary, during the course of the
7 provisional period; and

8 (2) In a signed statement the applicant:

9 (A) Affirms that he or she has not committed a disqualifying
10 offense;

11 (B) Acknowledges that a disqualifying offense reported in
12 the required criminal history record information check shall
13 constitute good cause for termination; and

14 (C) Acknowledges that the covered provider or covered
15 contractor may terminate the individual if a disqualifying offense
16 is reported in the background check.

17 (b) Provisional employees who have requested a variance
18 shall not be required to sign such a statement. A covered
19 provider or covered contractor may continue to employ an
20 applicant if an applicant applies for a variance of his or her
21 fitness determination until the variance is resolved.

§16-49-7. Clearance for subsequent employment.

1 (a) An applicant is not required to submit to fingerprinting
2 and a criminal background check if:

3 (1) The individual previously submitted to fingerprinting and
4 a full criminal background check as required by this article;

5 (2) The prior criminal background check confirmed that the
6 individual did not have a disqualifying offense or the individual
7 received prior approval from the secretary to work for or with
8 the same type of covered provider or covered contractor; and

9 (3) The Rap Back Program has not identified any criminal
10 activity that constitutes a disqualifying offense.

11 (b) The secretary shall provide notice of prior clearance for
12 direct access status upon request by a subsequent covered
13 provider or covered contractor.

§16-49-8. Fees.

1 In order to enforce the requirements and intent of this article,
2 the following fees may be charged:

3 (1) The State Police may assess a fee to applicants, covered
4 providers or covered contractors for conducting the criminal
5 background check and for collecting and retaining fingerprints
6 for Rap Back as authorized under this article.

7 (2) The secretary may assess a fee to applicants, covered
8 providers or covered contractors for the maintenance of the
9 Internet-based system required by this article. The assessment
10 shall be deposited into a special revenue account within the State
11 Treasurer's office to be known as the DHHR Criminal
12 Background Administration Account. Expenditures from the
13 account shall be made by the secretary for purposes set forth in
14 this article and are authorized from collections. The account
15 shall be administered by the secretary and may not be deemed a
16 part of the general revenue of the state.

§16-49-9. Rules; penalties; confidentiality; immunity.

1 (a) The secretary shall propose rules for legislative approval
2 in accordance with article three, chapter twenty-nine-a of this
3 code to implement the provisions of this article. The secretary
4 may promulgate emergency rules, if justified, pursuant to section
5 fifteen, article three, chapter twenty-nine-a of this code as may
6 be required.

7 (b) Failure of a covered provider or covered contractor to
8 ensure proper completion of the background check process for
9 each individual employed as direct access personnel may result
10 in the imposition of monetary civil penalties. In addition,
11 engaging individuals knowing that they are ineligible to work
12 may subject the employer to monetary civil penalties.

13 (c) The secretary shall treat and maintain any criminal
14 background search information obtained under this article as
15 confidential. The secretary shall limit the use of records solely
16 to the purposes authorized in this article. The criminal history
17 record information in the custody of the secretary is not subject
18 to subpoena, other than one issued in a criminal action or
19 investigation; is confidential by law and privileged; and is not
20 subject to discovery or admissible in evidence in any private
21 civil action.

22 (d) The secretary, the department and its employees are
23 immune from liability, civil or criminal, that might otherwise be
24 incurred or imposed for good faith conduct in determining
25 eligibility or granting variances permitted by this article.

CHAPTER 120

**(Com. Sub. for H. B. 2999 - By Delegate(s) Miller,
Hicks, Hornbuckle, Reynolds, Rohrbach, Rodighiero, Perdue,
Campbell, Sobonya, Pushkin and Frich)**

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f; to amend said code by adding thereto a new article, designated §16-2N-1, §16-2N-2 and §16-2N-3, all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate and emergency rules; requiring the rules to set out a licensing procedure by July 1, 2015; requiring the rules to set minimum standards of operation for neonatal abstinence centers; clarifying

that the provision of the rules on relate to specified facilities; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

Be it enacted by the Legislature of West Virginia:

That §16-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §16-2D-5f; and that said code be amended by adding thereto a new article, designated §16-2N-1, §16-2N-2 and §16-2N-3, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of need
2 program as provided by this article.

3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state and
5 for amending and modifying the state health plan which includes
6 the certificate of need standards. The state agency shall review
7 the state health plan, including the certificate of need standards
8 and make any necessary amendments and modifications. The
9 state agency shall also review the cost effectiveness of the
10 certificate of need program. The state agency may form task
11 forces to assist it in addressing these issues. The task forces shall
12 be composed of representatives of consumers, business,
13 providers, payers and state agencies.

14 (c) The state agency may seek advice and assistance of other
15 persons, organizations and other state agencies in the
16 performance of the state agency's responsibilities under this
17 article.

18 (d) For health services for which competition appropriately
19 allocates supply consistent with the state health plan, the state
20 agency shall, in the performance of its functions under this
21 article, give priority, where appropriate to advance the purposes
22 of quality assurance, cost effectiveness and access, to actions
23 which would strengthen the effect of competition on the supply
24 of the services.

25 (e) For health services for which competition does not or
26 will not appropriately allocate supply consistent with the state
27 health plan, the state agency shall, in the exercise of its functions
28 under this article, take actions, where appropriate to advance the
29 purposes of quality assurance, cost effectiveness and access and
30 the other purposes of this article, to allocate the supply of the
31 services.

32 (f) Notwithstanding the provisions of section seven of this
33 article, the state agency may charge a fee for the filing of any
34 application, the filing of any notice in lieu of an application, the
35 filing of any exemption determination request or the filing of any
36 request for a declaratory ruling. The fees charged may vary
37 according to the type of matter involved, the type of health
38 service or facility involved or the amount of capital expenditure
39 involved: *Provided*, That any fee charged pursuant to this
40 subsection may not exceed a dollar amount to be established by
41 procedural rule. The state agency shall evaluate and amend any
42 procedural rule promulgated prior to the amendments to this
43 subsection made during the 2009 regular session of the
44 Legislature. The fees charged shall be deposited into a special
45 fund known as the Certificate of Need Program Fund to be
46 expended for the purposes of this article.

47 (g) A hospital, nursing home or other health care facility
48 may not add any intermediate care or skilled nursing beds to its
49 current licensed bed complement. This prohibition also applies
50 to the conversion of acute care or other types of beds to
51 intermediate care or skilled nursing beds: *Provided*, That
52 hospitals eligible under the provisions of section four-a of this
53 article and subsection (i) of this section may convert acute care
54 beds to skilled nursing beds in accordance with the provisions of
55 these sections, upon approval by the state agency. Furthermore,
56 a certificate of need may not be granted for the construction or
57 addition of any intermediate care or skilled nursing beds except
58 in the case of facilities designed to replace existing beds in
59 unsafe existing facilities. A health care facility in receipt of a
60 certificate of need for the construction or addition of
61 intermediate care or skilled nursing beds which was approved
62 prior to the effective date of this section shall incur an obligation
63 for a capital expenditure within twelve months of the date of
64 issuance of the certificate of need. Extensions may not be
65 granted beyond the twelve-month period. The state agency shall
66 establish a task force or utilize an existing task force to study the
67 need for additional nursing facility beds in this state. The study
68 shall include a review of the current moratorium on the
69 development of nursing facility beds; the exemption for the
70 conversion of acute care beds to skilled nursing facility beds; the
71 development of a methodology to assess the need for additional
72 nursing facility beds; and certification of new beds both by
73 Medicare and Medicaid. The task force shall be composed of
74 representatives of consumers, business, providers, payers and
75 government agencies.

76 (h) No additional intermediate care facility for individuals
77 with an intellectual disability (ICF/ ID) beds may be granted a
78 certificate of need, except that prohibition does not apply to
79 ICF/MR beds approved under the Kanawha County circuit court
80 order of August 3, 1989, civil action number MISC-81-585

81 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d
82 232 (1981).

83 (i) Notwithstanding the provisions of subsection (g) of this
84 section and further notwithstanding the provisions of subsection
85 (b), section three of this article, an existing acute care hospital
86 may apply to the Health Care Authority for a certificate of need
87 to convert acute care beds to skilled nursing beds: *Provided*,
88 That the proposed skilled nursing beds are Medicare- certified
89 only: *Provided, however*, That any hospital which converts acute
90 care beds to Medicare- certified only skilled nursing beds shall
91 not bill for any Medicaid reimbursement for any converted beds.
92 In converting beds, the hospital shall convert a minimum of one
93 acute care bed into one Medicare- certified only skilled nursing
94 bed. The Health Care Authority may require a hospital to convert
95 up to and including three acute care beds for each Medicare
96 certified only skilled nursing bed: *Provided further*, That a
97 hospital designated or provisionally designated by the state
98 agency as a rural primary care hospital may convert up to thirty
99 beds to a distinct-part nursing facility, including skilled nursing
100 beds and intermediate care beds, on a one-for-one basis if the
101 rural primary care hospital is located in a county without a
102 certified freestanding nursing facility and the hospital may bill
103 for Medicaid reimbursement for the converted beds: *And*
104 *provided further*, That if the hospital rejects the designation as
105 a rural primary care hospital, then the hospital may not bill for
106 Medicaid reimbursement. The Health Care Authority shall adopt
107 rules to implement this subsection which require that:

108 (1) All acute care beds converted shall be permanently
109 deleted from the hospital's acute care bed complement and the
110 hospital may not thereafter add, by conversion or otherwise,
111 acute care beds to its bed complement without satisfying the
112 requirements of subsection (b), section three of this article for
113 which purposes an addition, whether by conversion or otherwise,
114 shall be considered a substantial change to the bed capacity of

115 the hospital notwithstanding the definition of that term found in
116 subsection (ff), section two of this article.

117 (2) The hospital shall meet all federal and state licensing
118 certification and operational requirements applicable to nursing
119 homes including a requirement that all skilled care beds created
120 under this subsection shall be located in distinct-part, long-term
121 care units.

122 (3) The hospital shall demonstrate a need for the project.

123 (4) The hospital shall use existing space for the Medicare-
124 certified only skilled nursing beds. Under no circumstances shall
125 the hospital construct, lease or acquire additional space for
126 purposes of this section.

127 (5) The hospital shall notify the acute care patient, prior to
128 discharge, of facilities with skilled nursing beds which are
129 located in or near the patient's county of residence. Nothing in
130 this subsection negatively affects the rights of inspection and
131 certification which are otherwise required by federal law or
132 regulations or by this code or duly adopted rules of an authorized
133 state entity.

134 (j) (1) Notwithstanding the provisions of subsection (g) of
135 this section, a retirement life care center with no skilled nursing
136 beds may apply to the Health Care Authority for a certificate of
137 need for up to sixty skilled nursing beds provided the proposed
138 skilled beds are Medicare-certified only. On a statewide basis, a
139 maximum of one hundred eighty skilled beds which are
140 Medicare-certified only may be developed pursuant to this
141 subsection. The state health plan is not applicable to projects
142 submitted under this subsection. The Health Care Authority shall
143 adopt rules to implement this subsection which shall include a
144 requirement that:

145 (A) The one hundred eighty beds are to be distributed on a
146 statewide basis;

147 (B) There be a minimum of twenty beds and a maximum of
148 sixty beds in each approved unit;

149 (C) The unit developed by the retirement life care center
150 meets all federal and state licensing certification and operational
151 requirements applicable to nursing homes;

152 (D) The retirement center demonstrates a need for the
153 project;

154 (E) The retirement center offers personal care, home health
155 services and other lower levels of care to its residents; and

156 (F) The retirement center demonstrates both short- and
157 long-term financial feasibility.

158 (2) Nothing in this subsection negatively affects the rights of
159 inspection and certification which are otherwise required by
160 federal law or regulations or by this code or duly adopted rules
161 of an authorized state entity.

162 (k) The state agency may order a moratorium upon the
163 offering or development of a new institutional health service
164 when criteria and guidelines for evaluating the need for the new
165 institutional health service have not yet been adopted or are
166 obsolete. The state agency may also order a moratorium on the
167 offering or development of a health service, notwithstanding the
168 provisions of subdivision (5), subsection (b), section three of this
169 article, when it determines that the proliferation of the service
170 may cause an adverse impact on the cost of health care or the
171 health status of the public. A moratorium shall be declared by a
172 written order which shall detail the circumstances requiring the
173 moratorium. Upon the adoption of criteria for evaluating the
174 need for the health service affected by the moratorium, or one

175 hundred eighty days from the declaration of a moratorium,
176 whichever is less, the moratorium shall be declared to be over
177 and applications for certificates of need are processed pursuant
178 to section six of this article: *Provided*, That the state agency may
179 not order a moratorium upon the offering or development of
180 skilled nursing facilities providing services for the treatment of
181 children under one year of age suffering from Neonatal
182 Abstinence Syndrome.

183 (1) (1) The state agency shall coordinate the collection of
184 information needed to allow the state agency to develop
185 recommended modifications to certificate of need standards as
186 required in this article. When the state agency proposes
187 amendments or modifications to the certificate of need
188 standards, it shall file with the Secretary of State, for publication
189 in the State Register, a notice of proposed action, including the
190 text of all proposed amendments and modifications, and a date,
191 time and place for receipt of general public comment. To comply
192 with the public comment requirement of this section, the state
193 agency may hold a public hearing or schedule a public comment
194 period for the receipt of written statements or documents.

195 (2) When amending and modifying the certificate of need
196 standards, the state agency shall identify relevant criteria
197 contained in section six of this article or rules adopted pursuant
198 to section eight of this article and apply those relevant criteria to
199 the proposed new institutional health service in a manner that
200 promotes the public policy goals and legislative findings
201 contained in section one of this article. In doing so, the state
202 agency may consult with or rely upon learned treatises in health
203 planning, recommendations and practices of other health
204 planning agencies and organizations, recommendations from
205 consumers, recommendations from health care providers,
206 recommendations from third-party payors, materials reflecting
207 the standard of care, the state agency's own developed expertise
208 in health planning, data accumulated by the state agency or other

209 local, state or federal agency or organization and any other
210 source deemed relevant to the certificate of need standards
211 proposed for amendment or modification.

212 (3) All proposed amendments and modifications to the
213 certificate of need standards, with a record of the public hearing
214 or written statements and documents received pursuant to a
215 public comment period, shall be presented to the Governor.
216 Within thirty days of receiving the proposed amendments or
217 modifications, the Governor shall either approve or disapprove
218 all or part of the amendments and modifications and, for any
219 portion of amendments or modifications not approved, shall
220 specify the reason or reasons for nonapproval. Any portions of
221 the amendments or modifications not approved by the Governor
222 may be revised and resubmitted.

223 (4) The certificate of need standards adopted pursuant to this
224 section which are applicable to the provisions of this article are
225 not subject to article three, chapter twenty-nine-a of this code.
226 The state agency shall follow the provisions set forth in this
227 subsection for giving notice to the public of its actions, holding
228 hearings or receiving comments on the certificate of need
229 standards. The certificate of need standards in effect on
230 November 29, 2005, and all prior versions promulgated and
231 adopted in accordance with the provisions of this section are and
232 have been in full force and effect from each of their respective
233 dates of approval by the Governor.

234 (m) The state agency may exempt from or expedite rate
235 review, certificate of need and annual assessment requirements
236 and issue grants and loans to financially vulnerable health care
237 facilities located in underserved areas that the state agency and
238 the Office of Community and Rural Health Services determine
239 are collaborating with other providers in the service area to
240 provide cost effective health care services.

§16-2D-5f. Exception for facilities treating infants with Neonatal Abstinence Syndrome.

1 (a) Notwithstanding any other provision of this code, the
2 establishment or offering of a skilled nursing facility providing
3 skilled nursing services for children under one year of age
4 suffering from Neonatal Abstinence Syndrome shall be exempt
5 from the nursing home bed moratorium pursuant to subsection
6 (g), section five of this article and any other moratoriums
7 contained in this code or ordered by the state agency.

8 (b) Any facility or services developed and offered pursuant
9 to this section shall be subject to all certificate of need laws and
10 rules as they pertain to any transactions subsequent to the
11 development and commencement of operation of such skilled
12 nursing facility.

ARTICLE 2N. NEONATAL ABSTINENCE CENTERS.

§16-2N-1. Neonatal Abstinence Centers authorized; licensure required.

1 Neonatal abstinence centers are a distinct type of medical
2 facility, providing unique medical services in the state. Neonatal
3 abstinence centers may provide treatment for infants under one
4 year of age suffering from Neonatal Abstinence Syndrome,
5 including, but not limited to, the following services:

- 6 (1) Administration of medications;
- 7 (2) Pain management;
- 8 (3) Scoring, analysis and monitoring of symptoms;
- 9 (4) Nursing care;
- 10 (5) Plan of care;

- 11 (6) Therapeutic handling;
- 12 (7) Nutrition management;
- 13 (8) Doctor visits; and
- 14 (9) Parental training.

§16-2N-2. Rules; minimum standards for neonatal abstinence centers.

1 (a) The secretary shall promulgate emergency rules pursuant
2 to the provisions of section fifteen, article three, chapter twenty-
3 two of this code to carry out the purpose of this article. These
4 rules shall include at a minimum:

5 (1) Licensing procedures for neonatal abstinence centers.
6 These procedures shall be in place by July 1, 2015;

7 (2) The minimum standards of operation for neonatal
8 abstinence facilities including the following:

9 (A) Minimum numbers of administrators, medical directors,
10 nurses, aides and other personnel according to the occupancy of
11 the facility;

12 (B) Qualifications of facility's administrators, medical
13 directors, nurses, aides and other personnel;

14 (C) Safety requirements;

15 (D) Sanitation requirements;

16 (E) Therapeutic services to be provided;

17 (F) Medical records;

18 (G) Pharmacy services;

19 (H) Nursing services;

20 (I) Medical services;

21 (J) Physical facility;

22 (K) Visitation privileges; and

23 (L) Admission, transfer and discharge policies.

24 (b) The provisions of the rules promulgated pursuant to this
25 section shall apply only to those facilities regulated pursuant to
26 section five, article two-d of this chapter and shall not apply to
27 a hospital-based acute care unit.

§16-2N-3. Certificate of need; exemption from moratorium.

1 Notwithstanding any other provision of this code, the Health
2 Care Authority shall consider neonatal abstinence services
3 provided in neonatal abstinence care centers as a unique and
4 distinct medical service in conducting a certificate of need
5 review.

CHAPTER 121

(Com. Sub. for S. B. 60 - By Senators Williams and Sypolt)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2-16, relating to the regulation of food handlers; permitting the issuance of a food handler's card; permitting the issuance of the food handler's

permit; requiring a food handler's card to be valid for a certain time frame; requiring a food handler's permit to be valid for a certain time frame; permitting the food handler's card to be valid in all counties subject to payment of an additional fee; permitting the food handler's permit to be valid in all counties subject to payment of an additional fee; requiring a food handler's card to be obtained within thirty days of being hired; requiring a food handler's permit to be obtained within thirty days of being hired; requiring the Bureau for Public Health to develop minimum training guidelines; permitting a local health department to adopt certain training programs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-2-16, to read as follows:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-16. Food handler examinations and cards.

1 A food handler permit or card issued pursuant to the
2 procedures put in place by a local county health department shall
3 be valid for at least one year but not longer than three years. The
4 permit or card shall be valid in all counties of this state, if the
5 applicant pays an additional fee not to exceed \$10. If required,
6 a permit or card shall be obtained within thirty days of a person
7 being hired in a restaurant or other applicable food
8 establishment. The Bureau for Public Health shall develop
9 minimum guidelines for training programs for individuals
10 seeking a food handler permit or card that may be adopted by
11 local county health departments. In lieu of state guidelines a
12 local health department may use training courses developed by
13 the American National Standards Institute or other nationally
14 recognized entities for food safety training.

CHAPTER 122

(H. B. 2669 - By Delegate(s) Ellington, Householder and Pasdon)

[Passed February 25, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §16-3D-2 and §16-3D-3 of the Code of West Virginia, 1931, as amended, all relating to compulsory tuberculosis testing; defining terms; removing requirement for compulsory tuberculosis testing for school children transferring from outside this state; removing the requirement for recording test results, immediate evaluations by a physician of positive reactors, and X rays upon a positive test; omitting the requirement for all school personnel to have one tuberculin test at the time of employment; and eliminating the requirement that local health officers be responsible for arranging follow-up of school personnel and students who are not able to get a physician evaluation for a positive tuberculin skin test.

Be it enacted by the Legislature of West Virginia:

That §16-3D-2 and §16-3D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-2. Definitions.

- 1 As used in this article:
- 2 (1) “Active Tuberculosis” or “Tuberculosis” means a
- 3 communicable disease caused by the bacteria, Mycobacterium
- 4 tuberculosis, which is demonstrated by clinical, bacteriological,

5 radiographic or epidemiological evidence. An infected person
6 whose tuberculosis has progressed to active disease may
7 experience symptoms such as coughing, fever, fatigue, loss of
8 appetite and weight loss and is capable of spreading the disease
9 to others if the tuberculosis germs are active in the lungs or
10 throat.

11 (2) “Bureau” means the Bureau for Public Health in the
12 Department of Health and Human Resources;

13 (3) “Commissioner” means the Commissioner of the Bureau
14 for Public Health, who is the state health officer;

15 (4) “Local board of health,” “local board” or “board” means
16 a board of health serving one or more counties or one or more
17 municipalities or a combination thereof;

18 (5) “Local health department” means the staff of the local
19 board of health; and

20 (6) “Local health officer” means the individual physician
21 with a current West Virginia license to practice medicine who
22 supervises and directs the activities of the local health
23 department services, staff and facilities and is appointed by the
24 local board of health with approval by the commissioner.

25 (7) “Tuberculosis suspect” means a person who is suspected
26 of having tuberculosis disease due to any or all of the following
27 medical factors: the presence of symptoms, the result of a
28 positive skin test, risk factors for tuberculosis, or findings on an
29 abnormal chest x ray, during the time period when an active
30 tuberculosis disease diagnosis is pending.

**§16-3D-3. Compulsory testing for tuberculosis of school children
and school personnel; commissioner to approve the
test; X rays required for reactors; suspension from
school or employment for pupils and personnel found
to have tuberculosis.**

1 (a) Pupils found or suspected to have active tuberculosis
2 shall be temporarily removed from school while their case is
3 reviewed and evaluated by their personal physician and the local
4 health officer. Pupils shall return to school when their personal
5 physician and the local health officer, in consultation with the
6 commissioner, indicate that it is safe and appropriate for them to
7 return.

8 (b) School personnel found or suspected to have active
9 tuberculosis shall have their employment suspended until the
10 local health officer, in consultation with the commissioner,
11 approves a return to work.

12 (c) The commissioner may require selective testing of
13 students and school personnel for tuberculosis when there is
14 reason to believe that they may have been exposed to the
15 tuberculosis organism or they have signs and symptoms
16 indicative of the disease. School nurses shall identify and refer
17 any students or school personnel to the local health department
18 in instances where they have reason to suspect that the individual
19 has been exposed to tuberculosis or has symptoms indicative of
20 the disease.

CHAPTER 123

**(Com. Sub. for S. B. 286 - By Senators Ferns, Trump,
D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes)**

[Amended and again passed March 18, 2015, as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, all relating generally to mandatory immunizations; adding required immunizations;

requiring immunizations in public, private and parochial schools; requiring immunizations in state-regulated day care centers; providing medical exemptions from mandatory immunizations for children; allowing for provisional enrollment; requiring parents and guardians to provide a certificate from the Commissioner of the Bureau for Public Health; providing that certificate be provided before exemption applies; requiring that a request for a medical exemption must be accompanied with a certificate from a licensed physician indicating immunization is medically contraindicated; providing that county health departments shall provide immunizations when families attest they cannot afford them; allowing Commissioner of the Bureau for Public Health to grant, renew, condition, deny, suspend or revoke exemptions when not medically indicated; allowing for appointment by Commissioner of the Bureau for Public Health of an immunization officer who must be a physician; allowing for immunization officer to make determinations regarding exemptions; providing for an appeal procedure for determinations by the immunization officer or the state health officer; modifying Immunization Advisory Committee; establishing a chair of the committee; and setting forth ethical limitations for committee members.

Be it enacted by the Legislature of West Virginia:

That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3. PREVENTION AND CONTROL OF
COMMUNICABLE AND OTHER
INFECTIOUS DISEASES.**

**§16-3-4. Compulsory immunization of school children;
information disseminated; offenses; penalties.**

- 1 (a) Whenever a resident birth occurs, the commissioner shall
- 2 promptly provide parents of the newborn child with information
- 3 on immunizations mandated by this state or required for

4 admission to a public, private and parochial school in this state
5 or a state-regulated child care center.

6 (b) Except as hereinafter provided, a child entering school or
7 a state-regulated child care center in this state must be
8 immunized against chickenpox, hepatitis-b, measles, meningitis,
9 mumps, diphtheria, polio, rubella, tetanus and whooping cough.

10 (c) No child or person may be admitted or received in any of
11 the schools of the state or a state-regulated child care center until
12 he or she has been immunized against chickenpox, hepatitis-b,
13 measles, meningitis, mumps, diphtheria, polio., rubella, tetanus
14 and whooping cough or produces a certificate from the
15 commissioner granting the child or person an exemption from
16 the compulsory immunization requirements of this section.

17 (d) Any school or state-regulated child care center personnel
18 having information concerning any person who attempts to be
19 enrolled in a school or state-regulated child care center without
20 having been immunized against chickenpox, hepatitis-b,
21 measles, meningitis, mumps, diphtheria, polio, rubella, tetanus
22 and whooping cough shall report the names of all such persons
23 to the commissioner.

24 (e) Persons may be provisionally enrolled under minimum
25 criteria established by the commissioner so that the person's
26 immunization may be completed while missing a minimum
27 amount of school. No person shall be allowed to enter school
28 without at least one dose of each required vaccine.

29 (f) County health departments shall furnish the biologicals
30 for this immunization for children of parents or guardians who
31 attest that they cannot afford or otherwise access vaccines
32 elsewhere.

33 (g) Health officers and physicians who provide vaccinations
34 must present the person vaccinated with a certificate free of

35 charge showing that they have been immunized against
36 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria,
37 polio, rubella, tetanus and whooping cough, or he or she may
38 give the certificate to any person or child whom he or she knows
39 to have been immunized against chickenpox, hepatitis-b,
40 measles, meningitis, mumps, diphtheria, polio, rubella, tetanus
41 and whooping cough.

42 (h) The commissioner is authorized to grant, renew,
43 condition, deny, suspend or revoke exemptions to the
44 compulsory immunization requirements of this section, on a
45 statewide basis, upon sufficient medical evidence that
46 immunization is contraindicated or there exists a specific
47 precaution to a particular vaccine.

48 (1) A request for an exemption to the compulsory
49 immunization requirements of this section must be accompanied
50 by the certification of a licensed physician stating that the
51 physical condition of the child is such that immunization is
52 contraindicated or there exists a specific precaution to a
53 particular vaccine.

54 (2) The commissioner is authorized to appoint and employ
55 an Immunization Officer to make determinations on request for
56 an exemption to the compulsory immunization requirements of
57 this section, on a statewide basis, and delegate to the
58 Immunization Officer the authority granted to the commissioner
59 by this subsection.

60 (3) A person appointed and employed as the Immunization
61 Officer must be a physician licensed under the laws of this state
62 to practice medicine.

63 (4) The Immunization Officer's decision on a request for an
64 exemption to the compulsory immunization requirements of this
65 section may be appealed to the State Health Officer.

66 (5) The final determination of the State Health Officer is
67 subject to a right of appeal pursuant to the provisions of article
68 five, chapter twenty-nine a of this code.

69 (i) A physician who provides any person with a false
70 certificate of immunization against chickenpox, hepatitis-b,
71 measles, meningitis, mumps, diphtheria, polio., rubella, tetanus
72 and whooping cough is guilty of a misdemeanor and, upon
73 conviction, shall be fined not less than \$25 nor more than \$100.

§16-3-5. Distribution of free vaccine preventives of disease.

1 (a) *Declaration of legislative findings and purpose.* — The
2 Legislature finds and declares that early immunization for
3 preventable diseases represents one of the most cost-effective
4 means of disease prevention. The savings which can be realized
5 from immunization, compared to the cost of health care
6 necessary to treat the illness and lost productivity, are
7 substantial. Immunization of children at an early age serves as a
8 preventive measure both in time and money and is essential to
9 maintain our children's health and well-being. The costs of
10 childhood immunizations should not be allowed to preclude the
11 benefits available from a comprehensive, medically supervised
12 child immunization service.

13 (b) The Commissioner of the Bureau for Public Health shall
14 acquire vaccine for the prevention of polio, measles, meningitis,
15 mumps, rubella, chickenpox, diphtheria, pertussis, tetanus,
16 hepatitis-b, haemophilus influenzae-b and other vaccine
17 preventable diseases as considered necessary or required by law
18 and shall distribute the same, free of charge, in quantities he or
19 she considers necessary, to public and private providers, to be
20 used by them for the benefit of citizens to check contagions and
21 control epidemics.

22 (c) The Commissioner of the Bureau for Public Health,
23 through the immunization program, has the responsibility to

24 ensure the distribution, free of charge, of federally supplied
25 vaccines to public and private providers to be used to check
26 contagions and control epidemics: *Provided*, That the public and
27 private providers may not make a charge for the vaccine itself
28 when administering it to a patient. The Commissioner of the
29 Bureau for Public Health, through the immunization program,
30 shall keep an accurate record of any vaccine delivered as
31 provided in this section.

32 (d) The commissioner is charged with establishing an
33 Immunization Advisory Committee. The advisory committee is
34 to make recommendations on the distribution of vaccines
35 acquired pursuant to this section, advise the secretary on the
36 changing needs and opportunities for immunization from known
37 diseases for all persons across their life span and track
38 immunization compliance in accordance with federal and state
39 laws. Members of the Immunization Advisory Committee shall
40 be designated and appointed by the commissioner no later than
41 July 1, 2015. The advisory committee shall be comprised of
42 representatives from the following groups: Public health nursing,
43 public health officers, primary health care providers,
44 pediatricians, family practice physicians, health care
45 administrators, pharmacists, the Commissioner of the Bureau for
46 Medical Services, or his or her designee, the health insurance
47 industry, the Director of the Public Employees Insurance
48 Agency, or his or her designee, the self-insured industry and a
49 minimum of three consumers. The state epidemiologist serves as
50 an advisor to the committee. The commissioner, or his or her
51 designee, serves as the chair of the advisory committee.
52 Members of the advisory committee serve four-year terms.

53 (e) An advisory committee member may not participate in a
54 matter involving specific parties that will have a direct and
55 predicable effect on their financial interest. An effect will not be
56 direct in instances where the chain of causation is attenuated or
57 is contingent upon the occurrence of events that are speculative.

58 (f) All health insurance policies and prepaid care policies
59 issued in this state which provide coverage for the children of the
60 insured shall provide coverage for child immunization services
61 to include the cost of the vaccine, if incurred by the health care
62 provider, and all costs of administration from birth through age
63 eighteen years. These services are exempt from any deductible,
64 per-visit charge and/or copayment provisions which may be in
65 force in these policies or contracts. This section does not exempt
66 other health care services provided at the time of immunization
67 from any deductible or copayment provisions.

68 (g) Attending physicians, midwives, nurse practitioners,
69 hospitals, birthing centers, clinics and other appropriate health
70 care providers shall provide parents of newborns and preschool
71 age children with information on the following immunizations:
72 Diphtheria, polio, mumps, meningitis, measles, rubella, tetanus,
73 hepatitis-b, haemophilus influenzae-b, chickenpox and whooping
74 cough. This information should include the availability of free
75 immunization services for children.

CHAPTER 124

**(H. B. 2100 - By Delegate(s) Williams, Campbell,
Ellington, Hamilton, Rowan and Fleischauer)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating to permitting hospital patients to designate a lay caregiver; providing definitions; requiring patient consent; requiring certain notation in

medical records; permitting modifications to the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact a lay caregiver; providing immunity; and prohibiting use of state or federal funds for payment of a lay caregiver.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all to read as follows:

ARTICLE 5X. CAREGIVER ADVISE, RECORD AND ENABLE ACT.

§16-5X-1. Definitions.

1 For purpose of this article:

2 (1) “Aftercare” means any assistance provided by a
3 designated lay caregiver to an individual under this article after
4 the patient’s discharge from a hospital. Assistance may include
5 tasks that are limited to the patient’s condition at the time of
6 discharge that do not require a licensed professional;

7 (2) “Discharge” means a patient’s exit or release from a
8 hospital to the patient’s residence following an inpatient stay;

9 (3) “Hospital” means a facility licensed pursuant to article
10 five-b, chapter sixteen of this code and any acute care facility
11 operated by state government;

12 (4) “Lay caregiver” means any individual eighteen years of
13 age or older designated as a lay caregiver pursuant to the
14 provisions of this article who provides aftercare assistance to a
15 patient in the patient’s residence; and

16 (5) "Residence" means a dwelling considered by a patient to
17 be his or her home, not including a hospital or, a nursing home
18 or group home, as defined by section two, article five-c, chapter
19 sixteen of this code.

§16-5X-2. Caregiver designation.

1 (a) (1) A hospital shall provide a patient or the patient's legal
2 guardian with an opportunity to designate one lay caregiver
3 following the patient's admission into a hospital.

4 (2) If the patient is unconscious or otherwise incapacitated
5 upon admission to the hospital, the hospital shall provide the
6 patient's legal guardian with an opportunity to designate a lay
7 caregiver following the patient's recovery of consciousness or
8 capacity, so long as the designation or lack of a designation does
9 not interfere with, delay or otherwise affect the medical care
10 provided to the patient.

11 (3) If the patient or the patient's legal guardian declines to
12 designate a lay caregiver under this article, the hospital shall
13 promptly document that in the patient's medical record, and the
14 hospital is considered to have complied with the provisions of
15 this article.

16 (4) If the patient or the patient's legal guardian designates an
17 individual as a lay caregiver under this article, the hospital shall
18 promptly request the written consent of the patient or the
19 patient's legal guardian to release medical information to the
20 patient's designated lay caregiver pursuant to the hospital's
21 established procedures for releasing personal health information
22 and in compliance with applicable state and federal law.

23 (5) If the patient or the patient's legal guardian declines to
24 consent to the release of medical information to the patient's
25 designated lay caregiver, the hospital shall promptly document
26 that in the patient's medical record, and the hospital is
27 considered to have complied with the provisions of this article.

28 (6) The hospital shall record the patient's designation of a
29 lay caregiver, the relationship of the lay caregiver to the patient,
30 and the name and contact information of the patient's designated
31 lay caregiver in the patient's medical record.

32 (b) A patient may elect to change his or her designated lay
33 caregiver in the event that the originally designated lay caregiver
34 becomes unavailable, unwilling or unable to care for the patient.

35 (c) Designation of a lay caregiver by a patient or a patient's
36 legal guardian pursuant to the provisions of this article does not
37 obligate any individual to perform any aftercare tasks for the
38 patient.

39 (d) This article does not require a patient or a patient's legal
40 guardian to designate any individual as a lay caregiver as defined
41 by this article.

§16-5X-3. Notification.

1 If a patient has designated a lay caregiver, a hospital shall
2 notify the patient's designated lay caregiver of the patient's
3 discharge to the patient's residence as soon as possible. If the
4 hospital is unable to contact the designated lay caregiver, the
5 lack of contact may not interfere with, delay or otherwise affect
6 the medical care provided to the patient, or an appropriate
7 discharge of the patient. The hospital shall promptly document
8 that in the patient's medical record, and the hospital is
9 considered to have complied with the provisions of this section.

§16-5X-4. Discharge.

1 (a) As soon as possible and, in any event, upon issuance of
2 a discharge order by the patient's attending physician, the
3 hospital shall consult with the designated lay caregiver along
4 with the patient regarding the lay caregiver's capabilities and
5 limitations and issue a discharge plan that describes a patient's

6 after-care needs at his or her residence. At minimum, a discharge
7 plan shall include:

8 (1) The name and contact information of the lay caregiver
9 designated under this article;

10 (2) A description of all after-care tasks necessary to maintain
11 the patient's ability to reside at home, taking into account the
12 capabilities and limitations of the lay caregiver; and

13 (3) Contact information for any health care, community
14 resources and long-term services and supports necessary to
15 successfully carry out the patient's discharge plan.

16 (b) The hospital issuing the discharge plan shall provide the
17 lay caregiver with instruction in all after-care tasks described in
18 the discharge plan. At minimum, the instruction shall include:

19 (1) Education and instruction of the lay caregiver by a
20 hospital employee or individual with whom the hospital has a
21 contractual relationship authorized to perform the after care task
22 in a manner that is consistent with current accepted practices and
23 is based on an assessment of the lay caregiver's learning needs;

24 (2) An opportunity for the lay caregiver and patient to ask
25 questions about the after-care tasks; and

26 (3) Answers to the lay caregiver's and patient's questions
27 provided in a competent manner and in accordance with the
28 hospital's requirements to provide language access services
29 under state and federal law.

30 (c) Any instruction required under this article shall be
31 documented in the patient's medical record, including, at
32 minimum, the date, time, and contents of the instruction.

§16-5X-5. Exceptions and immunity.

1 (a) This article may not be construed to interfere with the
2 rights of a person legally authorized to make health care
3 decisions as provided in article thirty, chapter sixteen of this
4 code.

5 (b) Nothing in this act shall be construed to create a private
6 right of action against a hospital, hospital employee, a duly
7 authorized agent of the hospital or any consultants or contractors
8 with whom the hospital has a contractual relationship.

9 (c) A hospital, a hospital employee or any consultants or
10 contractors with whom a hospital has a contractual relationship
11 shall not be held liable in any way for services rendered or not
12 rendered by the lay caregiver.

§16-5X-6. Funding.

1 State or federal dollars may not be used for payment to any
2 lay caregiver as defined in this article after discharge from a
3 hospital. No state or federal program funding shall be impacted
4 by this article.

CHAPTER 125

**(Com. Sub. for H. B. 2652 - By Delegates Ellington,
Householder, Ashley, Boggs, Folk, Hamilton, Howell,
McGeehan, Storch and Zatezalo)**

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

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §16-29B-8 of the Code of West Virginia, 1931, as amended, relating to annual assessments on

hospitals by the West Virginia Health Care Authority; and changing the basis for the annual assessment.

Be it enacted by the Legislature of West Virginia:

That §16-29B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-8. Powers generally; budget expenses of the board.

1 (a) In addition to the powers granted to the board elsewhere
2 in this article, the board may:

3 (1) Adopt, amend and repeal necessary, appropriate and
4 lawful policy guidelines and rules in accordance with article
5 three, chapter twenty-nine-a of this code: *Provided*, That
6 subsequent amendments and modifications to any rule
7 promulgated pursuant to this article and not exempt from the
8 provisions of article three, chapter twenty-nine-a of this code
9 may be implemented by emergency rule;

10 (2) Hold public hearings, conduct investigations and require
11 the filing of information relating to matters affecting the costs of
12 health care services subject to the provisions of this article and
13 may subpoena witnesses, papers, records, documents and all
14 other data in connection therewith. The board may administer
15 oaths or affirmations in any hearing or investigation;

16 (3) Apply for, receive and accept gifts, payments and other
17 funds and advances from the United States, the state or any other
18 governmental body, agency or agencies or from any other private
19 or public corporation or person (with the exception of hospitals
20 subject to the provisions of this article, or associations
21 representing them, doing business in the state of West Virginia,
22 except in accordance with subsection (c) of this section), and

23 enter into agreements with respect thereto, including the
24 undertaking of studies, plans, demonstrations or projects. Any
25 such gifts or payments that may be received or any such
26 agreements that may be entered into shall be used or formulated
27 only so as to pursue legitimate, lawful purposes of the board, and
28 shall in no respect inure to the private benefit of a board
29 member, staff member, donor or contracting party;

30 (4) Lease, rent, acquire, purchase, own, hold, construct,
31 equip, maintain, operate, sell, encumber and assign rights or
32 dispose of any property, real or personal, consistent with the
33 objectives of the board as set forth in this article: *Provided*, That
34 such acquisition or purchase of real property or construction of
35 facilities shall be consistent with planning by the state building
36 commissioner and subject to the approval of the Legislature;

37 (5) Contract and be contracted with and execute all
38 instruments necessary or convenient in carrying out the board's
39 functions and duties; and

40 (6) Exercise, subject to limitations or restrictions herein
41 imposed, all other powers which are reasonably necessary or
42 essential to effect the express objectives and purposes of this
43 article.

44 (b) The board shall annually prepare a budget for the next
45 fiscal year for submission to the governor and the Legislature
46 which shall include all sums necessary to support the activities
47 of the board and its staff.

48 (c) Each hospital subject to the provisions of this article shall
49 be assessed by the board on a pro rata basis using the net patient
50 revenue, as defined under generally accepted accounting
51 principles, of each hospital as reported under the authority of
52 section eighteen of this article as the measure of the hospital's
53 obligation. The amount of such fee shall be determined by the

54 board except that in no case shall the hospital's obligation
55 exceed one tenth of one percent of its net patient revenue. Such
56 fees shall be paid on or before the first day of July in each year
57 and shall be paid into the state treasury and kept as a special
58 revolving fund designated "health care cost review fund", with
59 the moneys in such fund being expendable after appropriation by
60 the Legislature for purposes consistent with this article. Any
61 balance remaining in said fund at the end of any fiscal year shall
62 not revert to the treasury, but shall remain in said fund and such
63 moneys shall be expendable after appropriation by the
64 Legislature in ensuing fiscal years.

65 (d) Each hospital's assessment shall be treated as an
66 allowable expense by the board.

67 (e) The board is empowered to withhold rate approvals,
68 certificates of need and rural health system loans and grants if
69 any such fees remain unpaid, unless exempted under subsection
70 (g), section four, article two-d of this chapter.

CHAPTER 126

(Com. Sub. for S. B. 336 - By Senators Ferns and Takubo)

[Passed March 11, 2015; in effect from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §16-29B-19 of the Code of West Virginia, 1931, as amended, relating generally to powers and duties of Health Care Authority; and eliminating power of Health Care Authority to apply penalties held in abeyance to any future rate applications filed with the authority.

Be it enacted by the Legislature of West Virginia:

That §16-29B-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-19. Rate-setting powers generally.

1 (a) The board shall have power: (1) To initiate reviews and
2 investigations of hospital rates and establish and approve such
3 rates; (2) to initiate reviews and investigations of hospital rates
4 for specific services and the component factors which determine
5 such rates; (3) to initiate reviews and investigations of hospital
6 budgets and the specific components of such budgets; and (4) to
7 approve or disapprove hospital rates and budgets taking into
8 consideration the criteria set forth in section twenty of this
9 article: *Provided*, That the board may not apply penalties held in
10 abeyance to any future rate applications filed with the authority
11 effective May 31, 2015, forward: *Provided, however*, That the
12 board shall waive all penalties held in abeyance by May 31,
13 2015.

14 (b) In the interest of promoting the most efficient and
15 effective use of hospital service, the board may adopt and
16 approve alternative methods of rate determination. The board
17 may also adopt methods of charges and payments of an
18 experimental nature which are in the public interest and
19 consistent with the purpose of this article.

20 (c) The board shall examine the need for an alternative to the
21 current rate-setting method as a means of controlling hospital
22 costs and submit the findings, recommendations and any
23 proposed drafts of legislation, if necessary, in a report to the
24 Legislative Oversight Commission on Health and Human
25 Resources Accountability and the Governor on or before August
26 1, 1998.

CHAPTER 127

**(Com. Sub. for S. B. 335 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Amended and again passed February 26, 2015, as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on March 9, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and to amend and reenact §30-1-7a of said code, all relating generally to accessing and administering opioid antagonists in overdose situations; defining terms; establishing objectives and purpose; allowing licensed health care providers to prescribe opioid antagonist to initial responders and certain individuals; allowing initial responders to possess and administer opioid antagonists; providing for limited liability for initial responders; providing for limited liability for licensed health care providers who prescribe opioid antagonist in accordance with this article; providing for limited liability for anyone who possesses and administers an opioid antagonist; establishing responsibility of licensed health care providers to provide educational materials on overdose prevention and administration of opioid antagonist; providing for data collection and reporting; providing for training requirements; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and that §30-1-7a of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.****§16-46-1. Purpose and findings.**

1 (a) The purpose of this article is to prevent deaths in
2 circumstances involving individuals who have overdosed on
3 opiates.

4 (b) The Legislature finds that permitting licensed health care
5 providers to prescribe opioid antagonists to initial responders as
6 well as individuals at risk of experiencing an overdose, their
7 relatives, friends or caregivers may prevent accidental deaths as
8 a result of opiate-related overdoses.

§16-46-2. Definitions.

1 As used in this article:

2 (1) “Initial responder” means emergency medical service
3 personnel, as defined in subdivision (g), section three, article
4 four-c of this chapter, including, but not limited to, a member of
5 the West Virginia State Police, a sheriff, a deputy sheriff, a
6 municipal police officer, a volunteer or paid firefighter and any
7 other person acting under color of law who responds to
8 emergencies.

9 (2) “Licensed health care provider” means a person,
10 partnership, corporation, professional limited liability company,
11 health care facility or institution licensed by or certified in this
12 state to provide health care or professional health care services.
13 This includes, but is not limited to, medical physicians,
14 allopathic and osteopathic physicians, pharmacists, physician
15 assistants or osteopathic physician assistants who hold a
16 certificate to prescribe drugs, advanced nurse practitioners who
17 hold a certificate to prescribe drugs, hospitals, emergency
18 service agencies and others as allowed by law to prescribed
19 drugs.

20 (3) “Opiates” or “opioid drugs” means drugs that are
21 members of the natural and synthetic opium family, including,
22 but not limited to, heroin, morphine, codeine, methadone,
23 oxycodone, hydrocodone, fentanyl and hydromorphone.

24 (4) “Opioid antagonist” means a federal Food and Drug
25 Administration-approved drug for the treatment of an opiate-
26 related overdose, such as naloxone hydrochloride or other
27 substance, that, when administered, negates or neutralizes, in
28 whole or in part, the pharmacological effects of an opioid in the
29 body.

30 (5) “Opioid overdose prevention and treatment training
31 program” or “program” means any program operated or
32 approved by the Office of Emergency Medical Services as set
33 forth in rules promulgated pursuant to this article.

34 (6) “Overdose” means an acute condition, including, but not
35 limited to, life-threatening physical illness, coma, mania,
36 hysteria or death, which is the result of the consumption or use
37 of opioid drugs.

38 (7) “Standing order” means a written document containing
39 rules, policies, procedures, regulations and orders for the conduct
40 of patient care, including the condition being treated, the action
41 to be taken and the dosage and route of administration for the
42 drug prescribed.

**§16-46-3. Licensed health care providers may prescribe opioid
antagonists to initial responders and certain
individuals; required educational materials; limited
liability.**

1 (a) All licensed health care providers in the course of their
2 professional practice may offer to initial responders a

3 prescription for opioid antagonists, including a standing order,
4 to be used during the course of their professional duties as initial
5 responders.

6 (b) All licensed health care providers in the course of their
7 professional practice may offer to a person considered by the
8 licensed health care provider to be at risk of experiencing an
9 opiate-related overdose, or to a relative, friend, caregiver or
10 person in a position to assist a person at risk of experiencing an
11 opiate-related overdose, a prescription for an opioid antagonist.

12 (c) All licensed health care providers who prescribe an
13 opioid antagonist under this section shall provide educational
14 materials to any person or entity receiving such a prescription on
15 opiate-related overdose prevention and treatment programs, as
16 well as materials on administering the prescribed opioid
17 antagonist.

18 (d) Any person who possesses an opioid antagonist and
19 administers it to a person whom they believe to be suffering
20 from an opioid-related overdose and who is acting in good faith
21 is not, as a result of his or her actions or omissions, subject to
22 criminal prosecution arising from the possession of an opioid
23 antagonist or subject to any civil liability with respect to the
24 administration of or failure to administer the opioid antagonist
25 unless the act or failure to act was the result of gross negligence
26 or willful misconduct.

27 (e) Any person who administers an opioid antagonist to a
28 person whom they believe to be suffering from an opioid-related
29 overdose is required to seek additional medical treatment at a
30 medical facility for that person immediately following the
31 administration of the opioid antagonist to avoid further
32 complications as a result of suspected opioid-related overdose.

§16-46-4. Possession and administration of an opioid antagonist by an initial responder; limited liability.

1 (a) An initial responder who is not otherwise authorized to
2 administer opioid antagonists may possess opioid antagonists in
3 the course of his or her professional duties as an initial responder
4 and administer an opioid antagonist in an emergency situation if:

5 (1) The initial responder has successfully completed the
6 training required by subsection (b), section six of this article; and

7 (2) The administration thereof is done after consultation with
8 medical command, as defined in subdivision (k), section three,
9 article four-c of this chapter: *Provided*, That an initial responder
10 may administer an opioid antagonist without consulting medical
11 command if he or she is unable to so consult due to an inability
12 to contact medical command because of circumstances outside
13 the control of the initial responder or if there is insufficient time
14 for the consultation based upon the emergency conditions
15 presented.

16 (b) An initial responder who meets the requirements of
17 subsection (a) of this section, acting in good faith, is not, as a
18 result of his or her actions or omissions, subject to civil liability
19 or criminal prosecution arising from or relating to the
20 administration of the opioid antagonist unless the actions or
21 omissions were the result of the initial responder's gross
22 negligence or willful misconduct.

§16-46-5. Licensed health care providers' limited liability related to opioid antagonist prescriptions.

1 (a) A licensed health care provider who is permitted by law
2 to prescribe drugs, including opioid antagonists, may, if acting
3 in good faith, prescribe and subsequently dispense or distribute
4 an opioid antagonist without being subject to civil liability or
5 criminal prosecution unless prescribing the opioid antagonist

6 was the result of the licensed health care provider's gross
7 negligence or willful misconduct.

8 (b) For purposes of this chapter and chapter sixty-a, any
9 prescription written, as described in section three of this article,
10 shall be presumed as being issued for a legitimate medical
11 purpose in the usual course of professional practice unless the
12 presumption is rebutted by a preponderance of the evidence.

§16-46-6. Data collection and reporting requirements; training.

1 (a) Beginning March 1, 2016, and annually thereafter the
2 following reports shall be compiled:

3 (1) The Office of Emergency Medical Services shall collect
4 data regarding each administration of an opioid antagonist by an
5 initial responder. The Office of Emergency Medical Services
6 shall report this information to the Legislative Oversight
7 Commission on Health and Human Resources Accountability
8 and the West Virginia Bureau for Behavioral Health and Health
9 Facilities. The data collected and reported shall include:

10 (A) The number of training programs operating in an Office
11 of Emergency Medical Services- designated training center;

12 (B) The number of individuals who received training to
13 administer an opioid antagonist;

14 (C) The number of individuals who received an opioid
15 antagonist administered by an initial responder;

16 (D) The number of individuals who received an opioid
17 antagonist administered by an initial responder who were
18 revived;

19 (E) The number of individuals who received an opioid
20 antagonist administered by an initial responder who were not
21 revived; and

22 (F) The cause of death of individuals who received an opioid
23 antagonist administered by an initial responder and were not
24 revived.

25 (2) Each licensed health care provider shall submit data to
26 the West Virginia Board of Pharmacy by February 1 of each
27 calendar year, excluding any personally identifiable information,
28 regarding the number of opioid antagonist prescriptions written
29 in accordance with this article in the preceding calendar year.
30 The licensed health care provider shall indicate whether the
31 prescription was written to an individual in the following
32 categories: An initial responder; an individual at risk of opiate-
33 related overdose; a relative of a person at risk of experiencing an
34 opiate-related overdose; a friend of a person at risk of
35 experiencing an opiate-related overdose; or a caregiver or person
36 in a position to assist a person at risk of experiencing an opiate-
37 related overdose.

38 (3) The West Virginia Board of Pharmacy shall compile all
39 data described in subdivision (2) of this section and any
40 additional data maintained by the Board of Pharmacy related to
41 prescriptions of opioid antagonists. By March 1 and annually
42 thereafter, the Board of Pharmacy shall provide a report of this
43 information to the Legislative Oversight Commission on Health
44 and Human Resources Accountability and the West Virginia
45 Bureau for Behavioral Health and Health Facilities.

46 (b) To implement the provisions of this article, including
47 establishing the standards for certification and approval of opioid
48 overdose prevention and treatment training programs and
49 protocols regarding a refusal to transport, the Office of
50 Emergency Medical Services may promulgate emergency rules
51 pursuant to the provisions of section fifteen, article three, chapter
52 twenty-nine-a of this code and shall propose rules for legislative
53 approval in accordance with the provisions of article three,
54 chapter twenty-nine-a of this code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL
STATE BOARDS OF EXAMINATION OR
REGISTRATION REFERRED TO IN
CHAPTER.****§30-1-7a. Continuing education.**

1 (a) Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to license
3 renewal. Each board shall develop continuing education criteria
4 appropriate to its discipline, which shall include, but not be
5 limited to, course content, course approval, hours required and
6 reporting periods.

7 (b) Notwithstanding any other provision of this code or the
8 provision of any rule to the contrary, each person issued a
9 license to practice medicine and surgery or a license to practice
10 podiatry or licensed as a physician assistant by the West Virginia
11 Board of Medicine, each person issued a license to practice
12 dentistry by the West Virginia Board of Dental Examiners, each
13 person issued a license to practice optometry by the West
14 Virginia Board of Optometry, each person licensed as a
15 pharmacist by the West Virginia Board of Pharmacy, each
16 person licensed to practice registered professional nursing or
17 licensed as an advanced nurse practitioner by the West Virginia
18 Board of Examiners for Registered Professional Nurses, each
19 person licensed as a licensed practical nurse by the West
20 Virginia State Board of Examiners for Licensed Practical Nurses
21 and each person licensed to practice medicine and surgery as an
22 osteopathic physician and surgeon or licensed or certified as an
23 osteopathic physician assistant by the West Virginia Board of
24 Osteopathy shall complete drug diversion training, best-practice
25 prescribing of controlled substances training and training on
26 prescribing and administration of an opioid antagonist, as the

27 trainings are established by his or her respective licensing board,
28 if that person prescribes, administers or dispenses a controlled
29 substance, as that term is defined in section one hundred one,
30 article one, chapter sixty-a of this code.

31 (1) Notwithstanding any other provision of this code or the
32 provision of any rule to the contrary, the West Virginia Board of
33 Medicine, the West Virginia Board of Dental Examiners, the
34 West Virginia Board of Optometry, the West Virginia Board of
35 Pharmacy, the West Virginia Board of Examiners for Registered
36 Professional Nurses, the West Virginia State Board of Examiners
37 for Licensed Practical Nurses and the West Virginia Board of
38 Osteopathy shall establish continuing education requirements
39 and criteria appropriate to their respective discipline on the
40 subject of drug diversion training, best-practice prescribing of
41 controlled substances training and prescribing and administration
42 of an opioid antagonist training for each person issued a license
43 or certificate by their respective board who prescribes,
44 administers or dispenses a controlled substance, as that term is
45 defined in section one hundred one, article one, chapter sixty-a
46 of this code, and shall develop a certification form pursuant to
47 subdivision (b)(2) of this section.

48 (2) Each person who receives his or her initial license or
49 certificate from any of the boards set forth in subsection (b) of
50 this section shall complete the continuing education
51 requirements set forth in subsection (b) of this section within one
52 year of receiving his or her initial license from that board and
53 each person licensed or certified by any of the boards set forth in
54 subsection (b) of this section who has held his or her license or
55 certificate for longer than one year shall complete the continuing
56 education requirements set forth in subsection (b) of this section
57 as a prerequisite to each license renewal: *Provided*, That a
58 person subject to subsection (b) of this section may waive the
59 continuing education requirements for license renewal set forth
60 in subsection (b) of this section if he or she completes and

61 submits to his or her licensing board a certification form
62 developed by his or her licensing board attesting that he or she
63 has not prescribed, administered or dispensed a controlled
64 substance, as that term is defined in section one hundred one,
65 article one, chapter sixty-a of this code, during the entire
66 applicable reporting period.

67 (c) Notwithstanding any other provision of this code or the
68 provision of any rule to the contrary, each person licensed to
69 practice registered professional nursing or licensed as an
70 advanced nurse practitioner by the West Virginia Board of
71 Examiners for Registered Professional Nurses, each person
72 licensed as a licensed practical nurse by the West Virginia State
73 Board of Examiners for Licensed Practical Nurses, each person
74 issued a license to practice midwifery as a nurse-midwife by the
75 West Virginia Board of Examiners for Registered Professional
76 Nurses, each person issued a license to practice chiropractic by
77 the West Virginia Board of Chiropractic, each person licensed to
78 practice psychology by the Board of Examiners of Psychologists,
79 each person licensed to practice social work by the West
80 Virginia Board of Social Work and each person licensed to
81 practice professional counseling by the West Virginia Board of
82 Examiners in Counseling shall complete two hours of continuing
83 education for each reporting period on mental health conditions
84 common to veterans and family members of veterans, as the
85 continuing education is established or approved by his or her
86 respective licensing board. The two hours shall be part of the
87 total hours of continuing education required by each board and
88 not two additional hours.

89 (1) Notwithstanding any other provision of this code or the
90 provision of any rule to the contrary, on or before July 1, 2015,
91 the boards referred to in this subsection shall establish
92 continuing education requirements and criteria and approve
93 continuing education coursework appropriate to their respective
94 discipline on the subject of mental health conditions common to

95 veterans and family members of veterans, in cooperation with
96 the Secretary of the Department of Veterans' Assistance. The
97 continuing education shall include training on inquiring about
98 whether the patients are veterans or family members of veterans,
99 and screening for conditions such as post-traumatic stress
100 disorder, risk of suicide, depression and grief and prevention of
101 suicide.

102 (2) On or after July 1, 2017, each person licensed by any of
103 the boards set forth in this subsection shall complete the
104 continuing education described herein as a prerequisite to his or
105 her next license renewal.

CHAPTER 128

**(Com. Sub. for S. B. 523 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all relating to obtaining emergency medical assistance for persons who may be experiencing alcohol or drug overdose; establishing short title; stating legislative findings; defining terms; providing immunity from prosecution in limited circumstances for persons who call for emergency medical assistance for person who reasonably appears to be experiencing drug or alcohol overdose; specifying required actions to be eligible for immunity from prosecution for certain misdemeanor offenses; providing seeking emergency medical

assistance may be raised as mitigating factor at sentencing in certain criminal proceedings; providing limited immunity does not preclude civil claims based on violations of exempted misdemeanor criminal statutes; providing option of limited immunity from prosecution; providing deferred prosecution, pretrial diversion, adjudication in drug court and other clemency options for the court to consider for persons who experienced drug or alcohol overdose for whom emergency medical assistance was sought; allowing persons to plead guilty to certain exempted criminal offenses if desired; and providing law-enforcement personnel limited civil immunity in arresting or issuing citations, except in cases of willful, wanton and reckless misconduct.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all to read as follows:

**ARTICLE 47. ALCOHOL AND DRUG OVERDOSE
PREVENTION AND CLEMENCY ACT.**

§16-47-1. Short title.

- 1 This article is known as and may be cited as the Alcohol and
- 2 Drug Overdose Prevention and Clemency Act.

§16-47-2. Legislative findings.

- 1 (a) West Virginia currently has the highest drug overdose
- 2 mortality rate in the United States. Since 1999, the number of
- 3 drug overdose deaths in West Virginia has increased by over six
- 4 hundred percent. Similarly, the age-adjusted death rate from
- 5 alcohol-related overdoses has significantly increased in West
- 6 Virginia, and throughout the United States, in the past ten years.

7 (b) The Legislature finds it is in the public interest to
8 encourage citizens to intervene in drug and alcohol overdose
9 situations by seeking potentially life-saving emergency medical
10 assistance for others without fear of being subject to certain
11 criminal penalties.

§16-47-3. Definitions.

1 As used in this article:

2 (1) “Overdose” means an acute condition, including, but not
3 limited to, life-threatening physical illness, coma, mania,
4 hysteria or death, which is the result of the consumption or use
5 of a controlled substance or alcohol.

6 (2) “Emergency medical assistance” means medical services
7 provided to a person who may be experiencing an overdose by
8 a health care professional licensed, registered or certified under
9 chapter thirty or chapter sixteen of this code acting within his or
10 her lawful scope of practice.

§16-47-4. Limited immunity from prosecution.

1 (a) Subject to the requirements of subsection (c) of this
2 section, a person who, in good faith and in a timely manner,
3 seeks emergency medical assistance for a person who reasonably
4 appears to be experiencing an overdose may not be held
5 criminally responsible for a violation of the following:

6 (1) Purchasing, consuming or possessing wine or other
7 alcoholic liquor by someone under age twenty-one as prohibited
8 by subsection (a), section twenty-a, article eight, chapter sixty of
9 this code;

10 (2) Purchasing wine or other alcoholic liquors from a
11 licensee through misrepresentation of age, presenting or offering
12 any written evidence of age which is false, fraudulent or not
13 actually one’s own, or illegally attempting to purchase wine or

14 other alcoholic liquors as prohibited by subsection (b), section
15 twenty-a, article eight, chapter sixty of this code;

16 (3) Purchasing, consuming or possessing alcoholic liquor by
17 someone under age twenty-one as prohibited by subdivision (1),
18 subsection (a), section twenty-four, article three-a, chapter sixty
19 of this code;

20 (4) Purchasing liquor from a retail licensee through
21 misrepresentation of age, presenting or offering any written
22 evidence of age which is false, fraudulent or not actually one's
23 own or illegally attempting to purchase liquor from a retail
24 licensee as prohibited by subsection (b), section twenty-four,
25 article three-a, chapter sixty of this code;

26 (5) Ordering, paying for, sharing the cost of, purchasing,
27 consuming or possessing nonintoxicating beer, wine or alcoholic
28 liquor by someone under age twenty-one as prohibited by
29 subsection (a), section twelve-a, article seven, chapter sixty of
30 this code;

31 (6) Purchasing nonintoxicating beer, wine or alcoholic
32 liquors from a licensee through misrepresentation of age,
33 presenting or offering any written evidence of age which is false,
34 fraudulent or not actually one's own or illegally attempting to
35 purchase nonintoxicating beer, wine or alcoholic liquors from a
36 licensee as prohibited by subsection (b), section twelve-a, article
37 seven, chapter sixty of this code;

38 (7) Purchasing, consuming or possessing nonintoxicating
39 beer by someone under age twenty-one as prohibited by
40 subdivision (1), subsection (a), section nineteen, article sixteen,
41 chapter eleven of this code;

42 (8) Purchasing nonintoxicating beer through
43 misrepresentation of age, presenting or offering any written
44 evidence of age which is false, fraudulent or not actually one's

45 own or illegally attempting to purchase nonintoxicating beer as
46 prohibited by subsection (b), section nineteen, article sixteen,
47 chapter eleven;

48 (9) Knowingly or intentionally possessing a controlled
49 substance or imitation controlled substance without a
50 prescription, as prohibited by subsection (c), section four
51 hundred one, article four, chapter sixty-a of this code; or

52 (10) Appearing in a public place in an intoxicated condition;
53 drinking alcoholic liquor in a public place; drinking alcoholic
54 liquor in a motor vehicle on a highway, street, alley or in a
55 public garage; tendering a drink of alcoholic liquor to another
56 person in a public place; or possessing alcoholic liquor which
57 was manufactured or acquired in violation of the provisions of
58 chapter sixty of this code, as prohibited by subdivisions (1), (2),
59 (3), (4) and (6), subsection (a), section nine, article six, chapter
60 sixty of this code.

61 (b) The immunity provided in subsection (a) of this section
62 shall not apply to the following offenses:

63 (1) Selling or serving wine or other alcoholic liquor by
64 someone under age twenty-one as prohibited by subsection (a),
65 section twenty-a, article eight, chapter sixty of this code;

66 (2) Selling or serving alcoholic liquor by someone under age
67 twenty-one as prohibited by subdivision (1), subsection (a),
68 section twenty-four, article three-a, chapter sixty of this code; or

69 (3) Selling or serving nonintoxicating beer by someone
70 under age twenty-one as prohibited by subdivision (1),
71 subsection (a), section nineteen, article sixteen, chapter eleven
72 of this code.

73 (c) A person may only be eligible for immunity under
74 subsection (a) of this section if he or she:

75 (1) Remains with the person who reasonably appears to be
76 in need of emergency medical assistance due to an overdose
77 until such assistance is provided;

78 (2) Identifies himself or herself, if requested by emergency
79 medical assistance personnel or law-enforcement officers; and

80 (3) Cooperates with and provides any relevant information
81 requested by emergency medical assistance personnel or
82 law-enforcement officers needed to treat the person reasonably
83 believed to be experiencing an overdose.

84 (d) Evidence of seeking emergency medical assistance for a
85 person who reasonably appears to be experiencing an overdose
86 may be considered by a court or jury as a mitigating factor in the
87 sentencing phase of a criminal proceeding in a prosecution for
88 which immunity is not granted in subsection (a) of this section:
89 *Provided*, That the criminal proceeding was instituted based on
90 conduct or evidence obtained as the result of the defendant
91 seeking emergency medical assistance as described in
92 subsections (a) and (c) of this section.

93 (e) Notwithstanding any other provision of this section to the
94 contrary, a person who acts pursuant to subsections (a) and (c)
95 of this section and is charged with an offense not exempted by
96 subsection (a) of this section may nevertheless enter a plea of
97 guilty to an offense exempted by subsection (a) of this section if
98 the person, after consultation with his or her attorney, so desires.

99 (f) The limited immunity provided by this section does not
100 preclude claims asserted in a civil action based on violation of
101 the statutes set forth in subsection (a) of this section, even if
102 immunity is provided in a criminal proceeding.

103 (g) A person who seeks assistance pursuant to subsection (a)
104 of this section is not subject to any sanction for a violation of a
105 condition of pretrial release, probation, furlough or parole.

§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.

1 (a) The immunity provisions in subsection (a), section four
2 of this article extend to the person for whom emergency medical
3 assistance was sought if, subsequent to receiving emergency
4 medical assistance, the person participates in, complies with and
5 completes a substance abuse treatment or recovery program
6 approved by the court. Alternatively, a court may consider the
7 following alternative sentencing and clemency options:

8 (1) Deferred prosecution under section twenty-six, article
9 six, chapter sixty of this code or under section four hundred
10 seven, article four, chapter sixty-a of this code;

11 (2) Pretrial diversion under section twenty-two, article
12 eleven, chapter sixty-one of this code;

13 (3) Adjudication in drug court under article fifteen, chapter
14 sixty-two of this code or under section two-b, article five,
15 chapter forty-nine of this code; or

16 (4) Any other appropriate form of alternative sentencing or
17 rehabilitation permitted by this code, including, but not limited
18 to:

19 (A) Probation;

20 (B) Conditional discharge under section twenty-six, article
21 six, chapter sixty of this code; or

22 (C) The weekend jail program, the work program or the
23 community service program under section one-a, article
24 eleven-a, chapter sixty-two of this code.

25 (b) Notwithstanding any other provision of this section to the
26 contrary, a person who may seek immunity or clemency pursuant

27 to subsection (a) of this section and is charged with an offense
28 not exempted by subsection (a), section four of this article may
29 enter a plea of guilty to an offense exempted by subsection (a),
30 section four of this article if the person, after consultation with
31 his or her attorney, so desires.

§16-47-6. Limited law-enforcement personnel immunity.

1 Except in cases of willful, wanton or reckless misconduct,
2 law-enforcement personnel are immune from civil liability for
3 citing or arresting a person who is later determined to qualify for
4 immunity under this article.

CHAPTER 129

**(Com. Sub. for H. B. 2648 - By Delegate(s) Pasdon,
Stansbury, Ellington, Statler, Kurcaba, Householder,
Fleischauer and Rohrbach)**

[Amended and again passed March 18, 2015; as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-50-1, §16-50-2, §16-50-3, §16-50-4 and §16-50-5, all relating to availability and use of epinephrine auto-injectors; providing definitions; providing for legislative rules; providing for training; providing prescriptive authority to health care practitioners in certain circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in certain circumstances; providing for the storage and emergency use of epinephrine auto-injectors; providing that in certain circumstances the use of epinephrine auto-injectors is not the practice of medicine; providing that in certain circumstances

one authorized to prescribe, possess or train regarding epinephrine auto-injectors is not liable for civil damages; and providing that certain individuals who administer or provide an epinephrine auto-injector to a person is immune from liability for civil action unless the act or omission was grossly negligent or willful misconduct.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-50-1, §16-50-2, §16-50-3, §16-50-4 and §16-50-5, all to read as follows:

ARTICLE 50. EPINEPHRINE AUTO-INJECTOR AVAILABILITY AND USE.

§16-50-1. Definitions.

1 As used in this article the term:

2 (1) “Administer” means to directly apply an epinephrine
3 auto-injector to the body of an individual.

4 (2) “Authorized entity” means an entity or organization
5 where allergens capable of causing a severe allergic reaction
6 may be present.

7 (3) “Authorized health care practitioner” means an allopathic
8 physician licensed to practice pursuant to the provisions of
9 article three, chapter thirty of this code and an osteopathic
10 physician licensed to practice pursuant to the provisions of
11 article fourteen, chapter thirty of this code.

12 (4) “Department” means the Department of Health and
13 Human Resources.

14 (5) “Epinephrine auto-injector” means a single-use device
15 used for the automatic injection of a premeasured dose of
16 epinephrine into the human body.

17 (6) “Self-administration” means an individual’s
18 discretionary administration of an epinephrine auto-injector on
19 herself or himself.

§16-50-2. Authority.

1 The department may:

2 (1) Propose legislative rules for legislative approval in
3 accordance with the provisions of article three, chapter twenty-
4 nine-a of this code, necessary to administer this article; and

5 (2) Conduct and approve education training programs.

§16-50-3. Educational training programs.

1 Educational training programs shall be conducted by a
2 nationally recognized organization experienced in training
3 laypersons in emergency health treatment or an entity or
4 individual approved by the department. The curriculum shall
5 include at a minimum:

6 (1) Recognition of the symptoms of allergic reactions to
7 food, insect stings and other allergens; and

8 (2) The proper administration of a subcutaneous injection of
9 epinephrine auto-injector.

**§16-50-4. Prescriptive authority for epinephrine auto-injectors;
emergency administration.**

1 (a) An authorized health care practitioner may prescribe an
2 epinephrine injector to an authorized entity. A pharmacist may
3 dispense an epinephrine auto-injectors pursuant to a prescription
4 issued in the name of an authorized entity.

5 (b) An authorized entity may acquire and stock a supply of
6 epinephrine auto-injectors pursuant to a prescription issued in

7 accordance with this section. The epinephrine auto-injectors
8 shall be stored in accordance with the epinephrine auto-injector's
9 instructions. An authorized entity shall designate employees or
10 agents who are trained pursuant to section three of this article to
11 be responsible for the storage, maintenance and general
12 oversight of epinephrine auto-injectors.

13 (c) An individual trained pursuant to section three of this
14 article may, on the premises of or in connection with the
15 authorized entity, use epinephrine auto-injectors to:

16 (1) Provide an epinephrine auto-injector to a person who the
17 trained individual in good faith believes is experiencing a severe
18 allergic reaction for that person's immediate self-administration,
19 regardless of whether the person has a prescription for an
20 epinephrine auto-injector or has previously been diagnosed with
21 an allergy; or

22 (2) Administer an epinephrine auto-injector to a person who
23 the trained individual in good faith believes is experiencing a
24 severe allergic reaction, regardless of whether the person has a
25 prescription for an epinephrine auto-injector or has previously
26 been diagnosed with an allergy.

§16-50-5. Not practice of medicine; limits on liability.

1 (a) The administration of an epinephrine auto-injector in
2 accordance with this article is not the practice of medicine.

3 (b) An authorized health care practitioner who prescribes
4 epinephrine auto-injectors to an authorized entity; an authorized
5 entity that possesses and makes available epinephrine auto-
6 injectors; and, an entity or person that conducts the training
7 under section three of this article are not liable for civil damages
8 that result from the administration or self-administration of an
9 epinephrine auto-injector, the failure to administer an

10 epinephrine auto-injector, or any other act or omission
11 committed, in good faith, pursuant to this article.

12 (c) An individual employed by an authorized entity who
13 administers or provides an epinephrine auto-injection to a person
14 as provided in this article is immune from liability for any civil
15 action arising out of an act or omission resulting from the
16 administration of the epinephrine auto-injection unless the act or
17 omission was the result of the individual's gross negligence or
18 willful misconduct.

CHAPTER 130

**(H. B. 2780 - By Delegate(s) Pasdon, Statler,
Kurcaba, Duke, Sobonya, Espinosa, Rohrbach, Fleischauer,
Miller and Morgan)**

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

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18B-4-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-29-8 of said code, all relating to enhancing the ability of campus police officers at state institutions of higher education to perform their duties; authorizing certain higher education campus police officers to receive compensation for attending law-enforcement training academies; authorizing governing boards to apply for certain funds available to law-enforcement agencies; authorizing governing boards to compensate campus police officers for attending law-enforcement training academies; and providing for agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

Be it enacted by the Legislature of West Virginia:

That §18B-4-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-29-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal; law enforcement grants.

1 (a) The governing boards may appoint bona fide residents of
2 this state to serve as campus police officers upon any premises
3 owned or leased by the State of West Virginia and under the
4 jurisdiction of the governing boards, subject to the conditions
5 and restrictions established in this section.

6 (1) A person who previously was qualified for employment
7 as a law-enforcement officer for a state agency or political
8 subdivision of the state is considered certified for appointment
9 as a campus police officer at the state institutions of higher
10 education under the jurisdiction of the governing boards of
11 Marshall University and West Virginia University.

12 (2) Before performing duties as a campus police officer in
13 any county, a person shall qualify as is required of county police
14 officers by:

15 (A) Taking and filing an oath of office as required by article
16 one, chapter six of this code; and

17 (B) Posting an official bond as required by article two,
18 chapter six of this code.

19 (b) A campus police officer may carry a gun and any other
20 dangerous weapon while on duty if the officer fulfills the
21 certification requirement for law-enforcement officers under
22 section five, article twenty-nine, chapter thirty of this code or
23 meets the requirements of subsection (a) of this section.

24 (c) It is the duty of a campus police officer to preserve law
25 and order:

26 (1) On the premises under the jurisdiction of the governing
27 board; and

28 (2) On any street, road or thoroughfare, except controlled
29 access and open country highways, immediately adjacent to or
30 passing through premises, to which the officer is assigned by the
31 president of the institution.

32 (A) For the purpose of this subdivision, the campus police
33 officer is a law-enforcement officer pursuant to the provisions of
34 section one, article twenty-nine, chapter thirty of this code.

35 (B) The officer has and may exercise all the powers and
36 authority of a law-enforcement officer as to offenses committed
37 within the area assigned;

38 (C) The officer is subject to all the requirements and
39 responsibilities of a law-enforcement officer;

40 (D) Authority assigned pursuant to this subdivision does not
41 supersede in any way the authority or duty of other
42 law-enforcement officers to preserve law and order on such
43 premises.

44 (E) Campus police officers may assist a local
45 law-enforcement agency on public highways. The assistance
46 may be provided to control traffic in and around premises owned
47 by the state when:

48 (i) Traffic is generated as a result of athletic or other
49 activities conducted or sponsored by the institution; and

50 (ii) The assistance has been requested by the local
51 law-enforcement agency; and

52 (F) Campus police officers may assist a local
53 law-enforcement agency in any location under the agency's
54 jurisdiction at the request of the agency.

55 (d) The salary of a campus police officer is paid by the
56 employing governing board. A state institution may furnish each
57 campus police officer with a firearm and an official uniform to
58 be worn while on duty. The institution shall furnish and require
59 each officer while on duty to wear a shield with an appropriate
60 inscription and to carry credentials certifying the person's
61 identity and authority as a campus police officer.

62 (e) A governing board may at its pleasure revoke the
63 authority of any campus police officer and such officers serve at
64 the will and pleasure of the governing board. The president of
65 the state institution shall report the termination of employment
66 of a campus police officer by filing a notice to that effect in the
67 office of the clerk of each county in which the campus police
68 officer's oath of office was filed.

69 (f) Notwithstanding any other provisions of this code to the
70 contrary, and for purposes of enhancing the ability of campus
71 police officers to perform their duties, a governing board may
72 apply for and receive any public or private grant or other
73 financial award that is available to other law-enforcement
74 agencies in the state.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 (a) A West Virginia law-enforcement agency shall, and a
2 governing board may, pay compensation to employees, including
3 wages, salaries, benefits, tuition and expenses, for the
4 employees' attendance at a law-enforcement training academy.
5 The compensation paid to the employees for such attendance
6 may not include overtime compensation under the provisions of
7 section three, article five-c, chapter twenty-one of this code and
8 shall be at the regular rate to which each employee would be
9 entitled for a workweek of forty hours in regular employment
10 with the employer.

11 (b) In consideration for such compensation, the governing
12 board, county commission or municipal government may
13 require each employee to enter into a written agreement in
14 advance of such attendance that obligates the employee to repay
15 the employer if he or she voluntarily discontinues employment
16 within one year immediately following completion of the
17 training curriculum. The amount of repayment shall be a pro rata
18 portion of the total compensation which is equal to the portion
19 of the year which the employee chose not to remain employed.

20 (c) As used in this section, "governing board" has the
21 meaning ascribed in section two, article one, chapter eighteen-b
22 of this code.

CHAPTER 131

(Com. Sub. for H. B. 2867 - By Delegate(s) Perry and Williams)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-14-2, relating to providing for recommendations regarding expanded transfer of course credits among higher education institutions in the state; requiring higher education policy commission and council for community and technical college education to report the recommendations to Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-14-2, to read as follows:

ARTICLE 14. MISCELLANEOUS.

§18B-14-2. Transfer of credit for courses completed.

- 1 (a) The Legislature finds that:
- 2 (1) The state has an increasing need for individuals with a
- 3 post-secondary credential or degree;
- 4 (2) Post-secondary education institutions offering programs
- 5 primarily below the baccalaureate level often are a more
- 6 affordable option for students; and
- 7 (3) Implementing a seamless education system with uniform
- 8 transfer of credits among post-secondary institutions in the state
- 9 would greatly benefit students.

10 (b) The commission and council jointly shall develop
11 recommendations for implementing course credit transfer among
12 private and public higher education institutions in the state.
13 When developing policy regarding transfer affecting private
14 institutions, the commission and council shall consult with at
15 least two representatives from the private higher education
16 institutions. The commission and council shall report the
17 recommendations on public higher education institutions to the
18 Legislative Oversight Commission on Education Accountability
19 by December 1, 2015. The commission and council shall report
20 the recommendations on private higher education institutions to
21 the Legislative Oversight Commission on Education Account-
22 ability by December 1, 2017. The recommendations shall
23 address the following:

24 (1) Providing a uniform method for transferring credit
25 between institutions for a course successfully completed by a
26 student if:

27 (A) The course curriculum of the sending institution is at
28 least seventy percent the same or similar to that of the receiving
29 institution;

30 (B) The sending institution validates that the student
31 successfully completed the course for which credit will be
32 transferred; and

33 (C) The sending institution is accredited by a regional,
34 national, programmatic or other accrediting body recognized by
35 the U.S. Department of Education under the Higher Education
36 Act of 1965, as amended;

37 (2) Establishing a uniform method for each institution to
38 provide clear and specific details of course content for each
39 course it offers in a manner that allows a sending institution to
40 determine:

41 (A) Whether its course is at least seventy percent the same
42 or similar to the receiving institution; and if not,

43 (B) What changes to its course curriculum is needed to
44 achieve the seventy percent level;

45 (3) Providing to the student and sending institution clear and
46 specific details regarding:

47 (A) Reasons that a receiving institution denies course credit
48 transfer; and

49 (B) Additional information or actions, if any, necessary to
50 permit the transfer; and

51 (4) Allowing a student to resubmit a course credit transfer
52 request following denial.

CHAPTER 132

(H. B. 2884 - By Delegate(s) Pasdon and Perry)

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

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18B-1D-9 of the Code of West Virginia, 1931, as amended, relating to modifying training and development requirement for certain members of Higher Education Policy Commission, council for community and technical college education and institutional governing boards.

Be it enacted by the Legislature of West Virginia:

That §18B-1D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**§18B-1D-9. Commission, council and institutional governing board training and development; training and development requirements, applicability and exceptions.**

1 (a) The commission and council, either jointly or separately,
2 shall coordinate periodic training and development opportunities
3 for members of the commission, council and institutional
4 governing boards as provided in this section.

5 The training and development shall address the following
6 topics:

7 (1) State goals, objectives and priorities for higher
8 education;

9 (2) The accountability system for higher education set forth
10 in this article;

11 (3) The general powers and duties of members; and

12 (4) Ethical considerations arising from board membership.

13 (b) Training and development is required as follows:

14 (1) A member newly appointed to the commission, council
15 or a governing board shall complete three hours of training and
16 development by the end of the first fiscal year of service if the
17 appointment is made in the first half of a fiscal year. If the
18 appointment is made in the second half of a fiscal year the
19 member shall complete three hours of training and development
20 by the end of the first half of the second fiscal year.

21 (2) With the exception of the ex officio members of the
22 commission and the council and the student member of a

23 governing board, each member shall complete at least six hours
24 of training and development related to his or her duties within
25 two fiscal years of beginning service and within every two fiscal
26 years of service thereafter.

27 (c) Annually, by July 31, the chair of the commission,
28 council and each governing board shall certify to the commission
29 or council, as appropriate, the number of hours of training and
30 development that each member received during the preceding
31 fiscal year.

32 (d) If the certification indicates that a board member has not
33 completed the training and development required by this section,
34 the commission or council, as appropriate, shall send a notice to
35 the affected board member, and to the Governor and the
36 Secretary of State or to the institutional appointing entity that the
37 board member is disqualified from continued service
38 notwithstanding the provisions of sections five and six, article
39 six, chapter six of this code. The commission or council, as
40 appropriate, shall request the Governor or appointing entity to
41 appoint a replacement for that board member.

42 (e) Annually, by September 30, the commission and council
43 shall report to the Legislative Oversight Commission on
44 Education Accountability on the training and development that
45 members of the commission and council and the governing
46 boards under their respective jurisdictions have received during
47 the preceding fiscal year. This information shall be included in
48 the institutional and statewide report cards provided in section
49 eight of this article.

50 (f) As used in this section, “member” means all members of
51 the commission, council and the governing boards unless a
52 specific exception is provided in this section.

CHAPTER 133

**(H. B. 2892 - By Delegate(s) Pasdon, Duke,
Miller, Hornbuckle, Perry, Rohrbach,
Morgan and Sobonya)**

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding capital project management, Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program; and authorizing legislative rule for the Council for Community and Technical College Education regarding capital project management.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

- 1 (a) The legislative rule filed in the State Register on October
- 2 15, 2004, relating to the Higher Education Policy Commission
- 3 (Underwood-Smith Teacher Scholarship Program rule) is
- 4 authorized.

- 5 (b) The legislative rule filed in the State Register on October
- 6 15, 2004, relating to the Higher Education Policy Commission

7 (West Virginia Engineering, Science and Technology
8 Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on October
10 15, 2004, relating to the Higher Education Policy Commission
11 (Medical Education Fee and Medical Student Loan Program
12 rule) is authorized.

13 (d) The legislative rule filed in the State Register on October
14 27, 2005, relating to the Higher Education Policy Commission
15 (Authorization of degree-granting institutions) is authorized.

16 (e) The legislative rule filed in the State Register on August
17 23, 2006, relating to the Higher Education Policy Commission
18 (West Virginia Higher Education Grant Program) is authorized.

19 (f) The legislative rule filed in the State Register on January
20 4, 2008, relating to the Higher Education Policy Commission
21 (Providing Real Opportunities for Maximizing In-state Student
22 Excellence - PROMISE) is authorized.

23 (g) The legislative rule filed in the State Register on August
24 25, 2008, relating to the Higher Education Policy Commission
25 (Research Trust Program) is authorized.

26 (h) The legislative rule filed in the State Register on January
27 8, 2009, relating to the Higher Education Policy Commission
28 (Guidelines for Governing Boards in Employing and Evaluating
29 Presidents) is authorized.

30 (i) The legislative rule filed in the State Register on
31 September 10, 2008, relating to the Higher Education Policy
32 Commission (Medical Student Loan Program) is authorized,
33 with the following amendment:

34 On page 2, subsection 5.1, following the words “financial aid
35 office” by inserting a new subdivision 5.1.3 to read as follows:

36 “United States citizenship or legal immigrant status while
37 actively pursuing United States citizenship.”

38 (j) The legislative rule filed in the State Register on
39 December 1, 2008, relating to the Higher Education Policy
40 Commission (West Virginia Higher Education Grant Program)
41 is authorized.

42 (k) The legislative rule filed in the State Register on January
43 26, 2009, relating to the Higher Education Policy Commission
44 (Accountability System) is authorized.

45 (l) The legislative rule filed in the State Register on May 20,
46 2009, relating to the Higher Education Policy Commission
47 (Energy and Water Savings Revolving Loan Fund Program) is
48 authorized.

49 (m) The legislative rule filed in the State Register on January
50 27, 2010, relating to the Higher Education Policy Commission
51 (Providing Real Opportunities for Maximizing In-state Student
52 Excellence - PROMISE) is authorized.

53 (n) The legislative rule filed in the State Register on
54 December 8, 2010, relating to the Higher Education Policy
55 Commission (Authorization of Degree Granting Institutions) is
56 authorized.

57 On page 28, subsection 9.1.b, following the words “Good
58 cause shall consist of” by inserting the words “any one or more
59 of the following”.

60 (o) The legislative rule filed in the State Register on
61 December 12, 2011, relating to the Higher Education Policy
62 Commission (Tuition and Fee Policy) is authorized.

63 (p) The legislative rule filed in the State Register on August
64 10, 2012, relating to the Higher Education Policy Commission
65 (Authorization of Degree Granting Institutions) is authorized.

66 (q) The legislative rule filed in the State Register on August
67 10, 2012, relating to the Higher Education Policy Commission
68 (Annual Reauthorization of Degree Granting Institutions) is
69 authorized.

70 (r) The legislative rule filed in the State Register on March
71 20, 2013, relating to the Higher Education Policy Commission
72 (Human Resources Administration) is authorized.

73 (s) The legislative rule filed in the State Register on January
74 24, 2014, relating to the Higher Education Policy Commission
75 (Capital Project Management) is authorized.

76 (t) The legislative rule filed in the State Register on April 4,
77 2014, relating to the Higher Education Policy Commission
78 (Underwood-Smith Teacher Scholarship Program) is authorized.

79 (u) The legislative rule filed in the State Register on August
80 4, 2014, relating to the Higher Education Policy Commission
81 (Nursing Scholarship Program) is authorized.

**§18B-17-3. Authorizing rules of the Council for Community and
Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council for
3 Community and Technical College Education (performance
4 indicators) is authorized.

5 (b) The legislative rule filed in the State Register on October
6 13, 2005, relating to the West Virginia Council for Community
7 and Technical College Education (Authorization of
8 degree-granting institutions) is authorized.

9 (c) The legislative rule filed in the State Register on October
10 30, 2006, relating to the West Virginia Council for Community
11 and Technical College Education (Workforce Development
12 Initiative Program) is authorized.

13 (d) The legislative rule filed in the State Register on
14 December 4, 2008, relating to the West Virginia Council for
15 Community and Technical College Education (Employing and
16 Evaluating Presidents) is authorized.

17 (e) The legislative rule filed in the State Register on
18 December 23, 2008, relating to the West Virginia Council for
19 Community and Technical College Education (Performance
20 Indicators) is authorized.

21 (f) The legislative rule filed in the State Register on February
22 5, 2009, relating to the West Virginia Council for Community
23 and Technical College Education (Finance) is authorized.

24 (g) The legislative rule filed in the State Register on
25 February 5, 2009, relating to the West Virginia Council for
26 Community and Technical College Education (Accountability
27 System) is authorized.

28 (h) The legislative rule filed in the State Register on June 15,
29 2011, relating to the West Virginia Council for Community and
30 Technical College Education (Workforce Development Initiative
31 Program) is authorized.

32 (i) The legislative rule filed in the State Register on October
33 26, 2011, relating to the West Virginia Council for Community
34 and Technical College Education (Tuition and Fees) is
35 authorized.

36 (j) The legislative rule filed in the State Register on October
37 17, 2012, relating to the West Virginia Council for Community
38 and Technical College Education (Authorization of Degree
39 Granting Institutions) is authorized.

40 (k) The legislative rule filed in the State Register on October
41 17, 2012, relating to the West Virginia Council for Community
42 and Technical College Education (Annual Reauthorization of
43 Degree Granting Institutions) is authorized.

44 (l) The legislative rule filed in the State Register on March
45 21, 2013, relating to the West Virginia Council for Community
46 and Technical College Education (Human Resources
47 Administration) is authorized.

48 (m) The legislative rule filed in the State Register on August
49 21, 2012, relating to the West Virginia Council for Community
50 and Technical College Education (West Virginia EDGE
51 Program) is authorized.

52 (n) The legislative rule filed in the State Register on January
53 28, 2014, relating to the West Virginia Council for Community
54 and Technical College Education (Capital Project Management)
55 is authorized.

CHAPTER 134

**(Com. Sub. for S. B. 455 - By Senators Prezioso,
Carmichael, D. Hall, Kessler, Leonhardt, Plymale,
Walters, Williams, Palumbo and Stollings)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1F-4 of said code; to amend and reenact §18B-5-4, §18B-5-6 and §18B-5-7 of said code; and to amend said code by adding thereto a new section, designated §18B-5-4a, all relating to public higher education procurement and payment generally; modifying receipting of certain electronic commerce purchases; increasing monetary threshold for certain required bids and surety; modifying notification of certain required bids; exempting purchases by certain higher education institutions from requirement to be

encumbered; providing certain exemptions from certain design-build procurement requirements; increasing time period for certain required audits; authorizing Higher Education Policy Commission to issue certain revenue bonds; and modifying requirements for disposition of certain items and the reporting requirements therefor.

Be it enacted by the Legislature of West Virginia:

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-1F-4 of said code be amended and reenacted; that §18B-5-4, §18B-5-6 and §18B-5-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-5-4a, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-6. Receipting of electronic commerce purchases.

1 (a) The state treasurer may establish a system for acceptance
2 of credit card and other payment methods for electronic
3 commerce purchases from spending units. Notwithstanding any
4 other provision of this code to the contrary, each spending unit
5 utilizing WEB commerce, electronic commerce or other method
6 that offers products or services for sale shall utilize the state
7 Treasurer's system for acceptance of payments except as
8 provided in subsection (b) of this section.

9 (b) A state institution of higher education may receive credit
10 card payments from systems of acceptance other than that
11 provided by the state Treasurer if:

12 (1) The proposed alternate system is compliant with the
13 payment card industry data security standards for acceptance of
14 payments, and the institution is proposing to use the alternate
15 system for the sole purpose of:

- 16 (A) Processing the payment of academic transcripts; or
- 17 (B) Accepting payment for applications for admission if
18 necessary to participate in a national or regional program for
19 applications for admission; or
- 20 (2) The institution certifies that the use of the alternate
21 system will not cause a reduction in the volume of credit card
22 revenues by more than ten percent as compared to previous
23 credit card revenues processed on behalf of the institution during
24 the previous fiscal year and the state Treasurer consents to the
25 use.
- 26 (c) To facilitate electronic commerce, the state Treasurer
27 may charge a spending unit for the banking and other expenses
28 incurred by the Treasurer on behalf of the spending unit and for
29 any work performed, including, without limitation, assisting in
30 the development of a website and utilization of the Treasurer's
31 payment gateway. A special revenue account, entitled the
32 Treasurer's Financial Electronic Commerce Fund, is created in
33 the state treasury to receive the amounts charged by the
34 Treasurer. The Treasurer may expend the funds received in the
35 Treasurer's Financial Electronic Commerce Fund only for the
36 purposes of this article and for other purposes as determined by
37 the Legislature.
- 38 (d) The state Treasurer may authorize a spending unit to
39 assess and collect a fee to recover or pay the cost of accepting
40 bank, charge, check, credit or debit cards from amounts
41 collected.
- 42 (e) Upon written request from a political subdivision, the
43 state Treasurer may provide services of his or her office to a
44 political subdivision and charge for the services.
- 45 (f) The state Treasurer shall propose legislative rules for
46 promulgation in accordance with the provisions of article three,

47 chapter twenty-nine-a of this code to implement the provisions
48 of this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE HIGHER EDUCATION POLICY COMMISSION.

§18B-1F-4. Powers and duties of board of directors and corporation.

1 (a) The primary responsibility of the corporation is to
2 manage the day-to-day operations of the technology park
3 through collaboration agreements with the commission. To that
4 end, the board of directors has the following powers and duties:

5 (1) To employ an executive director subject to the provisions
6 of section five of this article;

7 (2) To approve employment of other staff recommended by
8 the executive director as being necessary and appropriate to
9 carry out the purposes of this article and subject to agreements
10 with the commission;

11 (3) To serve as fiscal agent and provide additional services,
12 including, but not limited to, property management, human
13 resources management and purchasing;

14 (4) To meet as a governing body. A corporation created
15 under this article is exempt from the provisions of section three,
16 article nine-a, chapter six of this code and from the provisions of
17 article one, chapter twenty-nine-b of this code;

18 (5) To receive, purchase, hold, lease, use, sell and dispose of
19 real and personal property of all classes, subject to the provisions

20 of subdivision (8) of this subsection and section eight of this
21 article;

22 (6) To receive from any source whatsoever grants to be
23 expended in accomplishing the objectives of this article;

24 (7) To receive from any source whatsoever aid or
25 contributions of money, property or other things of value to be
26 held, used and applied only for the purposes for which the aid or
27 contributions may be made;

28 (8) To accept and expend any gift, grant, contribution,
29 bequest, endowment or other money for the purposes of this
30 article. Any transfer of endowment or other assets by the
31 commission to the corporation or by the corporation to the
32 commission for management shall be formalized in a
33 memorandum of agreement to assure, at a minimum, that any
34 restrictions governing the future disposition of funds are
35 preserved. The commission may not transfer ownership of the
36 technology park property to the corporation;

37 (9) To make, amend and repeal bylaws, rules and its
38 governing documents consistent with the provisions of this
39 article to effectuate the purpose and scope of the corporation;

40 (10) To alter the purpose or scope of the corporation; and

41 (11) To delegate the exercise of any of its powers except for
42 the power to approve budgets to the executive director, subject
43 to the directions and limitations contained in its governing
44 documents.

45 (b) In addition to the powers and duties provided for in this
46 section and any other powers and duties that may be assigned to
47 it by law or agreement, the corporation has other powers and
48 duties necessary to accomplish the objectives of this article or as
49 provided by law.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The council, commission and each governing board shall
2 purchase or acquire all materials, supplies, equipment, services
3 and printing required for that governing board or the council or
4 commission, as appropriate, and the state institutions of higher
5 education under their jurisdiction, except the governing boards
6 of Marshall University and West Virginia University,
7 respectively, are subject to subsection (d) of this section.

8 (b) The commission and council jointly shall adopt rules
9 governing and controlling acquisitions and purchases in
10 accordance with this section. The rules shall ensure that the
11 following procedures are followed:

12 (1) No person is precluded from participating and making
13 sales thereof to the council, commission or governing board
14 except as otherwise provided in section five of this article.
15 Providing consulting services such as strategic planning services
16 does not preclude or inhibit the governing boards, council or
17 commission from considering a qualified bid or response for
18 delivery of a product or a commodity from the individual
19 providing the services;

20 (2) Specifications are established and prescribed for
21 materials, supplies, equipment, services and printing to be
22 purchased;

23 (3) Purchase order, requisition or other forms as may be
24 required are adopted and prescribed;

25 (4) Purchases and acquisitions in such quantities, at such
26 times and under contract, are negotiated for and made in the

27 open market or through other accepted methods of governmental
28 purchasing as may be practicable in accordance with general
29 law;

30 (5) Bids are advertised on all purchases exceeding \$50,000
31 and made by means of sealed or electronically submitted bids
32 and competitive bidding or advantageous purchases effected
33 through other accepted governmental methods and practices.
34 Competitive bids are not required for purchases of \$50,000 or
35 less.

36 (6) Notices for acquisitions and purchases for which
37 competitive bids are being solicited are posted either in the
38 purchasing office of the specified institution involved in the
39 purchase or by electronic means available to the public at least
40 five days prior to making the purchases. The rules shall ensure
41 that the notice is available to the public during business hours;

42 (7) Purchases are made in the open market;

43 (8) Vendors are notified of bid solicitation and emergency
44 purchasing; and

45 (9) No fewer than three bids are obtained when bidding is
46 required, except if fewer than three bids are submitted, an award
47 may be made from among those received.

48 (c) When a state institution of higher education submits a
49 contract, agreement or other document to the Attorney General
50 for approval as to form as required by this chapter, the following
51 conditions apply:

52 (1) "Form" means compliance with the constitution and
53 statutes of the state of West Virginia;

54 (2) The Attorney General does not have the authority to
55 reject a contract, agreement or other document based on the

56 substantive provisions in the contract, agreement or document or
57 any extrinsic matter as long as it complies with the constitution
58 and statutes of this state;

59 (3) Within fifteen days of receipt, the Attorney General shall
60 notify the appropriate state institution of higher education in
61 writing that the contract, agreement or other document is
62 approved or disapproved as to form. If the contract, agreement
63 or other document is disapproved as to form, the notice of
64 disapproval shall identify each defect that supports the
65 disapproval; and

66 (4) If the state institution elects to challenge the disapproval
67 by filing a writ of mandamus or other action and prevails, then
68 the Attorney General shall pay reasonable attorney fees and costs
69 incurred.

70 (d) Pursuant to this subsection, the governing boards of
71 Marshall University and West Virginia University, respectively,
72 may carry out the following actions:

73 (1) Purchase or acquire all materials, supplies, equipment,
74 services and printing required for the governing board without
75 approval from the commission or the Vice Chancellor for
76 Administration and may issue checks in advance to cover
77 postage as provided in subsection (f) of this section;

78 (2) Purchase from cooperative buying groups, consortia, the
79 federal government or from federal government contracts if the
80 materials, supplies, services, equipment or printing to be
81 purchased is available from these groups and if this would be the
82 most financially advantageous manner of making the purchase;

83 (3) Select and acquire by contract or lease all grounds,
84 buildings, office space or other space, and capital improvements,
85 including equipment, if the rental is necessarily required by the
86 governing board; and

87 (4) Use purchase cards under terms approved for the
88 commission, the council and governing boards of state
89 institutions of higher education and participate in any expanded
90 program of use as provided in subsection (u) of this section.

91 (e) The governing boards shall adopt sufficient accounting
92 and auditing procedures and promulgate and adopt appropriate
93 rules subject to section six, article one of this chapter to govern
94 and control acquisitions, purchases, leases and other instruments
95 for grounds, buildings, office or other space, and capital
96 improvements, including equipment, or lease-purchase
97 agreements.

98 (f) The council, commission or each governing board may
99 issue a check in advance to a company supplying postage meters
100 for postage used by that board, the council or commission and by
101 the state institutions of higher education under their jurisdiction.

102 (g) When a purchase is to be made by bid, any or all bids
103 may be rejected. However, all purchases based on advertised bid
104 requests shall be awarded to the lowest responsible bidder taking
105 into consideration the qualities of the articles to be supplied,
106 their conformity with specifications, their suitability to the
107 requirements of the governing boards, council or commission
108 and delivery terms. The preference for resident vendors as
109 provided in section thirty-seven, article three, chapter five-a of
110 this code applies to the competitive bids made pursuant to this
111 section.

112 (h) The governing boards, council and commission shall
113 maintain a purchase file, which shall be a public record and open
114 for public inspection.

115 (1) After the award of the order or contract, the governing
116 boards, council and commission shall indicate upon the
117 successful bid the following information:

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118 (A) Designation as the successful bid;

119 (B) The reason any bids were rejected; and

120 (C) The reason for rejection, if the mathematical low vendor
121 was not awarded the order or contract.

122 (2) A record in the purchase file may not be destroyed
123 without the written consent of the Legislative Auditor. Those
124 files in which the original documentation has been held for at
125 least one year and in which the original documents have been
126 reproduced and archived on microfilm or other equivalent
127 method of duplication may be destroyed without the written
128 consent of the Legislative Auditor.

129 (3) All files, no matter the storage method, shall be open for
130 inspection by the Legislative Auditor upon request.

131 (i) The commission and council, also jointly, shall
132 promulgate rules to prescribe qualifications to be met by any
133 person who is to be employed as a buyer pursuant to this section.
134 These rules shall require that a person may not be employed as
135 a buyer unless that person, at the time of employment, has one
136 of the following qualifications:

137 (1) Is a graduate of an accredited college or university; or

138 (2) Has at least four years' experience in purchasing for any
139 unit of government or for any business, commercial or industrial
140 enterprise.

141 (j) Any person making purchases and acquisitions pursuant
142 to this section shall execute a bond in the penalty of \$50,000,
143 payable to the state of West Virginia, with a corporate bonding
144 or surety company authorized to do business in this state as
145 surety thereon, in form prescribed by the Attorney General and
146 conditioned upon the faithful performance of all duties in

147 accordance with this section and sections five through eight,
148 inclusive, of this article and the rules of the governing board and
149 the council and commission. In lieu of separate bonds for these
150 buyers, a blanket surety bond may be obtained. The bond shall
151 be filed with the Secretary of State and the cost of the bond shall
152 be paid from funds appropriated to the applicable governing
153 board or the council or commission.

154 (k) All purchases and acquisitions shall be made in
155 consideration and within limits of available appropriations and
156 funds and in accordance with applicable provisions of article
157 two, chapter five-a of this code relating to expenditure schedules
158 and quarterly allotments of funds. Notwithstanding any other
159 provision of this code to the contrary, only those purchases
160 exceeding the dollar amount for competitive sealed bids in this
161 section are required to be encumbered. Such purchases may be
162 entered into the state's centralized accounting system by the staff
163 of the commission, council or governing boards to satisfy the
164 requirements of article two, chapter five-a of this code to
165 determine whether the amount of the purchase is within the
166 quarterly allotment of the commission, council or governing
167 board, is in accordance with the approved expenditure schedule
168 and otherwise conforms to the article: *Provided*, That,
169 notwithstanding the foregoing provisions of this subsection or
170 any other provision of this code to the contrary, purchases by
171 Marshall University or West Virginia University are not required
172 to be encumbered.

173 (l) The governing boards, council and commission may
174 make requisitions upon the state Auditor for a sum to be known
175 as an advance allowance account, not to exceed five percent of
176 the total of the appropriations for the governing board, council
177 or commission, and the state Auditor shall draw a warrant upon
178 the Treasurer for those accounts. All advance allowance
179 accounts shall be accounted for by the applicable governing

180 board or the council or commission once every thirty days or
181 more often if required by the state Auditor.

182 (m) Contracts entered into pursuant to this section shall be
183 signed by the applicable governing board or the council or
184 commission in the name of the state and shall be approved as to
185 form by the Attorney General. A contract which requires
186 approval as to form by the Attorney General is considered
187 approved if the Attorney General has not responded within
188 fifteen days of presentation of the contract. A contract or a
189 change order for that contract and notwithstanding any other
190 provision of this code to the contrary, associated documents such
191 as performance and labor/material payments, bonds and
192 certificates of insurance which use terms and conditions or
193 standardized forms previously approved by the Attorney General
194 and do not make substantive changes in the terms and conditions
195 of the contract do not require approval as to form by the
196 Attorney General. The Attorney General shall make a list of
197 those changes which he or she considers to be substantive and
198 the list, and any changes to the list, shall be published in the
199 State Register. A contract that exceeds the dollar amount
200 requiring competitive sealed bids in this section shall be filed
201 with the state Auditor. If requested to do so, the governing
202 boards, council or commission shall make all contracts available
203 for inspection by the state Auditor. The governing board, council
204 or commission, as appropriate, shall prescribe the amount of
205 deposit or bond to be submitted with a bid or contract, if any,
206 and the amount of deposit or bond to be given for the faithful
207 performance of a contract.

208 (n) If the governing board, council or commission purchases
209 or contracts for materials, supplies, equipment, services and
210 printing contrary to sections four through seven, inclusive, of
211 this article or the rules pursuant to this article, the purchase or
212 contract is void and of no effect.

213 (o) A governing board or the council or commission, as
214 appropriate, may request the director of purchasing to make
215 available the facilities and services of that department to the
216 governing boards, council or commission in the purchase and
217 acquisition of materials, supplies, equipment, services and
218 printing. The director of purchasing shall cooperate with that
219 governing board, council or commission, as appropriate, in all
220 such purchases and acquisitions upon that request.

221 (p) Each governing board or the council or commission, as
222 appropriate, may permit private institutions of higher education
223 to join as purchasers on purchase contracts for materials,
224 supplies, services and equipment entered into by that governing
225 board or the council or commission. A private institution
226 desiring to join as purchaser on purchase contracts shall file with
227 that governing board or the council or commission, as
228 appropriate, an affidavit signed by the president or designee of
229 the private institution requesting that it be authorized to join as
230 purchaser on purchase contracts of that governing board or the
231 council or commission, as appropriate. The private institution
232 shall agree that it is bound by such terms and conditions as that
233 governing board or the council or commission may prescribe and
234 that it will be responsible for payment directly to the vendor
235 under each purchase contract.

236 (q) Notwithstanding any other provision of this code to the
237 contrary, the governing boards, council and commission, as
238 appropriate, may make purchases from cooperative buying
239 groups, consortia, the federal government or from federal
240 government contracts if the materials, supplies, services,
241 equipment or printing to be purchased is available from that
242 source, and purchasing from that source would be the most
243 financially advantageous manner of making the purchase.

244 (r) An independent performance audit of all purchasing
245 functions and duties which are performed at any state institution

246 of higher education shall be performed at least once in each
247 three-year period. The Joint Committee on Government and
248 Finance shall conduct the performance audit and the governing
249 boards, council and commission, as appropriate, are responsible
250 for paying the cost of the audit from funds appropriated to the
251 governing boards, council or commission.

252 (1) The governing board shall provide for independent
253 performance audits of all purchasing functions and duties on its
254 campus at least once in each three-year period.

255 (2) Each audit shall be inclusive of the entire time period
256 that has elapsed since the date of the preceding audit.

257 (3) Copies of all appropriate documents relating to any audit
258 performed by a governing board shall be furnished to the Joint
259 Committee on Government and Finance and the Legislative
260 Oversight Commission on Education Accountability within
261 thirty days of the date the audit report is completed.

262 (s) The governing boards shall require each institution under
263 their respective jurisdictions to notify and inform every vendor
264 doing business with that institution of section fifty-four, article
265 three, chapter five-a of this code, also known as the Prompt Pay
266 Act of 1990.

267 (t) Consultant services, such as strategic planning services,
268 do not preclude or inhibit the governing boards, council or
269 commission from considering any qualified bid or response for
270 delivery of a product or a commodity because of the rendering
271 of those consultant services.

272 (u) Purchasing card use may be expanded by the council,
273 commission and state institutions of higher education pursuant
274 to this subsection.

275 (1) The council and commission jointly shall establish
276 procedures to be implemented by the council, commission and

277 any institution under their respective jurisdictions using
278 purchasing cards. The procedures shall ensure that each meets
279 the following conditions:

280 (A) Appropriate use of the purchasing card system;

281 (B) Full compliance with article three, chapter twelve of this
282 code relating to the purchasing card program; and

283 (C) Sufficient accounting and auditing procedures for all
284 purchasing card transactions.

285 (2) Notwithstanding any other provision of this code to the
286 contrary, the council, commission and any institution authorized
287 pursuant to subdivision (3) of this subsection may use
288 purchasing cards for the following purposes:

289 (A) Payment of travel expenses directly related to the job
290 duties of the traveling employee, including, but not limited to,
291 fuel and food; and

292 (B) Payment of any routine, regularly scheduled payment,
293 including, but not limited to, utility payments and real property
294 rental fees.

295 (3) The commission and council each shall evaluate the
296 capacity of each institution under its jurisdiction for complying
297 with the procedures established pursuant to subdivision (2) of
298 this subsection. The commission and council each shall authorize
299 expanded use of purchasing cards pursuant to that subdivision
300 for any institution it determines has the capacity to comply.

§18B-5-4a. Construction projects.

1 Notwithstanding any other provision of this code to the
2 contrary, and specifically section one, article twenty-two,
3 chapter five of this code, a state institution of higher education

4 is not required to solicit competitive bids or require a valid bid
5 bond or other surety for any construction project unless the value
6 exceeds \$100,000 in total cost.

§18B-5-6. Other code provisions relating to purchasing and design-build procurement not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

1 The provisions of article three, chapter five-a of this code
2 and section five, article twenty-two-a, chapter five of this code
3 do not control or govern design-build procurement or the
4 purchase, acquisition or other disposition of any equipment,
5 materials, supplies, services or printing by the commission or the
6 governing boards, except as provided in sections four through
7 seven, inclusive, of this article. Sections twenty-nine, thirty and
8 thirty-one, article three, chapter five-a of this code apply to all
9 purchasing activities of the commission and the governing
10 boards.

11 Neither the commission, the governing boards, nor any
12 employee of the commission or governing boards may be
13 financially interested, or have any beneficial personal interest,
14 directly or indirectly, in the purchase of any equipment,
15 materials, supplies, services or printing, nor in any firm,
16 partnership, corporation or association furnishing them, except
17 as may be authorized by the provisions of chapter six-b of this
18 code. Neither the commission, the governing boards nor any
19 employee of the commission or governing boards may accept or
20 receive directly or indirectly from any person, firm or
21 corporation, known by the commission, governing boards or
22 such employee to be interested in any bid, contract or purchase,
23 by rebate, gift or otherwise, any money or other thing of value

24 whatsoever or any promise, obligation or contract for future
25 reward or compensation, except as may be authorized by the
26 provisions of chapter six-b of this code.

27 A person who violates any of the provisions of this section
28 is guilty of a misdemeanor and, upon conviction thereof, shall be
29 imprisoned in jail not less than three months nor more than one
30 year, or fined not less than \$50 nor more than \$1,000, or both
31 imprisoned and fined, in the discretion of the court. Any person
32 who violates any provisions of this section by receiving money
33 or other thing of value under circumstances constituting the
34 crime of bribery under the provisions of section three, article
35 five-a, chapter sixty-one of this code shall, upon conviction of
36 bribery, be punished as provided in section nine of said article.

**§18B-5-7. Disposition of obsolete and unusable equipment, surplus
supplies and other unneeded materials.**

1 (a) The commission, the council and the governing boards
2 shall dispose of obsolete and unusable equipment, surplus
3 supplies and other unneeded materials, either by transfer to other
4 governmental agencies or institutions, by exchange or trade, or
5 by sale as junk or otherwise. The commission, the council and
6 each governing board shall adopt rules governing and controlling
7 the disposition of all such equipment, supplies and materials.
8 The rules shall provide for disposition of the equipment, supplies
9 and materials as sound business practices warrant under existing
10 circumstances and conditions and for adequate prior notice to the
11 public of the disposition.

12 (b) The commission, council or governing board, as
13 appropriate, shall report biannually to the Legislative Auditor all
14 sales of commodities made during the preceding biennium. The
15 report shall include a description of the commodities sold, the
16 name of the buyer to whom each commodity was sold, the price
17 paid by the buyer.

18 (c) The proceeds of sales or transfers shall be deposited in
19 the state treasury to the credit on a pro rata basis of the fund or
20 funds from which the purchase of the particular commodities or
21 expendable commodities was made. The commission, council or
22 governing board, as appropriate, may charge and assess fees
23 reasonably related to the costs of care and handling with respect
24 to the transfer, warehousing, sale and distribution of state
25 property that is disposed of or sold pursuant to the provisions of
26 this section.

27 (d) Notwithstanding the provisions of this section, the
28 commission, council or a governing board may donate
29 equipment, supplies and materials with the approval of the
30 commission, council or governing board or their designee, as
31 appropriate.

CHAPTER 135

**(Com. Sub. for S. B. 439 - By Senators Prezioso,
Carmichael, Gaunch, D. Hall, Kessler, Leonhardt,
Walters, Williams and Plymale)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §18B-4-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new section, designated §18B-9A-5a, all relating to public higher education

personnel generally; clarifying roles and certain responsibilities of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; modifying legislative purposes and intent for higher education personnel, classification and compensation system, and classified employee salary schedule; defining terms and modifying defined terms; modifying and clarifying duties of Vice Chancellor for Human Resources of the Higher Education Policy Commission; eliminating outdated and redundant reporting, rule and review requirements; requiring certain personnel provisions be created and specifying responsibilities; modifying certain reporting requirements; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; modifying percentages and criteria of percentages of employees designated as “nonclassified”; modifying requirements for study of employment practices; expanding applicability of certain salary schedule provisions and flexibilities; clarifying that certain provisions are only applicable to classified employees; modifying and clarifying powers and duties of the Job Classification Committee and Compensation Planning and Review Committee; eliminating certain approval of members of Job Classification Committee and Compensation Planning and Review Committee; eliminating requirement that salary schedules fall within relative market equity; clarifying role and considerations of the Higher Education Policy Commission and Community and Technical College Council in developing salary schedules for classified employees; requiring classification and compensation rules; deleting obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code be amended and reenacted;

that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-9A-5a, all to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-2a. Employment of Vice Chancellor for Human Resources; powers and duties generally; staff; office.

1 (a) By and with the advice and consent of the Council for
2 Community and Technical College Education, the commission
3 shall employ a Vice Chancellor for Human Resources who may
4 not be dismissed without the consent of the council. Any
5 vacancy occurring in this position shall be filled in accordance
6 with this section.

7 (b) The successful candidate for the position of vice
8 chancellor provides vision, leadership and direction to ensure the
9 human resources system for employees of the commission,
10 council and governing boards is effective, efficient and aligned
11 with industry best practices. The successful candidate possesses
12 the following minimum qualifications:

13 (1) A master's degree in human resources or a related field;
14 and

15 (2) Thorough knowledge of and experience administering
16 employment laws and regulations, recruiting and selection
17 techniques, employee relations techniques and methodologies,
18 legal reporting and compliance requirements.

19 (c) The vice chancellor, in consultation with the chancellors,
20 performs functions, tasks and responsibilities necessary to carry
21 out the policy directives of the council and commission and any
22 other duties prescribed by law. The vice chancellor oversees and

23 monitors all issues related to the personnel system for higher
24 education employees and provides advice and technical support
25 to organizations as directed or requested on all issues related to
26 the design, development, implementation and administration of
27 the personnel system established by this chapter and by duly
28 promulgated rules.

29 (d) The vice chancellor supervises employees at the
30 commission offices involved in human resources functions,
31 including the professional, administrative, clerical and other
32 employees necessary to carry out assigned powers and duties. In
33 consultation with the Vice Chancellor for Administration and the
34 chancellors, the vice chancellor shall delineate staff
35 responsibilities as considered desirable and appropriate.

36 (e) The vice chancellor provides support to the chancellors
37 and organizations on a highly diverse range of issues, including
38 assisting them to develop a culture of constant improvement in
39 a rapidly changing, complex market. Duties of the position
40 include, but are not limited to, the following:

41 (1) Developing and implementing business-related initiatives
42 involving organizational design, labor cost management,
43 executive recruitment and compensation, leadership and
44 management development, human resources data and
45 technology, and compensation and benefits programs;

46 (2) Chairing, or designating a qualified designee to chair the
47 Job Classification Committee and the Compensation Planning
48 and Review Committee established by sections four and five,
49 article nine-a of this chapter.

50 (3) Assuming responsibility for coordinating benefits
51 programs for all employees, including designing these programs,
52 and for supporting each higher education organization in
53 implementing the programs;

54 (4) Assuming responsibility for coordinating classification
55 and compensation programs for classified employees, including
56 designing these programs, and for supporting each higher
57 education organization in implementing the programs;

58 (5) Assisting, as directed or requested, organizations with
59 classification and/or compensation programs for faculty and/or
60 nonclassified employees, including, as appropriate, design and
61 implementation of the programs;

62 (6) Maintaining consistent human resources information
63 systems and selecting and supervising benefits consultants,
64 brokers, trustees and necessary legal assistants;

65 (7) Maintaining the classified employee classification
66 system by providing for regular review of jobs to determine
67 whether the current job description accurately reflects the duties
68 and responsibilities and whether the job is properly classified or
69 needs to be modified or deleted. Every job shall be reviewed at
70 least once within each five-year period;

71 (8) Ensuring that market comparison studies are conducted
72 for classified employees and providing a report annually from
73 data collected from each organization on the status of
74 compensation among the employee classifications.

75 (9) As requested by organizations, assist with carrying out
76 the following duties related to training and development:

77 (A) Analyzing and determining training needs of
78 organization employees and formulating and developing plans,
79 procedures and programs to meet specific training needs and
80 problems.

81 (B) Developing, constructing, maintaining and revising
82 training manuals and training aids or supervising development
83 of these materials by outside suppliers;

84 (C) Planning, conducting and coordinating management
85 inventories, appraisals, placement, counseling and training;

86 (D) Coordinating participation by all employees in training
87 programs developed internally or provided by outside
88 contractors; and

89 (E) Administering and analyzing annual training and
90 development needs surveys. The survey may coincide with the
91 completion of the annual performance review process.

92 (10) As requested, assisting boards of governors and/or
93 presidents in conducting performance reviews of personnel who
94 administer human resources functions at each organization in
95 relation to best practices pursuant to articles seven, eight, nine
96 and nine-a of this chapter and rules of the commission and
97 council. Human resources personnel at each organization shall
98 be evaluated at least once within each three-year period. Copies
99 of evaluations will be submitted to the Vice Chancellor who
100 shall analyze the results of these evaluations and target training
101 and professional development to identified areas of deficiency.

102 (f) To assist in performing the duties of vice chancellor, the
103 commission, with the consent of the council, shall create the
104 following positions, and fill the positions beginning July 1, 2016,
105 with well qualified and appropriately credentialed individuals
106 who will report to the Vice Chancellor for Human Resources and
107 work collaboratively with governing boards and their employees
108 at all levels:

109 (1) A Generalist/Manager who is responsible for a wide
110 range of human resources management, the Human Resources
111 Information System, reporting and program development
112 activities;

113 (2) A Director of Classification and Compensation who is
114 responsible for maintaining job classification systems, assisting

115 organizations with classification and compensation matters,
116 coordinating compensation studies with the compensation
117 planning and review committee and external vendors, and
118 conducting annual compensation program updates or market
119 reviews;

120 (3) A Training and Development Specialist who is
121 responsible for assessing training needs, and for planning,
122 designing, developing, implementing and/or coordinating
123 delivery of training and development programs and activities as
124 required in subdivision (9), subsection (e) of this section and
125 section six, article seven of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

1 (a) The intent of the Legislature in enacting this article and
2 articles eight, nine and nine-a of this chapter is to establish a
3 statewide, integrated higher education human resources system
4 capable of, but not limited to, meeting the following objectives:

5 (1) Providing benefits to the citizens of the State of West
6 Virginia by supporting the public policy agenda as articulated by
7 state policymakers;

8 (2) Assuring fiscal responsibility by making the best use of
9 scarce resources;

10 (3) Promoting fairness, accountability, credibility, and
11 transparency in personnel decisionmaking;

12 (4) Reducing or, wherever possible, eliminating arbitrary and
13 capricious decisions affecting employees of higher education
14 organizations as defined in section two, article nine-a of this
15 chapter;

16 (5) Creating a stable, self-regulating human resources system
17 capable of evolving to meet changing needs;

18 (6) Providing for institutional flexibility with meaningful
19 accountability;

20 (7) Adhering to federal and state laws;

21 (8) Adhering to duly promulgated and adopted rules; and

22 (9) Implementing best practices throughout the state higher
23 education system.

24 (10) Providing current, reliable data to governing boards, the
25 commission, the council, the Governor and the Legislature to
26 inform the decision-making process of these policymakers.

27 (b) To accomplish these goals, the Legislature encourages
28 organizations to pursue a human resources strategy which
29 provides monetary and nonmonetary returns to employees in
30 exchange for their time, talents and efforts to meet articulated
31 goals, objectives and priorities of the state, the commission and
32 council, and the organization. The system should maximize the
33 recruitment, motivation and retention of highly qualified
34 employees, ensure satisfaction and engagement of employees
35 with their jobs, ensure job performance and achieve desired
36 results.

37 (c) It is the intent of the Legislature to establish a human
38 resources strategy that is fair, accountable, credible, transparent
39 and systematic. In recognition of the importance of these
40 qualities, the human resources strategy outlined in this article,
41 together with articles eight, nine and nine-a of this chapter, is
42 designated and may be cited as "FACTS for Higher Education".

43 (d) It is the intent of the Legislature to require each higher
44 education organization to achieve full funding of the salary

45 schedule established in section three, article nine of this chapter.
46 A higher education organization, as defined in section two,
47 article nine-a of this chapter, is subject to the provisions of
48 article nine of this chapter until full funding is reached.

49 (e) It is further the intent of the Legislature to encourage
50 strongly that each organization dedicate a portion of future
51 tuition increases to fund the classified salary schedule, and after
52 full funding of the salary schedule is achieved, to move toward
53 meeting salary goals for faculty, classified and nonclassified
54 employees.

§18B-7-2. Definitions.

1 For the purposes of this article and articles eight, nine and
2 nine-a of this chapter, the following words have the meanings
3 ascribed to them unless the context clearly indicates a different
4 meaning:

5 (1) “Benefits” means programs that an employer uses to
6 supplement the cash compensation of employees and includes
7 health and welfare plans, retirement plans, pay for time not
8 worked and other employee perquisites.

9 (2) “Compensation” means cash provided by an employer to
10 an employee for services rendered.

11 (3) “Compensatory time” and “compensatory time off” mean
12 hours during which the employee is not working, which are not
13 counted as hours worked during the applicable work week or
14 other work period for purposes of overtime compensation and
15 for which the employee is compensated at the employee’s
16 regular rate of pay.

17 (4) “Employee classification” or “employee class” means
18 those employees designated as classified employees;
19 nonclassified employees, including presidents, chief executives

20 and top level administrators and faculty, as these terms are
21 defined in this article and articles eight, nine and nine-a of this
22 chapter.

23 (5) “Full-time” means an employee whose employment, if
24 continued, accumulates to a minimum total of one thousand forty
25 hours during a calendar year and extends over at least nine
26 months of a calendar year

27 (6) “Health and welfare benefit plan” means an arrangement
28 which provides any of the following: Medical, dental, visual,
29 psychiatric or long-term health care, life insurance, accidental
30 death or dismemberment benefits, disability benefits or
31 comparable benefits.

§18B-7-8. Reporting.

1 (a) *Annual personnel reports.* —

2 (1) No later than December 1, 2013, and annually thereafter,
3 the commission and council shall report to the Legislative
4 Oversight Commission on Education Accountability addressing
5 the following issues:

6 (A) Progress made by organizations toward achieving full
7 funding of the temporary classified employees’ salary schedule
8 pursuant to section three, article nine of this chapter; and

9 (B) Detailed data disaggregated by organization and
10 employee category or classification, comparing funding for
11 salaries of faculty, classified employees and nonclassified
12 employees as a percentage of the average funding for each of
13 these classes or categories of employees among the
14 organization’s state, region or national markets, as appropriate,
15 and among similar organizations within the state systems of
16 public higher education.

17 (2) The commission and council shall prepare a human
18 resources report card summarizing the performance of
19 organizations on key human resources measures established by
20 the commission and council. The report card shall be presented
21 to the Legislative Oversight Commission on Education
22 Accountability annually and shall be made available to the
23 general public. At a minimum, the human resources report card
24 shall contain the following data:

25 (A) Human resources department metrics by organization:

26 (i) Number of human resources staff;

27 (ii) Ratio of human resources staff to total number of full-
28 time equivalent employees;

29 (iii) Percentage of human resources staff functioning in
30 supervisory roles and percentage in administrative roles;

31 (iv) Number of positions reporting to the head of human
32 resources;

33 (v) Areas of human resources functions outsourced to
34 external entities;

35 (vi) Total expenses per full-time equivalent employee; and

36 (vii) Tuition revenue per full-time equivalent employee.

37 (B) Human resources expense data:

38 (i) Ratio of human resources expenses to operating expenses;

39 (ii) Ratio of human resources expenses to number of full-
40 time equivalent employees; and

41 (iii) Total human resources expense per organization
42 employee.

43 (C) Compensation data:

44 (i) Average amount of annual salary increase per full-time
45 equivalent organization employee;

46 (ii) Total amount of organization employee salaries as a
47 percent of operating expenses; and

48 (iii) Total amount of organization employee benefit costs as
49 a percent of cash compensation.

50 (D) System metrics:

51 (i) Comparisons of faculty salaries at each organization to
52 market averages; and

53 (ii) Comparisons of classified and nonclassified employee
54 salaries at each organization to current market averages;

55 (E) An account of the total amount, type of training or
56 professional development provided, the number of employees
57 who participated and the overall cost of the training and
58 professional development provided to employees pursuant to
59 section six of this article; and

60 (F) Other measures the commission or council considers
61 appropriate to assist policymakers in evaluating the degree of
62 success in implementing best human resources practices by
63 higher education organizations.

64 (b) *Job classification system report.* —

65 By July 1, 2016, and at least once within each five-year
66 period thereafter, the commission and council jointly shall
67 review the effectiveness of the system for classifying jobs and
68 submit an in-depth report to the Legislative Oversight
69 Commission on Education Accountability. The report shall

70 include, but is not limited to, findings, recommendations and
71 supporting documentation regarding the following job
72 classification issues:

73 (1) The effectiveness of the point factor methodology and a
74 determination of whether it should be maintained; and

75 (2) The status of the job evaluation plan, including the
76 factors used to classify jobs or their relative values, and a
77 determination of whether the plan should be adjusted.

78 (c) It is the responsibility of the head of human resources for
79 each organization to prepare and submit to the president or chief
80 executive officer all human resources data requested by the
81 commission and council. The president or executive officer of
82 each organization shall submit the requested data at times
83 established by the commission and council.

84 (d) In meeting reporting requirements established by this
85 article and articles eight, nine and nine-a of this chapter:

86 (1) The commission and council shall use the most recent
87 data available and, as appropriate, shall benchmark it against
88 best practices and appropriate labor markets; and

89 (2) With the exception of the annual human resources report
90 card and any other report designated as due no later than a date
91 certain, the commission and council may combine two or more
92 personnel reports if the dates on which they are due to the
93 Legislature fall within a sixty-day period.

§18B-7-9. Human resources reviews.

1 (a) The commission and council jointly shall conduct an
2 initial human resources review of each organization to be carried
3 out, subject to legislative appropriation, by an external vendor
4 possessing experience and expertise in conducting these reviews.

5 The initial review shall be completed by October 1, 2011, and
6 shall be designed to compare current human resources practices
7 at each organization to best practices to identify areas of strength
8 or deficiency, to identify functions that should be the
9 responsibility of the human resources department, but are
10 incorrectly assigned or carried out by other offices within each
11 organization, to assist in targeting employee training and
12 development, to determine the degree to which organizations are
13 adhering to state and federal laws related to human resources
14 administration and to provide data necessary to guide
15 policymakers in developing personnel rules and implementing
16 the classification and compensation system.

17 (b) Following completion of the initial human resources
18 review, the commission and council jointly shall conduct a
19 systematic human resources review of each organization at least
20 once within each five-year period.

21 (1) The review shall focus on compliance with statutory
22 mandates contained in this article and articles eight, nine and
23 nine-a of this chapter and on adherence to personnel rules of the
24 commission and council.

25 (2) In the absence of special circumstances, the commission
26 and council shall provide organizations with reasonable notice
27 prior to conducting a human resources review and shall identify
28 the subjects to be examined in the review.

**§18B-7-11. Employees designated as nonclassified; limits; reports
required.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, by July 1, 2016, the percentage of personnel placed in
3 the category of nonclassified at a higher education organization
4 may not exceed twenty-five percent of the total number of
5 classified and nonclassified employees of that organization as

6 those terms are defined in section two, article nine-a of this
7 chapter and who are eligible for membership in a state retirement
8 system of the State of West Virginia or other retirement plan
9 authorized by the state. An institution may not have more than
10 ten percent of its total number of classified and nonclassified
11 employees in positions considered by the president to be critical
12 to the institution pursuant to said section two, article nine-a of
13 this chapter.

14 A higher education organization which has more than
15 twenty-five percent of its employees placed in the nonclassified
16 category as defined by this subsection on July 1, 2015, shall
17 reduce the number of nonclassified employees to no more than
18 twenty-five percent by July 1, 2016.

19 (b) For the purpose of determining the ratio of nonclassified
20 employees pursuant to this section, the following conditions
21 apply:

22 (1) Organizations shall count faculty or classified
23 employees, respectively, who retain the right to return to faculty
24 or classified employee positions, in the employee category they
25 are serving in at the time of reporting as required by subsections
26 (a) and (b), section eight of this article. Such employees will be
27 counted in their original category at such time as they exercise
28 their return rights.

29 (2) Athletic coaches are excluded from calculation of the
30 ratio. The commission and the council shall include
31 consideration of this employee category in each review required
32 by section nine of this article and shall monitor organizations'
33 use of this category and include this information in the report
34 required by (a), section eight of this article.

35 (c) *Powers and duties of commission and council regarding*
36 *nonclassified staff ratios.* –

37 (1) The commission and council shall provide advice and
38 technical assistance to organizations under their respective
39 jurisdictions in collecting and interpreting data to ensure that
40 they fulfill the requirements established by this section.
41 Consideration of these issues shall be made part of each review
42 required by section nine of this article and information from the
43 review included in the report required by subsection (a), section
44 eight of this article;

45 (2) The chancellors shall monitor the progress of the
46 organizations in meeting the deadlines established in this section
47 and shall report such in the annual human resources report card.

48 (d) The current annual salary of a nonclassified employee
49 may not be reduced if his or her position is redefined as a
50 classified position solely to meet the requirements of this
51 section. If such a nonclassified employee is reclassified, his or
52 her salary does not constitute evidence of inequitable
53 compensation in comparison to other employees in the same pay
54 grade.

55 (e) For the purposes of this section only the commission and
56 council are not considered higher education organizations.

§18B-7-16. Study of employment practices.

1 (a) The commission and council shall study the following
2 issues relating to employment practices:

3 (1) Developing a fair and rational policy based upon best
4 human resources practices for covering reductions in force,
5 furloughs and other issues relating to seniority, including
6 determining how employees shall be treated whose salaries are
7 derived from funds other than state appropriations;

8 (2) Determining the advantages and disadvantages of
9 maintaining the internal preferences for hiring, promoting and
10 transferring classified employees;

11 (3) Determining the appropriate definition of a
12 “nonclassified” position, recommending a best practice criteria
13 for designating positions as nonclassified and recommending the
14 appropriate number or ratio of nonclassified positions for
15 commission and council organizations.

16 (4) Recommending a rational, uniform policy to determine
17 the status of employees whose positions are funded, in whole or
18 in part, by an external grant or contract from a federal, state or
19 local government or a private entity.

20 (b) The commission and council shall complete the work and
21 report their findings, conclusions and recommendations, together
22 with drafts of any legislation necessary to effectuate the
23 recommendations, to the Legislative Oversight Commission on
24 Education Accountability upon completion, but no later than
25 January 1, 2018.

**ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE
SALARY SCHEDULE; CLASSIFICATION
AND COMPENSATION SYSTEM.**

§18B-9-1. Legislative purpose and intent.

1 The purpose of the Legislature in enacting this article is to
2 require the commission and council jointly to implement,
3 control, supervise and manage a complete, uniform system of
4 personnel classification and compensation in accordance with
5 the provisions of this article for classified employees at higher
6 education organizations.

§18B-9-2. Definitions.

1 The following words have the meanings ascribed to them
2 unless the context clearly indicates a different meaning:

3 (1) “Classified employee” or “employee” means a regular
4 full-time or regular part-time employee of an organization who

5 holds a position that is assigned a particular job title and pay
6 grade in accordance with the personnel classification and
7 compensation system established by this article or by the
8 commission and council;

9 (2) “Salary” means the amount of compensation paid
10 through the State Treasury per annum, excluding those payments
11 made pursuant to section two, article five, chapter five of this
12 code, to an organization employee;

13 (3) “Schedule” or “salary schedule” means the grid of annual
14 salary figures established in section three of this article; and

15 (4) “Years of experience” means the number of years a
16 person has been an employee of the State of West Virginia and
17 refers to the horizontal column heading of the salary schedule
18 established in section three of this article. For the purpose of
19 placement on the salary schedule, employment for nine months
20 or more equals one year of experience, but a classified employee
21 may not accrue more than one year of experience during any
22 given fiscal year. Employment for less than full time or for fewer
23 than nine months during any fiscal year shall be prorated. In
24 accordance with rules established by the commission and council
25 jointly, a classified employee may be granted additional years of
26 experience not to exceed the actual number of years of prior,
27 relevant work or experience at accredited institutions of higher
28 education other than state institutions of higher education.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9A-1. Legislative intent and purpose.

1 (a) The intent of the Legislature in enacting this article is to
2 establish the classification and compensation system for certain
3 employees of higher education organizations and apply
4 recognized best human resources practices in order to use

5 available resources in the most effective and efficient manner for
6 the benefit of the citizens of West Virginia.

7 (b) In furtherance of the principles described in subsection
8 (a) of this section, the chief purposes of the classified
9 classification and compensation system are to accomplish the
10 following objectives:

11 (1) Develop and implement a classification and
12 compensation system that is fair, transparent, understandable,
13 simple to administer, self-regulating and adaptable to meet
14 future goals and priorities;

15 (2) Compensate employees within an organization fairly in
16 relation to one another;

17 (3) Compensate employees across organizations who are
18 performing similar work at similar wage rates;

19 (4) Compensate employees at levels that are competitive
20 with appropriate external markets and are fiscally responsible;
21 and

22 (5) Improve the process for evaluating jobs, including, but
23 not limited to, mandating training and development in best
24 human resources practices and directing that key terms, job titles
25 and evaluation forms are consistent across organizations.

26 (c) It is further the intent of the Legislature to ensure that
27 regular compensation analyses are performed to determine how
28 organization compensation for all classes of employees
29 compares to compensation in relevant external markets.

§18B-9A-2. Definitions.

1 As used in this article and articles seven, eight and nine of
2 this chapter, the following words have the meanings ascribed to
3 them unless the context clearly indicates a different meaning:

4 (1) “Classification system” means the process by which jobs,
5 job titles, career ladders and assignment to pay grades are
6 determined.

7 (2) “Classified employee” or “employee” means a regular
8 full-time or regular part-time employee of an organization who
9 holds a position that is assigned a particular job title and pay
10 grade in accordance with the personnel classification and
11 compensation system established by this article or by the
12 commission and council.

13 (3) “Job” means the total collection of tasks, duties and
14 responsibilities assigned to one or more individuals whose work
15 is of the same nature and level.

16 (4) “Job description” or “position description” means a
17 summary of the most important features of a job, including the
18 general nature and level of the work performed.

19 (5) “Job evaluation” means a systematic way of determining
20 the value/worth of a job in relation to other jobs in an
21 organization by analyzing weighted compensable factors
22 resulting in the assignment of a job title and pay grade to a
23 position described by a position information questionnaire.

24 (6) “Job family” means a group of jobs having the same
25 nature of work, but requiring different levels of skill, effort,
26 responsibility or working conditions.

27 (7) “Job specification” means the generic description of a
28 group of jobs assigned a common job title in the classification
29 system. The job specification contains a brief summary of the
30 purpose of the job; the most common duties and responsibilities
31 performed by positions holding the title; knowledge, skills and
32 abilities necessary to perform the work; and minimum
33 qualifications required for positions assigned the title.

34 (8) “Job title” means the descriptive name for the total
35 collection of tasks, duties and responsibilities assigned to one or
36 more individuals whose positions have the same nature of work
37 performed at the same level.

38 (9) “Job worth hierarchy” means the perceived internal value
39 of jobs in relation to each other within an organization.

40 (10) “Midpoint differential” means the difference in wage
41 rates paid in the midpoints of two adjacent pay grades. A
42 midpoint differential is calculated by taking the difference
43 between the two adjacent midpoints as a percentage of the lower
44 of the midpoints.

45 (11) “Nonclassified employee” means an employee of an
46 organization who holds a position that is not assigned a
47 particular job and job title within the classification system
48 established by this article and article nine of this chapter, and by
49 duly promulgated and adopted rules of the commission and
50 council and who meets one or more of the following criteria:

51 (A) Holds a direct policy-making position at the department
52 or organization level;

53 (B) Reports directly to the president or chief executive
54 officer of the organization; or

55 (C) Is in a position considered by the president to be critical
56 to the institution pursuant to policies adopted by the governing
57 board.

58 (12) “Organization” means the commission, the council, an
59 agency or entity under the respective jurisdiction of the
60 commission or the council or a state institution of higher
61 education as defined in section two, article one of this chapter.

62 (13) “Pay grade” means the level to which a job is assigned
63 within a job worth hierarchy as a result of job evaluation.

64 (14) “Point factor methodology” means a quantitative job
65 evaluation process in which elements of a job are given a factor
66 value and each factor is weighted according to its importance.

67 (15) “Position information questionnaire” or “PIQ” means
68 a tool used to gather specific job information for a specific
69 position held by an individual, and used for the purposes of
70 evaluating the position for determination of job title and pay
71 grade. The PIQ is used to gather information used to assess the
72 compensable factors of knowledge, experience, complexity and
73 problem solving, freedom of action, scope and effect, breadth of
74 responsibility, intra-systems contacts, external contacts, direct
75 supervision of personnel, indirect supervision of personnel and
76 health, safety and physical considerations.

77 (16) “Pay range spread” means the difference in the
78 minimum and maximum rate of pay for a pay grade expressed as
79 a percentage.

§18B-9A-3. Applicability.

1 Until the commission or council, as appropriate, has certified
2 that an organization has achieved full funding of the temporary
3 classified employee annual salary schedule or is making
4 appropriate progress toward attaining full funding as defined by
5 section three, article nine of this chapter, the organization is
6 subject to article nine of this chapter and may not exercise
7 flexibility provisions in any area of human resources identified
8 in this chapter or in commission and council rule. Flexibility
9 provisions include paying classified employees in excess of the
10 salary established for their pay grade and years of experience
11 indicated on the temporary classified employee annual salary
12 schedule established by section three, article nine of this chapter.
13 Additional flexibility provisions, such as the ability to modify
14 the classified salary schedule at the organization level are
15 identified and governed in section four, article nine of this
16 chapter.

§18B-9A-4. Job classification system; job classification committee established; membership; meetings; powers and duties.

1 (a) The commission and council jointly shall maintain a
2 uniform system for classifying jobs and positions of organization
3 classified employees.

4 (b) Pursuant to the rule authorized in section seven of this
5 article, the commission and council jointly shall establish and
6 maintain a job classification committee.

7 The rule shall contain the following provisions related to the
8 job classification committee:

9 (1) A systematic method for appointing committee members
10 who are representative of all the higher education organizations
11 and affected constituent groups, including specifically providing
12 for membership selections to be made from nominations from
13 these higher education organizations and affected constituent
14 groups;

15 (2) A requirement that an organization may have no more
16 than two members serving on the committee at any time and the
17 combined membership representing various groups or divisions
18 within or affiliated with an organization in total may not
19 constitute a majority of the membership; and

20 (3) A requirement that committee members serve staggered
21 terms. One third of the initial appointments shall be for two
22 years, one third for three years and one third for four years.
23 Thereafter, the term is four years. A member may not serve more
24 than four years consecutively.

25 (c) Powers and duties of the committee include, but are not
26 limited to, the following:

- 27 (1) Modifying and deleting jobs and assigning job titles;
- 28 (2) Reviewing and revising job titles to make them
29 consistent among organizations, including adopting consistent
30 title abbreviations;
- 31 (3) Establishing job worth hierarchies and data lines for each
32 job title;
- 33 (4) Classifying jobs, establishing proper pay grades and
34 placing jobs in pay grades consistent with the job evaluation
35 plan;
- 36 (5) Determining when new job titles are needed and creating
37 new job titles within the system;
- 38 (6) Recommending base pay enhancements for jobs for
39 which the application of point factor methodology produces
40 significantly lower salaries than external market pricing. The
41 committee may exercise this authority only if it reevaluates each
42 job annually to make a determination whether the enhancement
43 should be continued;
- 44 (7) Recommending a procedure for performing job family
45 reviews;
- 46 (8) Determining appropriate career ladders within the
47 classification system and establishing criteria for career
48 progression; and
- 49 (9) Hearing job classification appeals prior to
50 commencement of the formal grievance process pursuant to
51 commission and council rule.
- 52 (d) The committee shall meet monthly if there is business to
53 conduct and also may meet more frequently at the call of the
54 chair. A majority of the voting members serving on the

55 committee at a given time constitutes a quorum for the purpose
56 of conducting business.

57 (e) The commission and council shall use an appropriate
58 methodology to classify jobs. The commission and council
59 jointly may adjust the job evaluation plan, including the factors
60 used to classify jobs and their relative values, at any time.

61 (f) No later than July 1, 2012, the commission and council
62 shall have in place an up-to-date job description for every
63 classified job.

64 (g) The commission and council shall develop a position
65 information questionnaire to be used by all organizations to
66 gather data necessary for classification of positions within the
67 job worth hierarchy.

**§18B-9A-5. Compensation planning and review committee
established; membership; meetings; powers and
duties.**

1 (a) Pursuant to the rule authorized in section seven of this
2 article, the commission and council jointly shall establish and
3 maintain a compensation planning and review committee.

4 (b) Within the guidelines established in this article and
5 articles seven, eight and nine of this chapter, the committee shall
6 manage all aspects of compensation planning and review that the
7 commission and council jointly delegate to it.

8 The rule shall contain the following requirements related to
9 the compensation planning and review committee:

10 (1) A systematic method for appointing committee members
11 who are representative of all the higher education organizations
12 and affected constituent groups, including specifically providing
13 for membership selections to be made from nominations from

14 these higher education organizations and affected constituent
15 groups; and

16 (2) A requirement that an organization may have no more
17 than two members serving on the committee at any time and the
18 combined membership representing various groups or divisions
19 within or affiliated with an organization in total may not
20 constitute a majority of the membership; and

21 (3) A requirement that committee members serve staggered
22 terms. One third of the initial appointments shall be for two
23 years, one third for three years and one third for four years.
24 Thereafter, the term is four years. A member may not serve more
25 than four years consecutively.

26 (c) The committee shall meet at least quarterly and at other
27 times at the call of the chair. A majority of the voting members
28 serving on the committee at a given time constitutes a quorum
29 for the purpose of conducting business.

30 (d) An institution may not have a majority of the committee
31 members, and the combined membership representing various
32 groups or divisions within or affiliated with an organization in
33 total may not constitute a majority of the membership.

34 (e) The Compensation Planning and Review Committee has
35 powers and duties related to classified employee compensation
36 programs which include, but are not limited to, the following:

37 (1) Making annual recommendations for revisions in the
38 system classified compensation plan, based on existing
39 economic, budgetary and fiscal conditions or on market study
40 data.

41 (2) Overseeing the five-year market salary study conducted
42 by an external vendor pursuant to section six of this article;

- 43 (3) Overseeing the annual internal market review;
- 44 (4) Meeting at least annually with the Job Classification
45 Committee to discuss benchmark jobs to be included in salary
46 surveys, market “hot jobs” that may require a temporary salary
47 adjustment, results of job family reviews and assessment of
48 current job titles within the classification system for market
49 matches and other issues as the Vice Chancellor for Human
50 Resources, in consultation with the chancellors, determines to be
51 appropriate; and
- 52 (5) Performing other duties as assigned by the commission
53 and council or as necessary or expedient to maintain an effective
54 classification and compensation system.
- 55 (f) The commission and council may allow the committee to
56 collapse the three lowest pay grades into a single pay grade and
57 provide for employees to be paid at rates appropriate to the
58 highest of the three lowest pay grades.

**§18B-9A-5a. Restriction on duties of job classification committee
and compensation planning and review
committee.**

- 1 The commission and council may not delegate any of the
2 following duties to the Compensation Planning and Review
3 Committee or the Job Classification Committee:
- 4 (1) Approval of a classification and compensation rule;
- 5 (2) Approval of the job evaluation plan; and
- 6 (3) Approval of the annual classified salary schedule.

§18B-9A-6. Salary structure and salary schedules.

- 1 (a) The commission and council shall develop and maintain
2 a classified salary schedule and ensure that all organizations

3 under their respective jurisdictions adhere to state and federal
4 laws and duly promulgated and adopted organization rules.

5 (b) The classified salary schedule serves as the basis for the
6 following activities:

7 (1) Evaluating compensation of classified employees in
8 relation to appropriate external markets; and

9 (2) Developing the minimum salary per pay grade to be
10 adopted by the commission and council.

11 (c) The classified salary schedule shall meet the following
12 criteria:

13 (1) Sets forth the number of pay grades to be included in the
14 structure;

15 (2) Includes a midpoint value for each pay grade which
16 represents the average market rate of pay for jobs in that pay
17 grade. The commission and council may choose a midpoint
18 value that is not based exclusively on market salary data; and

19 (3) Includes minimum and maximum pay range values based
20 on an established range spread.

21 (d) The commission and council jointly shall contract with
22 an external vendor to conduct a classified employee market
23 salary study. The study shall be completed by January 31, 2016,
24 and on January 31 every fifth year thereafter. At the conclusion
25 of each study, or for good cause, the commission and council, in
26 consultation with the Compensation Planning and Review
27 Committee, may take any combination of the following actions:

28 (1) Adjust the number of pay grades and the point values
29 necessary to validate the result of the classification system and
30 the job worth hierarchy with the market;

31 (2) Adjust the midpoint differentials between pay grades
32 better to reflect market conditions; or

33 (3) Adjust the range spread for any pay grade.

34 (e) The commission and council jointly may perform an
35 annual review of market salary data to determine how salaries
36 have changed in the external market. Based on data collected, the
37 commission and council jointly, in consultation with the
38 Compensation Planning and Review Committee, shall adjust the
39 classified salary schedule if changes are supported by the data.

40 (f) Annually, the commission and council may approve a
41 minimum salary amount that sets forth a compensation level for
42 each pay grade below which no organization employee may be
43 paid.

44 (1) The minimum salary amount for each pay grade on the
45 classified salary schedule is determined by applying a percentage
46 determined after analysis of the market and existing
47 compensation levels to the annual market salary data. The
48 commission and council may take into consideration other
49 factors they consider appropriate.

50 (2) The salary of an employee working fewer than thirty-
51 seven and one-half hours per week shall be prorated.

52 (g) The organization rule promulgated pursuant to subsection
53 (c), section seven of this article may provide for differential pay
54 for certain employees who work different shifts, weekends or
55 holidays.

§18B-9A-7. Classification and compensation rules required.

1 (a) Notwithstanding any provision of law or rule to the
2 contrary, the commission and council jointly shall design,
3 develop, implement and administer the classified personnel

4 system of classification and compensation pursuant to this article
5 and articles seven, eight and nine of this chapter.

6 (b) *System rule.* —

7 The commission and council shall propose a joint rule or
8 rules for legislative approval in accordance with article three-a,
9 chapter twenty-nine-a of this code to implement the provisions
10 of this article and articles seven, eight and nine of this chapter.
11 The rule shall establish a classified employee classification and
12 compensation system that incorporates best human resources
13 practices.

14 (1) *Organization accountability.* —

15 The commission and council shall propose a joint system
16 rule that provides a procedure for correcting deficiencies
17 identified in the human resources reviews conducted pursuant to
18 section nine, article seven of this chapter. The procedure shall
19 include, but is not limited to, the following components:

20 (A) Specifying a reasonable time for organizations to correct
21 deficiencies uncovered by a review;

22 (B) Applying sanctions when major deficiencies are not
23 corrected within the allotted time:

24 (i) For purposes of this subsection, a major deficiency means
25 an organization has failed to comply with federal or state law or
26 with personnel rules of the commission and council.

27 (ii) When a major deficiency is identified, the commission
28 or council, as appropriate, shall notify the governing board of the
29 institution in writing, giving particulars of the deficiency and
30 outlining steps the governing board is required to take to correct
31 the deficiency.

32 (iii) The governing board shall correct the major deficiency
33 within four months or longer provided the length of time is
34 agreed upon by the governing board and the commission or
35 council as applicable, and shall notify the commission or
36 council, as appropriate, when the deficiency has been corrected.

37 (iv) If the governing boards fail to correct the major
38 deficiency or fail to notify the commission or council, as
39 appropriate, that the deficiency has been corrected within the
40 agreed upon period, the commission or council shall apply
41 sanctions.

42 Sanctions may include, but are not limited to, suspending
43 new hiring by the organization and prohibiting compensation
44 increases for key administrators who have authority over the
45 areas of major deficiency until the identified deficiencies are
46 corrected.

47 (2) *Classified employee classification and compensation.* —
48 The classified employee classification and compensation system
49 rule shall establish a classification and compensation system to
50 accomplish the following objectives:

51 (A) Allowing for performance and other objective,
52 measurable factors such as technical expertise, education, years
53 of experience in higher education and experience above position
54 requirements to be considered in compensation decisions;

55 (B) Achieving and maintaining appropriate levels of
56 employee dispersion through a pay range;

57 (C) The rule shall provide that the salary of a current
58 employee may not be reduced by a job reclassification, a
59 modification of the market salary schedule or other conditions
60 that the commission and the council consider appropriate and
61 reasonable;

62 (D) Establishing a job worth hierarchy and identifying the
63 factors to be used to classify jobs and their relative values and
64 determining the number of points that are necessary to assign a
65 job to a particular pay grade;

66 (E) Establishing an objective standard to be used in
67 determining when a job description or a position description is
68 up-to-date;

69 (F) Providing a procedure whereby a classified employee or
70 a supervisor who believes that changes in the job duties and
71 responsibilities of the employee justify a position review may
72 request that a review be done at any time;

73 (G) Specifying that the acceptable period that may elapse
74 between the time when an employee files a formal request for a
75 position review and the time when the review is completed may
76 not exceed forty-five days. An organization that fails to complete
77 a review within the specified time shall provide the employee
78 back pay from the date the request for review was received if the
79 review, when completed, produces a reclassification of the
80 position into a job in a higher pay grade;

81 (H) Providing a procedure by which employees may file
82 appeals of job classification decisions for review by the Job
83 Classification Committee prior to filing a formal grievance. The
84 committee shall render a decision within sixty days of the date
85 the appeal is filed with the commission or the council;

86 (I) Providing for recommendations from the Compensation
87 Planning and Review Committee and the Job Classification
88 Committee to be considered by the commission and the council
89 and to be included in the legislative reporting process pursuant
90 to section eight, article seven of this chapter; and

91 (J) Establishing and maintaining the job classification
92 committee mandated in section four of this article.

93 (3) *Performance evaluations.* — The system rule shall
94 provide for developing and implementing a consistent, objective
95 performance evaluation model and shall mandate that training in
96 conducting performance evaluations be provided for all
97 organization personnel who hold supervisory positions.

98 (c) *Organization rules.* —

99 (1) Each organization shall promulgate and adopt a rule or
100 rules in accordance with the provisions of section six, article one
101 of this chapter to implement requirements contained in the
102 classification and compensation system rule or rules of the
103 commission and council. The commission and council shall
104 provide a model personnel rule for the organizations under their
105 jurisdiction and shall provide technical assistance in rulemaking
106 as requested.

107 (2) The initial organization rule shall be adopted not later
108 than six months following the date on which the commission and
109 council receive approval to implement the emergency rule
110 promulgated pursuant to this section. Additionally, each
111 organization shall amend its rule to comply with mandated
112 changes not later than six months after the effective date of any
113 change in statute or rules, unless a different compliance date is
114 specified within the statute or rule containing the requirements
115 or mandate.

116 (3) An organization may not adopt a rule under this section
117 until it has consulted with the appropriate employee class
118 affected by the rule's provisions.

119 (4) If an organization fails to adopt a rule or rules as
120 mandated by this subsection, the commission and council may
121 prohibit it from exercising any flexibility or implementing any
122 discretionary provision relating to human resources contained in
123 statute or in a commission or council rule until the organization's
124 rule requirements have been met.

125 (5) Additional flexibility or areas of operational discretion
126 identified in the system rule or rules may be exercised only by an
127 organization which meets the following requirements:

128 (A) Receives certification from the commission or council,
129 as appropriate, that the organization has achieved full funding of
130 the temporary salary schedule or is making appropriate progress
131 toward achieving full funding pursuant to section three, article
132 nine of this chapter;

133 (B) Promulgates a comprehensive classification and
134 compensation rule as required by this section;

135 (C) Receives approval for the classification and
136 compensation rule from the appropriate chancellor in accordance
137 with this section; and

138 (D) Adopts the rule by vote of the organization's governing
139 board.

140 (6) Notwithstanding any provision of this code to the
141 contrary, each chancellor, or his or her designee, has the
142 authority and the duty to review each classification and
143 compensation rule promulgated by an organization under his or
144 her jurisdiction and to recommend changes to the rule to bring
145 it into compliance with state and federal law, commission and
146 council rules or legislative, commission and council intent. Each
147 chancellor may reject or disapprove any rule, in whole or in part,
148 if he or she determines that it is not in compliance with law or
149 rule or if it is inconsistent with legislative, commission and
150 council intent.

CHAPTER 136

**(H. B. 2976 - By Delegate(s) Pasdon, Perry,
Rohrbach, Campbell and Ellington)**

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18C-3-4 of the Code of West Virginia, 1931, as amended, relating to expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

Be it enacted by the Legislature of West Virginia:

That §18C-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.

- 1 (a) There is continued in the State Treasury a special revenue
- 2 account known as the "Center for Nursing Fund" to be
- 3 administered by the commission to implement the provisions of
- 4 this section and article seven-b, chapter thirty of this code. Any
- 5 moneys in the account on the effective date of this section are
- 6 transferred to the commission's administrative authority.
- 7 Balances remaining in the fund at the end of the fiscal year do
- 8 not expire or revert to the general revenue. All costs associated
- 9 with the administration of this section and article seven-b,
- 10 chapter thirty of this code shall be paid from the Center for

11 Nursing Fund under the direction of the Vice Chancellor for
12 Administration. Administrative costs are to be minimized and
13 the maximum amount feasible is to be used to fund awards for
14 students in nursing programs.

15 (b) The account is funded from the following sources:

16 (1) A supplemental licensure fee, not to exceed \$10 per year,
17 to be paid by all nurses licensed by the Board of Examiners for
18 Registered Professional Nurses, pursuant to section eight-a,
19 article seven, chapter thirty of this code, and the Board of
20 Examiners for Licensed Practical Nurses, pursuant to section
21 seven-a, article seven-a, chapter thirty of this code;

22 (2) Repayments, including interest as set by the Vice
23 Chancellor for Administration, collected from recipients who fail
24 to practice or teach in West Virginia under the terms of the
25 scholarship agreement; and

26 (3) Any other funds from any source as may be added to the
27 account.

28 (c) In consultation with the board of directors of the West
29 Virginia Center for Nursing, established pursuant to article
30 seven-b, chapter thirty of this code, the commission shall
31 administer a scholarship, designated the "Nursing Scholarship
32 Program", designed to benefit nurses who practice in hospitals
33 and other health care institutions or teach in state nursing
34 programs.

35 (1) Awards are available for students enrolled in accredited
36 nursing programs in West Virginia. A recipient shall execute an
37 agreement to fulfill a service requirement or repay the amount of
38 any award received.

39 (2) Awards are made as follows, subject to the rule required
40 by this section:

41 (A) An award for any student may not exceed the full cost of
42 education for program completion;

43 (B) An award of up to \$3,000 is available for a student in a
44 licensed practical nurse education program. A recipient is
45 required to practice nursing in West Virginia for one year
46 following program completion;

47 (C) An award of up to \$7,500 is available for a student who
48 has completed one-half of a registered nurse education program.
49 A recipient is required to teach or practice nursing in West
50 Virginia for two years following program completion.

51 (D) An award of up to \$15,000 is available to a student in a
52 nursing master's degree program or a doctoral nursing or
53 education program. A recipient is required to teach in West
54 Virginia for two years following program completion.

55 (E) An award of up to \$1,000 per year is available for a
56 student obtaining a licensed practical nurse teaching certificate.
57 A recipient is required to teach in West Virginia for one year per
58 award received.

59 (d) An award recipient shall satisfy one of the following
60 conditions:

61 (1) Fulfill the service requirement pursuant to this section
62 and the legislative rule; or

63 (2) Repay the commission for the amount awarded, together
64 with accrued interest as stipulated in the service agreement.

65 (e) The commission shall promulgate a rule for legislative
66 approval pursuant to article three-a, chapter twenty-nine-a of this
67 code to implement and administer this section. The rule shall
68 provide for the following:

69 (1) Eligibility and selection criteria for program
70 participation;

71 (2) Terms of a service agreement which a recipient shall
72 execute as a condition of receiving an award;

73 (3) Repayment provisions for a recipient who fails to fulfill
74 the service requirement;

75 (4) Forgiveness options for death or disability of a recipient;

76 (5) An appeal process for students denied participation or
77 ordered to repay awards; and

78 (6) Additional provisions as necessary to implement this
79 section.

80 (f) The commission shall report annually by December 1, to
81 the Legislative Oversight Commission on Health and Human
82 Resources Accountability and the Legislative Oversight
83 Commission on Education Accountability on the number of
84 award recipients and all other matters relevant to the provisions
85 of this section.

CHAPTER 137

(S. B. 295 - By Senators Ferns and Trump)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-13, relating to judicial review of decisions of the West Virginia Department of

Health and Human Resources Board of Review and the Bureau for Medical Services affecting applicants, recipients or providers of state or federal assistance programs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9-2-13, to read as follows:

**ARTICLE 2. COMMISSIONER OF HUMAN SERVICES;
P O W E R S , D U T I E S A N D
RESPONSIBILITIES GENERALLY.**

§9-2-13. Judicial review of decisions of contested cases.

1 (a) For purposes of this section:

2 (1) “Agency” means the Board of Review or the Bureau for
3 Medical Services, as the case may be, that has been named as a
4 party to any proceeding on appeal made pursuant to the
5 provisions of this section.

6 (2) “Board of Review” or “Board” means the West Virginia
7 Department of Health and Human Resources Board of Review
8 operating pursuant to the provisions of subdivision (13), section
9 six of this article.

10 (3) “Bureau” means the Department of Health and Human
11 Resources’ Bureau for Medical Services which is the single state
12 agency for Medicaid services in West Virginia.

13 (b) The board shall provide a fair, impartial and expeditious
14 grievance and appeal process to applicants or recipients of state
15 assistance, federal assistance, federal-state assistance or welfare
16 assistance, as defined in article one of this chapter. The bureau
17 shall provide a fair, impartial and expeditious grievance and
18 appeal process to providers of Medicaid services.

19 (c) Any party adversely affected or aggrieved by a final
20 decision or order of the agency may seek judicial review of that
21 decision.

22 (d) Proceedings for review shall be instituted by filing a
23 petition, at the election of the petitioner, in either the circuit
24 court of Kanawha County, West Virginia, or in the circuit court
25 of the county in which the petitioner or any one of the petitioners
26 resides or does business, or with the judge thereof in vacation,
27 within thirty days after the date upon which such party received
28 notice of the final order or decision of the agency. A copy of the
29 petition shall be served upon the agency and all other parties of
30 record by registered or certified mail. The petition shall state
31 whether the appeal is taken on questions of law or questions of
32 fact, not both. No appeal bond is required to effect any such
33 appeal.

34 (e) The filing of the petition for appeal does not stay or
35 supercede enforcement of the final decision or order of the
36 agency. The agency may voluntarily stay such enforcement and
37 the appellant, at any time after the filing of the petition for
38 appeal, may apply to the circuit court of Kanawha County, or in
39 the circuit court of the county in which the petitioner or any one
40 of the petitioners resides or does business, for a stay of or to
41 supersede the final decision or order. Pending the appeal, the
42 circuit court may grant a stay or supersede the order upon such
43 terms as it considers proper.

44 (f) Within fifteen days after receipt of a copy of the petition
45 by the agency, or within such further time as the court may
46 allow, the agency shall prepare and transmit to the circuit court
47 of Kanawha County, or in the circuit court of the county in
48 which the petitioner or any one of the petitioners resides or does
49 business, the original or a certified copy of the entire record of
50 the proceeding under review: *Provided*, That all records prepared
51 and transmitted that involve a minor shall be filed under seal.

52 This shall include a transcript of all reported testimony and all
53 exhibits, papers, motions, documents, evidence, records, agency
54 staff memoranda and data used in consideration of the case, all
55 briefs, memoranda, papers and records considered by the agency
56 in the underlying proceeding and a statement of matters
57 officially noted. By stipulation of the parties, the record may be
58 shortened. In the event the complete record is not filed with the
59 court within the time provided for in this section, the appellant
60 may apply to the court to have the case docketed and the court
61 shall order the agency to file the record.

62 (g) The cost of preparing the official record shall be assessed
63 as part of the costs of the appeal. The appellant shall provide
64 security for costs satisfactory to the court. Any party
65 unreasonably refusing to stipulate to limit the record may be
66 assessed by the court for the additional costs involved. Upon
67 demand by any party to the appeal, the agency shall furnish, at
68 cost to the requesting party, a copy of the official record.

69 (h) The court shall hear appeals upon assignments of error
70 filed in the petition or set out in the briefs filed by the parties.
71 The court, at its discretion, may disregard errors not argued by
72 brief or may consider errors that are not assigned or argued. The
73 court shall fix a date and time for the hearing on the petition.
74 Unless otherwise agreed by the parties, the court shall not
75 schedule the hearing sooner than ten days after the filing of the
76 petition for appeal. The petitioner shall provide notice of the date
77 and time of the hearing to the agency.

78 (i) In cases involving alleged irregularities in procedure
79 before the agency that are not shown in the record, the court may
80 take additional testimony. Otherwise, the circuit court shall
81 review the appeal without a jury and may only consider the
82 official record provided pursuant to the requirements of this
83 section. The court may hear oral arguments and require written
84 briefs.

85 (j) The court may affirm the final decision or order of the
86 agency or remand the matter for further proceedings. The court
87 may reverse, vacate or modify the final decision or order of the
88 agency only if the substantial rights of the petitioner have been
89 prejudiced because the administrative findings, inferences,
90 conclusions, decision or order are:

91 (1) In violation of constitutional or statutory provisions;

92 (2) In excess of the statutory authority or jurisdiction of the
93 agency;

94 (3) Made upon unlawful procedures;

95 (4) Affected by other error of law;

96 (5) Clearly wrong in view of the reliable, probative and
97 substantial evidence on the whole record; or

98 (6) Arbitrary or capricious or characterized by an abuse of
99 discretion or clearly unwarranted exercise of discretion.

100 (k) The judgment of the circuit court is final unless reversed,
101 vacated or modified on appeal to the West Virginia Supreme
102 Court of Appeals.

103 (l) The process established by this section is the exclusive
104 remedy for judicial review of final decisions of the Board of
105 Review and the Bureau for Medical Services.

CHAPTER 138

**(Com. Sub. for S. B. 274 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §9-9-11 of the Code of West Virginia, 1931, as amended, relating to Temporary Assistance for Needy Families program; directing Secretary of Department of Health and Human Resources promulgate emergency and legislative rules setting forth schedule of sanctions; identifying certain factors and goals that secretary is to consider when setting schedule of sanctions; directing secretary promulgate legislative rules governing what constitutes de minimis violations and those violations subject to sanctions and maximum penalties; setting forth reporting requirement to Legislative Oversight Commission on Health and Human Resources Accountability regarding sanctions; and providing copies of reports be provided to President of the Senate and Speaker of the House.

Be it enacted by the Legislature of West Virginia:

That §9-9-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-11. Breach of contract; notice; sanctions.

- 1 (a) The department may terminate cash assistance benefits
- 2 to an at-risk family if it finds any of the following:

3 (1) Fraud or deception by the beneficiary in applying for or
4 receiving program benefits;

5 (2) A substantial breach by the beneficiary of the
6 requirements and obligations set forth in the personal
7 responsibility contract and any amendments or addenda to the
8 contract; or

9 (3) A violation by the beneficiary of any provision of the
10 personal responsibility contract or any amendments or addenda
11 to the contract, this article, or any rule or policy promulgated by
12 the secretary pursuant to this article.

13 (b) In the event the department determines that benefits
14 received by the beneficiary are subject to reduction or
15 termination, written notice of the reduction or termination and
16 the reason for the reduction or termination shall be deposited in
17 the United States mail, postage prepaid and addressed to the
18 beneficiary at his or her last-known address at least thirteen days
19 prior to the termination or reduction. The notice shall state the
20 action being taken by the department and grant to the beneficiary
21 a reasonable opportunity to be heard at a fair and impartial
22 hearing before the department in accordance with administrative
23 procedures established by the department and due process of
24 law.

25 (c) In any hearing conducted pursuant to the provisions of
26 this section, the beneficiary has the burden of proving that his or
27 her benefits were improperly reduced or terminated and shall
28 bear his or her own costs, including attorneys' fees.

29 (d) The secretary shall promulgate emergency rules and
30 propose for legislative promulgation legislative rules, pursuant
31 to article three, chapter twenty-nine-a of this code, setting forth
32 the schedule of sanctions to be imposed when a beneficiary has
33 violated any provision of this article, of his or her personal
34 responsibility contract or any amendment or addendum to the

35 contract, or any applicable department rule. In developing these
36 rules, the secretary is directed to make those sanctions graduated
37 and sufficiently stringent, when compared to those of contiguous
38 states, so as to discourage persons from moving from such states
39 to this state to take advantage of lesser sanctions being imposed
40 for the same or similar violations by the secretary. The secretary
41 shall also promulgate legislative rules setting forth what
42 constitutes de minimis violations and those violations subject to
43 sanctions and maximum penalties.

44 (e) The department shall provide an annual report regarding
45 the sanctions relating to the Temporary Assistance to Needy
46 Families program , including their relative stringency when
47 compared to those of contiguous states, frequency of imposition
48 and the overall success of those sanctions at deterring individuals
49 from taking advantage of the Temporary Assistance to Needy
50 Families program and accomplishing the overall purposes of the
51 program, to the Legislative Oversight Commission on Health
52 and Human Resources Accountability on January 1 of each year.
53 Copies of that report shall also be furnished to the President of
54 the Senate and Speaker of the House.

CHAPTER 139

**(H. B. 2213 - By Mr. Speaker, (Mr. Armstead)
and Miley)**

[By Request of the Executive]

[Passed March 11, 2015; in effect from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended, relating to the West Virginia

Infrastructure Fund; reducing the distributions to the West Virginia Infrastructure Fund from the State Excess Lottery Revenue Fund to \$30 million for fiscal year 2016; and increasing the percentage of funds available annually for grants from the West Virginia Infrastructure Fund.

Be it enacted by the Legislature of West Virginia:

That §29-22-18d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Increase in allocation to West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund.

1 Notwithstanding any provision of subsection (d), section
2 eighteen-a of this article to the contrary, the deposit of \$40
3 million into the West Virginia Infrastructure Fund set forth
4 above is for the fiscal year beginning July 1, 2010, only. For the
5 fiscal year beginning July 1, 2011, and each fiscal year
6 thereafter, in lieu of the deposits required under subdivision (5),
7 subsection (d), section eighteen-a of this article, the commission
8 shall, first, deposit \$6 million into the West Virginia
9 Infrastructure Lottery Revenue Debt Service Fund created in
10 subsection (h), section nine, article fifteen-a, chapter thirty-one
11 of this code, to be spent in accordance with the provisions of that
12 subsection, and, second deposit \$40 million into the West
13 Virginia Infrastructure Fund created in subsection (a), section
14 nine, article fifteen-a, chapter thirty-one of this code, to be spent
15 in accordance with the provisions of that article: *Provided*, That
16 for the fiscal year beginning July 1, 2014, the deposit to the West
17 Virginia Infrastructure Fund shall be \$20 million: *Provided*,
18 *however*, That notwithstanding the provisions of subsection (a),
19 section ten, article fifteen-a, chapter thirty-one of this code, for

20 the fiscal year beginning July 1, 2014, any moneys disbursed
21 from the West Virginia Infrastructure Fund in the form of grants
22 may not exceed fifty percent of the total funds available for the
23 funding of projects: *Provided further*, That for the fiscal year
24 beginning July 1, 2015, the deposit to the West Virginia
25 Infrastructure Fund shall be \$30 million: *And provided further*,
26 That notwithstanding the provisions of subsection (a), section
27 ten, article fifteen-a, chapter thirty-one of this code, for the fiscal
28 year beginning July 1, 2015, any moneys disbursed from the
29 West Virginia Infrastructure Fund in the form of grants may not
30 exceed fifty percent of the total funds available for the funding
31 of projects.

CHAPTER 140

**(H. B. 2212 - By Mr. Speaker, (Mr. Armstead)
and Miley)**

[By Request of the Executive]

[Passed February 25, 2015; in effect from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §31-15A-16 of the Code of West Virginia, 1931, as amended, relating to dedication of severance tax proceeds to the West Virginia Infrastructure General Obligation Debt Service Fund; specifying reduction of the amount of severance tax proceeds dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

That §31-15A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.****§31-15A-16. Dedication of severance tax proceeds.**

1 (a) There shall be dedicated an annual amount from the
2 collections of the tax collected pursuant to article thirteen-a,
3 chapter eleven of this code for the construction, extension,
4 expansion, rehabilitation, repair and improvement of water
5 supply and sewage treatment systems and for the acquisition,
6 preparation, construction and improvement of sites for economic
7 development in this state as provided in this article.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, beginning on July 1, 1995, the first \$16 million of the
10 tax collected pursuant to article thirteen-a, chapter eleven of this
11 code shall be deposited to the credit of the West Virginia
12 Infrastructure General Obligation Debt Service Fund created
13 pursuant to section three, article fifteen-b of this chapter:
14 *Provided*, That beginning on July 1, 1998, the first \$24 million
15 of the tax annually collected pursuant to article thirteen-a of this
16 code shall be deposited to the credit of the West Virginia
17 Infrastructure General Obligation Debt Service Fund created
18 pursuant to section three, article fifteen-b of this chapter:
19 *Provided, however*, That subject to the conditions, limitations,
20 exclusions and constraints prescribed by subsection (c) of this
21 section, beginning on July 1, 2013, the amount deposited under
22 this subsection to the credit of the West Virginia Infrastructure
23 General Obligation Debt Service Fund created pursuant to
24 section three, article fifteen-b of this chapter shall be the first
25 \$23 million of the tax annually collected pursuant to article
26 thirteen-a, chapter eleven of this code: *Provided further*, That
27 subject to the conditions, limitations, exclusions and constraints
28 prescribed by subsection (c) of this section, beginning on July 1,
29 2015, the amount deposited under this subsection to the credit of
30 the West Virginia Infrastructure General Obligation Debt

31 Service Fund created pursuant to section three, article fifteen-b
32 of this chapter shall be the first \$22.5 million of the tax annually
33 collected pursuant to article thirteen-a, chapter eleven of this
34 code.

35 (c) Notwithstanding any provision of subsection (b) of this
36 section to the contrary: (1) None of the collections from the tax
37 imposed pursuant to section six, article thirteen-a, chapter eleven
38 of this code shall be so dedicated or deposited; and (2) the
39 portion of the tax imposed by article thirteen-a, chapter eleven
40 and dedicated for purposes of Medicaid and the Division of
41 Forestry pursuant to section twenty-a of said article thirteen-a
42 shall remain dedicated for the purposes set forth in that section
43 twenty-a.

44 (d) On or before May 1 of each year, commencing May 1,
45 1995, the council, by resolution, shall certify to the Treasurer
46 and the Water Development Authority the principal and interest
47 coverage ratio and amount for the following fiscal year on any
48 infrastructure general obligation bonds issued pursuant to the
49 provisions of article fifteen-b of this chapter.

CHAPTER 141

**(Com. Sub. for H. B. 2790 - By Delegate(s) Westfall,
Waxman, Shott and Frich)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-6-31 and §33-6-31d of said code; and to amend said code by adding thereto a new section, designated §33-6-31h, all

relating to proof of financial responsibility limits for motor vehicles; increasing the minimum amounts of proof required; providing that insurers are not required to offer new or increased uninsured or underinsured motor vehicle coverage when coverage is increased to meet the increased requirements of proof of financial responsibility; providing that insurers who issue policies with named driver exclusions are not required to provide any coverage upon an insured vehicle covering the excluded driver, notwithstanding the requirements of proof of financial responsibility.

Be it enacted by the Legislature of West Virginia:

That §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-6-31 and §33-6-31d of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-6-31h , all to read as follows:

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-2. “Proof of financial responsibility” defined.

1 As used in this chapter:

2 (a)“Proof of financial responsibility” means proof of ability
3 to respond in damages for liability, on account of accident
4 occurring subsequent to the effective date of the proof, arising
5 out of the ownership, operation, maintenance or use of a motor
6 vehicle, trailer or semitrailer in the amount of \$20,000 because
7 of bodily injury to or death of one person in any one accident,
8 and, subject to the limit for one person, in the amount of \$40,000
9 because of bodily injury to or death of two or more persons in

10 any one accident, and in the amount of \$10,000 because of injury
11 to or destruction of property of others in any one accident.

12 (b) Beginning January 1, 2016, “proof of financial
13 responsibility” means proof of ability to respond in damages for
14 liability, on account of accident occurring subsequent to the
15 effective date of the proof, arising out of the ownership,
16 operation, maintenance, or use of a motor vehicle, trailer or
17 semitrailer in the amount of \$25,000 because of bodily injury to
18 or death of one person in any one accident, and, subject to the
19 limit for one person, in the amount of \$50,000 because of bodily
20 injury to or death of two or more persons in any one accident,
21 and in the amount of \$25,000 because of injury to or destruction
22 of property of others in any one accident: *Provided*, That proof
23 of financial responsibility provided by an insurance policy in
24 effect on December 31, 2015 in the minimum amounts required
25 in subdivision (a) of this section shall continue to provide
26 adequate proof of financial responsibility required by this
27 chapter until the policy expires or is renewed.

§17D-4-7. Payments sufficient to satisfy requirements.

1 (a) Judgments herein referred to shall, for the purpose of this
2 chapter only, are deemed satisfied:

3 (1) When \$20,000 has been credited upon any judgment or
4 judgments rendered in excess of that amount because of bodily
5 injury to or death of one person as the result of any one accident;
6 or

7 (2) When, subject to such limit of \$20,000 because of bodily
8 injury to or death of one person, the sum of \$40,000 has been
9 credited upon any judgment or judgments rendered in excess of
10 that amount because of bodily injury to or death of two or more
11 persons as the result of any one accident; or

12 (3) When \$10,000 has been credited upon any judgment or
13 judgments rendered in excess of that amount because of injury

14 to or destruction of property of others as a result of any one
15 accident.

16 (b) Notwithstanding the provisions of subsection (a) of this
17 section, judgments herein referred to that are rendered upon a
18 cause of action that arose on or after January 1, 2016, for the
19 purpose of this chapter only, are deemed satisfied:

20 (1) When \$25,000 has been credited upon any judgment or
21 judgments rendered in excess of that amount because of bodily
22 injury to or death of one person as the result of any one accident;
23 or

24 (2) When, subject to such limit of \$25,000 because of bodily
25 injury to or death of one person, the sum of \$50,000 has been
26 credited upon any judgment or judgments rendered in excess of
27 that amount because of bodily injury to or death of two or more
28 persons as the result of any one accident; or

29 (3) When \$25,000 has been credited upon any judgment or
30 judgments rendered in excess of that amount because of injury
31 to or destruction of property of others as a result of any one
32 accident.

33 (c) Payments made in settlement of any claims because of
34 bodily injury, death or property damage arising from such
35 accident shall be credited in reduction of the amounts provided
36 for in this section.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of policy.

1 (a) A “motor vehicle liability policy” as the term is used in
2 this chapter means an “owner’s policy” or an “operator’s policy”
3 of liability insurance certified as provided in section ten or
4 section eleven of this article as proof of financial responsibility,
5 and issued, except as otherwise provided in section eleven, by an

6 insurance carrier duly authorized to transact business in this
7 state, to or for the benefit of the person named therein as insured.

8 (b) Such owner's policy of liability insurance:

9 (1) Shall designate by explicit description or by appropriate
10 reference all vehicles with respect to which coverage is thereby
11 to be granted; and

12 (2) Shall insure the person named therein and any other
13 person, as insured, using any such vehicle or vehicles with the
14 express or implied permission of such named insured, against
15 loss from the liability imposed by law for damages arising out of
16 the ownership, operation, maintenance or use of such vehicle or
17 vehicles within the United States of America or the Dominion of
18 Canada, subject to limits exclusive of interest and costs, with
19 respect to each such vehicle, in the amounts required in section
20 two of this article.

21 (c) Such operator's policy of liability insurance shall insure
22 the person named as insured therein against loss from the
23 liability imposed upon him or her by law for damages arising out
24 of the use by him or her of any motor vehicle not owned by him
25 or her, within the same territorial limits and subject to the same
26 limits of liability as are set forth above with respect to an
27 owner's policy of liability insurance.

28 (d) Such motor vehicle liability policy shall state the name
29 and address of the named insured, the coverage afforded by the
30 policy, the premium charged therefor, the policy period, and the
31 limits of liability, and shall contain an agreement or be endorsed
32 that insurance is provided thereunder in accordance with the
33 coverage defined in this chapter as respects bodily injury and
34 death or property damage, or both, and is subject to all the
35 provisions of this chapter.

36 (e) Such motor vehicle liability policy need not insure any
37 liability under any workers' compensation law nor any liability
38 on account of bodily injury to or death of an employee of the
39 insured while engaged in the employment, other than domestic,
40 of the insured, or while engaged in the operation, maintenance
41 or repair of any such vehicle nor any liability for damage to
42 property owned by, rented to, in charge of or transported by the
43 insured.

44 (f) Every motor vehicle liability policy is subject to the
45 following provisions which need not be contained therein:

46 (1) The liability of the insurance carrier with respect to the
47 insurance required by this chapter shall become absolute
48 whenever injury or damage covered by said motor vehicle
49 liability policy occurs; the policy may not be canceled or
50 annulled as to such liability by an agreement between the
51 insurance carrier and the insured after the occurrence of the
52 injury or damage; no statement made by the insured or on his or
53 her behalf and no violation of the policy defeats or voids the
54 policy.

55 (2) The satisfaction by the insured of a judgment for such
56 injury or damage is not a condition precedent to the right or duty
57 of the insurance carrier to make payment on account of such
58 injury or damage.

59 (3) The insurance carrier may settle any claim covered by
60 the policy, and if such settlement is made in good faith, the
61 amount thereof shall be deductible from the limits of liability
62 specified in subdivision (2), subsection (b) of this section.

63 (4) The policy, the written application therefor, if any, and
64 any rider or endorsement which does not conflict with the
65 provisions of this chapter constitutes the entire contract between
66 parties.

67 (g) Any policy which grants the coverage required for a
68 motor vehicle liability policy may also grant any lawful coverage
69 in excess of or in addition to the coverage specified for a motor
70 vehicle liability policy and such excess or additional coverage is
71 not subject to the provisions of this chapter. With respect to a
72 policy which grants such excess or additional coverage, the term
73 “motor vehicle liability policy” applies only to that part of the
74 coverage which is required by this section.

75 (h) Any motor vehicle liability policy may provide that the
76 insured shall reimburse the insurance carrier for any payment the
77 insurance carrier would not have been obligated to make under
78 the terms of the policy except for the provisions of this chapter.

79 (i) Any motor vehicle liability policy may provide for the
80 prorating of the insurance thereunder with other valid and
81 collectible insurance.

82 (j) The requirements for a motor vehicle liability policy may
83 be fulfilled by the policies of one or more insurance carriers
84 which policies together meet such requirements.

85 (k) Any binder issued pending the issuance of a motor
86 vehicle policy fulfills the requirements for such a policy.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability insurance,
2 or of property damage liability insurance, covering liability
3 arising from the ownership, maintenance or use of any motor

4 vehicle, may be issued or delivered in this state to the owner of
5 such vehicle, or may be issued or delivered by any insurer
6 licensed in this state upon any motor vehicle for which a
7 certificate of title has been issued by the Division of Motor
8 Vehicles of this state, unless it contains a provision insuring the
9 named insured and any other person, except a bailee for hire and
10 any persons specifically excluded by any restrictive endorsement
11 attached to the policy, responsible for the use of or using the
12 motor vehicle with the consent, expressed or implied, of the
13 named insured or his or her spouse against liability for death or
14 bodily injury sustained or loss or damage occasioned within the
15 coverage of the policy or contract as a result of negligence in the
16 operation or use of such vehicle by the named insured or by such
17 person: *Provided*, That in any such automobile liability
18 insurance policy or contract, or endorsement thereto, if coverage
19 resulting from the use of a nonowned automobile is conditioned
20 upon the consent of the owner of such motor vehicle, the word
21 “owner” shall be construed to include the custodian of such
22 nonowned motor vehicles. Notwithstanding any other provision
23 of this code, if the owner of a policy receives a notice of
24 cancellation pursuant to article six-a of this chapter and the
25 reason for the cancellation is a violation of law by a person
26 insured under the policy, said owner may by restrictive
27 endorsement specifically exclude the person who violated the
28 law and the restrictive endorsement shall be effective in regard
29 to the total liability coverage provided under the policy,
30 including coverage provided pursuant to the mandatory liability
31 requirements of section two, article four, chapter seventeen-d of
32 this code, but nothing in such restrictive endorsement may be
33 construed to abrogate the “family purpose doctrine”.

34 (b) Nor may any such policy or contract be so issued or
35 delivered unless it contains an endorsement or provisions
36 undertaking to pay the insured all sums which he or she is
37 legally entitled to recover as damages from the owner or
38 operator of an uninsured motor vehicle, within limits which shall

39 be no less than the requirements of section two, article four,
40 chapter seventeen-d of this code, as amended from time to time:
41 *Provided*, That such policy or contract shall provide an option to
42 the insured with appropriately adjusted premiums to pay the
43 insured all sums which he or she shall be legally entitled to
44 recover as damages from the owner or operator of an uninsured
45 motor vehicle up to an amount of \$100,000 because of bodily
46 injury to or death of one person in any one accident and, subject
47 to said limit for one person, in the amount of \$300,000 because
48 of bodily injury to or death of two or more persons in any one
49 accident and in the amount of \$50,000 because of injury to or
50 destruction of property of others in any one accident: *Provided*,
51 *however*, That such endorsement or provisions may exclude the
52 first \$300 of property damage resulting from the negligence of
53 an uninsured motorist: *Provided further*, That such policy or
54 contract shall provide an option to the insured with appropriately
55 adjusted premiums to pay the insured all sums which he or she
56 is legally entitled to recover as damages from the owner or
57 operator of an uninsured or underinsured motor vehicle up to an
58 amount not less than limits of bodily injury liability insurance
59 and property damage liability insurance purchased by the insured
60 without set off against the insured's policy or any other policy.
61 Regardless of whether motor vehicle coverage is offered and
62 provided to an insured through a multiple vehicle insurance
63 policy or contract, or in separate single vehicle insurance
64 policies or contracts, no insurer or insurance company providing
65 a bargained for discount for multiple motor vehicles with respect
66 to underinsured motor vehicle coverage may be treated
67 differently from any other insurer or insurance company utilizing
68 a single insurance policy or contract for multiple covered
69 vehicles for purposes of determining the total amount of
70 coverage available to an insured. "Underinsured motor vehicle"
71 means a motor vehicle with respect to the ownership, operation
72 or use of which there is liability insurance applicable at the time
73 of the accident, but the limits of that insurance are either: (i)

74 Less than limits the insured carried for underinsured motorists'
75 coverage; or (ii) has been reduced by payments to others injured
76 in the accident to limits less than limits the insured carried for
77 underinsured motorists' coverage. No sums payable as a result
78 of underinsured motorists' coverage may be reduced by
79 payments made under the insured's policy or any other policy.

80 (c) As used in this section, the term "bodily injury" includes
81 death resulting therefrom and the term "named insured" means
82 the person named as such in the declarations of the policy or
83 contract and also includes such person's spouse if a resident of
84 the same household and the term "insured" means the named
85 insured and, while resident of the same household, the spouse of
86 any such named insured and relatives of either, while in a motor
87 vehicle or otherwise, and any person, except a bailee for hire,
88 who uses, with the consent, expressed or implied, of the named
89 insured, the motor vehicle to which the policy applies or the
90 personal representative of any of the above; and the term
91 "uninsured motor vehicle" means a motor vehicle as to which
92 there is no: (i) Bodily injury liability insurance and property
93 damage liability insurance both in the amounts specified by
94 section two, article four, chapter seventeen-d of this code, as
95 amended from time to time; (ii) there is such insurance, but the
96 insurance company writing the same denies coverage thereunder;
97 or (iii) there is no certificate of self-insurance issued in
98 accordance with the provisions of said section. A motor vehicle
99 shall be deemed to be uninsured if the owner or operator thereof
100 be unknown: *Provided*, That recovery under the endorsement or
101 provisions is subject to the conditions hereinafter set forth.

102 (d) Any insured intending to rely on the coverage required
103 by subsection (b) of this section shall, if any action be instituted
104 against the owner or operator of an uninsured or underinsured
105 motor vehicle, cause a copy of the summons and a copy of the
106 complaint to be served upon the insurance company issuing the
107 policy, in the manner prescribed by law, as though such

108 insurance company were a named party defendant; such
109 company shall thereafter have the right to file pleadings and to
110 take other action allowable by law in the name of the owner, or
111 operator, or both, of the uninsured or underinsured motor vehicle
112 or in its own name.

113 Nothing in this subsection prevents such owner or operator
114 from employing counsel of his or her own choice and taking any
115 action in his or her own interest in connection with such
116 proceeding.

117 (e) If the owner or operator of any motor vehicle which
118 causes bodily injury or property damage to the insured is
119 unknown, the insured, or someone in his or her behalf, in order
120 for the insured to recover under the uninsured motorist
121 endorsement or provision, shall:

122 (1) Within twenty-four hours after the insured discover, and
123 being physically able to report the occurrence of such accident,
124 the insured, or someone in his or her behalf, reports the accident
125 to a police, peace or to a judicial officer, unless the accident has
126 already been investigated by a police officer;

127 (2) Notify the insurance company, within sixty days after
128 such accident, that the insured or his or her legal representative
129 has a cause or causes of action arising out of such accident for
130 damages against a person or persons whose identity is unknown
131 and setting forth the facts in support thereof; and, upon written
132 request of the insurance company communicated to the insured
133 not later than five days after receipt of such statement, make
134 available for inspection the motor vehicle which the insured was
135 occupying at the time of the accident; and

136 (3) Upon trial establish that the motor vehicle, which caused
137 the bodily injury or property damage, whose operator is
138 unknown, was a "hit and run" motor vehicle, meaning a motor

139 vehicle which causes damage to the property of the insured
140 arising out of physical contact of such motor vehicle therewith,
141 or which causes bodily injury to the insured arising out of
142 physical contact of such motor vehicle with the insured or with
143 a motor vehicle which the insured was occupying at the time of
144 the accident. If the owner or operator of any motor vehicle
145 causing bodily injury or property damage be unknown, an action
146 may be instituted against the unknown defendant as “John Doe”,
147 in the county in which the accident took place or in any other
148 county in which such action would be proper under the
149 provisions of article one, chapter fifty-six of this code; service of
150 process may be made by delivery of a copy of the complaint and
151 summons or other pleadings to the clerk of the court in which the
152 action is brought, and service upon the insurance company
153 issuing the policy shall be made as prescribed by law as though
154 such insurance company were a party defendant. The insurance
155 company has the right to file pleadings and take other action
156 allowable by law in the name of John Doe.

157 (f) An insurer paying a claim under the endorsement or
158 provisions required by subsection (b) of this section is
159 subrogated to the rights of the insured to whom such claim was
160 paid against the person causing such injury, death or damage to
161 the extent that payment was made. The bringing of an action
162 against the unknown owner or operator as John Doe or the
163 conclusion of such an action does not constitute a bar to the
164 insured, if the identity of the owner or operator who caused the
165 injury or damages complained of, becomes known, from
166 bringing an action against the owner or operator theretofore
167 proceeded against as John Doe. Any recovery against such
168 owner or operator shall be paid to the insurance company to the
169 extent that such insurance company has paid the insured in the
170 action brought against such owner or operator as John Doe,
171 except that such insurance company shall pay its proportionate
172 part of any reasonable costs and expenses incurred in connection
173 therewith, including reasonable attorney’s fees. Nothing in an

174 endorsement or provision made under this subsection, nor any
175 other provision of law, operates to prevent the joining, in an
176 action against John Doe, of the owner or operator of the motor
177 vehicle causing injury as a party defendant, and such joinder is
178 hereby specifically authorized.

179 (g) No such endorsement or provisions may contain any
180 provision requiring arbitration of any claim arising under any
181 such endorsement or provision, nor may anything be required of
182 the insured except the establishment of legal liability, nor may
183 the insured be restricted or prevented in any manner from
184 employing legal counsel or instituting legal proceedings.

185 (h) The provisions of subsections (a) and (b) of this section
186 do not apply to any policy of insurance to the extent that it
187 covers the liability of an employer to his or her employees under
188 any workers' compensation law.

189 (i) The commissioner of insurance shall formulate and
190 require the use of standard policy provisions for the insurance
191 required by this section, but use of such standard policy
192 provisions may be waived by the commissioner in the
193 circumstances set forth in section ten of this article.

194 (j) A motor vehicle is uninsured within the meaning of this
195 section, if there has been a valid bodily injury or property
196 damage liability policy issued upon such vehicle, but which
197 policy is uncollectible, in whole or in part, by reason of the
198 insurance company issuing such policy upon such vehicle being
199 insolvent or having been placed in receivership. The right of
200 subrogation granted insurers under the provisions of subsection
201 (f) of this section does not apply as against any person or persons
202 who is or becomes an uninsured motorist for the reasons set forth
203 in this subsection.

204 (k) Nothing contained herein prevents any insurer from also
205 offering benefits and limits other than those prescribed herein,

206 nor does this section prevent any insurer from incorporating in
207 such terms, conditions and exclusions as may be consistent with
208 the premium charged.

209 (l) The Insurance Commissioner shall review on an annual
210 basis the rate structure for uninsured and underinsured motorists'
211 coverage as set forth in subsection (b) of this section and shall
212 report to the Legislature on said rate structure on or before
213 January 15, 1983, and on or before January 15, of each of the
214 next two succeeding years.

215 (m) For insurance policies in effect on December 31, 2015,
216 including motor vehicle insurance policies and liability policies
217 that are of an excess or umbrella type that cover automobile
218 liability, insurers are not required to make a new offer of
219 uninsured and underinsured motor vehicle coverage upon the
220 renewal if the liability coverage is increased solely to meet the
221 requirements of the increased minimum required financial
222 responsibility limits set forth in subdivision (b), section two,
223 article four, chapter seventeen-d of this code. Those insurers that
224 have issued policies that carry limits of coverage below the
225 minimum required financial responsibility limits in effect on
226 December 31, 2015 shall increase such limits to an amount equal
227 to or above the new minimum required financial responsibility
228 limits when the policy is renewed but not later than December
229 31, 2016.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

1 (a) Optional limits of uninsured motor vehicle coverage and
2 underinsured motor vehicle coverage required by section
3 thirty-one of this article shall be made available to the named
4 insured at the time of initial application for liability coverage and
5 upon any request of the named insured on a form prepared and
6 made available by the Insurance Commissioner. The contents of

7 the form shall be as prescribed by the commissioner and shall
8 specifically inform the named insured of the coverage offered
9 and the rate calculation therefor, including, but not limited to, all
10 levels and amounts of such coverage available and the number
11 of vehicles which will be subject to the coverage. The form shall
12 be made available for use on or before the effective date of this
13 section. The form shall allow any named insured to waive any or
14 all of the coverage offered.

15 (b) Any insurer who issues a motor vehicle insurance policy
16 in this state shall provide the form to each person who applies
17 for the issuance of such policy by delivering the form to the
18 applicant or by mailing the form to the applicant together with
19 the applicant's initial premium notice. The applicant shall
20 complete, date and sign the form and return the form to the
21 insurer within thirty days after receipt thereof. No insurer or
22 agent thereof is liable for payment of any damages applicable
23 under any optional uninsured or underinsured coverage
24 authorized by section thirty-one of this article for any incident
25 which occurs from the date the form was mailed or delivered to
26 the applicant until the insurer receives the form and accepts
27 payment of the appropriate premium for the coverage requested
28 therein from the applicant: *Provided*, That if prior to the
29 insurer's receipt of the executed form the insurer issues a policy
30 to the applicant which provides for such optional uninsured or
31 underinsured coverage, the insurer is liable for payment of
32 claims against such optional coverage up to the limits provided
33 therefor in such policy. The contents of a form described in this
34 section which has been signed by an applicant creates a
35 presumption that such applicant and all named insureds received
36 an effective offer of the optional coverages described in this
37 section and that such applicant exercised a knowing and
38 intelligent election or rejection, as the case may be, of such offer
39 as specified in the form. Such election or rejection is binding on
40 all persons insured under the policy.

41 (c) Any insurer who has issued a motor vehicle insurance
42 policy in this state which is in effect on the effective date of this
43 section shall mail or otherwise deliver the form to any person
44 who is designated in the policy as a named insured. A named
45 insured shall complete, date and sign the form and return the
46 form to the insurer within thirty days after receipt thereof. No
47 insurer or agent thereof is liable for payment of any damages in
48 any amount greater than any limits of such coverage, if any,
49 provided by the policy in effect on the date the form was mailed
50 or delivered to such named insured for any incident which occurs
51 from the date the form was mailed or delivered to such named
52 insured until the insurer receives the form and accepts payment
53 of the appropriate premium for the coverage requested therein
54 from the applicant. The contents of a form described in this
55 section which has been signed by any named insured creates a
56 presumption that all named insureds under the policy received an
57 effective offer of the optional coverages described in this section
58 and that all such named insured exercised a knowing and
59 intelligent election or rejection, as the case may be, of such offer
60 as specified in the form. Such election or rejection is binding on
61 all persons insured under the policy.

62 (d) Failure of the applicant or a named insured to return the
63 form described in this section to the insurer as required by this
64 section within the time periods specified in this section creates
65 a presumption that such person received an effective offer of the
66 optional coverages described in this section and that such person
67 exercised a knowing and intelligent rejection of such offer. Such
68 rejection is binding on all persons insured under the policy.

69 (e) The insurer shall make such forms available to any
70 named insured who requests different coverage limits on or after
71 the effective date of this section. No insurer is required to make
72 such form available or notify any person of the availability of
73 such optional coverages authorized by this section except as
74 required by this section.

75 (f) Notwithstanding any of the provisions of article six of
76 this chapter to the contrary, including section thirty-one-f, for
77 insurance policies in effect on December 31, 2015, insurers are
78 not required to offer or obtain new uninsured or underinsured
79 motorist coverage offer forms as described in this section on any
80 insurance policy to comply with the amount of the minimum
81 required financial responsibility limits set forth in subsection (b),
82 section two, article four, chapter seventeen-d of this code. All
83 such offer forms that were executed prior to January 1, 2016,
84 shall remain in full force and effect.

**§33-6-31h. Excluded drivers; definitions; legislative findings;
restrictive endorsements.**

1 (a) For purposes of this section, the following definitions
2 apply:

3 (1) A “motor vehicle liability policy” means an “owner’s
4 policy” or an “operator’s policy” of liability insurance certified
5 as provided in section twelve, article four, chapter seventeen-d
6 of this code.

7 (2) “Excluded driver” means any driver specifically
8 excluded from coverage under section thirty- one, article six,
9 chapter thirty-three of this code.

10 (3) “Minimum financial responsibility limits” means those
11 limits defined in section two, article four, chapter seventeen-d of
12 this code.

13 (b) The Legislature finds that:

14 (1) The explicit, plain language of a motor vehicle liability
15 policy between an insurer and its insureds should control its
16 effect;

17 (2) Where insurers are required by the common law to
18 provide minimum financial responsibility limits coverage for

19 excluded drivers, consumers not excluded by restrictive
20 endorsement are negatively impacted;

21 (3) The decision of the Supreme Court of Appeals of West
22 Virginia in *Jones v. Motorists Mutual Insurance Company*, 177
23 W. Va. 763 (1987) interpreted chapter seventeen-d of this code
24 to require insurers to provide minimum financial responsibility
25 limits of coverage to excluded drivers; and

26 (4) It is not the intent of the legislature to require insurers to
27 provide minimum financial responsibility limits of coverage to
28 excluded drivers.

29 (c) When any person is specifically excluded from coverage
30 under the provisions of a motor vehicle liability policy by any
31 restrictive endorsement to the policy, the insurer is not required
32 to provide any coverage, including both the duty to indemnify
33 and the duty to defend, for damages arising out of the operation,
34 maintenance or use of any motor vehicle by the excluded driver,
35 notwithstanding the provisions of chapter seventeen-d of this
36 code.

CHAPTER 142

(S. B. 514 - By Senators Gaunch and Plymale)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen's and firemen's pension and relief fund boards; requiring annual review of investment performance; requiring investment with the Investment Management Board in certain

circumstances; and reallocating certain tax revenue in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §33-3-14d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) (1) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds
3 and the Teachers Retirement System Reserve Fund and for
4 volunteer and part-volunteer fire companies and departments,
5 there is hereby levied and imposed an additional premium tax
6 equal to one percent of taxable premiums for fire insurance and
7 casualty insurance policies. For purposes of this section, casualty
8 insurance does not include insurance on the life of a debtor
9 pursuant to or in connection with a specific loan or other credit
10 transaction or insurance on a debtor to provide indemnity for
11 payments becoming due on a specific loan or other credit
12 transaction while the debtor is disabled as defined in the policy.

13 (2) All moneys collected from this additional tax shall be
14 received by the commissioner and paid by him or her into a
15 special account in the State Treasury, designated the Municipal
16 Pensions and Protection Fund: *Provided*, That on or after
17 January 1, 2010, the commissioner shall pay ten percent of the
18 amount collected to the Teachers Retirement System Reserve
19 Fund created in section eighteen, article seven-a, chapter
20 eighteen of this code, twenty-five percent of the amount
21 collected to the Fire Protection Fund created in section
22 thirty-three of this article for allocation by the Treasurer to

23 volunteer and part-volunteer fire companies and departments and
24 sixty-five percent of the amount collected to the Municipal
25 Pensions and Protection Fund: *Provided, however,* That upon
26 notification by the Municipal Pensions Oversight Board pursuant
27 to the provisions of section eighteen-b, article twenty-two,
28 chapter eight of this code, on or after January 1, 2010, or as soon
29 thereafter as the Municipal Pensions Oversight Board is prepared
30 to receive the funds, sixty-five percent of the amount collected
31 by the commissioner shall be deposited in the Municipal
32 Pensions Security Fund created in section eighteen-b, article
33 twenty-two, chapter eight of this code. The net proceeds of this
34 tax after appropriation thereof by the Legislature is distributed
35 in accordance with the provisions of this section, except for
36 distribution from proceeds pursuant to subsection (d), section
37 eighteen-a, article twenty-two, chapter eight of this code.

38 (b) (1) Before August 1 of each year, the treasurer of each
39 municipality in which a municipal policemen's or firemen's
40 pension and relief fund is established shall report to the State
41 Treasurer the average monthly number of members who worked
42 at least one hundred hours per month and the average monthly
43 number of retired members of municipal policemen's or
44 firemen's pension and relief fund or the Municipal Police
45 Officers and Firefighters Retirement System during the
46 preceding fiscal year: *Provided,* That beginning in the year 2010
47 and continuing thereafter, the report shall be made to the
48 oversight board created in section eighteen-a, article twenty-two,
49 chapter eight of this code. These reports received by the
50 oversight board shall be provided annually to the State Treasurer
51 by September 1.

52 (2) Before September 1 of each calendar year, the State
53 Treasurer, or the Municipal Pensions Oversight Board, once in
54 operation, shall allocate and authorize for distribution the
55 revenues in the Municipal Pensions and Protection Fund which
56 were collected during the preceding calendar year for the

57 purposes set forth in this section. Before September 1 of each
58 calendar year and after the Municipal Pensions Oversight Board
59 has notified the Treasurer and commissioner pursuant to section
60 eighteen-b, article twenty-two, chapter eight of this code, the
61 Municipal Pensions Oversight Board shall allocate and authorize
62 for distribution the revenues in the Municipal Pensions Security
63 Fund which were collected during the preceding calendar year
64 for the purposes set forth in this section. In any year the actuarial
65 report required by section twenty, article twenty-two, chapter
66 eight of this code indicates no actuarial deficiency in the
67 municipal policemen's or firemen's pension and relief fund, no
68 revenues may be allocated from the Municipal Pensions and
69 Protection Fund or the Municipal Pensions Security Fund to that
70 fund. The revenues from the Municipal Pensions and Protection
71 Fund shall then be allocated to all other pension and relief funds
72 which have an actuarial deficiency.

73 (3) The Municipal Pensions Oversight Board shall annually
74 review the investment performance of each municipal
75 policemen's or firemen's pension and relief fund. If the
76 municipal pension and relief fund's board fails for three
77 consecutive years to comply with the investment provisions
78 established by section twenty-two-a, article twenty-two, chapter
79 eight of this code, the oversight board may require the municipal
80 policemen's or firemen's pension and relief fund to invest with
81 the Investment Management Board to continue to receive its
82 allocation of funds from the premium tax. If the municipal
83 pension and relief fund fails to move its investments to the
84 Investment Management Fund within the eighteen-month
85 drawdown period, provided in subsection (e), section nineteen,
86 article twenty-two, chapter eight of this code, the revenues shall
87 be reallocated to all other municipal policemen's or firemen's
88 pension and relief funds that have drawn down one hundred
89 percent of their allocations.

90 (4) The moneys, and the interest earned thereon, in the
91 Municipal Pensions and Protection Fund allocated to volunteer
92 and part-volunteer fire companies and departments shall be
93 allocated and distributed quarterly to the volunteer fire
94 companies and departments. Before each distribution date, the
95 State Fire Marshal shall report to the State Treasurer the names
96 and addresses of all volunteer and part-volunteer fire companies
97 and departments within the state which meet the eligibility
98 requirements established in section eight-a, article fifteen,
99 chapter eight of this code.

100 (c) (1) Each municipal pension and relief fund shall have
101 allocated and authorized for distribution a pro rata share of the
102 revenues allocated to municipal policemen's and firemen's
103 pension and relief funds based on the corresponding
104 municipality's average monthly number of police officers and
105 firefighters who worked at least one hundred hours per month
106 during the preceding fiscal year. On and after July 1, 1997, from
107 the growth in any moneys collected pursuant to the tax imposed
108 by this section and interest thereon there shall be allocated and
109 authorized for distribution to each municipal pension and relief
110 fund, a pro rata share of the revenues allocated to municipal
111 policemen's and firemen's pension and relief funds based on the
112 corresponding municipality's average number of police officers
113 and firefighters who worked at least one hundred hours per
114 month and average monthly number of retired police officers and
115 firefighters. For the purposes of this subsection, the growth in
116 moneys collected from the tax collected pursuant to this section
117 is determined by subtracting the amount of the tax collected
118 during the fiscal year ending June 30, 1996, from the tax
119 collected during the fiscal year for which the allocation is being
120 made and interest thereon. All moneys received by municipal
121 pension and relief funds under this section may be expended
122 only for those purposes described in sections sixteen through
123 twenty-eight, inclusive, article twenty-two, chapter eight of this
124 code.

125 (2) Each volunteer fire company or department shall receive
126 an equal share of the revenues allocated for volunteer and
127 part-volunteer fire companies and departments.

128 (3) In addition to the share allocated and distributed in
129 accordance with subdivision (1) of this subsection, each
130 municipal fire department composed of full-time paid members
131 and volunteers and part-volunteer fire companies and
132 departments shall receive a share equal to the share distributed
133 to volunteer fire companies under subdivision (2) of this
134 subsection reduced by an amount equal to the share multiplied
135 by the ratio of the number of full-time paid fire department
136 members who are also members of a municipal firemen's
137 pension and relief fund or the Municipal Police Officers and
138 Firefighters Retirement System to the total number of members
139 of the fire department.

140 (d) The allocation and distribution of revenues provided in
141 this section are subject to the provisions of section twenty,
142 article twenty-two, chapter eight of this code and sections eight-a
143 and eight-b, article fifteen of said chapter.

144 (e) Based upon the findings of an audit by the Treasurer, the
145 Legislature hereby finds and declares that during the period of
146 1982 through April 27, 2012, allocations from the Municipal
147 Pensions and Protection Fund were miscalculated and errors
148 were made in amounts transferred, resulting in overpayments
149 and underpayments to the relief and pension funds and to the
150 Teachers Retirement System, and that the relief and pension
151 funds and the Teachers Retirement System were not at fault for
152 any of the overpayments and underpayments. The Legislature
153 hereby further finds and declares that any attempt by the
154 Municipal Pension Oversight Board or other entity to recover
155 any of the overpayments would be unjust and create economic
156 hardship for the entities that received overpayments. No entity,
157 including, without limitation, the Municipal Pension Oversight

158 Board, may seek to recover from a relief or pension fund, the
159 Teachers Retirement System or the state any overpayments
160 received from the Municipal Pensions and Protection Fund and
161 the overpayments are not subject to recovery, offset or litigation.
162 Pursuant to the audit by the Treasurer, the amount of
163 \$3,631,846.55 is determined owed to specific relief and pension
164 funds through the period of April 27, 2012. The Treasurer is
165 hereby authorized to transfer the amount of \$3,631,846.55 from
166 the Unclaimed Property Trust Fund to the Municipal Pensions
167 and Protection Fund, which is hereby reopened for the sole
168 purpose of the transfer and remittances pursuant to this
169 subsection, and to use the amount transferred to remit the
170 amounts due to the pension and relief funds. The payment of
171 \$3,631,846.55 to the pension and relief funds is complete
172 satisfaction of any amounts due and no entity, including, without
173 limitation, the Municipal Pension Oversight Board and any
174 pension or relief fund, may seek to recover any further amounts.

CHAPTER 143

**(Com. Sub. for H. B. 2557 - By Delegate(s) Walters,
Westfall, Pasdon, Moffatt, Morgan, Perry, Hartman, McCuskey,
Frich, Storch and H. White)**

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

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to security and insurance coverage provided for rented or leased motor vehicles; providing that security maintained on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under certain

motor vehicle liability insurance or other form of security that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance or use of the motor vehicle; and providing that any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.

Be it enacted by the Legislature of West Virginia:

That §33-6-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned or leased motor vehicles; exceptions.

1 (a) An insurer may not issue any policy of bodily injury or
2 property damage liability insurance which excludes coverage to
3 the owner or operator of a motor vehicle on account of bodily
4 injury or property damage to any guest or invitee who is a
5 passenger in such motor vehicle.

6 (b) Every policy or contract of liability insurance which
7 insures a motor vehicle licensed in this state with collision,
8 comprehensive, property or bodily injury coverage shall extend
9 these coverages to cover the insured individual while operating
10 a motor vehicle which he or she is permitted to use by a person,
11 firm or corporation that owns the vehicle and is engaged in the
12 business of selling, repairing, leasing or servicing motor
13 vehicles. Coverage under any motor vehicle insurance policy
14 available to such insured individual shall be primary, and any
15 collision, comprehensive, property or bodily injury insurance
16 coverage owned or obtained by a person, firm or corporation that
17 owns the motor vehicle and is engaged in the business of selling,
18 repairing, leasing or servicing motor vehicles shall be secondary.

19 Recovery under the motor vehicle owner's insurance policy shall
20 not be permitted until the insured individual has exhausted the
21 limits of all other insurance policies available to him or her:
22 *Provided*, That the following conditions are met: (1) No separate
23 consideration is paid by or on behalf of the insured individual at
24 the time of his or her use of the vehicle; and (2) the insured
25 individual is operating the vehicle with the business owner's
26 permission as a replacement vehicle provided to the insured
27 individual while his or her vehicle is out of use because it is
28 being repaired or serviced by the business owner or another
29 person with the permission of the business owner.

30 (c) Notwithstanding any provision of this section to the
31 contrary, any insurance coverage available to the insured
32 individual as described in subsection (b) of this section shall be
33 secondary to any motor vehicle liability insurance owned or
34 obtained by the person, firm or corporation engaged in the
35 business of selling, repairing, leasing or servicing motor
36 vehicles, if the insured individual is an employee of the business
37 owner and is operating the motor vehicle with the permission of
38 the business owner while acting within the scope of his or her
39 employment or the insured individual is testing the vehicle for
40 possible purchase or for a lease with more than a thirty-day term.

41 (d) Notwithstanding any provision of this code to the
42 contrary, security maintained as required by section three, article
43 two-a and section two, article four, chapter seventeen-d of this
44 code on any motor vehicle owned by any person, firm or
45 corporation engaged in the business of renting or leasing the
46 motor vehicle is secondary to coverage under any motor vehicle
47 liability insurance or other form of security meeting or
48 exceeding the requirements in chapter seventeen-d of this code
49 that is available and in effect for an individual with respect to the
50 renting, leasing, operation, maintenance, or use of the motor
51 vehicle: *Provided*, That any liability insurance purchased for
52 additional consideration from the rental or leasing company shall
53 be primary to other available insurance.

CHAPTER 144

**(H. B. 2461 - By Delegate(s) Walters, McCuskey, Frich,
Azingar, Westfall, Moore, Skinner, Perry,
Perdue, Bates and E. Nelson)**

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §33-10-4 and §33-10-26 of the Code of West Virginia, 1931, as amended, all relating to delinquency proceedings of insurers; issuance of injunctions or orders following the commencement of a rehabilitation or liquidation proceeding of an insurer; and providing limitations on the avoidance of a transfer to a federal home loan bank in a liquidation proceeding of an insurer-member of the federal home loan bank.

Be it enacted by the Legislature of West Virginia:

That §33-10-4 and §33-10-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-4. Injunctions and other orders.

1 (a) Upon application by the commissioner for an order under
2 this article:

3 (1) The court may without notice issue an injunction
4 restraining the insurer, its officers, directors, stockholders,
5 members, subscribers, agents and all other persons from the
6 transaction of its business or the waste or disposition of its
7 property until further order of the court.

8 (2) The court may at any time during a proceeding under this
9 article issue other injunctions or orders as may be considered
10 necessary to prevent interference with the commissioner or the
11 proceeding, or waste of the assets of the insurer, or the
12 commencement or prosecution of any actions, or the obtaining
13 of preferences, judgments, attachments or other liens, or the
14 making of any levy against the insurer or against its assets or any
15 part thereof.

16 (3) The court may order any managing general agent or
17 attorney-in-fact to release to the commissioner any books,
18 records, accounts, documents or other writings relating to the
19 business of such person: *Provided*, That any of the same or the
20 property of an agent or attorney shall be returned when no longer
21 necessary to the commissioner or at any time the court after
22 notice and hearing shall so direct.

23 (b) Any person having possession of and refusing to deliver
24 any of the books, records or assets of an insurer against whom a
25 seizure order has been issued by the court is guilty of a
26 misdemeanor and, shall be punished by a fine not exceeding
27 \$1,000 or confined in jail not more than one year, or both fined
28 and confined.

29 (c) Whenever the commissioner makes any seizure as
30 provided in section three of this article, it is the duty of the
31 sheriff of any county of this state, and of the police department
32 of any municipality therein, to furnish the commissioner, upon
33 demand, with deputies, patrolmen or officers necessary to assist
34 the commissioner in making and enforcing the seizure.

35 (d) Notwithstanding any other provision of law, no bond is
36 required of the commissioner as a prerequisite for the issuance
37 of any injunction or restraining order pursuant to this section.

38 (e) Notwithstanding subsections (a) through (d) of this
39 section or any other provision of this chapter, the

40 commencement of a delinquency proceeding with respect to an
41 insurer-member does not operate as a stay, injunction or
42 prohibition of the exercise by a federal home loan bank of its
43 rights regarding collateral pledged by the insurer-member.

§33-10-26. Voidable preferences and liens.

1 (a) A preference is a transfer of any of the property of an
2 insurer to or for the benefit of a creditor, for or on account of an
3 antecedent debt, made or suffered by the insurer within one year
4 before the filing of a successful petition for liquidation under this
5 article, the effect of which transfer may be to enable the creditor
6 to obtain a greater percentage of this debt than another creditor
7 of the same class would have otherwise received. If a liquidation
8 order is entered while the insurer is already subject to a
9 rehabilitation order, then the transfers are preferences if made or
10 suffered within one year before the filing of the successful
11 petition for rehabilitation, or within two years before the filing
12 of the successful petition for liquidation, whichever time is
13 shorter.

14 (b) Any preference may be avoided by the liquidator if the
15 insurer was insolvent at the time of the transfer; and

16 (1) The transfer was made within four months before the
17 filing of the petition; or

18 (2) The creditor receiving it or to be benefitted thereby or his
19 or her agent acting with reference thereto had, at the time when
20 the transfer was made, reasonable cause to believe that the
21 insurer was insolvent or was about to become insolvent; or

22 (3) The creditor receiving it was an officer, or any employee
23 or attorney or other person who was in fact in a position of
24 comparable influence in the insurer to an officer whether or not
25 he or she held such position, or any shareholder holding directly
26 or indirectly more than five percent of any class of any equity

27 security issued by the insurer, or any other person, firm,
28 corporation, association or aggregation of persons with whom
29 the insurer did not deal at arm's length.

30 (c) (1) Notwithstanding subsections (a) and (b) of this
31 section or any other provision of this chapter, the receiver for an
32 insurer-member subject to a delinquency proceeding may not
33 void a transfer made to a federal home loan bank in the ordinary
34 course of business within four months of the commencement of
35 the delinquency proceedings or which received prior approval of
36 the receiver: *Provided*, That a transfer may be voided under this
37 section if the transfer was made with actual intent to hinder,
38 delay or defraud the insurer-member, a receiver appointed for
39 the insurer-member or existing or future creditors.

40 (2) Following the appointment of a receiver for an insurer-
41 member and upon request of the receiver, the federal home loan
42 bank shall, within ten days of the request, provide a process and
43 establish timing for:

44 (A) The release of collateral that exceeds the lending value,
45 as determined in accordance with the advance agreement with
46 the federal home loan bank, required to support secured
47 obligations remaining after any repayment of advances;

48 (B) The release of any collateral remaining in the federal
49 home loan bank's possession following repayment of all
50 outstanding secured obligations in full;

51 (C) The payment of fees and the operation of deposits and
52 other accounts with the federal home loan bank; and

53 (D) The possible redemption or repurchase of federal home
54 loan bank stock or excess stock of any class that an insurer-
55 member is required to own.

56 (3) Upon the request of the receiver for an insurer-member,
57 the federal home loan bank shall provide any available options

58 for the insurer-member to renew or restructure an advance to
59 defer associated prepayment fees, to the extent that market
60 conditions, the terms of the advance outstanding to the insurer-
61 member, the applicable policies of the federal home loan bank
62 and compliance with the Federal Home Loan Bank Act and
63 corresponding regulations permit.

64 (4) Nothing in this subsection affects the receiver's rights
65 pursuant to 12 C.F.R. § 1266.4 regarding advances to an insurer-
66 member in delinquency proceedings.

67 (d) Where the preference is voidable, the liquidator may
68 recover the property or, if it has been converted, its value from
69 any person who has received or converted the property; except
70 where a bona fide purchaser or lienor has given less than fair
71 equivalent value, the purchaser or lienor shall have a lien upon
72 the property to the extent of the consideration actually given.
73 Where a preference by way of lien or security title is voidable,
74 the court may on due notice order the lien or title to be preserved
75 for the benefit of the estate, in which event the lien or title shall
76 pass to the liquidator.

77 (e) A transfer under this section is considered to have been
78 made as follows:

79 (1) A transfer of property other than real property is made or
80 suffered when it becomes so far perfected that no subsequent
81 lien obtainable by legal or equitable proceedings on a simple
82 contract could become superior to the rights of the transferee.

83 (2) A transfer of real property is made or suffered when it
84 becomes so far perfected that no subsequent bona fide purchaser
85 from the insurer could obtain rights superior to the rights of the
86 transferee.

87 (3) A transfer which creates an equitable lien is not perfected
88 if there are available means by which a legal lien could be
89 created.

90 (4) A transfer not perfected prior to the filing of a petition
91 for liquidation is made immediately before the filing of the
92 successful petition.

93 (5) The provisions of this subsection apply whether or not
94 there are or were creditors who might have obtained liens or
95 persons who might have become bona fide purchasers.

96 (f) (1) A lien obtainable by legal or equitable proceedings
97 upon a simple contract is one arising in the ordinary course of
98 the proceedings upon the entry or docketing of a judgment or
99 decree, or upon attachment, garnishment, execution or like
100 process, whether before, upon or after judgment or decree and
101 whether before or upon levy. It does not include liens which
102 under applicable law are given a special priority over other liens
103 which are prior in time.

104 (2) A lien obtainable by legal or equitable proceedings
105 becomes superior to the rights of a transferee, or a purchaser
106 obtains rights superior to the rights of a transferee within the
107 meaning of subsection(e) of this section, if the consequences
108 follow only from the lien or purchase itself, or from the lien or
109 purchase followed by any step wholly within the control of the
110 respective lienholder or purchaser, with or without the aid of
111 ministerial action by public officials. A lien does not, however,
112 become superior and the purchase does not create superior rights
113 for the purpose of subsection(e) of this section through any acts
114 subsequent to the obtaining of the lien or subsequent to the
115 purchase which require the agreement or concurrence of any
116 third party or which require any further judicial action or ruling.

117 (g) A transfer of property for or on account of a new and
118 contemporaneous consideration which is considered under
119 subsection (e) of this section to be made or suffered after the
120 transfer because of delay in perfecting it does not thereby
121 become a transfer for or on account of an antecedent debt if any

122 acts required by the applicable law to be performed in order to
123 perfect the transfer as against liens or bona fide purchasers'
124 rights are performed within twenty-one days or any period
125 expressly allowed by the law, whichever is less. A transfer to
126 secure a future loan, if the loan is actually made, or a transfer
127 which becomes security for a future loan, has the same effect as
128 a transfer for or on account of a new and contemporaneous
129 consideration.

130 (h) If any lien that is voidable under subsection (b) of this
131 section has been dissolved by the furnishing of a bond or other
132 obligation, the surety on which has been indemnified directly or
133 indirectly by the transfer of or the creation of a lien upon any
134 property of an insurer before the filing of a petition under this
135 article which results in a liquidation order, the indemnifying
136 transfer or lien is also considered voidable.

137 (i) The property affected by any lien considered voidable
138 under subsections (a), (b) and (h) of this section shall be
139 discharged from the lien and that property and any of the
140 indemnifying property transferred to or for the benefit of a surety
141 shall pass to the liquidator, except that the court may on due
142 notice order the lien to be preserved for the benefit of the estate
143 and the court may direct that the conveyance be executed as may
144 be proper or adequate to evidence the title of the liquidator.

145 (j) The circuit court has summary jurisdiction of any
146 proceeding by the liquidator to hear and determine the rights of
147 any parties under this section. Reasonable notice of any hearing
148 in the proceeding shall be given to all parties in interest,
149 including the obligee of a releasing bond or other like obligation.
150 Where an order is entered for the recovery of indemnifying
151 property in kind or for the avoidance of an indemnifying lien the
152 court, upon application of any party in interest, shall in the same
153 proceeding ascertain the value of the property or lien and if the
154 value is less than the amount for which the property is indemnity

155 or than the amount of the lien, the transferee or lienholder may
156 elect to retain the property or lien upon payment of its value, as
157 ascertained by the court, to the liquidator within reasonable
158 times the court fixes.

159 (k) The liability of the surety under a releasing bond or other
160 like obligation is discharged to the extent of the value of the
161 indemnifying property recovered or the indemnifying lien
162 nullified and avoided by the liquidator or where the property is
163 retained under subsection (j) of this section to the extent of the
164 amount paid to the liquidator.

165 (l) If a creditor has been preferred, and afterward in good
166 faith gives the insurer further credit without security of any kind,
167 for property which becomes a part of the insurer's estate, the
168 amount of the new credit remaining unpaid at the time of the
169 petition may be set off against the preference which would
170 otherwise be recoverable from him or her.

171 (m) If an insurer, directly or indirectly, within four months
172 before the filing of a successful petition for liquidation under this
173 article, or at any time in contemplation of a proceeding to
174 liquidate it, pays money or transfers property to an attorney-at-
175 law for services rendered or to be rendered, the transactions may
176 be examined by the court on its own motion or shall be examined
177 by the court on petition of the liquidator and may be held valid
178 only to the extent of a reasonable amount to be determined by
179 the court and the excess may be recovered by the liquidator for
180 the benefits of the estate provided that where the attorney is in a
181 position of influence in the insurer or an affiliate thereof
182 payment of any money or the transfer of any property to the
183 attorney-at-law for services rendered or to be rendered shall be
184 governed by the provision of subdivision (3), subsection (b) of
185 this section.

186 (n) (1) Every officer, manager, employee, shareholder,
187 member, subscriber, attorney or any other person acting on

188 behalf of the insurer who knowingly participates in giving any
189 preference when he or she has reasonable cause to believe the
190 insurer is or is about to become insolvent at the time of the
191 preference is personally liable to the liquidator for the amount of
192 the preference. It is permissible to infer that there is a reasonable
193 cause to so believe if the transfer was made within four months
194 before the date of filing of this successful petition for
195 liquidation.

196 (2) Every person receiving any property from the insurer or
197 the benefit thereof as a preference voidable under subsections (a)
198 and (b) of this section is personally liable therefor and is bound
199 to account to the liquidator.

200 (3) Nothing in this subsection prejudices any other claim by
201 the liquidator against any person.

CHAPTER 145

**(Com. Sub. for H. B. 2536 - By Delegate(s) Westfall, Walters,
B. White, Ashley, Frich and Kurcaba)**

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-32b, relating to travel insurance limited lines producers; defining terms; authorizing the Commissioner of Insurance to issue travel insurance entity producer license; establishing fees, fines, and penalties; requiring licensee to maintain register of travel retailers offering insurance on its behalf and designate a responsible individual producer; authorizing travel retailer to offer travel

insurance and receive compensation under certain conditions; requiring training of travel retailer employees offering travel insurance; exempting travel insurance entity producers and travel retailers and employees from examination and continuing education requirements; requiring travel retailer employees offering travel insurance to provide certain information; providing for enforcement; and permitting the Commissioner of Insurance to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-32b, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32b. Travel Insurance Entity Producer Limited License Act.

1 (a) *Definitions.* – For purposes of this section:

2 (1) A “group policy” means a policy issued to:

3 (A) A railroad company, steamship company, carrier by air,
4 public bus carrier or other common carrier of passengers, which
5 is considered the policyholder, where the policy insures its
6 passengers; or

7 (B) Any other group if the commissioner has determined by
8 rule that the members are engaged in a common enterprise or
9 have an economic or social affinity or relationship, and that
10 issuance of the policy would not be contrary to the best interests
11 of the public.

12 (2) “Offer and disseminate” means providing general
13 information, including descriptions of coverage and price,

14 processing applications, collecting premiums and performing
15 other activities permitted in this state without a license issued by
16 the commissioner.

17 (3) “Travel insurance” means:

18 (A) An individual or group policy of insurance that provides
19 coverage for personal risks incident to planned travel, including,
20 but not limited to:

21 (i) Interruption or cancellation of a trip or event;

22 (ii) Loss of baggage or personal effects;

23 (iii) Damages to accommodations or rental vehicles; or

24 (iv) Sickness, accident, disability or death occurring during
25 travel.

26 (B) “Travel insurance” does not include major medical plans
27 that provide comprehensive medical protection for travelers with
28 trips lasting six months or longer, including, but not limited to,
29 those working overseas as expatriates or military personnel
30 deployed overseas.

31 (4) “Travel insurance entity producer” means an entity
32 which is licensed under this section, is appointed by an insurer,
33 and has the duties set forth in subsection (d) of this section.

34 (5) “Travel retailer” means an entity that makes, arranges or
35 offers travel services, which may offer and disseminate travel
36 insurance on behalf of and under the direction of a travel
37 insurance entity producer.

38 (b) *License requirements.* – Notwithstanding any other
39 provision of law:

40 (1) The commissioner may issue a travel insurance entity
41 producer license, which authorizes the sale, solicitation or

42 negotiation of travel insurance issued by a licensed insurer, to a
43 person meeting the requirements of this section.

44 (2) An entity seeking a license under this section shall apply
45 on a form and in a manner prescribed by the commissioner.

46 (3) The annual fee for a travel insurance entity producer
47 license is \$200.

48 (c) *Conditions for travel retailers.* – A travel retailer may
49 offer and disseminate travel insurance policies under a license
50 issued to a travel insurance entity producer only if all of the
51 following conditions are met:

52 (1) The travel retailer agrees that it is bound by all applicable
53 provisions of this section and that no employee or authorized
54 representative, who is not licensed as an individual insurance
55 producer, may:

56 (A) Evaluate or interpret the technical terms, benefits, and
57 conditions of the offered travel insurance coverage;

58 (B) Evaluate or provide advice concerning a prospective
59 purchaser's existing insurance coverage; or

60 (C) Hold himself or herself out as a licensed insurer,
61 licensed producer, or insurance expert.

62 (2) The travel retailer makes available to prospective
63 purchasers brochures or other written materials that:

64 (A) State the identity and contact information of the insurer
65 and the travel insurance entity producer;

66 (B) Describe the material terms, or contain the actual
67 material terms, of the travel insurance coverage;

68 (C) Describe the process for filing a claim under the travel
69 insurance policy;

70 (D) Describe the review and cancellation processes for the
71 travel insurance policy;

72 (E) Explain that the purchase of travel insurance is not
73 required in order to purchase any other product or service from
74 the travel retailer; and

75 (F) Explain that a travel retailer not licensed by the
76 commissioner may provide general information about the travel
77 insurance offered, including a description of the coverage and
78 price, but is not qualified or authorized to answer technical
79 questions about the travel insurance or to evaluate the adequacy
80 of a prospective purchaser's existing insurance coverage.

81 (3) The travel retailer ensures that each employee and
82 authorized representative of the travel retailer whose duties
83 include offering and disseminating travel insurance successfully
84 completed the training required by this section.

85 (d) *Conditions for travel insurance entity producers.* – A
86 travel insurance entity producer may offer and disseminate travel
87 insurance policies through a travel retailer only if all of the
88 following conditions are met:

89 (1) On a form prescribed by the commissioner, the travel
90 insurance entity producer establishes, maintains and updates
91 annually a register of all travel retailers that offer travel
92 insurance on behalf of the travel insurance entity producer:

93 (A) The register shall include the name, address, and contact
94 information of each travel retailer and of the person who directs
95 or controls the travel retailer's operations, and the travel
96 retailer's federal tax identification number;

97 (B) The travel insurance entity producer shall certify that the
98 register complies with 18 U.S.C. §1033; and

99 (C) The travel insurance entity producer shall submit the
100 register to the commissioner within thirty days upon request.

101 (2) The travel insurance entity producer designates one of its
102 employees who is a licensed individual producer as the
103 responsible producer for the travel insurance entity producer's
104 compliance with this section and any rules promulgated under
105 this section.

106 (3) The designated responsible producer, and the president,
107 secretary, treasurer and any other person who directs or controls
108 the travel insurance entity producer's insurance operations,
109 comply with the fingerprinting requirements applicable to
110 insurance producers in the resident state of the travel insurance
111 entity producer.

112 (4) The travel insurance entity producer pays all applicable
113 insurance producer licensing fees set forth in this chapter or rules
114 promulgated under this chapter.

115 (5) The travel insurance entity producer requires each
116 employee and authorized representative of the travel retailer
117 whose duties include offering and disseminating travel insurance
118 to receive a program of instruction or training, which the
119 commissioner may review and approve or disapprove. The
120 training program shall, at a minimum, contain instructions on the
121 types of insurance offered, ethical sales practices and required
122 disclosures to prospective customers.

123 (e) A licensee under this section, and those registered under
124 its license pursuant to subdivision one, subsection (d) of this
125 section, are exempt from examination under section five of this
126 article and from continuing education requirements under section
127 eight of this article.

128 (f) A licensee under this section is subject to the provisions
129 of section six-b of this article as if it were an insurance agency.

130 (g) *License renewal.* – The commissioner shall annually
131 renew, on the expiration date as provided in this subsection, the
132 license of a licensee who qualifies and applies for renewal on a
133 form prescribed by the commissioner and pays the fee set forth
134 in subdivision three, subsection (b) of this section: *Provided,*
135 That the commissioner may fix the dates of expiration of travel
136 insurance entity producer licenses as he or she considers
137 advisable for efficient distribution of the workload of his or her
138 office:

139 (1) If the fixed expiration date would upon first occurrence
140 shorten the period for which a license fee has been paid, no
141 refund of unearned fee shall be made;

142 (2) If the fixed expiration date would upon first occurrence
143 lengthen the period for which a license fee has been paid, the
144 commissioner shall charge no additional fee for the lengthened
145 period;

146 (3) If a date is not fixed by the commissioner, each license
147 shall, unless continued as provided in this subsection, expire at
148 midnight on June 30 following issuance; and

149 (4) A licensee that fails to timely renew its license may
150 reinstate its license, retroactive to the expiration date, upon
151 submission of the renewal application within twelve months
152 after the expiration date and payment of a penalty in the amount
153 of \$50.

154 (h) *Appointment.* – A travel insurance entity producer may
155 not act as an agent of an insurer unless the insurer appoints the
156 travel insurance entity producer as its agent, as follows:

157 (1) The insurer shall file, in a format approved by the
158 commissioner, a notice of appointment within fifteen days from
159 the date the agency contract is executed and shall pay a
160 nonrefundable appointment processing fee in the amount of \$25:

161 *Provided*, That an insurer may elect to appoint a travel insurance
162 entity producer to all or some insurers within the insurer's
163 holding company system or group by filing a single notice of
164 appointment;

165 (2) Upon receipt of a notice of appointment, the
166 commissioner shall verify within a reasonable time, not to
167 exceed thirty days, that the travel insurance entity producer is
168 eligible for appointment: *Provided*, That the commissioner shall
169 notify the insurer within five days of a determination that the
170 travel insurance entity producer is ineligible for appointment;
171 and

172 (3) The insurer shall remit, no later than midnight on May 31
173 annually and in a manner prescribed by the commissioner, a
174 renewal appointment fee for each appointed travel insurance
175 entity producer in the amount of \$25; and

176 (4) The insurer shall maintain a current list of travel
177 insurance entity producers appointed to accept applications on
178 behalf of the insurer, and shall make the list available to the
179 commissioner upon reasonable request for purposes of
180 conducting investigations and enforcing the provisions of this
181 chapter.

182 (i) *Effect of registration.* – Notwithstanding any other
183 provision of law, if a travel retailer's insurance-related activities,
184 and those of its employees and authorized representatives, are
185 limited to offering and disseminating travel insurance on behalf
186 of and under the direction of a licensed travel insurance entity
187 producer, the travel retailer may perform those activities and
188 receive related compensation, upon registration by the travel
189 insurance entity producer pursuant to subdivision one,
190 subsection (d) of this section.

191 (j) *Liability.* – As the insurer's appointed agent, the travel
192 insurance entity producer is liable for the acts or omissions of

193 the travel retailer in offering and disseminating travel insurance
194 under the travel insurance entity producer's license and shall use
195 reasonable means to ensure compliance by the travel retailer
196 with this section.

197 (k) *Enforcement.* – In enforcing the provisions of this
198 section, the commissioner may use any enforcement mechanisms
199 in this chapter.

200 (1) If the commissioner determines that a travel retailer or its
201 employee has violated this section, the commissioner may after
202 notice and hearing:

203 (A) Impose fines not to exceed \$500 per violation or \$5,000
204 in the aggregate for the conduct; and

205 (B) Impose other or additional penalties that the
206 commissioner considers necessary and reasonable to carry out
207 the purpose of this section, including, but not limited to:

208 (i) Suspending or revoking the privilege of offering and
209 disseminating travel insurance pursuant to this section by
210 specific business retailers or at specific business retail locations
211 where violations have occurred;

212 (ii) Suspending or revoking the privilege of individual
213 employees of a travel retailer to act under this section; and

214 (iii) Placing the travel retailer or its employees on probation
215 under terms and conditions prescribed by the commissioner.

216 (2) If the commissioner determines that a travel insurance
217 entity producer has failed to perform its duties under this section
218 or has otherwise violated this section, the travel insurance entity
219 producer is subject to the provisions of section twenty-four of
220 this article.

221 (l) The commissioner may propose rules for legislative
222 approval in accordance with the provisions of article three,
223 chapter twenty-nine-a of this code to implement this section.

CHAPTER 146

**(Com. Sub. for H. B. 2493 - By Delegate(s) McCuskey,
Westfall, Ashley, Bates, Ellington, Frich, Householder, Perdue,
Sobonya, Walters and Rohrbach)**

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

[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4l; to amend said code by adding thereto a new section, designated §33-16-3x; to amend said code by adding thereto a new section, designated §33-24-7m; to amend said code by adding thereto a new section, designated §33-25-8j; and to amend said code by adding thereto a new section, designated §33-25A-8l, all relating to anti-cancer medications; providing accident and sickness insurance cover anti-cancer medications; providing direct health care services that cover anti-cancer medications; prohibiting certain copayments, deductibles or coinsurance for orally administered anti-cancer medications; prohibiting certain acts to comply with the requirements; defining terms; providing an effective date; and allowing cost containment measures.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4l; that said code be amended by adding thereto a new section, designated §33-16-3x; that said code be amended by adding thereto a new section, designated

§33-24-7m; that said code be amended by adding thereto a new section, designated §33-25-8j; and that said code be amended by adding thereto a new section, designated §33-25A-8l, all to read as follows:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4l. Deductibles, copayments and coinsurance for anti-cancer medications.

1 (a) Any accident and sickness insurance policy issued by an
2 insurer pursuant to this article that covers anti-cancer
3 medications that are injected or intravenously administered by
4 a health care provider and patient administered anti-cancer
5 medications, including, but not limited to, those medications
6 orally administered or self-injected, may not require a less
7 favorable basis for a copayment, deductible or coinsurance
8 amount for patient administered anti-cancer medications than it
9 requires for injected or intravenously administered anti-cancer
10 medications, regardless of the formulation or benefit category
11 determination by the policy or plan.

12 (b) An accident or sickness insurance policy may not comply
13 with subsection (a) of this section by:

14 (1) Increasing the copayment, deductible or coinsurance
15 amount required for injected or intravenously administered
16 anti-cancer medications that are covered under the policy or
17 plan; or

18 (2) Reclassifying benefits with respect to anti-cancer
19 medications.

20 (c) As used in this section, “anti-cancer medication” means
21 a FDA approved medication prescribed by a treating physician
22 who determines that the medication is medically necessary to

23 kill or slow the growth of cancerous cells in a manner consistent
24 with nationally accepted standards of practice.

25 (d) This section is effective for policy and plan years
26 beginning on or after January 1, 2016. This section applies to all
27 group accident and sickness insurance policies and plans subject
28 to this article that are delivered, executed, issued, amended,
29 adjusted or renewed in this state, on and after the effective date
30 of this section.

31 (e) Notwithstanding any other provision in this section to the
32 contrary, in the event that an insurer can demonstrate actuarially
33 to the Insurance Commissioner that its total costs for compliance
34 with this section will exceed or have exceeded two percent of the
35 total costs for all accident and sickness insurance coverage
36 issued by the insurer subject to this article in any experience
37 period, then the insurer may apply whatever cost containment
38 measures may be necessary to maintain costs below two percent
39 of the total costs for the coverage: *Provided*, That the cost
40 containment measures implemented are applicable only for the
41 plan year or experience period following approval of the request
42 to implement cost containment measures.

43 (f) For any enrollee that is enrolled in a catastrophic plan as
44 defined in Section 1302(e) of the Affordable Care Act or in a
45 plan that, but for this requirement, would be a High Deductible
46 Health Plan as defined in section 223(c)(2)(A) of the Internal
47 Revenue Code of 1986, and that, in connection with every
48 enrollment, opens and maintains for each enrollee a Health
49 Savings Account as that term is defined in section 223(d) of the
50 Internal Revenue Code of 1986, the cost-sharing limit outlined
51 in subsection (a) of this section shall be applicable only after the
52 minimum annual deductible specified in section 223(c)(2)(A) of
53 the Internal Revenue Code of 1986 is reached. In all other cases,
54 this limit shall be applicable at any point in the benefit design,
55 including before and after any applicable deductible is reached.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.**

**§33-16-3x. Deductibles, copayments and coinsurance for
anti-cancer medications.**

1 (a) Any group accident and sickness insurance policy issued
2 by an insurer pursuant to this article that covers anti-cancer
3 medications that are injected or intravenously administered by
4 a health care provider and patient administered anti-cancer
5 medications, including, but not limited to, those medications
6 orally administered or self-injected, may not require a less
7 favorable basis for a copayment, deductible or coinsurance
8 amount for patient administered anti-cancer medications than it
9 requires for injected or intravenously administered anti-cancer
10 medications, regardless of the formulation or benefit category
11 determination by the policy or plan.

12 (b) A group accident and sickness insurance policy may not
13 comply with subsection (a) of this section by:

14 (1) Increasing the copayment, deductible or coinsurance
15 amount required for injected or intravenously administered
16 anti-cancer medications that are covered under the policy or
17 plan; or

18 (2) Reclassifying benefits with respect to anti-cancer
19 medications.

20 (c) As used in this section, “anti-cancer medication” means
21 a FDA approved medication prescribed by a treating physician
22 who determines that the medication is medically necessary to
23 kill or slow the growth of cancerous cells in a manner consistent
24 with nationally accepted standards of practice.

25 (d) This section is effective for policy and plan years
26 beginning on or after January 1, 2016. This section applies to all

27 group accident and sickness insurance policies and plans subject
28 to this article that are delivered, executed, issued, amended,
29 adjusted or renewed in this state, on and after the effective date
30 of this section.

31 (e) Notwithstanding any other provision in this section to the
32 contrary, in the event that an insurer can demonstrate actuarially
33 to the Insurance Commissioner that its total anticipated costs for
34 any plan to comply with this section will exceed or have
35 exceeded two percent of the total costs for such plan in any
36 experience period, then the insurer may apply whatever cost
37 containment measures may be necessary to maintain costs below
38 two percent of the total costs for the plan: *Provided*, That such
39 cost containment measures implemented are applicable only for
40 the plan year following approval of the request to implement
41 cost containment measures.

42 (f) For any enrollee that is enrolled in a catastrophic plan as
43 defined in Section 1302(e) of the Affordable Care Act or in a
44 plan that, but for this requirement, would be a High Deductible
45 Health Plan as defined in section 223(c)(2)(A) of the Internal
46 Revenue Code of 1986, and that, in connection with every
47 enrollment, opens and maintains for each enrollee a Health
48 Savings Account as that term is defined in section 223(d) of the
49 Internal Revenue Code of 1986, the cost-sharing limit outlined
50 in subsection (a) of this section shall be applicable only after the
51 minimum annual deductible specified in section 223(c)(2)(A) of
52 the Internal Revenue Code of 1986 is reached. In all other cases,
53 this limit shall be applicable at any point in the benefit design,
54 including before and after any applicable deductible is reached.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE
CORPORATIONS.**

§33-24-7m. Deductibles, copayments and coinsurance for anti-cancer medications.

1 (a) Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement to which this article applies, any
3 group accident and sickness insurance policy, plan, contract or
4 agreement issued by an entity regulated by this article that
5 covers anti-cancer medications that are injected or intravenously
6 administered by a health care provider and patient administered
7 anti-cancer medications, including, but not limited to, those
8 medications orally administered or self-injected, may not require
9 a less favorable basis for a copayment, deductible or coinsurance
10 amount for patient administered anti-cancer medications than it
11 requires for injected or intravenously administered anti-cancer
12 medications, regardless of the formulation or benefit category
13 determination by the policy or plan.

14 (b) An accident or sickness insurance policy, plan, contract
15 or agreement may not comply with subsection (a) of this section
16 by:

17 (1) Increasing the copayment, deductible or coinsurance
18 amount required for injected or intravenously administered
19 anti-cancer medications that are covered under the policy or
20 plan; or

21 (2) Reclassifying benefits with respect to anti-cancer
22 medications.

23 (c) As used in this section, “anti-cancer medication” means
24 a FDA approved medication prescribed by a treating physician
25 who determines that the medication is medically necessary to
26 kill or slow the growth of cancerous cells in a manner consistent
27 with nationally accepted standards of practice.

28 (d) This section is effective for policy and plan years
29 beginning on or after January 1, 2016. This section applies to all
30 group accident and sickness insurance policies and plans subject
31 to this article that are delivered, executed, issued, amended,
32 adjusted or renewed in this state, on and after the effective date
33 of this section.

34 (e) Notwithstanding any other provision in this section to the
35 contrary, in the event that an entity subject to this article can
36 demonstrate actuarially to the Insurance Commissioner that its
37 total anticipated costs for any policy, plan, contract or agreement
38 to comply with this section will exceed or have exceeded two
39 percent of the total costs for such policy, plan, contract or
40 agreement in any experience period, then the entity may apply
41 whatever cost containment measures may be necessary to
42 maintain costs below two percent of the total costs for the policy,
43 plan, contract or agreement: *Provided*, That such cost
44 containment measures implemented are applicable only for the
45 plan year or experience period following approval of the request
46 to implement cost containment measures.

47 (f) For any enrollee that is enrolled in a catastrophic plan as
48 defined in Section 1302(e) of the Affordable Care Act or in a
49 plan that, but for this requirement, would be a High Deductible
50 Health Plan as defined in section 223(c)(2)(A) of the Internal
51 Revenue Code of 1986, and that, in connection with every
52 enrollment, opens and maintains for each enrollee a Health
53 Savings Account as that term is defined in section 223(d) of the
54 Internal Revenue Code of 1986, the cost-sharing limit outlined
55 in subsection (a) of this section shall be applicable only after the
56 minimum annual deductible specified in section 223(c)(2)(A) of
57 the Internal Revenue Code of 1986 is reached. In all other cases,
58 this limit shall be applicable at any point in the benefit design,
59 including before and after any applicable deductible is reached.

ARTICLE 25. HEALTH CARE CORPORATIONS.**§33-25-8j. Deductibles, copayments and coinsurance for anti-cancer medications.**

1 (a) Notwithstanding any provision of any policy, contract,
2 plan or agreement to which this article applies, a policy, contract,
3 plan or agreement issued to a member or subscriber by an entity
4 regulated by this article that covers anti-cancer medications that
5 are injected or intravenously administered by a health care
6 provider and patient administered anti-cancer medications,
7 including, but not limited to, those medications orally
8 administered or self-injected, may not require a less favorable
9 basis for a copayment, deductible or coinsurance amount for
10 patient administered anti-cancer medications than it requires for
11 injected or intravenously administered anti-cancer medications,
12 regardless of the formulation or benefit category determination
13 by the policy or plan.

14 (b) A contract issued to a member or subscriber that is
15 subject to this article may not comply with subsection (a) of this
16 section by:

17 (1) Increasing the copayment, deductible or coinsurance
18 amount required for injected or intravenously administered
19 anti-cancer medications that are covered under the policy,
20 contract, or plan or agreement; or

21 (2) Reclassifying benefits with respect to anti-cancer
22 medications.

23 (c) As used in this section, “anti-cancer medication” means
24 a FDA approved medication prescribed by a treating physician
25 who determines that the medication is medically necessary to
26 kill or slow the growth of cancerous cells in a manner consistent
27 with nationally accepted standards of practice.

28 (d) This section is effective for policy, plan or agreement
29 years beginning on or after January 1, 2016. This section applies
30 to all policies, plans, contracts or agreements subject to this
31 article that are delivered, executed, issued, amended, adjusted or
32 renewed in this state, on and after the effective date of this
33 section.

34 (e) Notwithstanding any other provision in this section to the
35 contrary, in the event that an entity subject to this article can
36 demonstrate actuarially to the Insurance Commissioner that its
37 total anticipated costs for benefits to all members or subscribers
38 to comply with this section will exceed or have exceeded two
39 percent of the total costs for all benefits of the policy, plan,
40 contract or agreement in any experience period, then the entity
41 may apply whatever cost containment measures may be
42 necessary to maintain costs below two percent of the total costs
43 for the policy, plan, contract or agreement: *Provided*, That such
44 cost containment measures implemented are applicable only for
45 the plan year or experience period following approval of the
46 request to implement cost containment measures.

47 (f) For any enrollee that is enrolled in a catastrophic plan as
48 defined in Section 1302(e) of the Affordable Care Act or in a
49 plan that, but for this requirement, would be a High Deductible
50 Health Plan as defined in section 223(c)(2)(A) of the Internal
51 Revenue Code of 1986, and that, in connection with every
52 enrollment, opens and maintains for each enrollee a Health
53 Savings Account as that term is defined in section 223(d) of the
54 Internal Revenue Code of 1986, the cost-sharing limit outlined
55 in subsection (a) of this section shall be applicable only after the
56 minimum annual deductible specified in section 223(c)(2)(A) of
57 the Internal Revenue Code of 1986 is reached. In all other cases,
58 this limit shall be applicable at any point in the benefit design,
59 including before and after any applicable deductible is reached.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

**§33-25A-8l. Deductibles, copayments and coinsurance for
anti-cancer medications.**

1 (a) Notwithstanding any provision of any policy, contract,
2 plan or agreement to which this article applies, any policy,
3 contract, plan or agreement issued by a health maintenance
4 organization pursuant to this article that covers anti-cancer
5 medications that are injected or intravenously administered by
6 a health care provider and patient administered anti-cancer
7 medications, including, but not limited to, those medications
8 orally administered or self-injected, may not require a less
9 favorable basis for a copayment, deductible or coinsurance
10 amount for patient administered anti-cancer medications than it
11 requires for injected or intravenously administered anti-cancer
12 medications, regardless of the formulation or benefit category
13 determination by the policy or plan.

14 (b) A policy, contract, plan or agreement or a health
15 maintenance organization may not comply with subsection (a) of
16 this section by:

17 (1) Increasing the copayment, deductible or coinsurance
18 amount required for injected or intravenously administered
19 anti-cancer medications that are covered under the policy,
20 contract, or plan or agreement; or

21 (2) Reclassifying benefits with respect to anti-cancer
22 medications.

23 (c) As used in this section, “anti-cancer medication” means
24 a FDA approved medication prescribed by a treating physician
25 who determines that the medication is medically necessary to
26 kill or slow the growth of cancerous cells in a manner consistent
27 with nationally accepted standards of practice.

28 (d) This section is effective for policy, contract, plan or
29 agreement beginning on or after January 1, 2016. This section
30 applies to all policies, contracts, plans or agreements subject to
31 this article that are delivered, executed, issued, amended,
32 adjusted or renewed in this state, on and after the effective date
33 of this section.

34 (e) Notwithstanding any other provision in this section to the
35 contrary, in the event that a health maintenance organization
36 subject to this article can demonstrate actuarially to the
37 Insurance Commissioner that its total anticipated costs for any
38 health maintenance contract to comply with this section will
39 exceed or have exceeded two percent of the total costs for the
40 policy, contract, plan or agreement in any experience period,
41 then the health maintenance organization may apply whatever
42 cost containment measures may be necessary to maintain costs
43 below two percent of the total costs for the policy, contract, plan
44 or agreement: *Provided*, That such cost containment measures
45 implemented are applicable only for the plan year or experience
46 period following approval of the request to implement cost
47 containment measures.

48 (f) For any enrollee that is enrolled in a catastrophic plan as
49 defined in Section 1302(e) of the Affordable Care Act or in a
50 plan that, but for this requirement, would be a High Deductible
51 Health Plan as defined in section 223(c)(2)(A) of the Internal
52 Revenue Code of 1986, and that, in connection with every
53 enrollment, opens and maintains for each enrollee a Health
54 Savings Account as that term is defined in section 223(d) of the
55 Internal Revenue Code of 1986, the cost-sharing limit outlined
56 in subsection (a) of this section shall be applicable only after the
57 minimum annual deductible specified in section 223(c)(2)(A) of
58 the Internal Revenue Code of 1986 is reached. In all other cases,
59 this limit shall be applicable at any point in the benefit design,
60 including before and after any applicable deductible is reached.

CHAPTER 147

(Com. Sub. for H. B. 2811 - By Delegate(s) Westfall, McCuskey and Frich)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §33-20F-4 of the Code of West Virginia, 1931, as amended, relating to the Physicians' Mutual Insurance Company; deleting obsolete provisions regarding the Physicians' Mutual Insurance Company; and providing that the company need not be organized as a nonprofit corporation.

Be it enacted by the Legislature of West Virginia:

That §33-20F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a Physicians'
2 Mutual Insurance Company may be created as a domestic,
3 private, nonstock corporation. The company must remain for the
4 duration of its existence a domestic mutual insurance company
5 owned by its policyholders and may not be converted into a
6 stock corporation or any other entity not owned by its
7 policyholders.

8 (b) For the duration of its existence, the company is not and
9 may not be considered a department, unit, agency, or

10 instrumentality of the state for any purpose. All debts, claims,
11 obligations, and liabilities of the company, whenever incurred,
12 are the debts, claims, obligations, and liabilities of the company
13 only and not of the state or of any department, unit, agency,
14 instrumentality, officer; or employee of the state.

15 (c) The moneys of the company are not and may not be
16 considered part of the General Revenue Fund of the state. The
17 debts, claims, obligations, and liabilities of the company are not
18 and may not be considered a debt of the state or a pledge of the
19 credit of the state.

20 (d) The company is not subject to provisions of article
21 nine-a, chapter six of this code or the provisions of article one,
22 chapter twenty-nine-b of this code.

23 (e) All premiums collected by the company are subject to the
24 premium taxes, additional premium taxes, additional fire and
25 casualty insurance premium taxes and surcharges contained in
26 sections fourteen, fourteen-a, fourteen-d and thirty-three, article
27 three of this chapter.

CHAPTER 148

**(S. B. 425 - By Senators Plymale, M. Hall,
Prezioso, Leonhardt, Walters, Williams, Carmichael, Laird,
Kessler, Stollings, Miller and D. Hall)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended, relating to investments by certain institutions of higher learning.

Be it enacted by the Legislature of West Virginia:

That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine.

1 (a) Notwithstanding any provision of this article to the
2 contrary, the governing boards of Marshall University, West
3 Virginia University and West Virginia School of Osteopathic
4 Medicine each may invest certain funds with its respective
5 nonprofit foundation that has been established to receive
6 contributions exclusively for that university and which exists on
7 January 1, 2005. The investment is subject to the limitations of
8 this section.

9 (b) A governing board, through its chief financial officer,
10 may enter into agreements, approved as to form by the State
11 Treasurer, for the investment by its foundation of certain funds
12 subject to their administration. Any interest or earnings on the
13 moneys invested is retained by the investing university.

14 (c) Moneys of a university that may be invested with its
15 foundation pursuant to this section are those subject to the
16 administrative control of the university and that do not include
17 any funds made available to the university from the state General
18 Revenue Fund or the funds established in section eighteen or
19 eighteen-a, article twenty-two, chapter twenty-nine of this code.
20 Moneys permitted to be invested under this section may be
21 aggregated in an investment fund for investment purposes.

22 (d) Investments by foundations that are authorized under this
23 section shall be made in accordance with and subject to the

24 provisions of the Uniform Prudent Investor Act, codified as
25 article six-c, chapter forty-four of this code. As part of its
26 fiduciary responsibilities, each governing board shall establish
27 investment policies in accordance with the Uniform Prudent
28 Investor Act for those moneys invested with its foundation. The
29 governing board shall review, establish and modify, if necessary,
30 the investment objectives as incorporated in its investment
31 policies so as to provide for the financial security of the moneys
32 invested with its foundation. The governing boards shall give
33 consideration to the following:

34 (1) Preservation of capital;

35 (2) Diversification;

36 (3) Risk tolerance;

37 (4) Rate of return;

38 (5) Stability;

39 (6) Turnover;

40 (7) Liquidity; and

41 (8) Reasonable cost of fees.

42 (e) A governing board shall report annually by December 31
43 to the Governor and to the Joint Committee on Government and
44 Finance on the performance of investments managed by its
45 foundation pursuant to this section.

46 (f) The amendments to this section in the second
47 extraordinary session of the Legislature in 2010 apply
48 retroactively so that the authority granted by this section shall be
49 construed as if that authority did not expire on July 1, 2010.

CHAPTER 149

**(S. B. 577 - By Senators D. Hall, Boley, Karnes, Laird,
Plymale, Romano, Stollings, Takubo and Sypolt)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-12e, relating to allowing governing boards of certain four-year colleges and universities to invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §12-1-12e, to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12e. Investments by state colleges.

1 (a) Notwithstanding any provision of this article to the
2 contrary, the governing boards of four-year public colleges and
3 universities, with the exception of those schools provided for in
4 section twelve-d of this article, after first consulting with the
5 West Virginia Investment Management Board and the state
6 Board of Treasury Investments to determine what their estimated
7 rate of return on investment, including administrative expenses,
8 would be if the moneys to be invested with the foundation were
9 instead to be invested with the Investment Management Board
10 or the Board of Treasury Investments when compared to any

11 estimated return on investment, including administrative
12 expenses, provided by the foundation, each may invest certain
13 funds with its respective nonprofit foundation that has been
14 established to receive contributions exclusively for that
15 institution and which exists on January 1, 2015. The investment
16 is subject to the limitations of this section.

17 (b) A governing board, through its chief financial officer,
18 may enter into agreements, approved as to form by the State
19 Treasurer, for the investment by its foundation of certain funds
20 subject to their administration. Any interest or earnings on the
21 moneys invested is retained by the investing institution.

22 (c) Moneys of a four-year public college or university that
23 may be invested with its foundation pursuant to this section are
24 those subject to the administrative control of the institution and
25 that do not include any funds made available to the institution
26 from the state General Revenue Fund or the funds established in
27 section eighteen or eighteen-a, article twenty-two, chapter
28 twenty-nine of this code. Moneys permitted to be invested under
29 this section may be aggregated in an investment fund for
30 investment purposes.

31 (d) Of the moneys authorized for investment by this
32 section, each four-year public college or university that may be
33 invested with its foundation pursuant to this section, may have
34 invested with its foundation at any time no more than \$1 million
35 excluding investment gains.

36 (e) Investments by foundations that are authorized under this
37 section shall be made in accordance with and subject to the
38 provisions of the Uniform Prudent Investor Act, codified as
39 article six-c, chapter forty-four of this code. As part of its
40 fiduciary responsibilities, each governing board shall establish
41 investment policies in accordance with the Uniform Prudent
42 Investor Act for those moneys invested with its foundation. The

43 governing board shall review, establish and modify, if necessary,
44 the investment objectives as incorporated in its investment
45 policies so as to provide for the financial security of the moneys
46 invested with its foundation. The governing boards shall give
47 consideration to the following:

48 (1) Preservation of capital;

49 (2) Diversification;

50 (3) Risk tolerance;

51 (4) Rate of return;

52 (5) Stability;

53 (6) Turnover;

54 (7) Liquidity; and

55 (8) Reasonable cost of fees.

56 (f) Prior to the initial transfer of funds to a foundation, the
57 four-year public college or university shall submit its plan for the
58 investment of the funds with its foundation to the Higher
59 Education Policy Commission for its review. The purpose of
60 review shall solely be to determine if the plan is financially
61 prudent for the institution. Upon the commission's written
62 finding that the plan is financially prudent for the institution, the
63 institution is authorized to transfer its funds to the foundation for
64 purposes of investment under this section.

65 (g) No four-year public college or university may transfer
66 funds to its foundation pursuant to this section unless the college
67 or university has a long-term bond from not less than two of the
68 following rating entities of at least A3 by Moody's Investors
69 Service, A- by Standard & Poor's and A- by Fitch Ratings.

70 (h) A governing board shall report annually by December 31
71 to the Governor and to the Joint Committee on Government and
72 Finance on the performance of investments managed by its
73 foundation pursuant to this section.

CHAPTER 150

**(Com. Sub. for S. B. 393 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed March 14, 2015; in effect May 17, 2015.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-2-907, §49-2-1002 and §49-2-1003 of said code; to amend said code by adding thereto two new sections, designated §49-2-912 and §49-2-913; to amend and reenact §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code; to amend said code by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; to amend and reenact §49-5-103 of said code; and to amend said code by adding thereto a new section, designated §49-5-106, all relating generally to juvenile justice reform; defining terms; providing that juveniles may only be transferred to juvenile diagnostic centers under certain circumstances; requiring dedication of a percentage of funding for community services to evidence-based practices; establishing criteria for transition to juvenile's home setting following out-of-home placement; providing for cooperative agreements solely between the Department of Health and Human Resources and private agencies to house status offenders; establishing community-based youth

reporting centers; establishing Juvenile Justice Reform Oversight Committee; providing for multidisciplinary team meetings; establishing members of multidisciplinary team; providing that multidisciplinary team shall advise court on treatment and rehabilitation plans for juvenile; providing that multidisciplinary team shall monitor juvenile's progress; requiring aftercare plan for all juvenile out-of-home placements; providing prepetition diversion process for juveniles who commit truancy offenses, status offenses and nonviolent misdemeanor offenses, effective July 1, 2016; providing requirements for prepetition diversion programs; authorizing probation officers to participate in prepetition diversion programs; allowing truancy or treatment programs existing in a judicial circuit as of January 1, 2015, to continue to operate notwithstanding new requirements; establishing prepetition review team; requiring court to consider results of risk and needs assessment of the juvenile prior to dispositional proceedings; requiring inclusion of accepted treatment and rehabilitation plan for juveniles in certain findings of fact; providing that a juvenile adjudicated as a status offender may not be placed in out-of-home placement in certain circumstances; prohibiting placement of a juvenile adjudicated as a status offender within a Division of Juvenile Services facility on or after January 1, 2016; providing that a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in out-of-home placement in certain circumstances; providing that time served by a juvenile in a detention center pending adjudication, disposition or transfer be taken into account during sentencing; requiring court to issue certain findings of fact if a juvenile is to be placed in a residential facility; providing for standardized screener to conduct an evaluation of the juvenile in certain circumstances; permitting court to include reasonable and relevant orders to parents in its disposition order for a juvenile; establishing review and modification procedures for probation dispositional orders; authorizing Supreme Court of Appeals to develop community-based juvenile probation sanctions and

incentives; establishing individualized case planning; providing that a juvenile may be referred to a truancy diversion specialist prior to filing of petition; providing for prepetition counsel and advice; providing for adoption of risk and needs assessment and validation; authorizing creation of restorative justice programs; providing for disclosure of juvenile records to Department of Health and Human Resources and Division of Juvenile Services for case planning; providing for data collection related to juvenile justice outcomes and disproportional minority contact; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §49-1-206 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-907, §49-2-1002 and §49-2-1003 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-2-912 and §49-2-913; that §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; that §49-5-103 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-5-106, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, child advocacy, care, residential and treatment programs,
4 except in those instances where a different meaning is provided
5 or the context in which the word is used clearly indicates that a
6 different meaning is intended.

7 “Child advocacy center (CAC)” means a community-based
8 organization that is a member in good standing with the West
9 Virginia Child Abuse Network, Inc., as set forth in section one
10 hundred one, article three of this chapter.

11 “Child care” means responsibilities assumed and services
12 performed in relation to a child’s physical, emotional,
13 psychological, social and personal needs and the consideration
14 of the child’s rights and entitlements, but does not include secure
15 detention or incarceration under the jurisdiction of the Division
16 of Juvenile Services pursuant to part nine, article two of this
17 chapter. It includes the provision of child care services or
18 residential services.

19 “Child care center” means a facility maintained by the state
20 or any county or municipality thereof, or any agency or facility
21 maintained by an individual, firm, corporation, association or
22 organization, public or private for the care of thirteen or more
23 children for child care services in any setting, if the facility is
24 open for more than thirty days per year per child.

25 “Child care services” means direct care and protection of
26 children during a portion of a twenty-four hour day outside of
27 the child’s own home which provides experiences to children
28 that foster their healthy development and education.

29 “Child placing agency” means a child welfare agency
30 organized for the purpose of placing children in private family
31 homes for foster care or for adoption. The function of a
32 child-placing agency may include the investigation and
33 certification of foster family homes and foster family group
34 homes as provided in this chapter. The function of a child
35 placing agency may also include the supervision of children who
36 are sixteen or seventeen years old and living in unlicensed
37 residences.

38 “Child welfare agency” means any agency or facility
39 maintained by the state or any county or municipality thereof, or
40 any agency or facility maintained by an individual, firm,
41 corporation, association or organization, public or private, to
42 receive children for care and maintenance or for placement in
43 residential care facilities, including, without limitation, private
44 homes or any facility that provides care for unmarried mothers
45 and their children. A child welfare agency does not include
46 juvenile detention facilities or juvenile correctional facilities
47 operated by or under contract with the Division of Juvenile
48 Services, pursuant to part nine, article two of this chapter, nor
49 any other facility operated by that division for the secure housing
50 or holding of juveniles committed to its custody.

51 “Community based” means a facility, program or service
52 located near the child’s home or family and involving
53 community participation in planning, operation and evaluation
54 and which may include, but is not limited to, medical,
55 educational, vocational, social and psychological guidance,
56 training, special education, counseling, substance abuse and any
57 other treatment or rehabilitation services.

58 “Community-based juvenile probation sanctions” means any
59 of a continuum of nonresidential accountability measures,
60 programs and sanctions in response to a technical violation of
61 probation, as part of a system of community-based juvenile
62 probation sanctions and incentives, that may include, but are not
63 limited to:

- 64 (A) Electronic monitoring;
- 65 (B) Drug and alcohol screening, testing or monitoring;
- 66 (C) Youth reporting centers;
- 67 (D) Reporting and supervision requirements;
- 68 (E) Community service; and

69 (F) Rehabilitative interventions such as family counseling,
70 substance abuse treatment, restorative justice programs and
71 behavioral or mental health treatment.

72 “Community services” means nonresidential prevention or
73 intervention services or programs that are intended to reduce
74 delinquency and future court involvement.

75 “Evidence-based practices” means policies, procedures,
76 programs and practices demonstrated by research to reliably
77 produce reductions in the likelihood of reoffending.

78 “Facility” means a place or residence, including personnel,
79 structures, grounds and equipment used for the care of a child or
80 children on a residential or other basis for any number of hours
81 a day in any shelter or structure maintained for that purpose.
82 Facility does not include any juvenile detention facility or
83 juvenile correctional facility operated by or under contract with
84 the Division of Juvenile Services for the secure housing or
85 holding of juveniles committed to its custody.

86 “Family child care facility” means any facility which is used
87 to provide nonresidential child care services for compensation
88 for seven to twelve children, including children who are living
89 in the household, who are under six years of age. No more than
90 four of the total number of children may be under twenty-four
91 months of age. A facility may be in a provider’s residence or a
92 separate building.

93 “Family child care home” means a facility which is used to
94 provide nonresidential child care services for compensation in a
95 provider’s residence. The provider may care for four to six
96 children, at one time including children who are living in the
97 household, who are under six years of age. No more than two of
98 the total number of children may be under twenty-four months
99 of age.

100 “Family resource network” means:

101 (A) A local community organization charged with service
102 coordination, needs and resource assessment, planning,
103 community mobilization and evaluation, and which has met the
104 following criteria:

105 (i) Agreeing to a single governing entity;

106 (ii) Agreeing to engage in activities to improve service
107 systems for children and families within the community;

108 (iii) Addressing a geographic area of a county or two or
109 more contiguous counties;

110 (iv) Having nonproviders, which include family
111 representatives and other members who are not employees of
112 publicly funded agencies, as the majority of the members of the
113 governing body, and having family representatives as the
114 majority of the nonproviders;

115 (v) Having representatives of local service agencies,
116 including, but not limited to, the public health department, the
117 behavioral health center, the local health and human resources
118 agency and the county school district, on the governing body;
119 and

120 (vi) Accepting principles consistent with the cabinet's
121 mission as part of its philosophy.

122 (B) A family resource network may not provide direct
123 services, which means to provide programs or services directly
124 to children and families.

125 "Family support", for the purposes of part six, article two of
126 this chapter, means goods and services needed by families to
127 care for their family members with developmental disabilities
128 and to enjoy a quality of life comparable to other community
129 members.

130 “Family support program” means a coordinated system of
131 family support services administered by the Department of
132 Health and Human Resources through contracts with behavioral
133 health agencies throughout the state.

134 “Foster family home” means a private residence which is
135 used for the care on a residential basis of no more than five
136 children who are unrelated by blood, marriage or adoption to any
137 adult member of the household.

138 “Health care and treatment” means:

139 (A) Developmental screening;

140 (B) Mental health screening;

141 (C) Mental health treatment;

142 (D) Ordinary and necessary medical and dental examination
143 and treatment;

144 (E) Preventive care including ordinary immunizations,
145 tuberculin testing and well-child care; and

146 (F) Nonemergency diagnosis and treatment. However,
147 nonemergency diagnosis and treatment does not include an
148 abortion.

149 “Home-based family preservation services” means services
150 dispensed by the Division of Human Services or by another
151 person, association or group who has contracted with that
152 division to dispense services when those services are intended to
153 stabilize and maintain the natural or surrogate family in order to
154 prevent the placement of children in substitute care. There are
155 two types of home-based family preservation services and they
156 are as follows:

157 (A) Intensive, short-term intervention of four to six weeks;
158 and

159 (B) Home-based, longer-term after care following intensive
160 intervention.

161 “Informal family child care” means a home that is used to
162 provide nonresidential child care services for compensation for
163 three or fewer children, including children who are living in the
164 household, who are under six years of age. Care is given in the
165 provider’s own home to at least one child who is not related to
166 the caregiver.

167 “Nonsecure facility” means any public or private residential
168 facility not characterized by construction fixtures designed to
169 physically restrict the movements and activities of individuals
170 held in lawful custody in that facility and which provides its
171 residents access to the surrounding community with supervision.

172 “Nonviolent misdemeanor offense” means a misdemeanor
173 offense that does not include any of the following:

174 (A) An act resulting in bodily injury or death;

175 (B) The use of a weapon in the commission of the offense;

176 (C) A domestic abuse offense involving a significant or
177 likely risk of harm to a family member or household member;

178 (D) A criminal sexual conduct offense; or

179 (E) Any offense for driving under the influence of alcohol or
180 drugs.

181 “Out-of-home placement” means a post-adjudication
182 placement in a foster family home, group home, nonsecure
183 facility, emergency shelter, hospital, psychiatric residential
184 treatment facility, staff-secure facility, hardware secure facility,
185 detention facility or other residential placement other than
186 placement in the home of a parent, custodian or guardian.

187 “Out-of-school time” means a child care service which
188 offers activities to children before and after school, on school
189 holidays, when school is closed due to emergencies and on
190 school calendar days set aside for teacher activities.

191 “Placement” means any temporary or permanent placement
192 of a child who is in the custody of the state in any foster home,
193 group home or other facility or residence.

194 “Pre-adjudicatory community supervision” means
195 supervision provided to a youth prior to adjudication, a period of
196 supervision up to one year for an alleged status or delinquency
197 offense.

198 “Regional family support council” means the council
199 established by the regional family support agency to carry out
200 the responsibilities specified in part six, article two of this
201 chapter.

202 “Relative family child care” means a home that provides
203 nonresidential child care services only to children related to the
204 caregiver. The caregiver is a grandparent, great grandparent,
205 aunt, uncle, great-aunt, great-uncle or adult sibling of the child
206 or children receiving care. Care is given in the provider’s home.

207 “Residential services” means child care which includes the
208 provision of nighttime shelter and the personal discipline and
209 supervision of a child by guardians, custodians or other persons
210 or entities on a continuing or temporary basis. It may include
211 care and/or treatment for transitioning adults. Residential
212 services does not include or apply to any juvenile detention
213 facility or juvenile correctional facility operated by the Division
214 of Juvenile Services, created pursuant to this chapter, for the
215 secure housing or holding of juveniles committed to its custody.

216 “Risk and needs assessment” means a validated,
217 standardized actuarial tool which identifies specific risk factors

218 that increase the likelihood of reoffending and the factors that,
219 when properly addressed, can reduce the likelihood of
220 reoffending.

221 “Secure facility” means any public or private residential
222 facility which includes construction fixtures designed to
223 physically restrict the movements and activities of juveniles or
224 other individuals held in lawful custody in such facility.

225 “Staff-secure facility” means any public or private
226 residential facility characterized by staff restrictions of the
227 movements and activities of individuals held in lawful custody
228 in such facility and which limits its residents’ access to the
229 surrounding community, but is not characterized by construction
230 fixtures designed to physically restrict the movements and
231 activities of residents.

232 “Standardized screener” means a brief, validated
233 nondiagnostic inventory or questionnaire designed to identify
234 juveniles in need of further assessment for medical, substance
235 abuse, emotional, psychological, behavioral, or educational
236 issues, or other conditions.

237 “State family support council” means the council established
238 by the Department of Health and Human Resources pursuant to
239 part six, article two of this chapter to carry out the
240 responsibilities specified in article two of this chapter.

241 “Time-limited reunification services” means individual,
242 group and family counseling, inpatient, residential or outpatient
243 substance abuse treatment services, mental health services,
244 assistance to address domestic violence, services designed to
245 provide temporary child care and therapeutic services for
246 families, including crisis nurseries and transportation to or from
247 those services, provided during fifteen of the most recent
248 twenty-two months a child or juvenile has been in foster care, as

249 determined by the earlier date of the first judicial finding that the
250 child is subjected to abuse or neglect, or the date which is sixty
251 days after the child or juvenile is removed from home.

252 “Technical violation” means an act that violates the terms or
253 conditions of probation or a court order that does not constitute
254 a new delinquent offense.

255 “Truancy diversion specialist” means a school-based
256 probation officer or truancy social worker within a school or
257 schools who, among other responsibilities, identifies truants and
258 the causes of the truant behavior, and assists in developing a plan
259 to reduce the truant behavior prior to court involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

***§49-2-907. Examination, diagnosis classification and treatment; period of custody.**

1 (a) As a part of the disposition for a juvenile who has been
2 adjudicated delinquent, and who has been determined by a risk
3 and needs assessment to be high risk or who has committed an
4 act or acts of violence, the court may, upon its own motion or
5 upon request of counsel, order the juvenile to be delivered into
6 the custody of the Director of the Division of Juvenile Services,
7 who shall cause the juvenile to be transferred to a juvenile
8 diagnostic center for a period not to exceed thirty days. During
9 this period, the juvenile shall undergo examination, diagnosis,
10 classification and a complete medical examination and shall at
11 all times be kept apart from the general juvenile inmate
12 population in the director’s custody.

13 (b) During the examination period established by subsection
14 (a) of this section, the director, or his or her designee, shall

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

15 convene and direct a multidisciplinary treatment team for the
16 juvenile which team will include the juvenile, if appropriate, the
17 juvenile's probation officer, the juvenile's case worker, if any,
18 the juvenile's custodial parent or parents, the juvenile's
19 guardian, attorneys representing the juvenile or the parents, the
20 guardian ad litem, if any, the prosecuting attorney and an
21 appropriate school official or representative. The team may also
22 include, where appropriate, a court-appointed special advocate,
23 a member of a child advocacy center and any other person who
24 may assist in providing recommendations for the particular
25 needs of the juvenile and the family.

26 (c) Not later than thirty days after commitment pursuant to
27 this section the juvenile shall be remanded and delivered to the
28 custody of the director, an appropriate agency or any other
29 person that the court by its order directs. Within ten days after
30 the end of the examination, diagnosis and classification, the
31 Director of the Division of Juvenile Services shall make or cause
32 to be made a report to the court containing the results, findings,
33 conclusions and recommendations of the multidisciplinary team
34 with respect to that juvenile.

§49-2-912. Youth reporting centers.

1 (a) The Division of Juvenile Services shall operate
2 community-based youth reporting centers to provide services to
3 youth involved in the juvenile justice system as an alternative to
4 detention, corrections or out-of-home placement.

5 (b) Based upon identifiable need, the Division of Juvenile
6 Services shall operate a total of at least fifteen youth reporting
7 centers by July 1, 2016.

8 (c) Based upon identifiable need, the Division of Juvenile
9 Services shall operate a total of at least nineteen youth reporting
10 centers by July 1, 2018.

11 (d) The Division of Juvenile Services shall promulgate
12 guidelines, policies and procedures regarding referrals,
13 assessments, case management, services, education and
14 connection to services in the community.

15 (e) The Division of Juvenile Services shall collaborate with
16 county boards of education to provide education services to
17 certain youth referred to youth reporting centers, whenever
18 feasible.

19 (f) The Division of Juvenile Services may convene local or
20 regional advisory boards for youth reporting centers.

§49-2-913. Juvenile Justice Reform Oversight Committee.

1 (a) The Juvenile Justice Reform Oversight Committee is
2 hereby created to oversee the implementation of reform
3 measures intended to improve the state's juvenile justice system.

4 (b) The committee shall be comprised of eighteen members,
5 including the following individuals:

6 (1) The Governor, or his or her designee, who shall preside
7 as chair of the committee;

8 (2) Two members from the House of Delegates, appointed
9 by the Speaker of the House of Delegates, who shall serve as
10 nonvoting, ex officio members;

11 (3) Two members from the Senate, appointed by the
12 President of the Senate, who shall serve as nonvoting, ex officio
13 members;

14 (4) The Secretary of the Department of Health and Human
15 Resources, or his or her designee;

16 (5) The Director of the Division of Juvenile Services, or his
17 or her designee;

18 (6) The Superintendent of the State Board of Education, or
19 his or her designee;

20 (7) The Administrative Director of the Supreme Court of
21 Appeals, or his or her designee, who shall serve as nonvoting, ex
22 officio member;

23 (8) The Director of the Division of Probation Services, or his
24 or her designee;

25 (9) Two circuit court judges, appointed by the Chief Justice
26 of the Supreme Court of Appeals, who shall serve as nonvoting,
27 ex officio members;

28 (10) One community member juvenile justice stakeholder,
29 appointed by the Governor;

30 (11) One juvenile crime victim advocate, appointed by the
31 Governor;

32 (12) One member from the law-enforcement agency,
33 appointed by the Governor;

34 (13) One member from a county prosecuting attorney's
35 office, appointed by the Governor; and

36 (14) The Director of the Juvenile Justice Commission.

37 (c) The committee shall perform the following duties:

38 (1) Guide and evaluate the implementation of the provisions
39 adopted in the year 2015 relating to juvenile justice reform;

40 (2) Obtain and review the juvenile recidivism and program
41 outcome data collected pursuant to section one hundred six,
42 article five of this chapter;

43 (3) Calculate any state expenditures that have been avoided
44 by reductions in the number of youth placed in out-of-home
45 placements by the Division of Juvenile Services or the

46 Department of Health and Human Resources as reported under
47 section one hundred six, article five of this chapter; and

48 (4) Institute a uniform process for developing and reviewing
49 performance measurement and outcome measures through data
50 analysis. The uniform process shall include:

51 (A) The performance and outcome measures for the court,
52 the Department of Health and Human Resources and the
53 Division of Juvenile Services; and

54 (B) The deadlines and format for the submission of the
55 performance and outcome measures; and

56 (5) Ensure system accountability and monitor the fidelity of
57 implementation efforts or programs;

58 (6) Study any additional topics relating to the continued
59 improvement of the juvenile justice system; and

60 (7) Issue an annual report to the Governor, the President of
61 the Senate, the Speaker of the House of Delegates and the Chief
62 Justice of the Supreme Court of Appeals of West Virginia on or
63 before November 30th of each year, starting in 2016, which shall
64 include:

65 (A) An assessment of the progress made in implementation
66 of juvenile justice reform efforts;

67 (B) A summary of the committee's efforts in fulfilling its
68 duties as set forth in this section; and

69 (C) An analysis of the recidivism data obtained by the
70 committee under this section;

71 (D) A summary of the averted costs calculated by the
72 committee under this section and a recommendation for any
73 reinvestment of the averted costs to fund services or programs to
74 expand West Virginia's continuum of alternatives for youth who
75 would otherwise be placed in out-of-home placement;

76 (E) Recommendations for continued improvements to the
77 juvenile justice system.

78 (d) The Division of Justice and Community Services shall
79 provide staff support for the committee. The committee may
80 request and receive copies of all data, reports, performance
81 measures and other evaluative material regarding juvenile justice
82 submitted from any agency, branch of government or political
83 subdivision to carry out its duties.

84 (e) The committee shall meet within ninety days after
85 appointment and shall thereafter meet at least quarterly, upon
86 notice by the chair. Eight members shall be considered a
87 quorum.

88 (f) After initial appointment, members appointed to the
89 committee by the Governor, the President of the Senate, the
90 Speaker of the House of Delegates or the Chief Justice of the
91 Supreme Court of Appeals, pursuant to subsection (b) of this
92 section, shall serve for a term of two years from his or her
93 appointment and shall be eligible for reappointment to that
94 position. All members appointed to the committee shall serve
95 until his or her successor has been duly appointed.

96 (g) The committee shall sunset on December 31, 2020,
97 unless reauthorized by the Legislature.

***§49-2-1002. Responsibilities of the Department of Health and
Human Resources and Division of Juvenile
Services of the Department of Military Affairs and
Public Safety; programs and services;
rehabilitation; cooperative agreements.**

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

1 (a) The Department of Health and Human Resources and the
2 Division of Juvenile Services of the Department of Military
3 Affairs and Public Safety shall establish programs and services
4 designed to prevent juvenile delinquency, to divert juveniles
5 from the juvenile justice system, to provide community-based
6 alternatives to juvenile detention and correctional facilities and
7 to encourage a diversity of alternatives within the child welfare
8 and juvenile justice system. The development, maintenance and
9 expansion of programs and services may include, but not be
10 limited to, the following:

11 (1) Community-based programs and services for the
12 prevention and treatment of juvenile delinquency through the
13 development of foster-care and shelter-care homes, group
14 homes, halfway houses, homemaker and home health services,
15 24-hour intake screening, volunteer and crisis home programs,
16 day treatment and any other designated community-based
17 diagnostic, treatment or rehabilitative service;

18 (2) Community-based programs and services to work with
19 parents and other family members to maintain and strengthen the
20 family unit so that the juvenile may be retained in his or her
21 home;

22 (3) Youth service bureaus and other community-based
23 programs to divert youth from the juvenile court or to support,
24 counsel or provide work and recreational opportunities for status
25 offenders, juvenile delinquents and other youth to help prevent
26 delinquency;

27 (4) Projects designed to develop and implement programs
28 stressing advocacy activities aimed at improving services for and
29 protecting rights of youth affected by the juvenile justice system;

30 (5) Educational programs or supportive services designed to
31 encourage status offenders, juvenile delinquents and other youth

32 to remain in elementary and secondary schools or in alternative
33 learning situations;

34 (6) Expanded use of professional and paraprofessional
35 personnel and volunteers to work effectively with youth;

36 (7) Youth-initiated programs and outreach programs
37 designed to assist youth who otherwise would not be reached by
38 traditional youth assistance programs;

39 (8) A statewide program designed to reduce the number of
40 commitments of juveniles to any form of juvenile facility as a
41 percentage of the state juvenile population; to increase the use of
42 nonsecure community-based facilities as a percentage of total
43 commitments to juvenile facilities; and to discourage the use of
44 secure incarceration and detention; and

45 (9) Transitional programs designed to assist juveniles who
46 are in the custody of the state upon reaching the age of eighteen
47 years.

48 (b) By January 1, 2017, the department and the Division of
49 Juvenile Services shall allocate at least fifty percent of all
50 community services funding, as defined in section two hundred
51 six, article one of this chapter, either provided directly or by
52 contracted service providers, for the implementation of
53 evidence-based practices, as defined in section two hundred six,
54 article one of this chapter.

55 (c) (1) The Department of Health and Human Resources
56 shall establish an individualized program of rehabilitation for
57 each status offender referred to the department and to each
58 alleged juvenile delinquent referred to the department after being
59 allowed a pre-adjudicatory community supervision period by the
60 juvenile court, and for each adjudicated juvenile delinquent who,
61 after adjudication, is referred to the department for investigation
62 or treatment or whose custody is vested in the department.

63 (2) An individualized program of rehabilitation shall take
64 into account the programs and services to be provided by other
65 public or private agencies or personnel which are available in the
66 community to deal with the circumstances of the particular
67 juvenile.

68 (3) For alleged juvenile delinquents and status offenders, an
69 individualized program of rehabilitation shall be furnished to the
70 juvenile court and made available to counsel for the juvenile; it
71 may be modified from time to time at the direction of the
72 department or by order of the juvenile court.

73 (4) The department may develop an individualized program
74 of rehabilitation for any juvenile referred for noncustodial
75 counseling under section seven hundred two-a, article four of
76 this chapter or for any juvenile upon the request of a public or
77 private agency.

78 (d) (1) The individualized program of rehabilitation required
79 by the provisions of subsection (c) of this section shall, for any
80 juvenile in out-of-home placement, include a plan to return the
81 juvenile to his or her home setting and transition the juvenile
82 into community services to continue his or her rehabilitation.

83 (2) Planning for the transition shall begin upon the juvenile's
84 entry into the residential facility. The transition process shall
85 begin thirty days after admission to the residential facility and
86 conclude no later than three months after admission.

87 (3) The Department of Health and Human Resources staff
88 shall, during its monthly site visits at contracted residential
89 facilities, ensure that the individualized programs of
90 rehabilitation include a plan for transition in accordance with
91 this subsection.

92 (4) If further time in residential placement is necessary and
93 the most effective method of attaining the rehabilitation goals

94 identified by the rehabilitation individualized plan created under
95 subsection (c) of this section, then the department shall provide
96 information to the multidisciplinary team to substantiate that
97 further time in a residential facility is necessary. The court, in
98 consultation with the multidisciplinary team, may order an
99 extension of time in residential placement prior to the juvenile's
100 transition to the community if the court finds by clear and
101 convincing evidence that an extension is in the best interest of
102 the child. If the court finds that the evidence does not support an
103 extension, the court shall order that the transition to community
104 services proceed.

105 (e) The Department of Health and Human Resources and the
106 Division of Juvenile Services are directed to enter into
107 cooperative arrangements and agreements with each other and
108 with private agencies or with agencies of the state and its
109 political subdivisions to fulfill their respective duties under this
110 article and chapter.

***§49-2-1003. Rehabilitative facilities for status offenders;
requirements; educational instruction.**

1 (a) The Department of Health and Human Resources shall
2 establish and maintain one or more rehabilitative facilities to be
3 used exclusively for the lawful custody of status offenders. Each
4 facility will be a nonsecure facility having as its purpose the
5 rehabilitation of status offenders. The facility will have a bed
6 capacity for not more than twenty juveniles and shall minimize
7 the institutional atmosphere and prepare the juvenile for
8 reintegration into the community.

9 (b) Rehabilitative programs and services shall be provided
10 by or through each facility and may include, but not be limited
11 to, medical, educational, vocational, social and psychological

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

12 guidance, training, counseling, substance abuse treatment and
13 other rehabilitative services. The Department of Health and
14 Human Resources shall provide to each status offender
15 committed to the facility a program of treatment and services
16 consistent with the individualized program of rehabilitation
17 developed for the juvenile. In the case of any other juvenile
18 residing at the facility, the department shall provide those
19 programs and services as may be proper in the circumstances
20 including, but not limited to, any programs or services directed
21 to be provided by the court.

22 (c) The board of education of the county in which the facility
23 is located shall provide instruction for juveniles residing at the
24 facility. Residents who can be permitted to do so shall attend
25 local schools and instruction shall otherwise take place at the
26 facility.

27 (d) Facilities established pursuant to this section shall be
28 structured as community-based facilities.

29 (e) The Department of Health and Human Resources may
30 enter into cooperative arrangements and agreements with private
31 agencies or with agencies of the state and its political
32 subdivisions to fulfill its duties under this section: *Provided*,
33 That after January 1, 2016, the department shall not enter into an
34 agreement with the Division of Juvenile Services to house
35 juvenile status offenders.

ARTICLE 4. COURT ACTIONS.

***§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.**

1 (a) (1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to part six and part seven of article four

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

3 of this chapter shall be established within each county of the
4 state, either separately or in conjunction with a contiguous
5 county, by the secretary of the department with advice and
6 assistance from the prosecutor's advisory council as set forth in
7 section four, article four, chapter seven of this code. In each
8 circuit, the department shall coordinate with the prosecutor's
9 office, the public defender's office or other counsel representing
10 juveniles to designate, with the approval of the court, at least one
11 day per month on which multidisciplinary team meetings for that
12 circuit shall be held: *Provided*, That multidisciplinary team
13 meetings may be held on days other than the designated day or
14 days when necessary. The Division of Juvenile Services shall
15 establish a similar treatment planning process for delinquency
16 cases in which the juvenile has been committed to its custody,
17 including those cases in which the juvenile has been committed
18 for examination and diagnosis.

19 (2) This section does not require a multidisciplinary team
20 meeting to be held prior to temporarily placing a child or
21 juvenile out-of-home under exigent circumstances or upon a
22 court order placing a juvenile in a facility operated by the
23 Division of Juvenile Services.

24 (b) The case manager in the Department of Health and
25 Human Resources for the child, family or juvenile or the case
26 manager in the Division of Juvenile Services for a juvenile shall
27 convene a treatment team in each case when it is required
28 pursuant to this article.

29 (1) Prior to disposition, in each case in which a treatment
30 planning team has been convened, the team shall advise the court
31 as to the types of services the team has determined are needed
32 and the type of placement, if any, which will best serve the needs
33 of the child. If the team determines that an out-of-home
34 placement will best serve the needs of the child, the team shall
35 first consider placement with appropriate relatives then with

36 foster care homes, facilities or programs located within the state.
37 The team may only recommend placement in an out-of-state
38 facility if it concludes, after considering the best interests and
39 overall needs of the child, that there are no available and suitable
40 in-state facilities which can satisfactorily meet the specific needs
41 of the child.

42 (2) Any person authorized by the provisions of this chapter
43 to convene a multidisciplinary team meeting may seek and
44 receive an order of the circuit court setting such meeting and
45 directing attendance. Members of the multidisciplinary team
46 may participate in team meetings by telephone or video
47 conferencing. This subsection does not prevent the respective
48 agencies from designating a person other than the case manager
49 as a facilitator for treatment team meetings. Written notice shall
50 be provided to all team members of the availability to participate
51 by videoconferencing.

52 (c) The treatment team shall coordinate its activities and
53 membership with local family resource networks and coordinate
54 with other local and regional child and family service planning
55 committees to assure the efficient planning and delivery of child
56 and family services on a local and regional level.

57 (d) The multidisciplinary treatment team shall be afforded
58 access to information in the possession of the Department of
59 Health and Human Resources, Division of Juvenile Services,
60 law-enforcement agencies and other state, county and local
61 agencies. Those agencies shall cooperate in the sharing of
62 information as may be provided in article five of this chapter or
63 any other relevant provision of law. Any multidisciplinary team
64 member who acquires confidential information may not disclose
65 the information except as permitted by the provisions of this
66 code or court rules.

***§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.**

1 (a) When a juvenile is adjudicated as a status offender
2 pursuant to section seven hundred eleven of this article, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, including a risk and needs
7 assessment, to determine the juvenile's mental and physical
8 condition, maturity and education level, home and family
9 environment, rehabilitative needs and recommended service
10 plan, which shall be provided in writing to the court and team
11 members. Upon completion of the assessment, the treatment
12 team shall prepare and implement a comprehensive,
13 individualized service plan for the juvenile.

14 (b) When a juvenile is adjudicated as a delinquent or has
15 been granted a preadjudicatory community supervision period
16 pursuant to section seven hundred eight of this article, the court,
17 either upon its own motion or motion of a party, may require the
18 Department of Health and Human Resources to convene a
19 multidisciplinary treatment team and conduct an assessment,
20 utilizing a standard uniform comprehensive assessment
21 instrument or protocol, including a risk and needs assessment, to
22 determine the juvenile's mental and physical condition, maturity
23 and education level, home and family environment, rehabilitative
24 needs and recommended service plan, which shall be provided
25 in writing to the court and team members. A referral to the
26 Department of Health and Human Resources to convene a
27 multidisciplinary treatment team and to conduct such an

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.

28 assessment shall be made when the court is considering placing
29 the juvenile in the department's custody or placing the juvenile
30 out-of-home at the department's expense pursuant to section
31 seven hundred fourteen of this article. In any delinquency
32 proceeding in which the court requires the Department of Health
33 and Human Resources to convene a multidisciplinary treatment
34 team, the probation officer shall notify the department at least
35 fifteen working days before the court proceeding in order to
36 allow the department sufficient time to convene and develop an
37 individualized service plan for the juvenile.

38 (c) When a juvenile has been adjudicated and committed to
39 the custody of the Director of the Division of Juvenile Services,
40 including those cases in which the juvenile has been committed
41 for examination and diagnosis, the Division of Juvenile Services
42 shall promptly convene a multidisciplinary treatment team and
43 conduct an assessment, utilizing a standard uniform
44 comprehensive assessment instrument or protocol, including a
45 risk and needs assessment, to determine the juvenile's mental
46 and physical condition, maturity and education level, home and
47 family environment, rehabilitative needs and recommended
48 service plan. Upon completion of the assessment, the treatment
49 team shall prepare and implement a comprehensive,
50 individualized service plan for the juvenile, which shall be
51 provided in writing to the court and team members. In cases
52 where the juvenile is committed as a post-sentence disposition
53 to the custody of the Division of Juvenile Services, the plan shall
54 be reviewed quarterly by the multidisciplinary treatment team.
55 Where a juvenile has been detained in a facility operated by the
56 Division of Juvenile Services without an active service plan for
57 more than sixty days, the director of the facility may call a
58 multidisciplinary team meeting to review the case and discuss
59 the status of the service plan.

60 (d) (1) The rules of juvenile procedure shall govern the
61 procedure for obtaining any assessment of a juvenile, preparing

62 an individualized service plan and submitting the plan and any
63 assessment to the court.

64 (2) In juvenile proceedings conducted pursuant to part seven
65 of this article, the following representatives shall serve as
66 members and attend each meeting of the multidisciplinary
67 treatment team, so long as they receive notice at least seven days
68 prior to the meeting:

69 (A) The juvenile;

70 (B) The juvenile's case manager in the Department of Health
71 and Human Resources or the Division of Juvenile Services;

72 (C) The juvenile's parent, guardian or custodian;

73 (D) The juvenile's attorney;

74 (E) Any attorney representing a member of the
75 multidisciplinary treatment team;

76 (F) The prosecuting attorney or his or her designee;

77 (G) The county school superintendent or the
78 superintendent's designee;

79 (H) A treatment or service provider with training and clinical
80 experience coordinating behavioral or mental health treatment;
81 and

82 (I) Any other person or agency representative who may
83 assist in providing recommendations for the particular needs of
84 the juvenile and family, including domestic violence service
85 providers. In delinquency proceedings, the probation officer
86 shall be a member of a multidisciplinary treatment team. When
87 appropriate, the juvenile case manager in the Department of
88 Health and Human Resources and the Division of Juvenile

89 Services shall cooperate in conducting multidisciplinary
90 treatment team meetings when it is in the juvenile's best interest.

91 (3) Prior to disposition, in each case in which a treatment
92 planning team has been convened, the team shall advise the court
93 as to the types of services the team has determined are needed
94 and type of placement, if any, which will best serve the needs of
95 the child. If the team determines that an out-of-home placement
96 will best serve the needs of the child, the team shall first
97 consider placement at facilities or programs located within the
98 state. The team may only recommend placement in an
99 out-of-state facility if it concludes, after considering the best
100 interests and overall needs of the child, that there are no
101 available and suitable in-state facilities which can satisfactorily
102 meet the specific needs of the child. The multidisciplinary
103 treatment team shall also determine and advise the court as to the
104 individual treatment and rehabilitation plan recommended for
105 the child for either out-of-home placement or community
106 supervision. The plan may focus on reducing the likelihood of
107 reoffending, requirements for the child to take responsibility for
108 his or her actions, completion of evidence-based services or
109 programs or any other relevant goal for the child. The plan may
110 also include opportunities to incorporate the family, custodian or
111 guardian into the treatment and rehabilitation process.

112 (4) The multidisciplinary treatment team shall submit written
113 reports to the court as required by applicable law or by the court,
114 shall meet with the court at least every three months, as long as
115 the juvenile remains in the legal or physical custody of the state,
116 and shall be available for status conferences and hearings as
117 required by the court. The multidisciplinary treatment team shall
118 monitor progress of the plan identified in subdivision (3) of this
119 subsection and review progress of the plan at the regular
120 meetings held at least every three months pursuant to this
121 section, or at shorter intervals, as ordered by the court, and shall

122 report to the court on the progress of the plan or if additional
123 modification is necessary.

124 (5) In any case in which a juvenile has been placed out of his
125 or her home except for a temporary placement in a shelter or
126 detention center, the multidisciplinary treatment team shall
127 cooperate with the state agency in whose custody the juvenile is
128 placed to develop an after-care plan. The rules of juvenile
129 procedure and section four hundred nine of this article govern
130 the development of an after-care plan for a juvenile, the
131 submission of the plan to the court and any objection to the
132 after-care plan.

133 (6) If a juvenile respondent admits the underlying allegations
134 of the case initiated pursuant to part VII of this article, in the
135 multidisciplinary treatment planning process, his or her
136 statements may not be used in any juvenile or criminal
137 proceedings against the juvenile, except for perjury or false
138 swearing.

***§49-4-409. After-care plans; contents; written comments;
contacts; objections; courts.**

1 (a) Prior to the discharge of a child from any out-of-home
2 placement to which the juvenile was committed pursuant to this
3 chapter, the department or the Division of Juvenile Services shall
4 convene a meeting of the multidisciplinary treatment team to
5 which the child has been referred or, if no referral has been
6 made, convene a multidisciplinary treatment team for any child
7 for which a multidisciplinary treatment plan is required by this
8 article and forward a copy of the juvenile's proposed after-care
9 plan to the court which committed the juvenile. A copy of the
10 plan shall also be sent to: (1) The child's parent, guardian or

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

11 custodian; (2) the child's lawyer; (3) the child's probation officer
12 or community mental health center professional; (4) the
13 prosecuting attorney of the county in which the original
14 commitment proceedings were held; and (5) the principal of the
15 school which the child will attend. The plan shall have a list of
16 the names and addresses of these persons attached to it.

17 (b) The after-care plan shall contain a detailed description of
18 the education, counseling and treatment which the child received
19 at the out-of-home placement and it shall also propose a plan for
20 education, counseling and treatment for the child upon the
21 child's discharge. The plan shall also contain a description of
22 any problems the child has, including the source of those
23 problems, and it shall propose a manner for addressing those
24 problems upon discharge.

25 (c) Within twenty-one days of receiving the plan, the child's
26 probation officer or community mental health center
27 professional shall submit written comments upon the plan to the
28 court which committed the child. Any other person who received
29 a copy of the plan pursuant to subsection (a) of this section may
30 submit written comments upon the plan to the court which
31 committed the child. Any person who submits comments upon
32 the plan shall send a copy of those comments to every other
33 person who received a copy of the plan.

34 (d) Within twenty-one days of receiving the plan, the child's
35 probation officer or community mental health center
36 professional shall contact all persons, organizations and agencies
37 which are to be involved in executing the plan to determine
38 whether they are capable of executing their responsibilities under
39 the plan and to further determine whether they are willing to
40 execute their responsibilities under the plan.

41 (e) If adverse comments or objections regarding the plan are
42 submitted to the circuit court, it shall, within forty-five days of

43 receiving the plan, hold a hearing to consider the plan and the
44 adverse comments or objections. Any person, organization or
45 agency which has responsibilities in executing the plan, or their
46 representatives, may be required to appear at the hearing unless
47 they are excused by the circuit court. Within five days of the
48 hearing, the circuit court shall issue an order which adopts the
49 plan as submitted or as modified in response to any comments or
50 objections.

51 (f) If no adverse comments or objections are submitted, a
52 hearing need not be held. In that case, the circuit court shall
53 consider the plan as submitted and shall, within forty-five days
54 of receiving the plan, issue an order which adopts the plan as
55 submitted.

56 (g) Notwithstanding the provisions of subsections (e) and (f)
57 of this section, the plan which is adopted by the circuit court
58 shall be in the best interests of the child and shall also be in
59 conformity with West Virginia's interest in youths as embodied
60 in this chapter.

61 (h) The court which committed the child shall appoint the
62 child's probation officer or community mental health center
63 professional to act as supervisor of the plan. The supervisor shall
64 report the child's progress under the plan to the court every sixty
65 days or until the court determines that no report or no further
66 care is necessary.

§49-4-413. Individualized case planning.

1 (a) For any juvenile ordered to probation supervision
2 pursuant to section seven hundred fourteen, article four of this
3 chapter, the probation officer assigned to the juvenile shall
4 develop and implement an individualized case plan in
5 consultation with the juvenile's parents, guardian or custodian,
6 and other appropriate parties, and based upon the results of a risk
7 and needs assessment conducted within the last six months prior

8 to the disposition to probation. The probation officer shall work
9 with the juvenile and his or her family, guardian or custodian to
10 implement the case plan following disposition. At a minimum,
11 the case plan shall:

12 (1) Identify the actions to be taken by the juvenile and, if
13 appropriate, the juvenile's parents, guardian or custodian to
14 ensure future lawful conduct and compliance with the court's
15 disposition order; and

16 (2) Identify the services to be offered and provided to the
17 juvenile and, if appropriate, the juvenile's parents, guardian or
18 custodian and may include services to address: Mental health
19 and substance abuse issues; education; individual, group and
20 family counseling services; community restoration; or other
21 relevant concerns identified by the probation officer.

22 (b) For any juvenile disposed to an out-of-home placement
23 with the department, the department shall ensure that the
24 residential service provider develops and implements an
25 individualized case plan based upon the recommendations of the
26 multidisciplinary team pursuant to section four hundred six,
27 article four of this chapter and the results of a risk and needs
28 assessment. At a minimum, the case plan shall include:

29 (1) Specific treatment goals and the actions to be taken by
30 the juvenile in order to demonstrate satisfactory attainment of
31 each goal;

32 (2) The services to be offered and provided by the residential
33 service providers; and

34 (3) A detailed plan designed to assure appropriate
35 reintegration of the juvenile to his or her family, guardian,
36 school and community following the satisfactory completion of
37 the case plan treatment goals, including a protocol and timeline
38 for engaging the parents, guardians or custodians prior to the
39 release of the juvenile.

40 (c) For any juvenile committed to the Division of Juvenile
41 Services, the Division of Juvenile Services shall develop and
42 implement an individualized case plan based upon the
43 recommendations made to the court by the multidisciplinary
44 team pursuant to section four hundred six, article four of this
45 chapter and the results of a risk and needs assessment. At a
46 minimum, the case plan shall include:

47 (1) Specific correctional goals and the actions to be taken by
48 the juvenile to demonstrate satisfactory attainment of each goal;

49 (2) The services to be offered and provided by the Division
50 of Juvenile Services and any contracted service providers; and

51 (3) A detailed plan designed to assure appropriate
52 reintegration of the juvenile to his or her family, guardian,
53 school and community following the satisfactory completion of
54 the case plan treatment goals, including a protocol and timeline
55 for engaging the parents, guardians or custodians prior to the
56 release of the juvenile.

***§49-4-702. Prepetition diversion to informal resolution;
mandatory prepetition diversion program for
status offenses and misdemeanor offenses;
prepetition review team.**

1 (a) Before a juvenile petition is formally filed with the court,
2 the court may refer the matter to a case worker, probation officer
3 or truancy diversion specialist for preliminary inquiry to
4 determine whether the matter can be resolved informally without
5 the formal filing of a petition with the court.

6 (b) (1) If the matter is for a truancy offense, the prosecutor
7 shall refer the matter to a state department worker, probation

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

8 officer or truancy diversion specialist who shall develop a
9 diversion program pursuant to subsection (d) of this section.

10 (2) If the matter is for a status offense other than truancy, the
11 prosecutor shall refer the juvenile to a case worker or probation
12 officer who shall develop a diversion program pursuant to
13 subsection (d) of this section.

14 (3) The prosecutor is not required to refer the juvenile for
15 development of a diversion program pursuant to subdivision (1)
16 or (2) of this subsection and may proceed to file a petition with
17 the court if he or she determines:

18 (A) The juvenile has a prior adjudication for a status or
19 delinquency offense; or

20 (B) There exists a significant and likely risk of harm to the
21 juvenile, a family member or the public.

22 (c) If the matter is for a nonviolent misdemeanor offense, the
23 prosecutor shall determine whether the case can be resolved
24 informally through a diversion program without the filing of a
25 petition. If the prosecutor determines that a diversion program is
26 appropriate, it shall refer the matter to a case worker or probation
27 officer who shall develop a diversion program pursuant to
28 subsection (d) of this section.

29 (d) (1) When developing a diversion program, the case
30 worker, probation officer or truancy diversion specialist shall:

31 (A) Conduct an assessment of the juvenile to develop a
32 diversion agreement;

33 (B) Create a diversion agreement;

34 (C) Obtain consent from the juvenile and his or her parent,
35 guardian or custodian to the terms of the diversion agreement;

36 (D) Refer the juvenile and, if necessary, his or her parent,
37 guardian or custodian to services in the community pursuant to
38 the diversion agreement.

39 (2) A diversion agreement may include:

40 (A) Referral to community services as defined in section two
41 hundred six, article one of this chapter for the juvenile to address
42 the assessed need;

43 (B) Referral to services for the parent, guardian or custodian
44 of the juvenile;

45 (C) Referral to one or more community work service
46 programs for the juvenile;

47 (D) A requirement that the juvenile regularly attend school;

48 (E) Community-based sanctions to address noncompliance;
49 or

50 (F) Any other efforts which may reasonably benefit the
51 community, the juvenile and his or her parent, guardian or
52 custodian.

53 (3) When a referral to a service provider occurs, the service
54 provider shall make reasonable efforts to contact the juvenile and
55 his or her parent, custodian or guardian within seventy-two hours
56 of the referral.

57 (4) Upon request by the case worker, probation officer or
58 truancy diversion specialist, the court may enter reasonable and
59 relevant orders to the parent, custodian or guardian of the
60 juvenile who have consented to the diversion agreement as is
61 necessary and proper to carry out the agreement.

62 (5) If the juvenile and his or her parent, custodian or
63 guardian do not consent to the terms of the diversion agreement

64 created by the case worker, probation officer or truancy
65 diversion specialist, the petition may be filed with the court.

66 (6) Referral to a prepetition diversion program shall toll the
67 statute of limitations for status and delinquency offenses.

68 (7) Probation officers may be authorized by the court to
69 participate in a diversion program.

70 (e) The case worker, probation officer or truancy diversion
71 specialist shall monitor the juvenile's compliance with any
72 diversion agreement.

73 (1) If the juvenile successfully completes the terms of the
74 diversion agreement, a petition shall not be filed with the court
75 and no further action shall be taken.

76 (2) If the juvenile is unsuccessful in or noncompliant with
77 the diversion agreement, the diversion agreement shall be
78 referred to a prepetition review team convened by the case
79 worker, probation officer or the truancy diversion specialist:
80 *Provided*, That if a new delinquency offense occurs, a petition
81 may be filed with the court.

82 (f) (1) The prepetition review team may be a subset of a
83 multidisciplinary team established pursuant to section four
84 hundred six, article four of this chapter.

85 (2) The prepetition review team may consist of:

86 (A) A case worker knowledgeable about community services
87 available and authorized to facilitate access to services;

88 (B) A service provider;

89 (C) A school superintendent or his or her designee; or

90 (D) Any other person, agency representative, member of the
91 juvenile's family, or a custodian or guardian who may assist in

92 providing recommendations on community services for the
93 particular needs of the juvenile and his or her family.

94 (3) The prepetition review team shall review the diversion
95 agreement and the service referrals completed and determine
96 whether other appropriate services are available to address the
97 needs of the juvenile and his or her family.

98 (4) The prepetition review shall occur within fourteen days
99 of referral from the state department worker, probation officer or
100 truancy diversion specialist.

101 (5) After the prepetition review, the prepetition review team
102 may:

103 (A) Refer a modified diversion agreement back to the case
104 worker, probation officer or truancy diversion specialist;

105 (B) Advise the case worker, probation officer or truancy
106 diversion specialist to file a petition with the court; or

107 (C) Advise the case worker to open an investigation for child
108 abuse or neglect.

109 (g) The requirements of this section are not mandatory until
110 July 1, 2016: *Provided*, That nothing in this section prohibits a
111 judicial circuit from continuing to operate a truancy or other
112 juvenile treatment program that existed as of January 1, 2015:
113 *Provided, however*, That any judicial circuit desiring to create a
114 diversion program after the effective date of this section and
115 prior to July 1, 2016, may only do so pursuant to this section.

**§49-4-702a. Noncustodial counseling or community services
provided to a juvenile; prepetition counsel and
advice.**

1 (a) The court at any time, or the department or other official
2 upon a request from a parent, guardian or custodian, may, before

3 a petition is filed under this article, refer a juvenile alleged to be
4 a delinquent or a status offender to a counselor at the department
5 or a community mental health center, other professional
6 counselor in the community or to a truancy diversion specialist.
7 In the event the juvenile refuses to respond to this referral, the
8 department may serve a notice by first class mail or personal
9 service of process upon the juvenile, setting forth the facts and
10 stating that a noncustodial order will be sought from the court
11 directing the juvenile to submit to counseling or community
12 services. The notice shall set forth the time and place for the
13 hearing on the matter. The court or referee after a hearing may
14 direct the juvenile to participate in a noncustodial period of
15 counseling or community services that may not exceed six
16 months. Upon recommendation of the department or request by
17 the juvenile's parent, custodian or guardian, the court or referee
18 may allow or require the parent, custodian or guardian to
19 participate in this noncustodial counseling or community
20 services. No information obtained as the result of counseling or
21 community services is admissible in a subsequent proceeding
22 under this article.

23 (b) Before a petition is formally filed with the court, the
24 probation officer or other officer of the court designated by it,
25 subject to its direction, may give counsel and advice to the
26 parties with a view to an informal adjustment period if it
27 appears:

28 (1) The admitted facts bring the case within the jurisdiction
29 of the court;

30 (2) Counsel and advice without an adjudication would be in
31 the best interest of the public and the juvenile; and

32 (3) The juvenile and his or her parents, guardian or other
33 custodian consent thereto with knowledge that consent is not
34 obligatory.

35 (c) The giving of counsel and advice pursuant to this section
36 may not continue longer than six months from the day it is
37 commenced unless extended by the court for an additional period
38 not to exceed six months.

***§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.**

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or deny
3 the allegations in the petition. The juvenile may elect to stand
4 silent, in which event the court shall enter a general denial of all
5 allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of the
7 petition, the court shall consider the admission to be proof of the
8 allegations if the court finds: (1) The respondent fully
9 understands all of his or her rights under this article; (2) the
10 respondent voluntarily, intelligently and knowingly admits all
11 facts requisite for an adjudication; and (3) the respondent in his
12 or her admission has not set forth facts which constitute a
13 defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or jury
16 shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the juvenile
18 is delinquent are admitted or are sustained by proof beyond a
19 reasonable doubt, the court shall schedule the matter for
20 disposition pursuant to section seven hundred four of this article.
21 The court shall receive and consider the results of the risk and

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.

22 needs assessment prior to or at the disposition pursuant to
23 section seven hundred twenty-four, article four of this chapter.

24 (4) If the allegations in a petition alleging that the juvenile
25 is a status offender are admitted or sustained by clear and
26 convincing evidence, the court shall consider the results of the
27 risk and needs assessment prior to or at the disposition pursuant
28 to section seven hundred twenty-four, article four of this chapter
29 and refer the juvenile to the Department of Health and Human
30 Resources for services, pursuant to section seven hundred twelve
31 of this article, and order the department to report back to the
32 court with regard to the juvenile's progress at least every ninety
33 days or until the court, upon motion or sua sponte, orders further
34 disposition under section seven hundred twelve of this article or
35 dismisses the case from its docket: *Provided*, That in a judicial
36 circuit operating a truancy program, a circuit judge may, in lieu
37 of referring truant juveniles to the department, order that the
38 juveniles be supervised by his or her probation office: *Provided*,
39 *however*, That a circuit judge may also refer a truant juvenile to
40 a truancy diversion specialist.

41 (5) If the allegations in a petition are not sustained by
42 evidence as provided in subsections (c) and (d) of this section,
43 the petition shall be dismissed and the juvenile shall be
44 discharged if he or she is in custody.

45 (6) Findings of fact and conclusions of law addressed to all
46 allegations in the petition shall be stated on the record or reduced
47 to writing and filed with the record or incorporated into the order
48 of the court. The record shall include the treatment and
49 rehabilitation plan the court has adopted after recommendation
50 by the multidisciplinary team as provided for in section four
51 hundred six, article four of this chapter.

***§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders in a Division of Juvenile Services facility on or after January 1, 2016.**

1 (a) The services provided by the department for juveniles
2 adjudicated as status offenders shall be consistent with part ten,
3 article two of this chapter and shall be designed to develop skills
4 and supports within families and to resolve problems related to
5 the juveniles or conflicts within their families. Services may
6 include, but are not limited to, referral of juveniles and parents,
7 guardians or custodians and other family members to services for
8 psychiatric or other medical care, or psychological, welfare,
9 legal, educational or other social services, as appropriate to the
10 needs of the juvenile and his or her family.

11 (b) If the juvenile, or his or her parent, guardian or
12 custodian, fails to comply with the services provided in
13 subsection (a) of this section, the department may petition the
14 circuit court:

15 (1) For a valid court order, as defined in section two hundred
16 seven, article one of this chapter, to enforce compliance with a
17 service plan or to restrain actions that interfere with or defeat a
18 service plan; or

19 (2) For a valid court order to place a juvenile out of home in
20 a nonsecure or staff-secure setting, and/or to place a juvenile in
21 custody of the department: *Provided*, That a juvenile adjudicated
22 as a status offender may not be placed in an out-of-home

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46), which passed prior to this act.

23 placement, excluding placements made for abuse and neglect, if
24 that juvenile has had no prior adjudications for a status or
25 delinquency offense, or no prior disposition to a pre-adjudicatory
26 improvement period or probation for the current matter:
27 *Provided, however,* That if the court finds by clear and
28 convincing evidence the existence of a significant and likely risk
29 of harm to the juvenile, a family member or the public and
30 continued placement in the home is contrary to the best interests
31 of the juvenile, such juvenile may be ordered to an out-of-home
32 placement: *Provided further,* That the court finds the department
33 has made all reasonable efforts to prevent removal of the
34 juvenile from his or her home, or that such reasonable efforts are
35 not required due to an emergent situation.

36 (c) In ordering any further disposition under this section, the
37 court is not limited to the relief sought in the department's
38 petition and shall make reasonable efforts to prevent removal of
39 the juvenile from his or her home or, as an alternative, to place
40 the juvenile in a community-based facility which is the least
41 restrictive alternative appropriate to the needs of the juvenile and
42 the community. The disposition may include reasonable and
43 relevant orders to the parents, guardians or custodians of the
44 juvenile as is necessary and proper to effectuate the disposition.

45 (d) (1) If the court finds that placement in a residential
46 facility is necessary to provide the services under subsection (a)
47 of this section, except as prohibited by subdivision (2),
48 subsection (b) of this section, the court shall make findings of
49 fact as to the necessity of this placement, stated on the record or
50 reduced to writing and filed with the record or incorporated into
51 the order of the court.

52 (2) The findings of fact shall include the factors that
53 indicate:

54 (A) The likely effectiveness of placement in a residential
55 facility for the juvenile; and

56 (B) The community services which were previously
57 attempted.

58 (e) The disposition of the juvenile may not be affected by the
59 fact that the juvenile demanded a trial by jury or made a plea of
60 not guilty. Any order providing disposition other than mandatory
61 referral to the department for services is subject to appeal to the
62 Supreme Court of Appeals.

63 (f) Following any further disposition by the court, the court
64 shall inquire of the juvenile whether or not appeal is desired and
65 the response shall be transcribed; a negative response may not be
66 construed as a waiver. The evidence shall be transcribed as soon
67 as practicable and made available to the juvenile or his or her
68 counsel, if it is requested for purposes of further proceedings. A
69 judge may grant a stay of execution pending further proceedings.

70 (g) A juvenile adjudicated solely as a status offender on or
71 after January 1, 2016, may not be placed in a Division of
72 Juvenile Services facility.

***§49-4-714. Disposition of juvenile delinquents; appeal.**

1 (a) In aid of disposition of juvenile delinquents, the juvenile
2 probation officer assigned to the juvenile shall, upon request of
3 the court, make an investigation of the environment of the
4 juvenile and the alternative dispositions possible. The court,
5 upon its own motion, or upon request of counsel, may order the
6 use of a standardized screener, as defined in section two hundred
7 six, article one of this chapter or, if additional information is
8 necessary, a psychological examination of the juvenile. The
9 report of an examination and other investigative and social
10 reports shall not be relied upon the court in making a

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

11 determination of adjudication. Unless waived, copies of the
12 report shall be provided to counsel for the petitioner and counsel
13 for the juvenile no later than seventy-two hours prior to the
14 dispositional hearing.

15 (b) Following the adjudication, the court shall receive and
16 consider the results of a risk and needs assessment conducted
17 pursuant to section seven hundred twenty-four, article four of
18 this chapter and shall conduct the disposition, giving all parties
19 an opportunity to be heard. The disposition may include
20 reasonable and relevant orders to the parents, custodians or
21 guardians of the juvenile as is necessary and proper to effectuate
22 the disposition. At disposition the court shall not be limited to
23 the relief sought in the petition and shall, in electing from the
24 following alternatives, consider the best interests of the juvenile
25 and the welfare of the public:

26 (1) Dismiss the petition;

27 (2) Refer the juvenile and the juvenile's parent or custodian
28 to a community agency for needed assistance and dismiss the
29 petition;

30 (3) Upon a finding that the juvenile is in need of
31 extra-parental supervision: (A) Place the juvenile under the
32 supervision of a probation officer of the court or of the court of
33 the county where the juvenile has his or her usual place of abode
34 or other person while leaving the juvenile in custody of his or
35 her parent or custodian; and (B) prescribe a program of treatment
36 or therapy or limit the juvenile's activities under terms which are
37 reasonable and within the child's ability to perform, including
38 participation in the litter control program established pursuant to
39 section three, article fifteen-a, chapter twenty-two of this code or
40 other appropriate programs of community service;

41 (4) Upon a finding that a parent or custodian is not willing
42 or able to take custody of the juvenile, that a juvenile is not

43 willing to reside in the custody of his or her parent or custodian
44 or that a parent or custodian cannot provide the necessary
45 supervision and care of the juvenile, the court may place the
46 juvenile in temporary foster care or temporarily commit the
47 juvenile to the department or a child welfare agency. The court
48 order shall state that continuation in the home is contrary to the
49 best interest of the juvenile and why; and whether or not the
50 department made a reasonable effort to prevent the placement or
51 that the emergency situation made those efforts unreasonable or
52 impossible. Whenever the court transfers custody of a youth to
53 the department, an appropriate order of financial support by the
54 parents or guardians shall be entered in accordance with part
55 eight, article four of this chapter and guidelines promulgated by
56 the Supreme Court of Appeals;

57 (5) (A) Upon a finding that the best interests of the juvenile
58 or the welfare of the public require it, and upon an adjudication
59 of delinquency, the court may commit the juvenile to the custody
60 of the Director of the Division of Juvenile Services for
61 placement in a juvenile services facility for the treatment,
62 instruction and rehabilitation of juveniles. The court maintains
63 discretion to consider alternative sentencing arrangements.

64 (B) Notwithstanding any provision of this code to the
65 contrary, in the event that the court determines that it is in the
66 juvenile's best interests or required by the public welfare to
67 place the juvenile in the custody of the Division of Juvenile
68 Services, the court shall provide the Division of Juvenile
69 Services with access to all relevant court orders and records
70 involving the underlying offense or offenses for which the
71 juvenile was adjudicated delinquent, including sentencing and
72 presentencing reports and evaluations, and provide the division
73 with access to school records, psychological reports and
74 evaluations, risk and needs assessment results, medical reports
75 and evaluations or any other such records as may be in the
76 court's possession as would enable the Division of Juvenile

77 Services to better assess and determine the appropriate
78 counseling, education and placement needs for the juvenile
79 offender.

80 (C) Commitments may not exceed the maximum term for
81 which an adult could have been sentenced for the same offense
82 and any such maximum allowable term of confinement to be
83 served in a juvenile correctional facility shall take into account
84 any time served by the juvenile in a detention center pending
85 adjudication, disposition or transfer. The order shall state that
86 continuation in the home is contrary to the best interests of the
87 juvenile and why; and whether or not the state department made
88 a reasonable effort to prevent the placement or that the
89 emergency situation made those efforts unreasonable or
90 impossible; or

91 (6) After a hearing conducted under the procedures set out
92 in subsections (c) and (d), section four, article five, chapter
93 twenty-seven of this code, commit the juvenile to a mental health
94 facility in accordance with the juvenile's treatment plan; the
95 director of the mental health facility may release a juvenile and
96 return him or her to the court for further disposition. The order
97 shall state that continuation in the home is contrary to the best
98 interests of the juvenile and why; and whether or not the state
99 department made a reasonable effort to prevent the placement or
100 that the emergency situation made those efforts unreasonable or
101 impossible.

102 The court shall make all reasonable efforts to place the
103 juvenile in the least restrictive alternative appropriate to the
104 needs of the juvenile and the community: *Provided*, That a
105 juvenile adjudicated delinquent for a nonviolent misdemeanor
106 offense may not be placed in an out-of-home placement within
107 the Division of Juvenile Services or the department if that
108 juvenile has no prior adjudications as either a status offender or
109 as a delinquent, or no prior dispositions to a pre-adjudicatory

110 improvement period or probation for the current matter,
111 excluding placements made for abuse or neglect: *Provided*,
112 *however*, That if the court finds by clear and convincing
113 evidence that there is a significant and likely risk of harm, as
114 determined by a risk and needs assessment, to the juvenile, a
115 family member or the public and that continued placement in the
116 home is contrary to the best interest of the juvenile, such juvenile
117 may be ordered to an out-of-home placement: *Provided further*,
118 That the department has made all reasonable efforts to prevent
119 removal of the juvenile from his or her home, or that reasonable
120 efforts are not required due to an emergent situation.

121 (c) In any case in which the court decides to order the
122 juvenile placed in an out-of-state facility or program, it shall set
123 forth in the order directing the placement the reasons the juvenile
124 was not placed in an in-state facility or program.

125 (d) The disposition of the juvenile shall not be affected by
126 the fact that the juvenile demanded a trial by jury or made a plea
127 of not guilty. Any disposition is subject to appeal to the Supreme
128 Court of Appeals.

129 (e) Following disposition, the court shall inquire whether the
130 juvenile wishes to appeal and the response shall be transcribed;
131 a negative response shall not be construed as a waiver. The
132 evidence shall be transcribed as soon as practicable and made
133 available to the juvenile or his or her counsel, if the same is
134 requested for purposes of further proceedings. A judge may grant
135 a stay of execution pending further proceedings.

136 (f) Following a disposition under subdivision (4), (5) or (6),
137 subsection (b) of this section, the court shall include in the
138 findings of fact the treatment and rehabilitation plan the court
139 has adopted upon recommendation of the multidisciplinary team
140 under section four hundred six, article four of this chapter.

141 (g) Notwithstanding any other provision of this code to the
142 contrary, if a juvenile charged with delinquency under this
143 chapter is transferred to adult jurisdiction and there tried and
144 convicted, the court may make its disposition in accordance with
145 this section in lieu of sentencing the person as an adult.

***§49-4-718. Modification of dispositional orders; motions;
hearings.**

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a department
3 official, the director of the Division of Juvenile Services or
4 prosecuting attorney; or

5 (2) Upon the request of the juvenile or a juvenile's parent,
6 guardian or custodian who alleges a change of circumstances
7 relating to disposition of the juvenile.

8 (b) Upon such a motion or request, the court shall conduct a
9 review hearing, except that if the last dispositional order was
10 within the previous six months, the court may deny a request for
11 review. Notice in writing of a review hearing shall be given to
12 the juvenile, the juvenile's parent, guardian or custodian and all
13 counsel not less than seventy-two hours prior to the proceeding.
14 The court shall review the performance of the juvenile, the
15 juvenile's parent or custodian, the juvenile's case worker and
16 other persons providing assistance to the juvenile or juvenile's
17 family. If the motion or request for review of disposition is based
18 upon an alleged violation of a court order, the court may modify
19 the disposition order and impose a more restrictive alternative if
20 it finds clear and convincing proof of substantial violation. In the
21 absence of such evidence, the court may decline to modify the
22 dispositional order or may modify the order and impose one of

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

23 the less restrictive alternatives set forth in section seven hundred
24 twelve of this article. A juvenile may not be required to seek a
25 modification order as provided in this section in order to exercise
26 his or her right to seek relief by habeas corpus.

27 (c) In a hearing for modification of a dispositional order, or
28 in any other dispositional hearing, the court shall consider the
29 best interests of the child and the welfare of the public.

30 (d) (1) For dispositional orders that include probation, the
31 juvenile's probation officer shall submit an overview to the court
32 of the juvenile's compliance with the conditions of probation and
33 goals of his or her case plan every ninety days.

34 (2) If the juvenile is compliant and no longer in need of
35 probation supervision, the probation officer shall submit a
36 recommendation for discharge from probation supervision. If the
37 court determines that early termination of the probation term is
38 warranted, it may issue an order discharging the juvenile from
39 probation without conducting a review hearing.

40 (3) If the juvenile is not compliant with the conditions or has
41 not met his or her goals, the probation officer shall include an
42 accompanying recommendation to the court with additional or
43 changed conditions or goals necessary to achieve compliance. If
44 the court determines that changes to the conditions of probation
45 are warranted, the court shall conduct a review hearing in
46 accordance with subsection (b) of this section.

***§49-4-719. Juvenile probation officers; appointment; salary;
facilities; expenses; duties; powers.**

1 (a) (1) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with the rules of

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

3 the Supreme Court of Appeals, shall appoint one or more
4 juvenile probation officers and clerical assistants for the circuit.
5 A probation officer or clerical assistant may not be related by
6 blood or marriage to the appointing judge.

7 (2) The salary for juvenile probation officers and clerical
8 assistants shall be determined and fixed by the Supreme Court of
9 Appeals. All expenses and costs incurred by the juvenile
10 probation officers and their staff shall be paid by the Supreme
11 Court of Appeals in accordance with its rules. The county
12 commission of each county shall provide adequate office
13 facilities for juvenile probation officers and their staff. All
14 equipment and supplies required by juvenile probation officers
15 and their staff shall be provided by the Supreme Court of
16 Appeals.

17 (3) A juvenile probation officer may not be considered a
18 law-enforcement official under this chapter.

19 (b) The clerk of a court shall notify, if practicable, the chief
20 probation officer of the county, or his or her designee, when a
21 juvenile is brought before the court or judge for proceedings
22 under this article. When notified, or if the probation officer
23 otherwise obtains knowledge of such fact, he or she or one of his
24 or her assistants shall:

25 (1) Make investigation of the case; and

26 (2) Furnish information and assistance that the court or judge
27 may require.

28 (c) (1) The Supreme Court of Appeals may develop a system
29 of community-based juvenile probation sanctions and incentives
30 to be used by probation officers in response to violations of
31 terms and conditions of probation and to award incentives for
32 positive behavior.

33 (2) The community-based juvenile probation sanctions and
34 incentives may consist of a continuum of responses from the
35 least restrictive to the most restrictive, designed to respond
36 swiftly, proportionally and consistently to violations of the terms
37 and conditions of probation and to reward compliance therewith.

38 (3) The purpose of community-based juvenile probation
39 sanctions and incentives is to reduce the amount of resources and
40 time spent by the court addressing probation violations, to
41 reduce the likelihood of a new status or delinquent act, and to
42 encourage and reward positive behavior by the juvenile on
43 probation prior to any attempt to place a juvenile in an
44 out-of-home placement.

§49-4-724. Standardized risk and needs assessment.

1 (a) The Supreme Court of Appeals is requested to adopt a
2 risk and needs assessment to be used for juvenile dispositions. A
3 validation study of the risk and needs assessment may be
4 conducted at least every three years to ensure that the risk and
5 needs assessment is predictive of the risk of reoffending.

6 (b) Each juvenile adjudicated for a status or delinquency
7 offense in accordance with this chapter shall undergo a risk and
8 needs assessment prior to disposition to identify specific factors
9 that predict a juvenile's likelihood of reoffending and, when
10 appropriately addressed, may reduce the likelihood of
11 reoffending. The risk and needs assessment may be conducted by
12 a probation officer, other court official or the state department
13 worker trained to conduct the risk and needs assessment.

14 (c) Each multidisciplinary team convened pursuant to
15 section four hundred six, article four of this chapter shall receive
16 and consider the results of the risk and needs assessment of the
17 juvenile.

18 (d) The results of the risk and needs assessment shall be
19 provided to the court prior to disposition or at the time of the
20 dispositional hearing.

§49-4-725. Restorative justice programs.

1 (a) The court or prosecuting attorney may divert a juvenile
2 referred to the court for a status offense or for a nonviolent
3 misdemeanor offense to a restorative justice program, where
4 available, prior to adjudication.

5 (b) A restorative justice program shall:

6 (1) Emphasize repairing the harm against the victim and the
7 community caused by the juvenile;

8 (2) Include victim-offender dialogues or family group
9 conferencing attended voluntarily by the victim, the juvenile
10 offender, a facilitator, a victim advocate, community members,
11 or supporters of the victim or the juvenile offender that provide
12 an opportunity for the offender to accept responsibility for the
13 harm caused to those affected by the crime and to participate in
14 setting consequences to repair the harm; and

15 (3) Implement sanctions for the juvenile, including, but not
16 limited to, restitution to the victim, restitution to the community,
17 services for the victim or the community, or any other sanction
18 intended to provide restitution to the victim or the community.

19 (c) If a juvenile is referred to, and successfully completes, a
20 restorative justice program, the petition against the juvenile shall
21 be dismissed.

22 (d) No information obtained as the result of a restorative
23 justice program is admissible in a subsequent proceeding under
24 this article.

ARTICLE 5. RECORDKEEPING AND DATABASE.***§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.**

1 (a) Any findings or orders of the court in a juvenile
2 proceeding shall be known as the juvenile record and shall be
3 maintained by the clerk of the court.

4 (b) Records of a juvenile proceeding conducted under this
5 chapter are not public records and shall not be disclosed to
6 anyone unless disclosure is otherwise authorized by this section.

7 (c) Notwithstanding the provisions of subsection (b) of this
8 section, a copy of a juvenile's records shall automatically be
9 disclosed to certain school officials, subject to the following
10 terms and conditions:

11 (1) Only the records of certain juveniles shall be disclosed.
12 These include, and are limited to, cases in which:

13 (A) The juvenile has been charged with an offense which:

14 (i) Involves violence against another person;

15 (ii) Involves possession of a dangerous or deadly weapon; or

16 (iii) Involves possession or delivery of a controlled
17 substance as that term is defined in section one hundred one,
18 article one, chapter sixty-a of this code; and

19 (B) The juvenile's case has proceeded to a point where one
20 or more of the following has occurred:

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46),
which passed prior to this act.

21 (i) A circuit court judge or magistrate has determined that
22 there is probable cause to believe that the juvenile committed the
23 offense as charged;

24 (ii) A circuit court judge or magistrate has placed the
25 juvenile on probation for the offense;

26 (iii) A circuit court judge or magistrate has placed the
27 juvenile into a preadjudicatory community supervision period in
28 accordance with section seven hundred eight, article four of this
29 chapter; or

30 (iv) Some other type of disposition has been made of the
31 case other than dismissal.

32 (2) The circuit court for each judicial circuit in West
33 Virginia shall designate one person to supervise the disclosure
34 of juvenile records to certain school officials.

35 (3) If the juvenile attends a West Virginia public school, the
36 person designated by the circuit court shall automatically
37 disclose all records of the juvenile's case to the county
38 superintendent of schools in the county in which the juvenile
39 attends school and to the principal of the school which the
40 juvenile attends, subject to the following:

41 (A) At a minimum, the records shall disclose the following
42 information:

43 (i) Copies of the arrest report;

44 (ii) Copies of all investigations;

45 (iii) Copies of any psychological test results and any mental
46 health records;

47 (iv) Copies of any evaluation reports for probation or facility
48 placement; and

49 (v) Any other material that would alert the school to
50 potential danger that the juvenile may pose to himself, herself or
51 others;

52 (B) The disclosure of the juvenile's psychological test results
53 and any mental health records shall only be made in accordance
54 with subdivision (14) of this subsection;

55 (C) If the disclosure of any record to be automatically
56 disclosed under this section is restricted in its disclosure by the
57 Health Insurance Portability and Accountability Act of 1996, PL
58 104-191, and any amendments and regulations under the act, the
59 person designated by the circuit court shall provide the
60 superintendent and principal any notice of the existence of the
61 record that is permissible under the act and, if applicable, any
62 action that is required to obtain the record; and

63 (D) When multiple disclosures are required by this
64 subsection, the person designated by the circuit court is required
65 to disclose only material in the juvenile record that had not
66 previously been disclosed to the county superintendent and the
67 principal of the school which the juvenile attends.

68 (4) If the juvenile attends a private school in West Virginia,
69 the person designated by the circuit court shall determine the
70 identity of the highest ranking person at that school and shall
71 automatically disclose all records of a juvenile's case to that
72 person.

73 (5) If the juvenile does not attend school at the time the
74 juvenile's case is pending, the person designated by the circuit
75 court may not transmit the juvenile's records to any school.
76 However, the person designated by the circuit court shall
77 transmit the juvenile's records to any school in West Virginia
78 which the juvenile subsequently attends.

79 (6) The person designated by the circuit court may not
80 automatically transmit juvenile records to a school which is not
81 located in West Virginia. Instead, the person designated by the
82 circuit court shall contact the out-of-state school, inform it that
83 juvenile records exist and make an inquiry regarding whether the
84 laws of that state permit the disclosure of juvenile records. If so,
85 the person designated by the circuit court shall consult with the
86 circuit judge who presided over the case to determine whether
87 the juvenile records should be disclosed to the out-of-state
88 school. The circuit judge has discretion in determining whether
89 to disclose the juvenile records and shall consider whether the
90 other state's law regarding disclosure provides for sufficient
91 confidentiality of juvenile records, using this section as a guide.
92 If the circuit judge orders the juvenile records to be disclosed,
93 they shall be disclosed in accordance with subdivision (7) of this
94 subsection.

95 (7) The person designated by the circuit court shall transmit
96 the juvenile's records to the appropriate school official under
97 cover of a letter emphasizing the confidentiality of those records
98 and directing the official to consult this section of the code. A
99 copy of this section of the code shall be transmitted with the
100 juvenile's records and cover letter.

101 (8) Juvenile records are absolutely confidential by the school
102 official to whom they are transmitted and nothing contained
103 within the juvenile's records may be noted on the juvenile's
104 permanent educational record. The juvenile records are to be
105 maintained in a secure location and are not to be copied under
106 any circumstances. However, the principal of a school to whom
107 the records are transmitted shall have the duty to disclose the
108 contents of those records to any teacher who teaches a class in
109 which the subject juvenile is enrolled and to the regular driver of
110 a school bus in which the subject juvenile is regularly
111 transported to or from school, except that the disclosure of the
112 juvenile's psychological test results and any mental health
113 records may only be made in accordance with subdivision (14)

114 of this subsection. Furthermore, any school official to whom the
115 juvenile's records are transmitted may disclose the contents of
116 those records to any adult within the school system who, in the
117 discretion of the school official, has the need to be aware of the
118 contents of those records.

119 (9) If for any reason a juvenile ceases to attend a school
120 which possesses that juvenile's records, the appropriate official
121 at that school shall seal the records and return them to the circuit
122 court which sent them to that school. If the juvenile has changed
123 schools for any reason, the former school shall inform the circuit
124 court of the name and location of the new school which the
125 juvenile attends or will be attending. If the new school is located
126 within West Virginia, the person designated by the circuit court
127 shall forward the juvenile's records to the juvenile's new school
128 in the same manner as provided in subdivision (7) of this
129 subsection. If the new school is not located within West
130 Virginia, the person designated by the circuit court shall handle
131 the juvenile records in accordance with subdivision (6) of this
132 subsection.

133 If the juvenile has been found not guilty of an offense for
134 which records were previously forwarded to the juvenile's
135 school on the basis of a finding of probable cause, the circuit
136 court may not forward those records to the juvenile's new
137 school. However, this does not affect records related to other
138 prior or future offenses. If the juvenile has graduated or quit
139 school or will otherwise not be attending another school, the
140 circuit court shall retain the juvenile's records and handle them
141 as otherwise provided in this article.

142 (10) Under no circumstances may one school transmit a
143 juvenile's records to another school.

144 (11) Under no circumstances may juvenile records be
145 automatically transmitted to a college, university or other
146 post-secondary school.

147 (12) No one may suffer any penalty, civil or criminal, for
148 accidentally or negligently attributing certain juvenile records to
149 the wrong person. However, that person has the affirmative duty
150 to promptly correct any mistake that he or she has made in
151 disclosing juvenile records when the mistake is brought to his or
152 her attention. A person who intentionally attributes false
153 information to a certain person shall be subjected to both
154 criminal and civil penalties in accordance with subsection (e) of
155 this section.

156 (13) If a circuit judge or magistrate has determined that there
157 is probable cause to believe that a juvenile has committed an
158 offense but there has been no final adjudication of the charge,
159 the records which are transmitted by the circuit court shall be
160 accompanied by a notice which clearly states in bold print that
161 there has been no determination of delinquency and that our
162 legal system requires a presumption of innocence.

163 (14) The county superintendent shall designate the school
164 psychologist or psychologists to receive the juvenile's
165 psychological test results and any mental health records. The
166 psychologist designated shall review the juvenile's
167 psychological test results and any mental health records and, in
168 the psychologist's professional judgment, may disclose to the
169 principal of the school that the juvenile attends and other school
170 employees who would have a need to know the psychological
171 test results, mental health records and any behavior that may
172 trigger violence or other disruptive behavior by the juvenile.
173 Other school employees include, but are not limited to, any
174 teacher who teaches a class in which the subject juvenile is
175 enrolled and the regular driver of a school bus in which the
176 subject juvenile is regularly transported to or from school.

177 (d) Notwithstanding the provisions of subsection (b) of this
178 section, juvenile records may be disclosed, subject to the
179 following terms and conditions:

180 (1) If a juvenile case is transferred to the criminal
181 jurisdiction of the circuit court pursuant to the provisions of
182 subsection (c) or (d), section seven hundred ten, article four of
183 this chapter, the juvenile records are open to public inspection.

184 (2) If a juvenile case is transferred to the criminal
185 jurisdiction of the circuit court pursuant to the provisions of
186 subsection (e), (f) or (g), section seven hundred ten, article four
187 of this chapter, the juvenile records are open to public inspection
188 only if the juvenile fails to file a timely appeal of the transfer
189 order, or the Supreme Court of Appeals refuses to hear or denies
190 an appeal which has been timely filed.

191 (3) If a juvenile is fourteen years of age or older and a court
192 has determined there is a probable cause to believe the juvenile
193 committed an offense set forth in subsection (g), section seven
194 hundred ten, article four of this chapter, but the case is not
195 transferred to criminal jurisdiction, the juvenile records are open
196 to public inspection pending trial only if the juvenile is released
197 on bond and no longer detained or adjudicated delinquent of the
198 offense.

199 (4) If a juvenile is younger than fourteen years of age and a
200 court has determined there is probable cause to believe that the
201 juvenile committed the crime of murder under section one, two
202 or three, article two, chapter sixty-one of this code, or the crime
203 of sexual assault in the first degree under section three, article
204 eight-b of chapter sixty-one, but the case is not transferred to
205 criminal jurisdiction, the juvenile records shall be open to public
206 inspection pending trial only if the juvenile is released on bond
207 and no longer detained or adjudicated delinquent of the offense.

208 (5) Upon a written petition and pursuant to a written order,
209 the circuit court may permit disclosure of juvenile records to:

210 (A) A court, in this state or another state, which has juvenile
211 jurisdiction and has the juvenile before it in a juvenile
212 proceeding;

213 (B) A court, in this state or another state, exercising criminal
214 jurisdiction over the juvenile which requests records for the
215 purpose of a presentence report or disposition proceeding;

216 (C) The juvenile, the juvenile's parents or legal guardian, or
217 the juvenile's counsel;

218 (D) The officials of a public institution to which the juvenile
219 is committed if they require those records for transfer, parole or
220 discharge; or

221 (E) A person who is conducting research. However, juvenile
222 records may be disclosed for research purposes only upon the
223 condition that information which would identify the subject
224 juvenile or the juvenile's family may not be disclosed.

225 (6) Notwithstanding any other provision of this code,
226 juvenile records shall be disclosed, or copies made available, to
227 a probation officer upon his or her request. Any probation officer
228 may access relevant juvenile case information contained in any
229 electronic database maintained by or for the Supreme Court of
230 Appeals and share it with any other probation officer.

231 (7) Notwithstanding any other provision of this code,
232 juvenile records shall be disclosed, or copies made available, in
233 response to any lawfully issued subpoena from a federal court or
234 federal agency.

235 (8) Notwithstanding any other provision of this code,
236 juvenile records shall be disclosed, or copies made available, to
237 the department or the Division of Juvenile Services for purposes
238 of case planning for the juvenile and his or her parents,
239 custodians or guardians.

240 (e) Any records open to public inspection pursuant to this
241 section are subject to the same requirements governing the
242 disclosure of adult criminal records.

243 (f) Any person who willfully violates this section is guilty of
244 a misdemeanor and, upon conviction, shall be fined not more
245 than \$1,000, or confined in jail for not more than six months, or
246 both fined and confined. A person who violates this section is
247 also liable for damages in the amount of \$300 or actual damages,
248 whichever is greater.

§49-5-106. Data collection.

1 (a) The Division of Juvenile Services, the department and
2 the Supreme Court of Appeals shall establish procedures to
3 jointly collect and compile data necessary to calculate juvenile
4 recidivism and the outcome of programs.

5 (b) For each juvenile who enters into a diversion agreement,
6 is placed on an improvement period, is placed on probation or is
7 placed in an out-of-home placement as defined by section two
8 hundred six, article one of this chapter, the data and procedures
9 developed in subsection (a) shall include:

10 (1) New offense referrals to juvenile court or criminal court
11 within three years of completion of the diversion agreement,
12 release from court jurisdiction or release from agency custody;

13 (2) Adjudications for a delinquent or status offense by a
14 juvenile or a conviction by a criminal court within three years of
15 completion of the diversion agreement, release from court
16 jurisdiction or release from agency custody;

17 (3) Commitments to the Division of Juvenile Services, the
18 department, excluding out-of-home placements made for child
19 welfare or abuse and neglect purposes, or incarceration with the
20 Division of Corrections within three years of completion of the
21 diversion agreement, release from court jurisdiction or release
22 from agency custody; and

23 (4) The number of out-of-home placements ordered where
24 the judge found by clear and convincing evidence the existence

25 of a significant and likely risk of harm to the juvenile, a family
26 member or the public.

27 (c) For youth placed in programs operated or funded by the
28 Division of Juvenile Services, the department or the Supreme
29 Court of Appeals, including youth reporting centers, juvenile
30 drug courts, restorative justice programs and teen courts, the
31 division, department and Supreme Court shall develop
32 procedures using, at a minimum, the measures in subsection (b)
33 of this section to track and record outcomes of each program,
34 and to demonstrate that the program reduces the likelihood of
35 reoffending for the youth referred to the program.

36 (d) For youth referred to truancy diversion specialists or
37 other truancy diversion programs operated or funded by the
38 Supreme Court of Appeals, the Division of Juvenile Services, the
39 Department of Health and Human Resources, the Department of
40 Education or other political subdivisions, that branch of
41 government or agency shall develop procedures to track and
42 record outcomes of each program, and to evaluate the
43 effectiveness in reducing unexcused absences for the youth
44 referred to the program. At a minimum, this outcome data shall
45 include:

46 (1) The number of youth successfully completing the truancy
47 diversion program;

48 (2) The number of youth who are referred to the court
49 system after failing to complete a truancy diversion program;
50 and

51 (3) The number of youth who, after successfully completing
52 a truancy diversion program, accumulate five or more unexcused
53 absences in the current or subsequent school year.

54 (e) The Supreme Court of Appeals, the Division of Juvenile
55 Services, the Department of Health and Human Resources and

56 the Department of Education shall also establish procedures to
57 jointly collect and compile data relating to disproportionate
58 minority contact, which is defined as the proportion of minority
59 youth who come into contact with the juvenile justice system in
60 relation to the proportion of minority youth in the general
61 population, and the compilation shall include data indicating the
62 prevalence of such disproportionality in each county. Data shall
63 include, at a minimum, the race and gender of youth arrested or
64 referred to court, entered into a diversion program, adjudicated
65 and disposed.

CHAPTER 151

**(Com. Sub. for H. B. 2217 - By Delegate(s) Overington,
Walters, Cowles, Upson, Blair, Espinosa, Deem, R. Phillips,
Shott, R. Smith and Sobonya)**

[Passed February 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on February 18, 2015.]

AN ACT to amend and reenact §21-1-2 of the Code of West Virginia, 1931, as amended, relating to the qualifications of the Commissioner of Labor; removing language that the commissioner be identified with the labor interests of the state and requiring that the commissioner be identified with and have knowledge and experience in employee issues and interests including employee-employer relations in this state; and removing language generally related to appointment and term of the Commissioner of Labor.

Be it enacted by the Legislature of West Virginia:

That §21-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF LABOR.**§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.**

1 The state Commissioner of Labor shall be appointed by the
2 Governor, by and with the advice and consent of the Senate. He
3 or she shall be a competent person, who is identified with and
4 has knowledge and experience in employee issues and interests
5 including employee-employer relations in this state. The
6 commissioner shall receive an annual salary as provided in
7 section two-a, article seven, chapter six of this code.

CHAPTER 152

**(Com. Sub. for S. B. 12 - By Senators Carmichael, Boley,
Ferns, Gaunch, D. Hall, M. Hall, Karnes, Mullins,
Sypolt, Nohe, Trump, Blair and Cole (Mr. President))**

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; defining terms; providing for how payments may be made; requiring certain payments by the next regular payday; providing for payments pursuant to certain agreements; reducing amount of liquidated damages available for violation of this section; providing instance when liquidated damages are not available; clarifying that section does not address whether overtime pay is due; authorizing payment by mail if requested by employee; and establishing date paid if payment mailed pursuant to employee request.

Be it enacted by the Legislature of West Virginia:

That §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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,
3 joint-stock company, trust, division of a corporation, the
4 administrator or executor of the estate of a deceased individual,
5 or the receiver, trustee or successor of any of the same, or officer
6 thereof, employing any person.

7 (b) The term “employee” or “employees” includes any
8 person suffered or permitted to work by a person, firm or
9 corporation.

10 (c) The term “wages” means compensation for labor or
11 services rendered by an employee, whether the amount is
12 determined on a time, task, piece, commission or other basis of
13 calculation. As used in sections four, five, eight-a, ten and
14 twelve of this article, the term “wages” shall also include then
15 accrued fringe benefits capable of calculation and payable
16 directly to an employee: *Provided*, That nothing herein contained
17 shall require fringe benefits to be calculated contrary to any
18 agreement between an employer and his or her employees which
19 does not contradict the provisions of this article.

20 (d) The term “commissioner” means Commissioner of Labor
21 or his or her designated representative.

22 (e) The term “railroad company” includes any firm or
23 corporation engaged primarily in the business of transportation
24 by rail.

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

32 (g) The term “deductions” includes amounts required by law
33 to be withheld, and amounts authorized for union or club dues,
34 pension plans, payroll savings plans, credit unions, charities and
35 hospitalization and medical insurance.

36 (h) The term “officer” shall include officers or agents in the
37 management of a corporation or firm who knowingly permit the
38 corporation or firm to violate the provisions of this article.

39 (i) The term “wages due” shall include at least all wages
40 earned up to and including the twelfth day immediately
41 preceding the regular payday.

42 (j) The term “construction” means the furnishing of work in
43 the fulfillment of a contract for the construction, alteration,
44 decoration, painting or improvement of a new or existing
45 building, structure, roadway or pipeline, or any part thereof, or
46 for the alteration, improvement or development of real property:
47 *Provided*, That construction performed for the owner or lessee
48 of a single family dwelling or a family farming enterprise is
49 excluded.

50 (k) The term “minerals” means clay, coal, flagstone, gravel,
51 limestone, manganese, sand, sandstone, shale, iron ore and any
52 other metallurgical ore.

53 (l) The term “fringe benefits” means any benefit provided an
54 employee or group of employees by an employer, or which is
55 required by law, and includes regular vacation, graduated

56 vacation, floating vacation, holidays, sick leave, personal leave,
57 production incentive bonuses, sickness and accident benefits and
58 benefits relating to medical and pension coverage.

59 (m) The term “employer” means any person, firm or
60 corporation employing any employee.

61 (n) The term “doing business in this state” means having
62 employees actively engaged in the intended principal activity of
63 the person, firm or corporation in West Virginia.

**§21-5-4. Cash orders; employees separated from payroll before
paydays.**

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

8 (b) Whenever a person, firm or corporation discharges an
9 employee, or whenever an employee quits or resigns from
10 employment, the person, firm or corporation shall pay the
11 employee’s wages due for work that the employee performed
12 prior to the separation of employment on or before the next
13 regular payday on which the wages would otherwise be due and
14 payable: *Provided*, That fringe benefits, as defined in section one
15 of this article, that are provided an employee pursuant to an
16 agreement between the employee and employer and that are due,
17 but pursuant to the terms of the agreement, are to be paid at a
18 future date or upon additional conditions which are ascertainable
19 are not subject to this subsection and are not payable on or
20 before the next regular payday, but shall be paid according to the
21 terms of the agreement. For purposes of this section, “business

22 day” means any day other than Saturday, Sunday or any legal
23 holiday as set forth in section one, article two, chapter two of
24 this code.

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

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

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

CHAPTER 153

**(S. B. 318 - By Senators Trump, Karnes,
Carmichael and Blair)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; and authorizing payment of employees twice a month.

Be it enacted by the Legislature of West Virginia:

That §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

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

1 (a) Every person, firm or corporation doing business in this
2 state, except railroad companies as provided in section one of
3 this article, shall settle with its employees at least twice every
4 month and with no more than nineteen days between settlements,
5 unless otherwise provided by special agreement, and pay them
6 the wages due, less authorized deductions and authorized wage
7 assignments, for their work or services.

8 (b) Payment required in subsection (a) of this section shall
9 be made:

10 (1) In lawful money of the United States;

11 (2) By cash order as described and required in section four
12 of this article;

13 (3) By deposit or electronic transfer of immediately available
14 funds into an employee's payroll card account in a federally
15 insured depository institution. The term "payroll card account"
16 means an account in a federally insured depository institution
17 that is directly or indirectly established through an employer and
18 to which electronic fund transfers of the employee's wages,
19 salary, commissions or other compensation are made on a
20 recurring basis, whether the account is operated or managed by
21 the employer, a third-party payroll processor, a depository
22 institution or another person. "Payroll card" means a card, code
23 or combination thereof or other means of access to an
24 employee's payroll card account, by which the employee may
25 initiate electronic fund transfers or use a payroll card to make
26 purchases or payments. Payment of employee compensation by
27 means of a payroll card must be agreed upon in writing by both
28 the person, firm or corporation paying the compensation and the
29 person being compensated; or

30 (4) By any method of depositing immediately available
31 funds in an employee's demand or time account in a bank, credit
32 union or savings and loan institution that may be agreed upon in
33 writing between the employee and such person, firm or
34 corporation, which agreement shall specifically identify the
35 employee, the financial institution, the type of account and the
36 account number: *Provided*, That nothing herein contained shall
37 be construed in a manner to require any person, firm or
38 corporation to pay employees by depositing funds in a financial
39 institution.

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

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

49 (e) No assignment of or order for future wages shall be valid
50 for a period exceeding one year from the date of the assignment
51 or order. An assignment or order shall be acknowledged by the
52 party making the same before a notary public or other officer
53 authorized to take acknowledgments, and any order or
54 assignment shall specify thereon the total amount due and
55 collectible by virtue of the same and three fourths of the
56 periodical earnings or wages of the assignor shall at all times be
57 exempt from such assignment or order and no assignment or
58 order shall be valid which does not so state upon its face:
59 *Provided*, That no such order or assignment shall be valid unless
60 the written acceptance of the employer of the assignor to the
61 making thereof is endorsed thereon: *Provided, however*, That
62 nothing herein contained shall be construed as affecting the right
63 of employer and employees to agree between themselves as to
64 deductions to be made from the payroll of employees.

CHAPTER 154

**(Com. Sub. for H. B. 2233 - By Delegate(s) Walters, Sobonya,
Rohrbach, Ambler, Mr. Speaker (Mr. Armstead), Storch,
H. White, R. Phillips, Ireland, Hanshaw and E. Nelson)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §29A-3-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Legislative Rule-Making Review Committee, with the assistance of the

Legislative Auditor's Office, to review any interpretive, procedural and current legislative rule to determine if it is achieving its purpose; and requiring the Legislative Rule-Making Review Committee to make recommendations to the applicable agency or board and the Joint Committee on Government and Finance for amendment or repeal of the rule.

Be it enacted by the Legislature of West Virginia:

That §29A-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. RULE-MAKING.

§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.

1 (a) The Legislative Rule-Making Review Committee may,
2 with the assistance of the Legislative Auditor's Office, review
3 any procedural rule, interpretive rule or existing legislative rule
4 to determine if the rule is achieving its purpose, and based on its
5 determination, if the rule should be continued, amended or
6 repealed.

7 (b) Following the review, the Legislative Rule-Making
8 Committee shall make recommendations to the agency or board,
9 which promulgated the rule, and to the Joint Committee on
10 Government and Finance.

CHAPTER 155

(Com. Sub. for S. B. 142 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to promulgation of administrative rules by Department of Administration; legislative mandate or authorization for promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing Department of Administration to promulgate a legislative rule relating to Purchasing Division; authorizing Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing Department of Administration to promulgate a legislative rule relating to the state plan for the operation of the West Virginia State Agency for Surplus Property; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and employer error interest factors; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to Deputy Sheriffs Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; and authorizing Office of Technology to promulgate a legislative rule relating to the procedures for sanitization, retirement and disposition of information technology equipment.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on July 30,
2 2014, authorized under the authority of section four, article
3 three, chapter five-a of this code, modified by the Department of
4 Administration to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 September 16, 2014, relating to the Department of
7 Administration (Purchasing Division, 148 CSR 1), is authorized
8 with the following amendments:

9 On page two, subsection 3.2, by striking out the proposed
10 word “will” that is underscored and reinstating the word “shall”;
11 and by making such similar strikes of the underscored word
12 “will” and reinstate the word “shall” throughout the rule;

13 On page thirteen, subdivision 7.2.b.3, after the word
14 “appropriate” and the comma by inserting the word “or”;

15 On page fourteen, subdivision 7.6.a., after the word
16 “procure” by striking out the words “goods or services” and
17 inserting in lieu thereof the words “specific commodities for
18 immediate delivery”;

19 On page fourteen, subdivision 7.5.b., after the words “if
20 possible” by striking the comma and the words “and any” and
21 inserting in lieu thereof a period and the word “Any”; and

22 On page fourteen, subdivision 7.6.c., after the words
23 “procurement of” by striking out the words “goods or services”
24 and inserting in lieu thereof the words “specific commodities for
25 immediate delivery”.

26 (b) The legislative rule filed in the State Register on July 29,
27 2014, authorized under the authority of section forty-eight,
28 article three, chapter five-a of this code, modified by the
29 Department of Administration to meet the objections of the
30 Legislative Rule-Making Review Committee and refiled in the
31 State Register on September 16, 2014, relating to the Department
32 of Administration (state owned vehicles, 148 CSR 3), is
33 authorized.

34 (c) The legislative rule filed in the State Register on July 30,
35 2014, authorized under the authority of section forty-four, article
36 three, chapter five-a of this code, modified by the Department of
37 Administration to meet the objections of the Legislative Rule-
38 Making Review Committee and refiled in the State Register on
39 September 16, 2014, relating to the Department of
40 Administration (state plan for the operation of the West Virginia
41 State Agency for Surplus Property, 148 CSR 4), is authorized.

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on July 31,
2 2014, authorized under the authority of section one, article ten-d,
3 chapter five of this code, relating to the Consolidated Public
4 Retirement Board (refund, reinstatement, retroactive service,
5 loan and employer error interest factors, 162 CSR 7), is
6 authorized.

7 (b) The legislative rule filed in the State Register on July 31,
8 2014, authorized under the authority of section one, article ten-d,
9 chapter five of this code, relating to the Consolidated Public
10 Retirement Board (Deputy Sheriff Retirement System, 162 CSR
11 10), is authorized.

12 (c) The legislative rule filed in the State Register on the July
13 31, 2014, authorized under the authority of section one, article
14 ten-d, chapter five of this code, relating to the Consolidated
15 Public Retirement Board (service credit for accrued and unused
16 sick and annual leave, 162 CSR 8), is authorized.

§64-2-3. Office of Technology.

1 The legislative rule filed in the State Register on July 30,
2 2014, authorized under the authority of section four, article six,
3 chapter five-a of this code, modified by the Office of
4 Technology to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 October 3, 2014, relating to the Office of Technology
7 (procedures for sanitization, retirement and disposition of
8 information technology equipment, 163 CSR 1), is authorized.

CHAPTER 156

(Com. Sub. for H. B. 2283 - By Delegate Sobonya)

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

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative

Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the awarding of WV Stream Partners Program Grants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rule for coal mining facilities; and, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to waste management.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

1 (a) The legislative rule filed in the State Register on July 23,
2 2014, authorized under the authority of section four, article five,
3 chapter twenty-two, of this code, relating to the Department of
4 Environmental Protection (permits for construction and major
5 modification of major stationary sources for the prevention of
6 significant deterioration of air quality, 45 CSR 14), is authorized.

7 (b) The legislative rule filed in the State Register on July 23,
8 2014, authorized under the authority of section four, article five,
9 chapter twenty-two of this code, relating to the Department of
10 Environmental Protection (standards of performance for new
11 stationary sources, 45 CSR 16), is authorized.

12 (c) The legislative rule filed in the State Register on July 23,
13 2014, authorized under the authority of section four, article five,
14 chapter twenty-two of this code, relating to the Department of
15 Environmental Protection (control of air pollution from
16 hazardous waste treatment, storage or disposal facilities, 45 CSR
17 25), is authorized.

18 (d) The legislative rule filed in the State Register on July 23,
19 2014, authorized under the authority of section four, article five,
20 chapter twenty-two of this code, relating to the Department of
21 Environmental Protection (requirements for operating permits,
22 45 CSR 30), is authorized.

23 (e) The legislative rule filed in the State Register on July 25,
24 2014, authorized under the authority of section four, article five,
25 chapter twenty-two of this code, relating to the Department of
26 Environmental Protection (emission standards for hazardous air
27 pollutants, 45 CSR 34), is authorized.

28 (f) The legislative rule filed in the State Register on July 29,
29 2014, authorized under the authority of section four, article
30 thirteen, chapter twenty of this code, relating to the Department

31 of Environmental Protection (awarding of WV Stream Partners
32 Program Grants, 60 CSR 4), is authorized with the amendment
33 set forth below:

34 On page two, subsection 4.2, line twenty-two, following the
35 words “furnished by”, by striking out the words “watershed
36 association” and inserting in lieu thereof the word
37 “organization”;

38 On page two, subsection 4.2, line twenty-five, following the
39 words “in which the”, by striking out the word “entity” and
40 inserting in lieu thereof the word “organization”;

41 On page three, subdivision 5.2.f, line sixteen, following the
42 words “expenses for”, by striking out the words “watershed
43 association” and inserting in lieu thereof the word
44 “organization”;

45 And,

46 On page three, subdivision 5.2.g, line seventeen, following
47 the words “support the”, by striking out the words “watershed
48 association’s” and inserting in lieu thereof the word
49 “organization’s”.

50 (g) The legislative rule filed in the State Register on July 30,
51 2014, authorized under the authority of section six, article
52 eighteen, chapter twenty-two of this code, relating to the
53 Department of Environmental Protection (hazardous waste
54 management system, 33 CSR 20), is authorized.

55 (h) The legislative rule filed in the State Register on August
56 1, 2014, authorized under the authority of section four, article
57 eleven, chapter twenty-two of this code, relating to the
58 Department of Environmental Protection (requirements
59 governing water quality standards, 47 CSR 2), is authorized.;
60 *Provided*; that the Secretary of the Department of Environmental

61 Protection shall consider, for the 2017 triennial review, potential
62 alternative applications for the Category A drinking water use
63 designation to the waters of the state, taking into consideration
64 stream flow, depth, and distance to a public water intake.

65 (i) The legislative rule filed in the State Register on July 28,
66 2014, authorized under the authority of section three, article one,
67 chapter twenty-two, of this code, relating to the Department of
68 Environmental Protection (WV/NPDES rule for coal mining
69 facilities, 47 CSR 30), is authorized

70 (j) The legislative rule filed in the State Register on August
71 12, 2014, authorized under the authority of section eight, article
72 fifteen, chapter twenty-two, of this code, modified by the
73 Department of Environmental Protection to meet the objections
74 of the Legislative Rule-making Review Committee and refiled
75 in the State Register on October 22, 2014, relating to the
76 Department of Environmental Protection (waste management, 33
77 CSR 1), is authorized with the following amendments:

78 On page 145, by adding the following new subparagraph:

79 **5.6.b.3.C.** Any facility permitted to accept drilling wastes
80 that does not transfer leachate off-site for additional treatment,
81 must sample and analyze the output fluid from on-site leachate
82 treatment systems to include the sampling parameters in
83 Appendix V of this rule on a quarterly basis;

84 And,

85 On page 176, by adding two compounds, toluene and xylene,
86 to Appendix V.

CHAPTER 157

(Com. Sub. for S. B. 175 - By Senator Snyder)

[Passed February 28, 2015; in effect from passage.]

[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Fatality and Mortality Review Team; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication administration and performance of health maintenance tasks by approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the nurse aid abuse and neglect registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; and authorizing the Department of Health and Human Resources to promulgate a

legislative rule relating to the statewide trauma/emergency care system.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

1 (a) The legislative rule filed in the State Register on August
2 1, 2014, authorized under the authority of section four, article
3 one, chapter sixteen of this code, modified by the Department of
4 Health and Human Resources to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on October 23, 2014, relating to the Department
7 of Health and Human Resources (public water systems, 64 CSR
8 3), is authorized.

9 (b) The legislative rule filed in the State Register on July 31,
10 2014, authorized under the authority of section nine, article five-
11 h, chapter sixteen of this code, relating to the Department of
12 Health and Human Resources (chronic pain management clinic
13 licensure, 69 CSR 8), is authorized.

14 (c) The legislative rule filed in the State Register on July 31,
15 2014, authorized under the authority of section four, article one,
16 chapter sixteen of this code, modified by the Department of
17 Health and Human Resources to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in the
19 State Register on October 14, 2014, relating to the Department

20 of Health and Human Resources (Fatality and Mortality Review
21 Team, 64 CSR 29), is authorized.

22 (d) The legislative rule filed in the State Register on July 31,
23 2014, authorized under the authority of section eleven, article
24 five-o, chapter sixteen of this code, modified by the Department
25 of Health and Human Resources to meet the objections of the
26 Legislative Rule-Making Review Committee and refiled in the
27 State Register on November 5, 2014, relating to the Department
28 of Health and Human Resources (medication administration and
29 performance of health maintenance tasks by approved
30 medication assistive personnel, 64 CSR 60), is authorized.

31 (e) The legislative rule filed in the State Register on August
32 1, 2014, authorized under the authority of section two, article
33 six, chapter nine of this code, modified by the Department of
34 Health and Human Resources to meet the objections of the
35 Legislative Rule-Making Review Committee and refiled in the
36 State Register on November 6, 2014, relating to the Department
37 of Health and Human Resources (nurse aid abuse and neglect
38 registry, 69 CSR 6), is authorized.

39 (f) The legislative rule filed in the State Register on August
40 1, 2014, authorized under the authority of section four, article
41 one, chapter sixteen of this code, modified by the Department of
42 Health and Human Resources to meet the objections of the
43 Legislative Rule-Making Review Committee and refiled in the
44 State Register on November 6, 2014, relating to the Department
45 of Health and Human Resources (nursing home licensure, 64
46 CSR 13), is authorized with the following amendments:

47 On page 57, subdivision 9.1.b., by striking the entirety of
48 that subdivision and inserting in lieu thereof the following:
49 “9.1.b. The standards for construction, renovations, and
50 alterations are the relevant sections of the 1996-1997 edition of

51 “The Guidelines for Design and Construction of Hospitals and
52 Health Care Facilities”, as recognized by the American Institute
53 of Architects, Academy of Architecture for Health with
54 assistance from the U.S. Department of Health and Human
55 Services. Beginning on June 1, 2019, the relevant standards for
56 construction, renovations, and alterations will be the latest
57 edition of “The Guidelines for Design and Construction of
58 Hospitals and Health Care Facilities”, according to Facilities
59 Guidelines Institute (FGI) and published by American Society
60 for Healthcare Engineering (ASHE) with assistance from the
61 U.S. Department of Health and Human Services which can be
62 located at www.hhs.gov.”

63 And,

64 On page 58, subdivision 9.1.c., immediately following the
65 word “Facilities” by inserting “as adopted by the Centers for
66 Medicare and Medicaid Services (CMS)”

67 And,

68 On page 58, subdivision 9.1.d., immediately following the
69 word “Code” by inserting “as adopted by the State Fire Marshal”

70 And,

71 On page 62, subdivision 9.7.f. by inserting a period after the
72 word, ‘program’ and striking the words, ‘insecticidal strips are
73 prohibitive’

74 And,

75 On page 62, by striking subdivision 9.7.g. and inserting a
76 new subdivision 9.7.g. to read as follows, ‘Pesticides shall be
77 applied only by an applicator certified by the West Virginia
78 Department of Agriculture or a registered technician operating
79 under the supervision of a certified applicator.’

80 (g) The legislative rule filed in the State Register on July 31,
81 2014, authorized under the authority of section four, article one,
82 chapter sixteen of this code, modified by the Department of
83 Health and Human Resources to meet the objections of the
84 Legislative Rule-Making Review Committee and refiled in the
85 State Register on October 14, 2014, relating to the Department
86 of Health and Human Resources (statewide trauma/emergency
87 care system, 64 CSR 27), is authorized with the following
88 amendment:

89 “On page 1, subsection 3.1 by removing the inserted
90 language, ‘in the current edition of’ reinserting the stricken
91 language, ‘edition’; and inserting a colon after the word ‘patient’
92 and the following, ‘2013.’”

CHAPTER 158

(Com. Sub. for S. B. 182 - By Senator Snyder)

[Passed March 13, 2015; in effect from passage.]
[Approved by the Governor on April 3, 2015.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to

and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications; authorizing State Police to promulgate a legislative rule relating to the regulations and procedures pertaining to the West Virginia DNA databank; authorizing State Fire Commission to promulgate a legislative rule relating to volunteer firefighters' training, equipment and operating standards; and authorizing State Fire Marshal to promulgate a legislative rule relating to supervision of fire protection work.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.**

§64-6-1. State Police.

1 The legislative rule filed in the State Register on July 25,
2 2014, authorized under the authority of section twenty-four,
3 article two, chapter fifteen of this code, modified by the State
4 Police to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 December 30, 2014, relating to the State Police (regulations and
7 procedures pertaining to the West Virginia DNA databank, 81
8 CSR 9), is authorized with the following amendments:

9 On page 1, subsection 1.4, by striking out the words “July 1,
10 2015”;

11 On page 3, subdivision 4.1.c., after the word “offender”, by
12 inserting a comma and the words “on or after July 1, 2011,”;

13 And,

14 On page 3, subdivision 4.1.e., after the word “offense”, by
15 inserting a comma and the words “on or after July 1, 2011,”.

§64-6-2. State Fire Commission.

1 The legislative rule filed in the State Register on July 1,
2 2014, authorized under the authority of section five-d, article
3 three, chapter twenty-nine of this code, relating to the State Fire
4 Commission (volunteer firefighters’ training, equipment and
5 operating standards, 87 CSR 8), is authorized with the following
6 amendments:

7 On page 1, subsection 2.4., by striking out the word “May”
8 and inserting in lieu thereof “This person may”;

9 On page 2, subsection 3.2, by striking out the words “These
10 individuals should also be NIMS compliant.” and inserting in
11 lieu thereof the following: “Additionally, all active members and
12 firefighters shall have the training available to them to allow
13 them to become compliant with the “NIMS Training Guidelines
14 for West Virginia” as established by the West Virginia Division
15 of Homeland Security and Emergency Management.”;

16 On page 2, subsection 3.5., by striking out the words “These
17 individuals shall also be NIMS compliant.” and inserting in lieu
18 thereof the following: “Additionally, all active members and
19 firefighters shall have the training available to them to allow
20 them to become compliant with the “NIMS Training Guidelines
21 for West Virginia” as established by the West Virginia Division
22 of Homeland Security and Emergency Management.”;

23 On page 3, subsection 3.6., by striking out the words “These
24 individuals should also be NIMS compliant.” and inserting in
25 lieu thereof the following: “Additionally, all active members and
26 firefighters shall have the training available to them to allow

27 them to become compliant with the “NIMS Training Guidelines
28 for West Virginia” as established by the West Virginia Division
29 of Homeland Security and Emergency Management.”;

30 On page 17, Appendix 87-8D, by striking out “2009 Edition”
31 and inserting in lieu thereof “2014 Edition”;

32 On page 17, Appendix 87-8D Cont, by striking out “2009
33 Edition” and inserting in lieu thereof “2014 Edition”;

34 On page 18, Appendix 87-8E, by striking out “2009 Edition”
35 and inserting in lieu thereof “2014 Edition”;

36 And,

37 On page 21, by striking out the NIMS Training Matrix in its
38 entirety.

§64-6-3. State Fire Marshal.

1 The legislative rule filed in the State Register on July 1,
2 2014, authorized under the authority of section four, article
3 three-d, chapter twenty-nine of this code, modified by the State
4 Fire Marshal to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 31, 2014, relating to the State Fire Marshal
7 (supervision of fire protection work, 103 CSR 3), is authorized
8 with the following amendment:

9 On page six, section seven, subsection seven after the words
10 “Code of West Virginia” by striking out the comma and the
11 remainder of sentence and inserting in lieu thereof the following:
12 “And shall pass a test developed by the state fire marshal on
13 HVAC Fire Safety.”

CHAPTER 159

(Com. Sub. for S. B. 187 - By Senator Snyder)

[Passed February 28, 2015; in effect from passage.]

[Approved by the Governor on March 5, 2015.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing State Tax Department to promulgate a legislative rule relating to appointment of special assessors by State Tax Commissioner; authorizing Insurance Commissioner to promulgate a legislative rule relating to recognizing annuity mortality tables for use in determining reserve liabilities for annuities; authorizing Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-7-1. Racing Commission.

1 The legislative rule filed in the State Register on July 29,
2 2014, authorized under the authority of section two, article
3 twenty-three, chapter nineteen of this code, relating to the
4 Racing Commission (thoroughbred racing, 178 CSR 1), is
5 authorized.

§64-7-2. State Tax Department.

1 The legislative rule filed in the State Register on July 31,
2 2014, authorized under the authority of section one, article three,
3 chapter eleven of this code, modified by the State Tax
4 Department to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 September 26, 2014, relating to the State Tax Department
7 (appointment of special assessors by the State Tax
8 Commissioner, 110 CSR 1Q), is authorized with the following
9 amendments:

10 On page one, subsection 3.1., after the word “For” by
11 striking the word “all” and inserting in lieu thereof the word
12 “each;”;

13 And,

14 On page one, subsection 3.1., after the words “the Tax
15 Commissioner shall” by striking the remainder of the sentence

16 and inserting in lieu thereof the following, “notify, on or before
17 the first day of the following tax year, the assessor and the
18 county commission for the county from which the assessor is
19 elected of that failure in writing, and instruct the assessor to
20 make all necessary corrections;”.

§64-7-3. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on August
2 1, 2014, authorized under the authority of section ten, article
3 two, chapter thirty-three of this code, relating to the Insurance
4 Commissioner (recognizing annuity mortality tables for use in
5 determining reserve liabilities for annuities, 114 CSR 45), is
6 authorized with the following amendment:

7 On page two, subsection 3.7., by striking out the word
8 “Generation” and inserting in lieu thereof the word
9 “Generational”.

10 (b) The legislative rule filed in the State Register on August
11 1, 2014, authorized under the authority of section ten, article
12 two, chapter thirty-three of this code, modified by the Insurance
13 Commissioner to meet the objections of the Legislative Rule-
14 Making Review Committee and refiled in the State Register on
15 September 15, 2014, relating to the Insurance Commissioner
16 (annuity disclosure, 114 CSR 11E), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on August
2 1, 2014, authorized under the authority of section twenty-two,
3 article sixteen, chapter eleven of this code, modified by the
4 Alcohol Beverage Control Commission to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 6, 2014, relating to the Alcohol
7 Beverage Control Commission (nonintoxicating beer licensing

8 and operations procedures, 176 CSR 1), is authorized with the
9 amendments set forth below:

10 On page 3, subsection 2.18., by striking out the following:
11 “Any container or jug not made of glass, ceramic or metal may
12 be submitted to the Commissioner for review and approval or
13 denial on a case-by-case basis.”;

14 On page 8, paragraph 3.6.a.2., by striking out the words “the
15 agents or employees” and inserting in lieu thereof “the agents,
16 employees or members”;

17 And,

18 On page 24, subdivision 13.2.a, by striking out the
19 following: “A franchise agreement as defined in subsection
20 2.15., is the agreement, that binds a brewer and a distributor so
21 that an appointed distributor may distribute all of the brewer’s
22 nonintoxicating beer products, brands or family of brands,
23 including line extensions, imported and offered for sale in West
24 Virginia, including, but not limited to: existing brands, new
25 brands and line extensions in the brewer’s approved franchise
26 distributor network and to a distributor’s assigned territory.”

27 (b) The legislative rule filed in the State Register on August
28 1, 2014, authorized under the authority of section ten, article
29 seven, chapter sixty of this code, modified by the Alcohol
30 Beverage Control Commission to meet the objections of the
31 Legislative Rule-Making Review Committee and refiled in the
32 State Register on October 29, 2014, relating to the Alcohol
33 Beverage Control Commission (private club licensing, 175 CSR
34 2), is authorized.

CHAPTER 160

(Com. Sub. for S. B. 192 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-8-1. Division of Motor Vehicles.

- 1 The legislative rule filed in the State Register on August 1,
- 2 2014, authorized under the authority of section nine, article two,

3 chapter seventeen-a of this code, modified by the Division of
4 Motor Vehicles to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 31, 2014, relating to the Division of Motor Vehicles
7 (examination and issuance of driver's licenses, 91 CSR 4), is
8 authorized with the following amendments:

9 On page 2, subsection 3.1., lines 8 and 9, by striking out
10 “§17B-2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

11 On page 6, subdivision 3.11.a., line 6, by striking out “§17B-
12 2-8(i)” and inserting in lieu thereof “§17B-2-8(i)”;

13 On page 7, subsection 3.11, after line 2, by adding a new
14 subdivision 3.11.e to read as follows:

15 “3.11.e In lieu of a social security card as proof of social
16 security number, the following documents may be used to obtain
17 a not for federal use driver's license or a not for federal use
18 identification card:

19 (i) An original or a copy of a certified Military Discharge
20 Form DD 214 issued by the U.S. Military, with the social
21 security number; or

22 (ii) A Medicare card issued in the applicant's full name,
23 which contains the applicant's social security number and the
24 signature of the applicant as the card holder.”

25 On page 7, subsection 4.1, line 17, after the word
26 “Commissioner.” by adding the following:

27 “The Division shall make available information for driver's
28 license and ID applicants that clearly delineates the requirements
29 for a for federal use driver license or ID and a not for federal use
30 driver's license and ID.”;

31 On page 10, subsection 4.1.f, line 5 after the word
32 “commissioner” by adding the following:

33 “which form must require and be accompanied by a
34 certification by a medical doctor of the person’s gender.”

35 On page 21, subsection 7.2, line 6, after the word “record.”
36 by adding the following:

37 “The renewal form shall clearly delineate the requirements
38 for a for federal use driver license or ID and a not for federal use
39 driver’s license and ID.”;

40 On page 25, line 8, by adding a new subsection 7A.1.c to
41 read as follows:

42 “7A.1.c. The Division’s online renewal process shall clearly
43 delineate the requirements for a for federal use driver license or
44 ID and a not for federal use driver’s license and ID.”;

45 On page 27, subsection 8.2.c, line 1 after the word
46 “commissioner” by adding the following:

47 “which form must require and be accompanied by a
48 certification by a medical doctor of the person’s gender.”

49 On page 31, subsection 9.5, line 17 after the word
50 “commissioner” by adding the following:

51 “which form must require and be accompanied by a
52 certification by a medical doctor of the person’s gender.”

53 On page 34, subdivision 11.1.b, lines 17 through 19, by
54 striking out all of subdivision 11.1.b and inserting in lieu thereof
55 the following:

56 “11.1.b. A valid photo driver’s license or identification card
57 expired six months or less issued the Division only on a not for

58 federal use driver's license and a not for federal use
59 identification card.”

60 And by renumbering the remaining subdivisions;

61 On page 35, subdivision 11.1.d., line one, by striking out
62 “§17B-2-8(I)” and inserting in lieu thereof “§17B-2-8(i), only on
63 a not for federal use driver's license and a not for federal use
64 identification card “;

65 On page 36, lines 14 and 15, by striking out all of
66 subdivision 12.2.b. and inserting in lieu thereof a new
67 subdivision 12.2.b. to read as follows:

68 “12.2.b. A United States passport or passport card, currently
69 valid or expired less than 2 years, only on a not for federal use
70 driver's license and a not for federal use identification card.”;

71 On page 47, subdivision 14.7.e, line 15, after the word
72 “endocrinologist” by inserting the words “or primary care
73 physician”;

74 On page 52, subsection 14.14, line 3, by striking out the
75 word “two” and inserting in lieu thereof the word “three”;

76 And,

77 On page 52, subsection 14.14, line 6, by striking out the
78 word “two” and inserting in lieu thereof the word “three”.

§64-8-2. Office of Administrative Hearings.

1 The legislative rule filed in the State Register on July 31,
2 2014, authorized under the authority of section four-a, article
3 five-c, chapter seventeen-c of this code, modified by the Office
4 of Administrative Hearings to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the

6 State Register on December 23, 2014, relating to the Office of
7 Administrative Hearings (appeal procedures, 105 CSR 1), is
8 authorized with the following amendment:

9 On page 14, subdivision 16.3.1., by changing the period to
10 a colon and adding the following proviso: *Provided*, That if a
11 party prevails in its appeal, the OAH shall refund the \$50 filing
12 fee.

CHAPTER 161

(Com. Sub. for S. B. 187 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating to authorizing the Conservation Committee to promulgate a legislative rule relating to financial assistance programs.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

* **NOTE:** This article was also amended by Com. Sub. for S. B. 199 (Chapter 162) which passed subsequent to this Act.

§64-9-1. Conservation Committee.

1 The legislative rule filed in the State Register on July 28,
2 2014, authorized under the authority of section four-a, article
3 twenty-one-a, chapter nineteen of this code, modified by the
4 Conservation Committee to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on November 21, 2014, relating to the
7 Conservation Committee (financial assistance programs, 63 CSR
8 2), is not authorized.

CHAPTER 162

(Com. Sub. for S. B. 199 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by miscellaneous agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications; authorizing

Board of Registration for Professional Engineers to promulgate a legislative rule relating to the examination, licensure and practice for professional engineers; authorizing Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing Enterprise Resource Planning Board to promulgate a legislative rule relating to the enterprise resource planning system user fee; authorizing Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants; authorizing Board of Osteopathic Medicine to promulgate a legislative rule relating to fees for services rendered by the board; authorizing Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists; authorizing Board of Pharmacy to promulgate a legislative rule relating to the registration of pharmacy technicians; authorizing Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing Board of Pharmacy to promulgate a legislative rule relating to licensure and the practice of pharmacy; authorizing Board of Dental Examiners to promulgate a legislative rule relating to formation and approval of professional limited liability companies; authorizing Board of Dental Examiners to promulgate a legislative rule relating to the board; authorizing Board of Dental Examiners to promulgate a legislative rule relating to dental recovery networks; authorizing Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations and dental

practice ownership; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to fee structure for the Pesticide Control Act of 1990; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Plant Pest Act; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to inspection of meat and poultry; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Spay Neuter Assistance Program; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to equine rescue facilities; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Loan Program; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to aquaculture importation; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to industrial hemp; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to dangerous wild animals; authorizing Secretary of State to promulgate a legislative rule relating to the procedures for recount of election results; authorizing Secretary of State to promulgate a legislative rule relating to the standards and guidelines for electronic notarization; authorizing Secretary of State to promulgate a legislative rule relating to notaries public; authorizing Secretary of State to promulgate a legislative rule relating to a schedule of fees for notaries public; authorizing Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure; authorizing

Family Protection Services Board to promulgate a legislative rule relating to domestic violence program licensure standards; authorizing Family Protection Services Board to promulgate a legislative rule relating to the Monitored Parenting and Exchange Program certification; authorizing Family Protection Services Board to promulgate a legislative rule relating to the operation of the board; and authorizing Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure for correctional institutions.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§64-9-1. Board of Registration for Professional Engineers.

1 The legislative rule filed in the State Register on March 27,
2 2014, authorized under the authority of section nine, article
3 thirteen, chapter thirty of this code, relating to the Board of
4 Registration for Professional Engineers (examination, licensure
5 and practice for professional engineers, 7 CSR 1), is not
6 authorized.

**§64-9-2. Governor's Committee on Crime, Delinquency and
Correction.**

1 The legislative rule filed in the State Register on September
2 9, 2014, authorized under the authority of section two, article

* **NOTE:** This article was also amended by Com. Sub. for S. B. 195
(Chapter 161) which passed prior to this Act.

3 twenty-nine, chapter thirty of this code, modified by the
4 Governor's Committee on Crime, Delinquency and Correction
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on October 29, 2014,
7 relating to the Governor's Committee on Crime, Delinquency
8 and Correction (law-enforcement training and certification
9 standards, 149 CSR 2), is authorized.

§64-9-3. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on August 1,
2 2014, authorized under the authority of section seven, article
3 thirty-eight, chapter thirty of this code, modified by the Real
4 Estate Appraiser Licensing and Certification Board to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on December 23, 2014, relating
7 to the Real Estate Appraiser Licensing and Certification Board
8 (requirements for registration and renewal of appraisal
9 management companies, 190 CSR 5), is authorized.

§64-9-4. Board of Medicine.

1 The legislative rule filed in the State Register on July 22,
2 2014, authorized under the authority of section three, article
3 three-e, chapter thirty of this code, modified by the Board of
4 Medicine to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 November 20, 2014, relating to the Board of Medicine
7 (licensure, disciplinary and complaint procedures, continuing
8 education and physician assistants, 11 CSR 1B), is authorized.

§64-9-5. Enterprise Resource Planning Board.

1 The legislative rule filed in the State Register on June 26,
2 2014, authorized under the authority of section two, article six-d,
3 chapter twelve of this code, relating to the Enterprise Resource

- 4 Planning Board (enterprise resource planning system user fee,
- 5 213 CSR 1), is authorized.

§64-9-6. Board of Physical Therapy.

- 1 The legislative rule filed in the State Register on May 9,
- 2 2014, authorized under the authority of section six, article
- 3 twenty, chapter thirty of this code, relating to the Board of
- 4 Physical Therapy (fees for physical therapists and physical
- 5 therapist assistants, 16 CSR 4), is authorized.

§64-9-7. Board of Osteopathic Medicine.

- 1 (a) The legislative rule filed in the State Register on July 31,
- 2 2014, authorized under the authority of section six, article one,
- 3 chapter thirty of this code, relating to the Board of Osteopathic
- 4 Medicine (fees for services rendered by the board, 24 CSR 5), is
- 5 authorized.

- 6 (b) The legislative rule filed in the State Register on July 31,
- 7 2014, authorized under the authority of section three, article
- 8 fourteen-a, chapter thirty of this code, modified by the Board of
- 9 Osteopathic Medicine to meet the objections of the Legislative
- 10 Rule-Making Review Committee and refiled in the State
- 11 Register on November 25, 2014, relating to the Board of
- 12 Osteopathic Medicine (osteopathic physician assistants, 24 CSR
- 13 2), is authorized.

§64-9-8. Board of Pharmacy.

- 1 (a) The legislative rule filed in the State Register on August
- 2 1, 2014, authorized under the authority of section seven, article
- 3 five, chapter thirty of this code, modified by the Board of
- 4 Pharmacy to meet the objections of the Legislative Rule-Making
- 5 Review Committee and refiled in the State Register on January

6 8, 2015, relating to the Board of Pharmacy (immunizations
7 administered by pharmacists, 15 CSR 12), is authorized.

8 (b) The legislative rule filed in the State Register on August
9 1, 2013, authorized under the authority of section seven, article
10 five, chapter thirty of this code, modified by the Board of
11 Pharmacy to meet the objections of the Legislative Rule-Making
12 Review Committee and refiled in the State Register on January
13 8, 2015, relating to the Board of Pharmacy (registration of
14 pharmacy technicians, 15 CSR 7), is authorized with the
15 amendment set forth below:

16 On page 11, subsection 5.3, by striking out the word “four”
17 and inserting in lieu thereof the word “four”.

18 (c) The legislative rule filed in the State Register on August
19 1, 2013, authorized under the authority of section seven, article
20 five, chapter thirty of this code, modified by the Board of
21 Pharmacy to meet the objections of the Legislative Rule-Making
22 Review Committee and refiled in the State Register on January
23 8, 2015, relating to the Board of Pharmacy (controlled
24 substances monitoring, 15 CSR 8), is authorized.

25 (d) The legislative rule filed in the State Register on August
26 1, 2014, authorized under the authority of section seven, article
27 five, chapter thirty of this code, modified by the Board of
28 Pharmacy to meet the objections of the Legislative Rule-Making
29 Review Committee and refiled in the State Register on January
30 8, 2015, relating to the Board of Pharmacy (licensure and the
31 practice of pharmacy, 15 CSR 1), is authorized.

§64-9-9. Board of Dental Examiners.

1 (a) The legislative rule filed in the State Register on July 25,
2 2014, authorized under the authority of section one thousand
3 three hundred four, article thirteen, chapter thirty-one-b of this

4 code, relating to the Board of Dental Examiners (formation and
5 approval of professional limited liability companies, 5 CSR 2),
6 is authorized.

7 (b) The legislative rule filed in the State Register on July 25,
8 2014, authorized under the authority of section six, article four,
9 chapter thirty of this code, modified by the Board of Dental
10 Examiners to meet the objections of the Legislative Rule-
11 Making Review Committee and refiled in the State Register on
12 December 17, 2014, relating to the Board of Dental Examiners
13 (rule for the West Virginia Board of Dental Examiners, 5 CSR
14 1), is authorized.

15 (c) The legislative rule filed in the State Register on July 25,
16 2014, authorized under the authority of section six, article four,
17 chapter thirty of this code, modified by the Board of Dental
18 Examiners to meet the objections of the Legislative Rule-
19 Making Review Committee and refiled in the State Register on
20 December 17, 2014, relating to the Board of Dental Examiners
21 (dental recovery networks, 5 CSR 15), is authorized.

22 (d) The legislative rule filed in the State Register on July 25,
23 2014, authorized under the authority of section six, article four,
24 chapter thirty of this code, relating to the Board of Dental
25 Examiners (formation and approval of dental corporations; and
26 dental practice ownership, 5 CSR 6), is authorized.

§64-9-10. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July 29,
2 2014, authorized under the authority of section ten, article
3 eleven-b, chapter nineteen of this code, modified by the
4 Commissioner of Agriculture to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on October 30, 2014, relating to the

7 Commissioner of Agriculture (frozen desserts and imitation
8 frozen desserts, 61 CSR 4B), is authorized.

9 (b) The legislative rule filed in the State Register on August
10 1, 2014, authorized under the authority of section two, article
11 nine, chapter nineteen of this code, modified by the
12 Commissioner of Agriculture to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in the
14 State Register on November 19, 2014, relating to the
15 Commissioner of Agriculture (animal disease control, 61 CSR
16 1), is authorized.

17 (c) The legislative rule filed in the State Register on August
18 1, 2014, authorized under the authority of section three-a, article
19 two-c, chapter nineteen of this code, modified by the
20 Commissioner of Agriculture to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in the
22 State Register on November 19, 2014, relating to the
23 Commissioner of Agriculture (auctioneers, 61 CSR 11B), is
24 authorized.

25 (d) The legislative rule filed in the State Register on July 29,
26 2014, authorized under the authority of section four, article
27 sixteen-a, chapter nineteen of this code, modified by the
28 Commissioner of Agriculture to meet the objections of the
29 Legislative Rule-Making Review Committee and refiled in the
30 State Register on October 30, 2014, relating to the
31 Commissioner of Agriculture (fee structure for the Pesticide
32 Control Act of 1990, 61 CSR 12), is authorized.

33 (e) The legislative rule filed in the State Register on August
34 1, 2014, authorized under the authority of section three, article
35 twelve, chapter nineteen of this code, modified by the
36 Commissioner of Agriculture to meet the objections of the
37 Legislative Rule-Making Review Committee and refiled in the

38 State Register on October 30, 2014, relating to the
39 Commissioner of Agriculture (West Virginia Plant Pest Act, 61
40 CSR 14), is authorized.

41 (f) The legislative rule filed in the State Register on July 22,
42 2013, authorized under the authority of section three, article two-
43 b, chapter nineteen of this code, relating to the Commissioner of
44 Agriculture (inspection of meat and poultry, 61 CSR 16), is
45 authorized.

46 (g) The legislative rule filed in the State Register on August
47 1, 2014, authorized under the authority of section three, article
48 twenty-c, chapter nineteen of this code, modified by the
49 Commissioner of Agriculture to meet the objections of the
50 Legislative Rule-Making Review Committee and refiled in the
51 State Register on November 19, 2014, relating to the
52 Commissioner of Agriculture (West Virginia Spay Neuter
53 Assistance Program, 61 CSR 24), is authorized.

54 (h) The legislative rule filed in the State Register on August
55 1, 2014, authorized under the authority of section four, article
56 one-c, chapter nineteen of this code, modified by the
57 Commissioner of Agriculture to meet the objections of the
58 Legislative Rule-Making Review Committee and refiled in the
59 State Register on November 19, 2014, relating to the
60 Commissioner of Agriculture (livestock care standards, 61 CSR
61 31), is authorized.

62 (i) The legislative rule filed in the State Register on August
63 1, 2014, authorized under the authority of section one, article
64 thirty-three, chapter nineteen of this code, modified by the
65 Commissioner of Agriculture to meet the objections of the
66 Legislative Rule-Making Review Committee and refiled in the
67 State Register on December 23, 2014, relating to the
68 Commissioner of Agriculture (equine rescue facilities, 61 CSR
69 32), is authorized with the following amendment:

70 On page 4, subsection 6.3, by striking the words ‘, and the
71 standards in the AAEP Care Guidelines for Equine Rescue and
72 Retirement Facilities’.

73 (j) The legislative rule filed in the State Register on August
74 1, 2014, authorized under the authority of section three, article
75 twelve, chapter nineteen of this code, modified by the
76 Commissioner of Agriculture to meet the objections of the
77 Legislative Rule-Making Review Committee and refiled in the
78 State Register on November 20, 2014, relating to the
79 Commissioner of Agriculture (Rural Rehabilitation Loan
80 Program, 61 CSR 33), is authorized with the following
81 amendment:

82 On page 3, by striking out all of subsection 4.2, and by
83 renumbering the remaining subsections.

84 (k) The legislative rule filed in the State Register on August
85 1, 2014, authorized under the authority of section four, article
86 thirty-two, chapter nineteen of this code, modified by the
87 Commissioner of Agriculture to meet the objections of the
88 Legislative Rule-Making Review Committee and refiled in the
89 State Register on November 19, 2014, relating to the
90 Commissioner of Agriculture (aquaculture importation, 61 CSR
91 35), is authorized.

92 (l) The legislative rule filed in the State Register on August
93 1, 2014, authorized under the authority of section seven, article
94 twelve-e, chapter nineteen of this code, modified by the
95 Department of Agriculture to meet the objections of the
96 Legislative Rule-Making Review Committee and refiled in the
97 State Register on December 30, 2014, relating to the
98 Commissioner of Agriculture (industrial hemp, 61 CSR 29), is
99 authorized.

100 (m) The legislative rule filed in the State Register on August
101 1, 2014, authorized under the authority of section three, article
102 thirty-four, chapter nineteen of this code, modified by the
103 Commissioner of Agriculture to meet the objections of the
104 Legislative Rule-Making Review Committee and refiled in the
105 State Register on November 20, 2014, relating to the
106 Commissioner of Agriculture (dangerous wild animals, 61 CSR
107 30), is authorized with the following amendments:

108 On page 2, Paragraph 3.1.g.3., after the words “mountain
109 lions;” by adding the word “and”;

110 On page 2, Paragraph 3.1.g.4., after the word “caracals”, by
111 changing the semicolon to a period and striking out the
112 remainder of Paragraph 3.1.g.4;

113 On page 2, Paragraph 3.1.g.5., by striking out all of
114 Paragraph 3.1.g.5.;

115 On page 2, Subdivision 3.1.o, by striking out all of
116 subdivision 3.1.o.;

117 On page 2, Subdivision 3.1.p, by striking out all of
118 subdivision 3.1.p.;

119 On page 2, Subdivision 3.1.q, by striking out all of
120 subdivision 3.1.q.;

121 On page 2, Subdivision 3.1.r, by striking out all of
122 subdivision 3.1.r.;

123 On pages 2 and 3, Subdivision 3.1.t., by striking out all of
124 subdivision 3.1.t.;

125 On page 3, Subdivision 3.1.u., by striking out all of
126 Paragraph 3.1.u.;

127 On page 3, Subdivision 3.1.v., by striking out all of
128 subdivision 3.1.v.;

129 On pages 3 and 4, Subdivision 3.1.w., by striking out all of
130 subdivision 3.1.w.;

131 On page 4, Subdivision 3.1.x., by striking out all of
132 subdivision 3.1.x.;

133 On page 4, Subdivision 3.1.y., by striking out all of
134 subdivision 3.1.y.;

135 And,

136 On page 4, Subdivision 3.1.z., by striking out all of
137 subdivision 3.1.z..

§64-9-11. Secretary of State.

1 (a) The legislative rule filed in the State Register on July 22,
2 2014, authorized under the authority of section six, article one-a,
3 chapter three of this code, modified by the Secretary of State to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on September 9,
6 2014, relating to the Secretary of State (procedures for recount
7 of election results, 153 CSR 20), is authorized.

8 (b) The legislative rule filed in the State Register on August
9 1, 2014, authorized under the authority of section twenty-five,
10 article four, chapter thirty-nine of this code, modified by the
11 Secretary of State to meet the objections of the Legislative Rule-
12 Making Review Committee and refiled in the State Register on
13 September 9, 2014, relating to the Secretary of State (standards
14 and guidelines for electronic notarization, 153 CSR 45), is
15 authorized with the amendments set forth below:

16 On page 3, by deleting all of section 8;

17 And,

18 By renumbering the remaining subsections.

19 (c) The legislative rule filed in the State Register on August
20 1, 2014, authorized under the authority of section twenty-five,
21 article four, chapter thirty-nine of this code, modified by the
22 Secretary of State to meet the objections of the Legislative
23 Rule-Making Review Committee and refiled in the State
24 Register on September 9, 2014, relating to the Secretary of State
25 (notaries public, 153 CSR 46), is authorized.

26 (d) The legislative rule filed in the State Register on August
27 1, 2014, authorized under the authority of section twenty-five,
28 article four, chapter thirty-nine of this code, modified by the
29 Secretary of State to meet the objections of the Legislative Rule-
30 Making Review Committee and refiled in the State Register on
31 September 9, 2014, relating to the Secretary of State (schedule
32 of fees for notaries public, 153 CSR 50), is authorized.

§64-9-12. Family Protection Services Board.

1 (a) The legislative rule filed in the State Register on July 30,
2 2014, authorized under the authority of section four hundred
3 three, article twenty-six, chapter forty-eight of this code,
4 modified by the Family Protection Services Board to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on December 17, 2014, relating
7 to the Family Protection Services Board (perpetrator intervention
8 programs licensure, 191 CSR 3), is authorized .

9 (b) The legislative rule filed in the State Register on July 30,
10 2014, authorized under the authority of section four hundred
11 three, article twenty-six, chapter forty-eight of this code,

12 modified by the Family Protection Services Board to meet the
13 objections of the Legislative Rule-Making Review Committee
14 and refiled in the State Register on December 17, 2014, relating
15 to the Family Protection Services Board (domestic violence
16 program licensure standards, 191 CSR 2), is authorized.

17 (c) The legislative rule filed in the State Register on July 30,
18 2014, authorized under the authority of section four hundred
19 three, article twenty-six, chapter forty-eight of this code,
20 modified by the Family Protection Services Board to meet the
21 objections of the Legislative Rule-Making Review Committee
22 and refiled in the State Register on December 17, 2014, relating
23 to the Family Protection Services Board (Monitored Parenting
24 and Exchange Program Certification, 191 CSR 4), is authorized.

25 (d) The legislative rule filed in the State Register on July 30,
26 2014, authorized under the authority of section four hundred
27 three, article twenty-six, chapter forty-eight of this code,
28 modified by the Family Protection Services Board to meet the
29 objections of the Legislative Rule-Making Review Committee
30 and refiled in the State Register on December 30, 2014, relating
31 to the Family Protection Services Board (Operation of the
32 Family Protection Services Board, 191 CSR 1), is authorized.

33 (e) The legislative rule filed in the State Register on July 30,
34 2014, authorized under the authority of section four hundred
35 three, article twenty-six, chapter forty-eight of this code,
36 modified by the Family Protection Services Board to meet the
37 objections of the Legislative Rule-Making Review Committee
38 and refiled in the State Register on December 17, 2014, relating
39 to the Family Protection Services Board (perpetrator intervention
40 programs licensure for correctional institutions, 191 CSR 5), is
41 authorized.

CHAPTER 163

(Com. Sub. for S. B. 170 - By Senator Snyder)

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Bureau of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications and as amended by the Legislature; authorizing Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the safety of those employed in and around quarries in West Virginia; authorizing Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing license and stamp fees; authorizing Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing Division of Natural Resources to promulgate a legislative rule relating to wildlife damage control agents; authorizing Division of Natural Resources to promulgate a

legislative rule relating to special boating; authorizing Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing Division of Labor to promulgate a legislative rule relating to child labor; authorizing Division of Labor to promulgate a legislative rule relating to the supervision of plumbing work; authorizing Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers; authorizing Division of Labor to promulgate a legislative rule relating to the regulation of heating, venting and cooling work; authorizing Division of Labor to promulgate a legislative rule relating to weights and measures calibration fees; and authorizing Division of Forestry to promulgate a legislative rule relating to ginseng.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Office of Miners' Health, Safety and Training.

1 The legislative rule filed in the State Register on July 29,
2 2014, authorized under the authority of section three, article
3 four, chapter twenty-two-a of this code, modified by the Office
4 of Miners' Health, Safety and Training to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the State Register on September 16, 2014, relating to the Office
7 of Miners' Health, Safety and Training (rules governing the
8 safety of those employed in and around quarries in West
9 Virginia, 56 CSR 20), is authorized.

§64-10-2. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on July 30,
2 2014, authorized under the authority of section seven, article
3 one, chapter twenty of this code, relating to the Division of
4 Natural Resources (defining the terms used in all hunting and
5 trapping rules, 58 CSR 46), is authorized.

6 (b) The legislative rule filed in the State Register on July 30,
7 2014, authorized under the authority of section forty-two, article
8 two, chapter twenty of this code, relating to the Division of
9 Natural Resources (hunting, trapping and fishing license and
10 stamp fees, 58 CSR 71), is not authorized.

11 (c) The legislative rule filed in the State Register on July 30,
12 2014, authorized under the authority of section seven, article
13 one, chapter twenty of this code, modified by the Division of
14 Natural Resources to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the State Register on
16 November 7, 2014, relating to the Division of Natural Resources
17 (general hunting, 58 CSR 49), is authorized.

18 (d) The legislative rule filed in the State Register on July 30,
19 2014, authorized under the authority of section seven, article
20 two-b, chapter twenty of this code, relating to the Division of
21 Natural Resources (lifetime hunting, trapping and fishing
22 licenses, 58 CSR 67), is not authorized.

23 (e) The legislative rule filed in the State Register on July 30,
24 2014, authorized under the authority of section seven, article
25 two, chapter twenty of this code, modified by the Division of
26 Natural Resources to meet the objections of the Legislative Rule-
27 Making Review Committee and refiled in the State Register on
28 September 29, 2014, relating to the Division of Natural
29 Resources (wildlife damage control agents, 58 CSR 41), is
30 authorized.

31 (f) The legislative rule filed in the State Register on July 30,
32 2014, authorized under the authority of section seven, article
33 one, chapter twenty of this code, relating to the Division of
34 Natural Resources (special boating, 58 CSR 26), is authorized.

35 (g) The legislative rule filed in the State Register on August
36 1, 2014, authorized under the authority of section twenty-three-a,
37 article two, chapter twenty of this code, modified by the Division
38 of Natural Resources to meet the objections of the Legislative
39 Rule-Making Review Committee and refiled in the State
40 Register on November 21, 2014, relating to the Division of
41 Natural Resources (commercial whitewater outfitters, 58 CSR
42 12), is authorized.

§64-10-3. Division of Labor.

1 (a) The legislative rule filed in the State Register on July 30,
2 2014, authorized under the authority of section three, article ten,
3 chapter twenty-one of this code, modified by the Division of
4 Labor to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 December 2, 2014, relating to the Division of Labor
7 (Amusement Rides and Amusement Attractions Safety Act, 42
8 CSR 17), is authorized with the amendments set forth below:

9 On page 2, subsection 3.14, after the word “guardian” by
10 adding “or their spouses”;

11 On page 3, subsection 3.25, by striking the words “at least a
12 20%” and inserting in lieu thereof “any percentage”;

13 And,

14 On page 13, after the words “Article 525” by adding the
15 following proviso:

16 “:Provided, That a three phase four wire system that is
17 grounded at the power source and constructed in accordance

18 with the NFPA70, 2014 National Electrical Code, Article 522
19 and Article 525 is approved for any area of the state where a
20 three phase five wire system is unavailable.”

21 (b) The legislative rule filed in the State Register on July 30,
22 2014, authorized under the authority of section eleven, article
23 six, chapter twenty-one of this code, modified by the Division of
24 Labor to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the State Register on
26 December 2, 2014, relating to the Division of Labor (child labor,
27 42 CSR 9), is authorized.

28 (c) The legislative rule filed in the State Register on July 30,
29 2014, authorized under the authority of section four, article
30 fourteen, chapter twenty-one of this code, modified by the
31 Division of Labor to meet the objections of the Legislative Rule-
32 Making Review Committee and refiled in the State Register on
33 December 2, 2014, relating to the Division of Labor (supervision
34 of plumbing work, 42 CSR 32), is authorized.

35 (d) The legislative rule filed in the State Register on July 30,
36 2014, authorized under the authority of section three, article one-
37 b, chapter twenty-one of this code, modified by the Division of
38 Labor to meet the objections of the Legislative Rule-Making
39 Review Committee and refiled in the State Register on
40 December 29, 2014, relating to the Division of Labor (Verifying
41 the Legal Employment Status of Workers, 42 CSR 31), is
42 authorized with the amendments set forth below:

43 On page two, subsection 3.7, after the word “work” by
44 adding the words “for compensation;”;

45 And

46 On page three, subsection 4.2, after the word “not” by
47 inserting the word “knowingly.”.

48 (e) The legislative rule filed in the State Register on July 30,
49 2014, authorized under the authority of section five, article
50 sixteen, chapter twenty-one of this code, modified by the
51 Division of Labor to meet the objections of the Legislative Rule-
52 Making Review Committee and refiled in the State Register on
53 December 2, 2014, relating to the Division of Labor (regulation
54 of heating, venting and cooling work, 42 CSR 34), is authorized
55 with the following amendments:

56 ‘On page 2, subsection 3.6. by striking all of subsection 3.6.;

57 And,

58 On page 2, subsection 6.2., after the word “Commissioner”,
59 by striking the word “may” and inserting in lieu thereof the word
60 “shall”;

61 And,

62 On page 2, subdivision 6.2.3.a by inserting a period after the
63 word, “program” and striking the remainder of the sentence and
64 subdivision 6.2.3.b;

65 On page 4, subsection 10.3., after the word “rule” by inserting
66 the following: “that are applicable to the duties and knowledge
67 required by an HVAC technician for the installation, repair and
68 maintenance of HVAC”;

69 And,

70 On page 5, section 11, by striking all of subsections 11.4.
71 and 11.5.;

72 And,

73 On page 6, subsection 13.1., after the word “license” by
74 inserting the following:

75 “: *Provided*, That no fee may be charged for an HVAC
76 technician license for a person who holds an HVAC contractor’s
77 license pursuant to article eleven, chapter twenty-one of the W.
78 Va. Code.”.

79 (f) The legislative rule filed in the State Register on July 30,
80 2014, authorized under the authority of section three, article one,
81 chapter forty-seven of this code, modified by the Division of
82 Labor to meet the objections of the Legislative Rule-Making
83 Review Committee and refiled in the State Register on
84 December 2, 2014, relating to the Division of Labor (weights
85 and measures calibration fees, 42 CSR 26), is authorized with the
86 amendment set forth below:

87 On page five, Appendix A, column one, by striking out
88 “Prover - from 5 to 49 gallons” and inserting in lieu thereof
89 “Prover - from 6 to 49 gallons”.

§64-10-4. Division of Forestry.

1 The legislative rule filed in the State Register on the August
2 1, 2014, authorized under the authority of section three-a, article
3 one-a, chapter nineteen of this code, modified by the Division of
4 Forestry to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 September 18, 2014, relating to the Division of Forestry
7 (ginseng, 22 CSR 1), is authorized with the amendments set forth
8 below:

9 On page four, section ten, by striking out the word “A” and
10 inserting in lieu thereof the word “No”;

11 On page five, section 12, subsection 12.3, after the word
12 “grower’s” by striking out the word “fee” and inserting in lieu
13 thereof the word “permit”;

14 And,

15 On page five, section 12, subsection 12.3, after the word
16 “dealer’s” by striking out the word “fee” and inserting in lieu
17 thereof the word “permit”.

CHAPTER 164

**(Com. Sub. for H. B. 2099 - By Delegate(s) Howell,
Householder, J. Nelson, Statler, Walters, Arvon, Border, Folk,
Hamilton, A. Evans and McGeehan)**

[Passed February 28, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §11-8-9 of the Code of West Virginia, 1931, as amended, relating to extending the time of meetings of local levying bodies when meetings are delayed due to circumstances beyond the control of a local levying body; providing the State Auditor is authorized to extend the time of meetings of local levying bodies; authorizing the State Auditor to propose rules to implement this section; requiring that the meeting be held in compliance with chapter six, article nine-a; and authorizing the State Auditor to set the meeting time.

Be it enacted by the Legislature of West Virginia:

That §11-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-9. Meetings of local levying bodies.

- 1 (a) Each local levying body shall hold a meeting or meetings
- 2 between the seventh and twenty-eighth days of March for the

3 transaction of business generally and particularly for the
4 business herein required.

5 (b) When a levy is placed on the ballot for consideration
6 during a primary election, each local levying body may extend
7 its time to meet as a levying body until the first day of June of
8 that year.

9 (c) The State Auditor shall propose rules for legislative
10 approval in accordance with article three, chapter twenty-nine-a
11 of this code to implement the purposes of this subsection. The
12 proposed rules shall include a procedure for a local levying body
13 to apply for permission to extend the time to meet as a levying
14 body, requiring the local levying body to cite the reason a timely
15 meeting was not held and that the meeting, if approved by the
16 State Auditor, be held in compliance with article nine-a, chapter
17 six of this code relating to open governmental proceedings at a
18 time set by the State Auditor.

19 (1) The State Auditor shall require all levying bodies to file
20 a report of their meetings as required in this article with the State
21 Auditor on or before the first day of April.

22 (2) The State Auditor shall notify any levying body, which
23 has not filed a report of their meetings to the State Auditor by the
24 first day of April, that the levying body must meet and file a
25 report of that meeting no later than the fifteenth day of April.

26 (3) For any meeting after the fifteenth day of April, the State
27 Auditor, may allow a late meeting and late report on or before
28 the first day of May, if the State Auditor finds good cause to so
29 allow a meeting and report to be filed after the fifteenth day of
30 April and not later than the first day of May.

CHAPTER 165

**(S. B. 532 - By Senators Trump, Woelfel, Plymale,
Stollings, Takubo, Prezioso, Carmichael, Ferns and Beach)**

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

[Approved by the Governor on March 24, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7H-1, §55-7H-2, §55-7H-3, §55-7H-4, §55-7H-5 and §55-7H-6, all relating to immunity from civil liability for clinical practice plans and personnel associated with medical and dental schools; providing legislative findings and declarations of public purpose; defining terms; limiting civil liability for clinical practice plans and their directors, officers, employees, agents and contractors; providing for minimum medical professional liability insurance requirements; and determining the applicability and construction of the immunity from civil liability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7H-1, §55-7H-2, §55-7H-3, §55-7H-4, §55-7H-5 and §55-7H-6, all to read as follows:

**ARTICLE 7H. IMMUNITY FROM CIVIL LIABILITY FOR
CLINICAL PRACTICE PLANS AND
PERSONNEL ASSOCIATED WITH
MEDICAL AND DENTAL SCHOOLS.**

§55-7H-1. Findings and declaration of public purpose.

1 The Legislature finds and declares:

2 That the citizens of this state have been and should continue
3 to be well served by physicians and dentists educated and trained
4 at the Marshall University School of Medicine, the West
5 Virginia School of Osteopathic Medicine, the West Virginia
6 University School of Medicine and the West Virginia University
7 School of Dentistry;

8 That the state's medical and dental schools play a vital role
9 in ensuring an adequate supply of qualified and trained
10 physicians throughout the state;

11 That the education, training and research provided at the
12 state's medical and dental schools and state medical school are
13 an essential governmental function in which the state has a
14 substantial and compelling interest;

15 That the provision of clinical services to patients by faculty
16 members,, residents, fellows and students of the state's medical
17 and dental schools and state medical school, is an inseparable
18 component of the aforementioned education, training and
19 research;

20 That the provision of the clinical services significantly
21 contributes to the ongoing quality, effectiveness and scope of the
22 state's health care delivery system;

23 That the provision of the clinical services also raises the
24 public profile and reputation of the respective institutions both
25 regionally and nationally, thereby facilitating the recruitment of
26 talented faculty, residents, fellows and students to their programs
27 of study;

28 That the provision of the clinical services generates
29 additional revenues needed to fund faculty salaries and other
30 costs associated with the overall operation of the state medical
31 school and state's medical and dental schools;

32 That the continued availability of the revenues to the state
33 medical school and state's medical and dental schools is
34 necessary to their ongoing operation and delivery of the benefits
35 described above;

36 That the continued availability of the revenues is
37 compromised by the cost of medical professional liability
38 insurance, the cost of defending medical professional liability
39 claims, and the cost of compensating patients who suffer medical
40 injury or death;

41 That the state concurrently has an interest in providing a
42 system that makes available adequate and fair compensation to
43 those individual patients who suffer medical injury or death;

44 That it is the duty and responsibility of the Legislature to
45 balance the rights of individual patients to obtain adequate and
46 fair compensation, with the substantial and compelling state
47 interests set forth herein supporting the need for a financially
48 viable system of medical and dental schools;

49 That, in balancing these important state interests, the
50 Legislature acknowledges the sovereign immunity set forth in
51 the West Virginia Constitution under Article VI, Section 35, to
52 prevent the diversion of state moneys from legislatively
53 appropriated purposes;

54 That, in conjunction with the provision of clinical services
55 to patients by faculty members, , residents, fellows and students
56 of the state's medical and dental schools, or state medical school,
57 it is a common practice both here and in other states to create
58 one or more clinical practice plans as nonprofit corporations;

59 That the clinical practice plans, among other things,
60 administratively support clinical activities by holding real and
61 personal property, offering personnel and financial management,
62 providing billing and collection for services rendered, and

63 disbursing excess revenues back to the respective medical and
64 dental schools;

65 That the clinical practice plans become integrated with their
66 respective state medical school and state's medical and dental
67 schools and exclusively serve the interests of these schools and
68 their faculty;

69 That any moneys the clinical practice plans expend for the
70 defense, settlement, and satisfaction of medical professional
71 liability claims inevitably result in a shortfall of funds available
72 to the medical and dental schools for faculty compensation and
73 other operational purposes, thereby undermining the sovereign
74 immunity otherwise granted to state institutions by the West
75 Virginia Constitution;

76 That it is therefore reasonable and appropriate for the
77 Legislature to provide immunity from civil liability to clinical
78 practice plans and their respective directors, officers, employees
79 and agents given the substantial and compelling state interests
80 being served; and

81 That it is further reasonable and appropriate to require the
82 state's medical and dental schools to maintain a level of medical
83 professional liability insurance to adequately and fairly
84 compensate patients who suffer medical injuries or death.

§55-7H-2. Definitions.

1 For purposes of this article:

2 (1) "Clinical practice plan" means any of the nonprofit
3 corporations that are operated to assist the state medical school
4 and state's medical and dental schools in providing clinical
5 services to patients and which are controlled by governing
6 boards all the voting members of which are faculty members or
7 university officials. Clinical practice plans as defined herein
8 shall be considered agents of the state.

9 (2) “Contractor” means an independent contractor, whether
10 compensated or not, who is licensed as a health care professional
11 under chapter thirty of this code, who is acting within the scope
12 of his or her authority for a state medical school, state’s medical
13 and dental schools, or a clinical practice plan, and is a member
14 of the faculty of a state’s medical and dental schools or state
15 medical school.

16 (3) “Employee” means a director, officer, employee, agent
17 or servant, whether compensated or not, who is licensed as a
18 health care professional under chapter thirty of this code and
19 who is acting within the scope of his or her authority or
20 employment for a state’s medical and dental schools, a state
21 medical school or a clinical practice plan.

22 (4) “Health care” means any act or treatment performed or
23 furnished, or which should have been performed or furnished, by
24 any director, officer, employee, agent or contractor of a state
25 medical school, state’s medical and dental schools, or a clinical
26 practice plan for, to or on behalf of a patient during the patient’s
27 medical care, treatment or confinement.

28 (5) “Medical injury” means injury or death to a patient
29 arising or resulting from the rendering or failure to render health
30 care.

31 (6) “Medical professional liability insurance” means a
32 contract of insurance, or any self-insurance retention program
33 established under the provisions of section ten, article five,
34 chapter eighteen-b of this code, that pays for the legal liability
35 arising from a medical injury.

36 (7) “Patient” means a natural person who receives or should
37 have received health care from a director, officer, employee,
38 agent or contractor of a state medical school, state’s medical and
39 dental schools, or a clinical practice plan under a contract,
40 express or implied.

41 (8) “Scope of authority or employment” means performance
42 by a director, officer, employee, agent or contractor acting in
43 good faith within the duties of his or her office, employment or
44 contract with a state medical school, state’s medical and dental
45 schools, or a clinical practice plan, but does not include
46 corruption or fraud.

47 (9) “State’s medical and dental schools” or “state medical
48 school” means the Marshall University School of Medicine, the
49 West Virginia School of Osteopathic Medicine, the West
50 Virginia University School of Medicine and the West Virginia
51 University School of Dentistry.

**§55-7H-3. Immunity for clinical practice plans and their directors,
officers, employees, agents and contractors.**

1 Notwithstanding any other provision of this code, all clinical
2 practice plans, and all employees and contractors of a state’s
3 medical and dental schools, state medical school or a clinical
4 practice plan, are only liable up to the limits of insurance
5 coverage procured through the State Board of Risk and
6 Insurance Management in accordance with section four, article
7 seven-h, chapter fifty-five of the code, arising from a medical
8 injury to a patient, including death resulting, in whole or in part,
9 from the medical injury, either through act or omission, or
10 whether actual or imputed, while acting within the scope of their
11 authority or employment for a state’s medical and dental
12 schools, state medical school or a clinical practice plan. The
13 provisions of this article apply to the acts and omissions of all
14 full-time, part-time, visiting and volunteer directors, officers,
15 faculty members, residents, fellows, students, employees, agents
16 and contractors of a state’s medical and dental schools, state
17 medical school or a clinical practice plan, regardless of whether
18 the persons are engaged in teaching, research, clinical,
19 administrative or other duties giving rise to the medical injury,
20 regardless of whether the activities were being performed on

21 behalf of a state's medical and dental schools, state medical
22 school or on behalf of a clinical practice plan and regardless of
23 where the duties were being carried out at the time of the
24 medical injury.

**§55-7H-4. Medical professional liability insurance for state's
medical and dental schools and state medical
schools.**

1 The State Board of Risk and Insurance Management shall
2 provide medical professional liability insurance to all of the
3 state's medical and dental schools, state medical school, all of
4 their clinical practice plans and all of their directors, officers,
5 employees, agents and contractors in an amount to be
6 determined by the State Board of Risk and Insurance
7 Management, but in no event less than \$1.5 million for each
8 occurrence after July 1, 2015, to increase to account for inflation
9 by an amount equal to the Consumer Price Index published by
10 the United States Department of Labor, up to \$2 million for each
11 occurrence. The clinical practice plans shall pay for this
12 insurance. The provision of professional liability insurance is not
13 a waiver of immunity that any of the foregoing entities or
14 persons may have pursuant to this article or under any other law.
15 Any judgment obtained for a medical injury to a patient as a
16 result of health care performed or furnished, or which should
17 have been performed or furnished, by any employee or
18 contractor of a state's medical and dental school, state medical
19 school or clinical practice plan shall not exceed the limits of
20 medical professional liability insurance coverage provided by the
21 State Board of Risk and Insurance Management pursuant to this
22 section.

§55-7H-5. Applicability of provisions.

1 The provisions of this article are applicable prospectively to
2 all claims that occur and are commenced on or after July 1,
3 2015.

§55-7H-6. Construction.

- 1 The provisions of this article operate in addition to, and not
- 2 in derogation of, any of the provisions contained in article
- 3 seven-b of this chapter.

CHAPTER 166

(S. B. 403 - By Senators Walters and Nohe)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §17A-4A-15 of the Code of West Virginia, 1931, as amended, relating to liens on vehicles; expanding period of time during which a recorded lien on a vehicle is valid; expanding period of time during which a refiled lien on a vehicle is valid; and clarifying that the lienholder may refile a lien or encumbrance without obtaining the owner's consent.

Be it enacted by the Legislature of West Virginia:

That §17A-4A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES
TO BE SHOWN ON CERTIFICATE OF
TITLE; NOTICE TO CREDITORS AND
PURCHASERS.**

§17A-4A-15. Expiration of lien or encumbrance; refiling.

- 1 The filing of any lien or encumbrance and its recordation
- 2 upon the face of a certificate of title to any vehicle as provided

3 in this article is valid for fifteen years only from the date of
4 filing, unless the lienholder refiles the lien or encumbrance in the
5 manner provided in this article for filing and recordation in the
6 first instance, in which event the lien or encumbrance is valid for
7 successive additional periods of five years from the date of each
8 refiling: *Provided*, That this article does not require the
9 lienholder to obtain the consent of the owner to refile the lien or
10 encumbrance: *Provided, however*, That in the case of a mobile
11 home or manufactured home, the filing of any lien or
12 encumbrance and its recordation upon the face of a certificate of
13 title to the mobile home or manufactured home is valid for a
14 period of thirty-three years from the date of filing.

15 When the last lien or encumbrance shown on a certificate of
16 title becomes invalid by the passage of time as provided in this
17 section, the Commissioner of Motor Vehicles is not required to
18 maintain a lien index as to the certificate of title.

CHAPTER 167

(S. B. 418 - By Senators Nohe and Gaunch)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §38-1-7 of the Code of West Virginia, 1931, as amended, relating to providing that a defendant in a civil action to recover a deficiency after a sale under a deed of trust may not assert as a defense that fair market value was not obtained for property sold at foreclosure sale.

Be it enacted by the Legislature of West Virginia:

That §38-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**§38-1-7. Application of proceeds; action to recover a deficiency.**

1 (a) The trustee shall apply the proceeds of sale, first to the
2 payment of expenses attending the execution of the trust,
3 including a commission to the trustee of five percent on the first
4 \$300, and two percent on the residue of the proceeds, and shall
5 apply the balance of such proceeds pro rata, or in the order of
6 priority, if any, prescribed by the trust deed, to the payment of
7 the debts secured and the indemnity of the sureties indemnified
8 by the deed, and shall pay the surplus, if any, to the grantor, his,
9 her or its heirs, personal representatives, successors or assigns,
10 as their interests may appear.

11 (b) A trust deed grantor, the obligor on the debt secured by
12 the deed of trust, including any maker, comaker, guarantor,
13 surety or other accommodation party, or other defendant in a
14 civil action seeking a deficiency judgment on the debt secured
15 by the deed of trust, may not assert as a defense that the fair
16 market value of secured real property was not obtained at a trust
17 deed foreclosure sale conducted in accordance with this article.

CHAPTER 168

**(Com. Sub. for S. B. 6 - By Senators Ferns, Boley,
Carmichael, Gaunch, Leonhardt, Mullins, Nohe, Trump,
Blair, Plymale, Stollings, Cole (Mr. President) and Takubo)**

[Amended and again passed March 10, 2015; as a result of the objections of the Governor;
in effect from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11

of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; amending existing definitions of “collateral source”, “health care”, “health care facility”, “health care provider” and “medical professional liability” and creating a new definition for “related entity” all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages; clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to read as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.

1 The Legislature finds and declares that:

2 The citizens of this state are entitled to the best medical care
3 and facilities available and that health care providers offer an
4 essential and basic service which requires that the public policy
5 of this state encourage and facilitate the provision of such
6 service to our citizens;

7 As in every human endeavor the possibility of injury or
8 death from negligent conduct commands that protection of the
9 public served by health care providers be recognized as an
10 important state interest;

11 Our system of litigation is an essential component of this
12 state's interest in providing adequate and reasonable
13 compensation to those persons who suffer from injury or death
14 as a result of professional negligence, and any limitation placed
15 on this system must be balanced with and considerate of the need
16 to fairly compensate patients who have been injured as a result
17 of negligent and incompetent acts by health care providers;

18 Liability insurance is a key part of our system of litigation,
19 affording compensation to the injured while fulfilling the need
20 and fairness of spreading the cost of the risks of injury;

21 A further important component of these protections is the
22 capacity and willingness of health care providers to monitor and
23 effectively control their professional competency, so as to
24 protect the public and ensure to the extent possible the highest
25 quality of care;

26 It is the duty and responsibility of the Legislature to balance
27 the rights of our individual citizens to adequate and reasonable
28 compensation with the broad public interest in the provision of
29 services by qualified health care providers and health care
30 facilities who can themselves obtain the protection of reasonably
31 priced and extensive liability coverage;

32 In recent years, the cost of insurance coverage has risen
33 dramatically while the nature and extent of coverage has
34 diminished, leaving the health care providers, the health care
35 facilities and the injured without the full benefit of professional
36 liability insurance coverage;

37 Many of the factors and reasons contributing to the increased
38 cost and diminished availability of professional liability
39 insurance arise from the historic inability of this state to
40 effectively and fairly regulate the insurance industry so as to
41 guarantee our citizens that rates are appropriate, that purchasers
42 of insurance coverage are not treated arbitrarily and that rates
43 reflect the competency and experience of the insured health care
44 providers and health care facilities;

45 The unpredictable nature of traumatic injury health care
46 services often results in a greater likelihood of unsatisfactory
47 patient outcomes, a higher degree of patient and patient family
48 dissatisfaction and frequent malpractice claims, creating a
49 financial strain on the trauma care system of our state, increasing
50 costs for all users of the trauma care system and impacting the
51 availability of these services, requires appropriate and balanced
52 limitations on the rights of persons asserting claims against
53 trauma care health care providers, this balance must guarantee
54 availability of trauma care services while mandating that these
55 services meet all national standards of care, to assure that our
56 health care resources are being directed towards providing the
57 best trauma care available;

58 The cost of liability insurance coverage has continued to rise
59 dramatically, resulting in the state's loss and threatened loss of
60 physicians, which, together with other costs and taxation
61 incurred by health care providers in this state, have created a
62 competitive disadvantage in attracting and retaining qualified
63 physicians and other health care providers;

64 Medical liability issues have reached critical proportions for
65 the state's long-term health care facilities, as: (1) Medical
66 liability insurance premiums for nursing homes in West Virginia
67 continue to increase and the number of claims per bed has
68 increased significantly; (2) the cost to the state Medicaid
69 program as a result of such higher premiums has grown
70 considerably in this period; (3) current medical liability premium
71 costs for some nursing homes constitute a significant percentage
72 of the amount of coverage; (4) these high costs are leading some
73 facilities to consider dropping medical liability insurance
74 coverage altogether; and (5) the medical liability insurance crisis
75 for nursing homes may soon result in a reduction of the number
76 of beds available to citizens in need of long-term care; and

77 The modernization and structure of the health care delivery
78 system necessitate an update of provisions of this article in order
79 to facilitate and continue the objectives of this article which are
80 to control the increase in the cost of liability insurance and to
81 maintain access to affordable health care services for our
82 citizens.

83 Therefore, the purpose of this article is to provide a
84 comprehensive resolution of the matters and factors which the
85 Legislature finds must be addressed to accomplish the goals set
86 forth in this section. In so doing, the Legislature has determined
87 that reforms in the common law and statutory rights of our
88 citizens must be enacted together as necessary and mutual
89 ingredients of the appropriate legislative response relating to:

90 (1) Compensation for injury and death;

91 (2) The regulation of rate making and other practices by the
92 liability insurance industry, including the formation of a
93 physicians' mutual insurance company and establishment of a
94 fund to assure adequate compensation to victims of malpractice;
95 and

96 (3) The authority of medical licensing boards to effectively
97 regulate and discipline the health care providers under such
98 board.

§55-7B-2. Definitions.

1 (a) “Board” means the State Board of Risk and Insurance
2 Management.

3 (b) “Collateral source” means a source of benefits or
4 advantages for economic loss that the claimant has received
5 from:

6 (1) Any federal or state act, public program or insurance
7 which provides payments for medical expenses, disability
8 benefits, including workers’ compensation benefits, or other
9 similar benefits. Benefits payable under the Social Security Act
10 and Medicare are not considered payments from collateral
11 sources except for Social Security disability benefits directly
12 attributable to the medical injury in question;

13 (2) Any contract or agreement of any group, organization,
14 partnership or corporation to provide, pay for or reimburse the
15 cost of medical, hospital, dental, nursing, rehabilitation, therapy
16 or other health care services or provide similar benefits, but
17 excluding any amount that a group, organization, partnership,
18 corporation or health care provider agrees to reduce, discount or
19 write off of a medical bill;

20 (3) Any group accident, sickness or income disability
21 insurance, any casualty or property insurance, including
22 automobile and homeowners’ insurance, which provides medical
23 benefits, income replacement or disability coverage, or any other
24 similar insurance benefits, except life insurance, to the extent
25 that someone other than the insured, including the insured’s
26 employer, has paid all or part of the premium or made an
27 economic contribution on behalf of the plaintiff; or

28 (4) Any contractual or voluntary wage continuation plan
29 provided by an employer or otherwise or any other system
30 intended to provide wages during a period of disability.

31 (c) “Consumer Price Index” means the most recent
32 Consumer Price Index for All Consumers published by the
33 United States Department of Labor.

34 (d) “Emergency condition” means any acute traumatic injury
35 or acute medical condition which, according to standardized
36 criteria for triage, involves a significant risk of death or the
37 precipitation of significant complications or disabilities,
38 impairment of bodily functions or, with respect to a pregnant
39 woman, a significant risk to the health of the unborn child.

40 (e) “Health care” means:

41 (1) Any act, service or treatment provided under, pursuant to
42 or in the furtherance of a physician’s plan of care, a health care
43 facility’s plan of care, medical diagnosis or treatment;

44 (2) Any act, service or treatment performed or furnished, or
45 which should have been performed or furnished, by any health
46 care provider or person supervised by or acting under the
47 direction of a health care provider or licensed professional for,
48 to or on behalf of a patient during the patient’s medical care,
49 treatment or confinement, including, but not limited to, staffing,
50 medical transport, custodial care or basic care, infection control,
51 positioning, hydration, nutrition and similar patient services; and

52 (3) The process employed by health care providers and
53 health care facilities for the appointment, employment,
54 contracting, credentialing, privileging and supervision of health
55 care providers.

56 (f) “Health care facility” means any clinic, hospital,
57 pharmacy, nursing home, assisted living facility, residential care

58 community, end-stage renal disease facility, home health agency,
59 child welfare agency, group residential facility, behavioral health
60 care facility or comprehensive community mental health center,
61 intellectual/developmental disability center or program, or other
62 ambulatory health care facility, in and licensed, regulated or
63 certified by the state of West Virginia under state or federal law
64 and any state-operated institution or clinic providing health care
65 and any related entity to the health care facility.

66 (g) “Health care provider” means a person, partnership,
67 corporation, professional limited liability company, health care
68 facility, entity or institution licensed by, or certified in, this state
69 or another state, to provide health care or professional health
70 care services, including, but not limited to, a physician,
71 osteopathic physician, physician assistant, advanced practice
72 registered nurse, hospital, health care facility, dentist, registered
73 or licensed practical nurse, optometrist, podiatrist, chiropractor,
74 physical therapist, speech-language pathologist and audiologist,
75 occupational therapist, psychologist, pharmacist, technician,
76 certified nursing assistant, emergency medical service personnel,
77 emergency medical services authority or agency, any person
78 supervised by or acting under the direction of a licensed
79 professional, any person taking actions or providing service or
80 treatment pursuant to or in furtherance of a physician’s plan of
81 care, a health care facility’s plan of care, medical diagnosis or
82 treatment; or an officer, employee or agent of a health care
83 provider acting in the course and scope of the officer’s,
84 employee’s or agent’s employment.

85 (h) “Medical injury” means injury or death to a patient
86 arising or resulting from the rendering of or failure to render
87 health care.

88 (i) “Medical professional liability” means any liability for
89 damages resulting from the death or injury of a person for any
90 tort or breach of contract based on health care services rendered,

91 or which should have been rendered, by a health care provider or
92 health care facility to a patient. It also means other claims that
93 may be contemporaneous to or related to the alleged tort or
94 breach of contract or otherwise provided, all in the context of
95 rendering health care services.

96 (j) “Medical professional liability insurance” means a
97 contract of insurance or any actuarially sound self-funding
98 program that pays for the legal liability of a health care facility
99 or health care provider arising from a claim of medical
100 professional liability. In order to qualify as medical professional
101 liability insurance for purposes of this article, a self-funding
102 program for an individual physician must meet the requirements
103 and minimum standards set forth in section twelve of this article.

104 (k) “Noneconomic loss” means losses, including, but not
105 limited to, pain, suffering, mental anguish and grief.

106 (l) “Patient” means a natural person who receives or should
107 have received health care from a licensed health care provider
108 under a contract, expressed or implied.

109 (m) “Plaintiff” means a patient or representative of a patient
110 who brings an action for medical professional liability under this
111 article.

112 (n) “Related entity” means any corporation, foundation,
113 partnership, joint venture, professional limited liability company,
114 limited liability company, trust, affiliate or other entity under
115 common control or ownership, whether directly or indirectly,
116 partially or completely, legally, beneficially or constructively,
117 with a health care provider or health care facility; or which owns
118 directly, indirectly, beneficially or constructively any part of a
119 health care provider or health care facility.

120 (o) “Representative” means the spouse, parent, guardian,
121 trustee, attorney or other legal agent of another.

§55-7B-7. Testimony of expert witness on standard of care.

1 (a) The applicable standard of care and a defendant's failure
2 to meet the standard of care, if at issue, shall be established in
3 medical professional liability cases by the plaintiff by testimony
4 of one or more knowledgeable, competent expert witnesses if
5 required by the court. A proposed expert witness may only be
6 found competent to testify if the foundation for his or her
7 testimony is first laid establishing that: (1) The opinion is
8 actually held by the expert witness; (2) the opinion can be
9 testified to with reasonable medical probability; (3) the expert
10 witness possesses professional knowledge and expertise coupled
11 with knowledge of the applicable standard of care to which his
12 or her expert opinion testimony is addressed; (4) the expert
13 witness's opinion is grounded on scientifically valid peer-
14 reviewed studies if available; (5) the expert witness maintains a
15 current license to practice medicine with the appropriate
16 licensing authority of any state of the United States: *Provided,*
17 That the expert witness's license has not been revoked or
18 suspended in the past year in any state; and (6) the expert
19 witness is engaged or qualified in a medical field in which the
20 practitioner has experience and/or training in diagnosing or
21 treating injuries or conditions similar to those of the patient. If
22 the witness meets all of these qualifications and devoted, at the
23 time of the medical injury, sixty percent of his or her
24 professional time annually to the active clinical practice in his or
25 her medical field or specialty, or to teaching in his or her
26 medical field or speciality in an accredited university, there shall
27 be a rebuttable presumption that the witness is qualified as an
28 expert. The parties shall have the opportunity to impeach any
29 witness's qualifications as an expert. Financial records of an
30 expert witness are not discoverable or relevant to prove the
31 amount of time the expert witness spends in active practice or
32 teaching in his or her medical field unless good cause can be
33 shown to the court.

34 (b) Nothing contained in this section limits a trial court's
35 discretion to determine the competency or lack of competency
36 of a witness on a ground not specifically enumerated in this
37 section.

§55-7B-7a. Admissibility and use of certain information.

1 (a) In an action brought, there is a rebuttable presumption
2 that the following information may not be introduced unless it
3 applies specifically to the injured person or it involves
4 substantially similar conduct that occurred within one year of the
5 particular incident involved:

6 (1) A state or federal survey, audit, review or other report of
7 a health care provider or health care facility;

8 (2) Disciplinary actions against a health care provider's
9 license, registration or certification;

10 (3) An accreditation report of a health care provider or health
11 care facility; and

12 (4) An assessment of a civil or criminal penalty.

13 (b) In any action brought, if the health care facility or health
14 care provider demonstrates compliance with the minimum
15 staffing requirements under state law, the health care facility or
16 health care provider is entitled to a rebuttable presumption that
17 appropriate staffing was provided.

18 (c) Information under this section may only be introduced in
19 a proceeding if it is otherwise admissible under the West
20 Virginia Rules of Evidence.

§55-7B-8. Limit on liability for noneconomic loss.

1 (a) In any professional liability action brought against a
2 health care provider pursuant to this article, the maximum

3 amount recoverable as compensatory damages for noneconomic
4 loss may not exceed \$250,000 for each occurrence, regardless of
5 the number of plaintiffs or the number of defendants or, in the
6 case of wrongful death, regardless of the number of distributees,
7 except as provided in subsection (b) of this section.

8 (b) The plaintiff may recover compensatory damages for
9 noneconomic loss in excess of the limitation described in
10 subsection (a) of this section, but not in excess of \$500,000 for
11 each occurrence, regardless of the number of plaintiffs or the
12 number of defendants or, in the case of wrongful death,
13 regardless of the number of distributees, where the damages for
14 noneconomic losses suffered by the plaintiff were for: (1)
15 Wrongful death; (2) permanent and substantial physical
16 deformity, loss of use of a limb or loss of a bodily organ system;
17 or (3) permanent physical or mental functional injury that
18 permanently prevents the injured person from being able to
19 independently care for himself or herself and perform life-
20 sustaining activities.

21 (c) On January 1, 2004, and in each year thereafter, the
22 limitation for compensatory damages contained in subsections
23 (a) and (b) of this section shall increase to account for inflation
24 by an amount equal to the Consumer Price Index published by
25 the United States Department of Labor, not to exceed one
26 hundred fifty percent of the amounts specified in said
27 subsections. (d) The limitations on noneconomic damages
28 contained in subsections (a), (b), (c) and (e) of this section are
29 not available to any defendant in an action pursuant to this article
30 which does not have medical professional liability insurance in
31 the aggregate amount of at least \$1 million for each occurrence
32 covering the medical injury which is the subject of the action.

33 (e) If subsection (a) or (b) of this section, as enacted during
34 the 2003 regular session of the Legislature, or the application
35 thereof to any person or circumstance, is found by a court of law

36 to be unconstitutional or otherwise invalid, the maximum
37 amount recoverable as damages for noneconomic loss in a
38 professional liability action brought against a health care
39 provider under this article shall thereafter not exceed \$1 million.

§55-7B-9. Several liability.

1 (a) In the trial of a medical professional liability action under
2 this article involving multiple defendants, the trier of fact shall
3 report its findings on a form provided by the court which
4 contains each of the possible verdicts as determined by the court.
5 Unless otherwise agreed by all the parties to the action, the jury
6 shall be instructed to answer special interrogatories, or the court,
7 acting without a jury, shall make findings as to:

8 (1) The total amount of compensatory damages recoverable
9 by the plaintiff;

10 (2) The portion of the damages that represents damages for
11 noneconomic loss;

12 (3) The portion of the damages that represents damages for
13 each category of economic loss;

14 (4) The percentage of fault, if any, attributable to each
15 plaintiff; and

16 (5) The percentage of fault, if any, attributable to each of the
17 defendants.

18 (b) In assessing percentages of fault, the trier of fact shall
19 consider only the fault of the parties in the litigation at the time
20 the verdict is rendered and may not consider the fault of any
21 other person who has settled a claim with the plaintiff arising out
22 of the same medical injury: *Provided, That*, upon the creation of
23 the Patient Injury Compensation Fund provided for in article
24 twelve-c, chapter twenty-nine of this code, or of some other

25 mechanism for compensating a plaintiff for any amount of
26 economic damages awarded by the trier of fact which the
27 plaintiff has been unable to collect, the trier of fact shall, in
28 assessing percentages of fault, consider the fault of all alleged
29 parties, including the fault of any person who has settled a claim
30 with the plaintiff arising out of the same medical injury.

31 (c) If the trier of fact renders a verdict for the plaintiff, the
32 court shall enter judgment of several, but not joint, liability
33 against each defendant in accordance with the percentage of fault
34 attributed to the defendant by the trier of fact.

35 (d) To determine the amount of judgment to be entered
36 against each defendant, the court shall first, after adjusting the
37 verdict as provided in section nine-a of this article, reduce the
38 adjusted verdict by the amount of any preverdict settlement
39 arising out of the same medical injury. The court shall then, with
40 regard to each defendant, multiply the total amount of damages
41 remaining, with interest, by the percentage of fault attributed to
42 each defendant by the trier of fact. The resulting amount of
43 damages, together with any post-judgment interest accrued, shall
44 be the maximum recoverable against the defendant.

45 (e) Upon the creation of the Patient Injury Compensation
46 Fund provided for in article twelve-c, chapter twenty-nine of this
47 code, or of some other mechanism for compensating a plaintiff
48 for any amount of economic damages awarded by the trier of
49 fact which the plaintiff has been unable to collect, the court shall,
50 in determining the amount of judgment to be entered against
51 each defendant, first multiply the total amount of damages, with
52 interest, recoverable by the plaintiff by the percentage of each
53 defendant's fault and that amount, together with any post-
54 judgment interest accrued, is the maximum recoverable against
55 said defendant. Prior to the court's entry of the final judgment
56 order as to each defendant against whom a verdict was rendered,
57 the court shall reduce the total jury verdict by any amounts

58 received by a plaintiff in settlement of the action. When any
59 defendant's percentage of the verdict exceeds the remaining
60 amounts due the plaintiff after the mandatory reductions, each
61 defendant shall be liable only for the defendant's pro rata share
62 of the remainder of the verdict as calculated by the court from
63 the remaining defendants to the action. The plaintiff's total
64 award may never exceed the jury's verdict less any statutory or
65 court-ordered reductions.

66 (f) Nothing in this section is meant to eliminate or diminish
67 any defenses or immunities which exist as of the effective date
68 of this section, except as expressly noted in this section.

69 (g) Nothing in this article is meant to preclude a health care
70 provider from being held responsible for the portion of fault
71 attributed by the trier of fact to any person acting as the health
72 care provider's agent or servant or to preclude imposition of
73 fault otherwise imputable or attributable to the health care
74 provider under claims of vicarious liability. A health care
75 provider may not be held vicariously liable for the acts of a
76 nonemployee pursuant to a theory of ostensible agency unless
77 the alleged agent does not maintain professional liability
78 insurance covering the medical injury which is the subject of the
79 action in the aggregate amount of at least \$1 million for each
80 occurrence.

§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

1 (a) In any action arising after the effective date of this
2 section, a defendant who has been found liable to the plaintiff for
3 damages for medical care, rehabilitation services, lost earnings
4 or other economic losses may present to the court, after the trier
5 of fact has rendered a verdict, but before entry of judgment,
6 evidence of payments the plaintiff has received for the same
7 injury from collateral sources.

8 (b) In a hearing held pursuant to subsection (a) of this
9 section, the defendant may present evidence of future payments
10 from collateral sources if the court determines that:

11 (1) There is a preexisting contractual or statutory obligation
12 on the collateral source to pay the benefits;

13 (2) The benefits, to a reasonable degree of certainty, will be
14 paid to the plaintiff for expenses the trier of fact has determined
15 the plaintiff will incur in the future; and

16 (3) The amount of the future expenses is readily reducible to
17 a sum certain.

18 (c) In a hearing held pursuant to subsection (a) of this
19 section, the plaintiff may present evidence of the value of
20 payments or contributions he or she has made to secure the right
21 to the benefits paid by the collateral source.

22 (d) After hearing the evidence presented by the parties, the
23 court shall make the following findings of fact:

24 (1) The total amount of damages for economic loss found by
25 the trier of fact;

26 (2) The total amount of damages for each category of
27 economic loss found by the trier of fact;

28 (3) The total amount of allowable collateral source payments
29 received or to be received by the plaintiff for the medical injury
30 which was the subject of the verdict in each category of
31 economic loss; and

32 (4) The total amount of any premiums or contributions paid
33 by the plaintiff in exchange for the collateral source payments in
34 each category of economic loss found by the trier of fact.

35 (e) The court shall subtract the total premiums the plaintiff
36 was found to have paid in each category of economic loss from
37 the total collateral source benefits the plaintiff received with
38 regard to that category of economic loss to arrive at the net
39 amount of collateral source payments.

40 (f) The court shall then subtract the net amount of collateral
41 source payments received or to be received by the plaintiff in
42 each category of economic loss from the total amount of
43 damages awarded the plaintiff by the trier of fact for that
44 category of economic loss to arrive at the adjusted verdict.

45 (g) The court may not reduce the verdict rendered by the
46 trier of fact in any category of economic loss to reflect:

47 (1) Amounts paid to or on behalf of the plaintiff which the
48 collateral source has a right to recover from the plaintiff through
49 subrogation, lien or reimbursement;

50 (2) Amounts in excess of benefits actually paid or to be paid
51 on behalf of the plaintiff by a collateral source in a category of
52 economic loss;

53 (3) The proceeds of any individual disability or income
54 replacement insurance paid for entirely by the plaintiff;

55 (4) The assets of the plaintiff or the members of the
56 plaintiff's immediate family; or

57 (5) A settlement between the plaintiff and another tortfeasor.

58 (h) After determining the amount of the adjusted verdict, the
59 court shall enter judgment in accordance with the provisions of
60 section nine of this article.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a

designated trauma center; exceptions; emergency rules.

1 (a) In any action brought under this article for injury to or
2 death of a patient as a result of health care services or assistance
3 rendered in good faith and necessitated by an emergency
4 condition for which the patient enters a health care facility
5 designated by the Office of Emergency Medical Services as a
6 trauma center, including health care services or assistance
7 rendered in good faith by a licensed emergency medical services
8 authority or agency, certified emergency medical service
9 personnel or an employee of a licensed emergency medical
10 services authority or agency, the total amount of civil damages
11 recoverable may not exceed \$500,000 for each occurrence,
12 exclusive of interest computed from the date of judgment, and
13 regardless of the number of plaintiffs or the number of
14 defendants or, in the case of wrongful death, regardless of the
15 number of distributees.

16 (b) The limitation of liability in subsection (a) of this section
17 also applies to any act or omission of a health care provider in
18 rendering continued care or assistance in the event that surgery
19 is required as a result of the emergency condition within a
20 reasonable time after the patient's condition is stabilized.

21 (c) The limitation on liability provided under subsection (a)
22 of this section does not apply to any act or omission in rendering
23 care or assistance which:

24 (1) Occurs after the patient's condition is stabilized and the
25 patient is capable of receiving medical treatment as a
26 nonemergency patient; or

27 (2) Is unrelated to the original emergency condition.

28 (d) In the event that: (1) A physician provides follow-up care
29 to a patient to whom the physician rendered care or assistance

30 pursuant to subsection (a) of this section; and (2) a medical
31 condition arises during the course of the follow-up care that is
32 directly related to the original emergency condition for which
33 care or assistance was rendered pursuant to said subsection, there
34 is rebuttable presumption that the medical condition was the
35 result of the original emergency condition and that the limitation
36 on liability provided by said subsection applies with respect to
37 that medical condition.

38 (e) There is a rebuttable presumption that a medical
39 condition which arises in the course of follow-up care provided
40 by the designated trauma center health care provider who
41 rendered good faith care or assistance for the original emergency
42 condition is directly related to the original emergency condition
43 where the follow-up care is provided within a reasonable time
44 after the patient's admission to the designated trauma center.

45 (f) The limitation on liability provided under subsection (a)
46 of this section does not apply where health care or assistance for
47 the emergency condition is rendered:

48 (1) In willful and wanton or reckless disregard of a risk of
49 harm to the patient; or

50 (2) In clear violation of established written protocols for
51 triage and emergency health care procedures developed by the
52 Office of Emergency Medical Services in accordance with
53 subsection (e) of this section. In the event that the Office of
54 Emergency Medical Services has not developed a written triage
55 or emergency medical protocol by the effective date of this
56 section, the limitation on liability provided under subsection (a)
57 of this section does not apply where health care or assistance is
58 rendered under this section in violation of nationally recognized
59 standards for triage and emergency health care procedures.

60 (g) The Office of Emergency Medical Services shall, prior
61 to the effective date of this section, develop a written protocol

62 specifying recognized and accepted standards for triage and
63 emergency health care procedures for treatment of emergency
64 conditions necessitating admission of the patient to a designated
65 trauma center.

66 (h) In its discretion, the Office of Emergency Medical
67 Services may grant provisional trauma center status for a period
68 of up to one year to a health care facility applying for designated
69 trauma center status. A facility given provisional trauma center
70 status is eligible for the limitation on liability provided in
71 subsection (a) of this section. If, at the end of the provisional
72 period, the facility has not been approved by the Office of
73 Emergency Medical Services as a designated trauma center, the
74 facility is no longer eligible for the limitation on liability
75 provided in subsection (a) of this section.

76 (i) The Commissioner of the Bureau for Public Health may
77 grant an applicant for designated trauma center status a one-time
78 only extension of provisional trauma center status, upon
79 submission by the facility of a written request for extension,
80 accompanied by a detailed explanation and plan of action to
81 fulfill the requirements for a designated trauma center. If, at the
82 end of the six-month period, the facility has not been approved
83 by the Office of Emergency Medical Services as a designated
84 trauma center, the facility no longer has the protection of the
85 limitation on liability provided in subsection (a) of this section.

86 (j) If the Office of Emergency Medical Services determines
87 that a health care facility no longer meets the requirements for a
88 designated trauma center, it shall revoke the designation, at
89 which time the limitation on liability established by subsection
90 (a) of this section ceases to apply to that health care facility for
91 services or treatment rendered thereafter.

92 (k) The Legislature hereby finds that an emergency exists
93 compelling promulgation of an emergency rule, consistent with

94 the provisions of this section, governing the criteria for
95 designation of a facility as a trauma center or provisional trauma
96 center and implementation of a statewide trauma/emergency care
97 system. The Legislature therefore directs the Secretary of the
98 Department of Health and Human Resources to file, on or before
99 July 1, 2003, emergency rules specifying the criteria for
100 designation of a facility as a trauma center or provisional trauma
101 center in accordance with nationally accepted and recognized
102 standards and governing the implementation of a statewide
103 trauma/emergency care system. The rules governing the
104 statewide trauma/emergency care system shall include, but not
105 be limited to:

106 (1) System design, organizational structure and operation,
107 including integration with the existing emergency medical
108 services system;

109 (2) Regulation of facility designation, categorization and
110 credentialing, including the establishment and collection of
111 reasonable fees for designation; and

112 (3) System accountability, including medical review and
113 audit to assure system quality. Any medical review committees
114 established to assure system quality shall include all levels of
115 care, including emergency medical service providers, and both
116 the review committees and the providers shall qualify for all the
117 rights and protections established in article three-c, chapter thirty
118 of this code.

119 (1) On January 1, 2016, and in each year after that, the
120 limitation for civil damages contained in subsection (a) of this
121 section shall increase to account for inflation by an amount equal
122 to the Consumer Price Index published by the United States
123 Department of Labor, not to exceed one hundred fifty percent of
124 said subsection.

§55-7B-9d. Adjustment of verdict for past medical expenses.

1 A verdict for past medical expenses is limited to:

2 (1) The total amount of past medical expenses paid by or on
3 behalf of the plaintiff; and

4 (2) The total amount of past medical expenses incurred but
5 not paid by or on behalf of the plaintiff for which the plaintiff or
6 another person on behalf of the plaintiff is obligated to pay.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the first
2 extraordinary session of the Legislature, 1986, shall be effective
3 at the same time that the provisions of Enrolled Senate Bill 714,
4 enacted during the regular session, 1986, become effective, and
5 the provisions of said House Bill 149 shall be deemed to amend
6 the provisions of Enrolled Senate Bill 714. The provisions of this
7 article shall not apply to injuries which occur before the effective
8 date of this said Enrolled Senate Bill 714.

9 The amendments to this article as provided in House Bill
10 601, enacted during the sixth extraordinary session of the
11 Legislature, 2001, apply to all causes of action alleging medical
12 professional liability which are filed on or after March 1, 2002.

13 The amendments to this article provided in Enrolled
14 Committee Substitute for House Bill No. 2122 during the regular
15 session of the Legislature, 2003, apply to all causes of action
16 alleging medical professional liability which are filed on or after
17 July 1, 2003.

18 (b) The amendments to this article provided in Enrolled
19 Committee Substitute for Senate Bill No. 6 during the regular
20 session of the Legislature, 2015, apply to all causes of action

21 alleging medical professional liability which are filed on or after
22 July 1, 2015.

§55-7B-11. Severability.

1 (a) If any provision of this article as enacted during the first
2 extraordinary session of the Legislature, 1986, in House Bill 149,
3 or as enacted during the regular session of the Legislature, 1986,
4 in Senate Bill 714, or as enacted during the regular session of the
5 Legislature, 2015, or the application thereof to any person or
6 circumstance is held invalid, the invalidity does not affect other
7 provisions or applications of this article, and to this end, the
8 provisions of this article are declared to be severable.

9 (b) If any provision of the amendments to section five of this
10 article, any provision of section six-d of this article or any
11 provision of the amendments to section eleven, article six,
12 chapter fifty-six of this code as provided in House Bill 601,
13 enacted during the sixth extraordinary session of the Legislature,
14 2001, is held invalid, or the application thereof to any person is
15 held invalid, then, notwithstanding any other provision of law,
16 every other provision of said House Bill 601 shall be deemed
17 invalid and of no further force and effect.

18 (c) If any provision of the amendments to section six or ten
19 of this article or any provision of section six-a, six-b or six-c of
20 this article as provided in House Bill 601, enacted during the
21 sixth extraordinary session of the Legislature, 2001, is held
22 invalid, the invalidity does not affect other provisions or
23 applications of this article, and to this end, such provisions are
24 deemed severable.

CHAPTER 169

**(H. B. 2797 - By Delegate(s) Campbell, Perry, Moye,
Fleischauer, Bates, Guthrie, Ellington, Householder,
Ashley, P. Smith and McCuskey)**

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRA-
TION; ISSUANCE OF CERTIFICATES OF
TITLE.**

**§17A-3-4. Application for certificate of title; fees; abolishing
privilege tax; prohibition of issuance of certificate of**

title without compliance with consumer sales and service tax provisions; exceptions.

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

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

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser of the vehicle is the value of the
27 vehicle. If the vehicle is a used or secondhand vehicle, the
28 present market value at time of transfer or purchase is the value
29 of the vehicle for the purposes of this section: *Provided*, That so
30 much of the purchase price or consideration as is represented by
31 the exchange of other vehicles on which the tax imposed by this

32 section has been paid by the purchaser shall be deducted from
33 the total actual price or consideration paid for the vehicle,
34 whether the vehicle be new or secondhand. If the vehicle is
35 acquired through gift or by any manner whatsoever, unless
36 specifically exempted in this section, the present market value of
37 the vehicle at the time of the gift or transfer is the value of the
38 vehicle for the purposes of this section.

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

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

61 (4) The Division of Motor Vehicles shall issue a certificate
62 of registration and title to an applicant without payment of the
63 tax imposed by this section if the applicant is a corporation,
64 partnership or limited liability company transferring the vehicle

65 to another corporation, partnership or limited liability company
66 when the entities involved in the transfer are members of the
67 same controlled group and the transferring entity has previously
68 paid the tax on the vehicle transferred. For the purposes of this
69 section, control means ownership, directly or indirectly, of stock
70 or equity interests possessing fifty percent or more of the total
71 combined voting power of all classes of the stock of a
72 corporation or equity interests of a partnership or limited liability
73 company entitled to vote or ownership, directly or indirectly, of
74 stock or equity interests possessing fifty percent or more of the
75 value of the corporation, partnership or limited liability
76 company.

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

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

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

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

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

131 (10) A person who has paid the tax imposed by this section
132 is not required to pay the tax a second time for the same motor

133 vehicle, but is required to pay a charge of \$5 for the certificate
134 of retitling of that motor vehicle, except that the tax shall be paid
135 by the person when the title to the vehicle has been transferred
136 either in this or another state from the person to another person
137 and transferred back to the person.

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

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

158 (13) The tax imposed by this section does not apply to the
159 titling of any vehicle operated by an urban mass transit authority
160 as defined in article twenty-seven, chapter eight of this code or
161 a nonprofit entity exempt from federal and state income tax
162 under the Internal Revenue Code and whose purpose is to
163 provide mass transportation to the public at large designed for
164 the transportation of persons and being operated for the
165 transportation of persons in the public interest.

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

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

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

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

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

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

192 (c) Notwithstanding any provisions of this code to the
193 contrary, the owners of trailers, semitrailers, recreational
194 vehicles and other vehicles not subject to the certificate of title
195 tax prior to the enactment of this chapter are subject to the
196 privilege tax imposed by this section: *Provided*, That the

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

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

221 (e) Any person making any affidavit required under any
222 provision of this section who knowingly swears falsely, or any
223 person who counsels, advises, aids or abets another in the
224 commission of false swearing, or any person, while acting as an
225 agent of the Division of Motor Vehicles, issues a vehicle
226 registration without first collecting the fees and taxes or fails to
227 perform any other duty required by this chapter or chapter eleven
228 of this code to be performed before a vehicle registration is
229 issued is, on the first offense, guilty of a misdemeanor and, upon
230 conviction thereof, shall be fined not more than \$500 or be

231 confined in jail for a period not to exceed six months or, in the
232 discretion of the court, both fined and confined. For a second or
233 any subsequent conviction within five years, that person is guilty
234 of a felony and, upon conviction thereof, shall be fined not more
235 than \$5,000 or be imprisoned in a state correctional facility for
236 not less than one year nor more than five years or, in the
237 discretion of the court, both fined and imprisoned.

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

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

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

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

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

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

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

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

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

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

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

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

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

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

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

34 This section does not prevent county boards of education
35 from providing special education programs, including, but not
36 limited to, special schools, classes, regular class programs and
37 home-teaching or visiting-teacher services for severely disabled
38 preschool children prior to such times as are required by this
39 section. In addition, county boards of education may provide
40 these services to preschool exceptional children in disability
41 categories other than those listed above.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

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

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

14 (b) Every youth committed hereunder shall, following the
15 dispositional proceeding, be transferred to the place or places
16 designated by the commissioner of corrections for complete
17 physical, educational and psychological examinations, including
18 all appropriate tests, to be completed as soon as possible, the
19 completion of the physical examinations to be within twenty
20 days. Such youth shall be housed in a manner so as to prevent
21 the spread of infectious disease. Following disposition and prior
22 to transfer to the custody of the commissioner of corrections,
23 each youth shall be allowed to visit with his or her relatives,
24 without being committed to jail for a period of not less than one
25 hour. The cost of the examinations herein shall be borne by the
26 committing county. The youth shall be provided all treatment
27 and rehabilitation indicated by such examinations.

28 In lieu of the physical examinations and tests provided for
29 herein, the court may, in the absence of objection, have the
30 county health officer or other local health care facility perform

31 physical and mental examinations and tests, so long as such
32 examinations and tests are performed prior to the dispositional
33 proceeding. Except as otherwise provided by law, no child shall
34 be committed to a jail following a dispositional proceeding
35 solely to await a physical, educational or mental examination or
36 the results thereof.

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

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

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

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

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

14 (b) When a convicted person in a jail, prison, or other
15 facility is believed to be mentally ill, intellectually disabled or
16 addicted, as those terms are defined in article one, chapter
17 twenty-seven of this code, and in need of treatment, training or
18 other services, the facts relating to such illness, shall be
19 presented to the chief administrative officer of the facility. Such
20 facts may be presented by a correctional officer, member of a
21 correctional institution medical staff, relative, or the convicted
22 person. Immediately upon receipt of such facts, the chief
23 administrative officer shall arrange for psychiatric or
24 psychological examination of the person alleged to be so
25 afflicted. If the report of the examination is to the effect that the
26 individual is mentally ill, intellectually disabled, or addicted and
27 that treatment, training or other services are required which
28 cannot reasonably be provided at the correctional facility, the
29 chief administrative officer shall file within twenty days after

30 presentation of the facts an application for transfer with the clerk
31 of the circuit court of the county of location of the correctional
32 facility. Such application for transfer shall include a statement of
33 the nature of the treatment which the person's condition warrants
34 and the facility to which transfer is sought.

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

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

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

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

86 Upon completion of the hearing, and consideration of the
87 evidence presented therein, the circuit court or mental hygiene
88 commissioner shall make findings of facts as to whether or not
89 (1) the individual is mentally ill, intellectually disabled or
90 addicted; (2) the individual because of mental illness, mental
91 retardation or addiction is likely to cause serious harm to self or
92 others; (3) the individual could not obtain the requisite treatment
93 or training at the correctional facility or another appropriate
94 correctional facility; and (4) the designated facility to which
95 transfer is sought could provide such treatment or training with

96 such security as the court finds appropriate; and, if all such
97 findings are in the affirmative, the circuit court may order the
98 transfer of such person to the appropriate facility. The findings
99 of fact shall be incorporated into the order entered by the circuit
100 court. In all proceedings hereunder, proof of mental condition
101 and of likelihood of serious harm must be established by clear,
102 cogent and convincing evidence, and the likelihood of serious
103 harm must be based upon evidence of recent overt acts.

CHAPTER 170

**(H. B. 2224 - By Delegate(s) Howell, Manchin,
Rowan, Storch, Canterbury, Stansbury, Zatezalo,
Butler, D. Evans, Ambler and Cooper)**

[Passed March 13, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §15-1F-7 of the Code of West Virginia, 1931, as amended, relating to unlawful military organizations; providing that historical reenactors are not violating the provision prohibiting unlawful military organizations; and providing that individuals or groups of individuals who drill, perform or parade at public ceremonies, including funerals, are not violating the provision prohibiting unlawful military organizations.

Be it enacted by the Legislature of West Virginia:

That §15-1F-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-7. Unlawful military organizations.

1 (a) It is unlawful for any body of individuals other than the
2 regularly organized National Guard or the troops of the United
3 States, to associate themselves together as a military company or
4 organization in this state.

5 (b) Notwithstanding subsection (a) of this section, the
6 Governor may grant permission to public or private schools of
7 the state to organize themselves into companies of cadets, and
8 may furnish the cadets, under proper restrictions, obsolete
9 ordnance stores and equipment owned by the state that are not in
10 use by the National Guard.

11 (c) It is not a violation of this section for a group of
12 individuals to associate as a military company or organization
13 for historical, artistic or fictional performances; or, for an
14 individual or group of individuals to drill, perform or parade at
15 public ceremonies, including funerals.

16 (d) A person who violates subsection (a) of this section, or
17 belongs to or parades with a body of individuals with arms
18 violating subsection (a) of this section, is guilty of a
19 misdemeanor and, upon conviction, shall be fined not more than
20 \$100 or confined in jail for not more than six months.

CHAPTER 171

**(Com. Sub. for S. B. 486 - By Senators Leonhardt,
Boso, D. Hall, Karnes, Maynard, Mullins, Nohe,
Romano and Walters)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §17A-3-23 of the Code of West Virginia, 1931, as amended, relating to removing requirement for

vehicles operated by West Virginia Wing of the Civil Air Patrol to display front license plates with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line; authorizing special license plates for Civil Air Patrol vehicles; and establishing fee to be paid per special license plate.

Be it enacted by the Legislature of West Virginia:

That §17A-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

1 (a) Any motor vehicle designed to carry passengers, owned
2 or leased by the state of West Virginia, or any of its departments,
3 bureaus, commissions or institutions, except vehicles used by the
4 Governor, Treasurer, three vehicles per elected office of the
5 Board of Public Works, vehicles operated by the State Police,
6 not to exceed five vehicles operated by the Office of the
7 Secretary of Military Affairs and Public Safety, not to exceed
8 five vehicles operated by the Division of Homeland Security and
9 Emergency Management, vehicles operated by natural resources
10 police officers of the Division of Natural Resources, not to
11 exceed ten vehicles operated by the arson investigators of the
12 Office of State Fire Marshal, not to exceed two vehicles operated
13 by the Division of Protective Services, not to exceed sixteen
14 vehicles operated by inspectors of the Office of the Alcohol
15 Beverage Control Commissioner, vehicles operated by the West
16 Virginia Wing of the Civil Air Patrol and vehicles operated by

17 probation officers employed under the Supreme Court of
18 Appeals may not be operated or driven by any person unless it
19 has displayed and attached to the front thereof, in the same
20 manner as regular motor vehicle registration plates are attached,
21 a plate of the same size as the regular registration plate, with
22 white lettering on a green background bearing the words “West
23 Virginia” in one line and the words “State Car” in another line
24 and the lettering for the words “State Car” shall be of sufficient
25 size to be plainly readable from a distance of one hundred feet
26 during daylight.

27 The vehicle shall also have attached to the rear a plate
28 bearing a number and any other words and figures as the
29 Commissioner of Motor Vehicles shall prescribe. The rear plate
30 shall also be green with the number in white.

31 (b) Registration plates issued to vehicles owned by counties
32 shall be white on red with the word “County” on top of the plate
33 and the words “West Virginia” on the bottom.

34 (c) Registration plates issued to a city or municipality shall
35 be white on blue with the word “City” on top and the words
36 “West Virginia” on the bottom.

37 (d) Registration plates issued to a city or municipality law-
38 enforcement department shall include blue lettering on a white
39 background with the words “West Virginia” on top of the plate
40 and shall be further designed by the commissioner to include a
41 law-enforcement shield together with other insignia or lettering
42 sufficient to identify the motor vehicle as a municipal law-
43 enforcement department motor vehicle. The colors may not be
44 reversed and shall be of reflectorized material. The registration
45 plates issued to counties, municipalities and other governmental
46 agencies authorized to receive colored plates hereunder shall be
47 affixed to both the front and rear of the vehicles.

48 (e) (1) Registration plates issued to vehicles operated by
49 county sheriffs shall be designed by the commissioner in
50 cooperation with the sheriffs' association with the word
51 "Sheriff" on top of the plate and the words "West Virginia" on
52 the bottom. The plate shall contain a gold shield representing the
53 sheriff's star and a number assigned to that plate by the
54 commissioner. Every county sheriff shall provide the
55 commissioner with a list of vehicles operated by the sheriff,
56 unless otherwise provided in this section, and a fee of \$10 for
57 each vehicle submitted by July 1, 2002.

58 (2) Registration plates issued to vehicles operated by the
59 West Virginia Wing of the Civil Air Patrol shall be designed by
60 the commissioner in cooperation with the Civil Air Patrol and
61 include the words "Civil Air Patrol" on the plate. The Civil Air
62 Patrol shall provide the commissioner with a list of vehicles
63 operated by the Civil Air Patrol, unless otherwise provided in
64 this section, and a fee of \$10 for each new vehicle for which a
65 Civil Air Patrol license plate is requested.

66 (f) The commissioner is authorized to designate the colors
67 and design of any other registration plates that are issued without
68 charge to any other agency in accordance with the motor vehicle
69 laws.

70 (g) Upon application, the commissioner is authorized to
71 issue a maximum of five Class A license plates per applicant to
72 be used by county sheriffs and municipalities on law-
73 enforcement vehicles while engaged in undercover
74 investigations.

75 (h) The commissioner is authorized to issue a maximum of
76 five Class A license plates to be used on vehicles assigned to the
77 Division of Motor Vehicles investigators for commercial driver
78 examination fraud investigation and driver's license issuance
79 fraud detection and fraud prevention.

80 (i) The commissioner is authorized to issue an unlimited
81 number of license plates per applicant to authorized drug and
82 violent crime task forces in the state of West Virginia when the
83 chairperson of the control group of a drug and violent crime task
84 force signs a written affidavit stating that the vehicle or vehicles
85 for which the plates are being requested will be used only for
86 official undercover work conducted by a drug and violent crime
87 task force.

88 (j) The commissioner is authorized to issue twenty Class A
89 license plates to the Criminal Investigation Division of the
90 Department of Revenue for use by its investigators.

91 (k) The commissioner may issue a maximum of ten Class A
92 license plates to the Division of Natural Resources for use by
93 natural resources police officers. The commissioner shall
94 designate the color and design of the registration plates to be
95 displayed on the front and the rear of all other state-owned
96 vehicles owned by the Division of Natural Resources and
97 operated by natural resources police officers.

98 (l) The commissioner is authorized to issue an unlimited
99 number of Class A license plates to the Commission on Special
100 Investigations for state-owned vehicles used for official
101 undercover work conducted by the Commission on Special
102 Investigations.

103 (m) The commissioner is authorized to issue a maximum of
104 two Class A plates to the Division of Protective Services for
105 state-owned vehicles used by the Division of Protective Services
106 in fulfilling its mission.

107 (n) The commissioner is authorized to issue Class A
108 registration plates for vehicles used by the Medicaid Fraud
109 Control Unit created by section seven, article seven, chapter nine
110 of this code.

111 (o) The commissioner is authorized to issue Class A
112 registration plates for vehicles used by the West Virginia
113 Insurance Fraud Unit created by section eight, article forty-one,
114 chapter thirty-three of this code.

115 (p) No other registration plate may be issued for, or attached
116 to, any state-owned vehicle.

117 (q) The Commissioner of Motor Vehicles shall have a
118 sufficient number of both front and rear plates produced to attach
119 to all state-owned cars. The numbered registration plates for the
120 vehicles shall start with the number five hundred and the
121 commissioner shall issue consecutive numbers for all state-
122 owned cars.

123 (r) It is the duty of each office, department, bureau,
124 commission or institution furnished any vehicle to have plates as
125 described herein affixed thereto prior to the operation of the
126 vehicle by any official or employee.

127 (s) The commissioner may issue special registration plates
128 for motor vehicles titled in the name of the Division of Public
129 Transit or in the name of a public transit authority as defined in
130 this subsection and operated by a public transit authority or a
131 public transit provider to transport persons in the public interest.
132 For purposes of this subsection, "public transit authority" means
133 an urban mass transportation authority created pursuant to the
134 provisions of article twenty-seven, chapter eight of this code or
135 a nonprofit entity exempt from federal and state income taxes
136 under the Internal Revenue Code and whose purpose is to
137 provide mass transportation to the public at large. The special
138 registration plate shall be designed by the commissioner and
139 shall display the words "public transit" or words or letters of
140 similar effect to indicate the public purpose of the use of the
141 vehicle. The special registration plate shall be issued without
142 charge.

143 (t) Any person who violates the provisions of this section is
144 guilty of a misdemeanor and, upon conviction thereof, shall be
145 fined not less than \$50 nor more than \$100. Magistrates have
146 concurrent jurisdiction with circuit courts for the enforcement of
147 this section.

CHAPTER 172

**(Com. Sub. for S. B. 453 - By Senators Woelfel, Blair,
Ferns, Gaunch, M. Hall, Leonhardt, Mullins, Nohe, Plymale,
Prezioso, Snyder, Takubo, Trump, Walters,
Williams and Karnes)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2015.]

AN ACT to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should

a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; and clarifying indemnity practices.

Be it enacted by the Legislature of West Virginia:

That §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all to read as follows:

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS,
WHOLESALEERS AND MANUFACTURERS.**

§17A-6A-1. Legislative finding.

1 The Legislature finds and declares that the distribution and
2 sale of motor vehicles in this state vitally affects the general
3 economy and the public welfare and that in order to promote the
4 public welfare and in exercise of its police power, it is necessary
5 to regulate motor vehicle dealers, manufacturers, distributors and
6 representatives of vehicle manufacturers and distributors doing
7 business in this state in order to avoid undue control of the
8 independent new motor vehicle dealer by the vehicle
9 manufacturer or distributor and to ensure that dealers fulfill their
10 obligations under their franchises and provide adequate and
11 sufficient service to consumers generally, and to protect and
12 preserve the investments and properties of the citizens and motor
13 vehicle dealers of this state.

§17A-6A-3. Definitions.

1 For the purposes of this article, the words and phrases
2 defined in this section have the meanings ascribed to them,
3 except where the context clearly indicates a different meaning.

4 (1) “Dealer agreement” means the franchise, agreement or
5 contract in writing between a manufacturer, distributor and a
6 new motor vehicle dealer which purports to establish the legal
7 rights and obligations of the parties to the agreement or contract
8 with regard to the purchase, lease or sale of new motor vehicles,
9 accessories, service and sale of parts for motor vehicles.

10 (2) “Designated family member” means the spouse, child,
11 grandchild, parent, brother or sister of a deceased new motor
12 vehicle dealer who is entitled to inherit the deceased dealer’s
13 ownership interest in the new motor vehicle dealership under the
14 terms of the dealer’s will, or who has otherwise been designated
15 in writing by a deceased dealer to succeed the deceased dealer in
16 the new motor vehicle dealership, or is entitled to inherit under
17 the laws of intestate succession of this state. With respect to an
18 incapacitated new motor vehicle dealer, the term means the
19 person appointed by a court as the legal representative of the
20 new motor vehicle dealer’s property. The term also includes the
21 appointed and qualified personal representative and the
22 testamentary trustee of a deceased new motor vehicle dealer.
23 However, the term means only that designated successor
24 nominated by the new motor vehicle dealer in a written
25 document filed by the dealer with the manufacturer or
26 distributor, if such a document is filed.

27 (3) “Distributor” means any person, resident or nonresident
28 who, in whole or in part, offers for sale, sells or distributes any
29 new motor vehicle to a new motor vehicle dealer or who
30 maintains a factor representative, resident or nonresident, or who
31 controls any person, resident or nonresident who, in whole or in

32 part, offers for sale, sells or distributes any new motor vehicle to
33 a new motor vehicle dealer.

34 (4) “Established place of business” means a permanent,
35 enclosed commercial building located within this state easily
36 accessible and open to the public at all reasonable times and at
37 which the business of a new motor vehicle dealer, including the
38 display and repair of motor vehicles, may be lawfully carried on
39 in accordance with the terms of all applicable building codes,
40 zoning and other land-use regulatory ordinances and as licensed
41 by the Division of Motor Vehicles.

42 (5) “Factory branch” means an office maintained by a
43 manufacturer or distributor for the purpose of selling or offering
44 for sale vehicles to a distributor, wholesaler or new motor
45 vehicle dealer, or for directing or supervising, in whole or in
46 part, factory or distributor representatives. The term includes any
47 sales promotion organization maintained by a manufacturer or
48 distributor which is engaged in promoting the sale of a particular
49 make of new motor vehicles in this state to new motor vehicle
50 dealers.

51 (6) “Factory representative” means an agent or employee of
52 a manufacturer, distributor or factory branch retained or
53 employed for the purpose of making or promoting the sale of
54 new motor vehicles or for supervising or contracting with new
55 motor vehicle dealers or proposed motor vehicle dealers.

56 (7) “Good faith” means honesty in fact and the observation
57 of reasonable commercial standards of fair dealing in the trade.

58 (8) “Manufacturer” means any person who manufactures or
59 assembles new motor vehicles; or any distributor, factory branch
60 or factory representative and, in the case of a school bus, truck
61 tractor, road tractor or truck as defined in section one, article one
62 of this chapter, also means a person engaged in the business of

63 manufacturing a school bus, truck tractor, road tractor or truck,
64 their engines, power trains or rear axles, including when engines,
65 power trains or rear axles are not warranted by the final
66 manufacturer or assembler, and any distributor, factory branch
67 or representative.

68 (9) “Motor vehicle” means that term as defined in section
69 one, article one of this chapter, including motorcycle, school bus,
70 truck tractor, road tractor, truck, recreational vehicle, all-terrain
71 vehicle and utility terrain vehicle as defined in subsections (c),
72 (d), (f), (h), (l), (nn) and (vv), respectively, of said section, but
73 not including a farm tractor or farm equipment. The term “motor
74 vehicle” also includes a school bus, truck tractor, road tractor,
75 truck, its component parts, including, but not limited to, its
76 engine, transmission or rear axle manufactured for installation in
77 a school bus, truck tractor, road tractor or truck.

78 (10) “New motor vehicle” means a motor vehicle which is
79 in the possession of the manufacturer, distributor or wholesaler,
80 or has been sold only to a new motor vehicle dealer and on
81 which the original title has not been issued from the new motor
82 vehicle dealer.

83 (11) “New motor vehicle dealer” means a person who holds
84 a dealer agreement granted by a manufacturer or distributor for
85 the sale of its motor vehicles, who is engaged in the business of
86 purchasing, selling, leasing, exchanging or dealing in new motor
87 vehicles, service of said vehicles, warranty work and sale of
88 parts who has an established place of business in this state and
89 is licensed by the Division of Motor Vehicles.

90 (12) “Person” means a natural person, partnership,
91 corporation, association, trust, estate or other legal entity.

92 (13) “Proposed new motor vehicle dealer” means a person
93 who has an application pending for a new dealer agreement with

94 a manufacturer or distributor. “Proposed motor vehicle dealer”
95 does not include a person whose dealer agreement is being
96 renewed or continued.

97 (14) “Relevant market area” means the area located within
98 a twenty-air mile radius around an existing same line-make new
99 motor vehicle dealership: *Provided*, That a fifteen-mile relevant
100 market area as it existed prior to the effective date of this statute
101 shall apply to any proposed new motor vehicle dealership as to
102 which a manufacturer or distributor and the proposed new motor
103 vehicle dealer have executed on or before the effective date of
104 this statute a written agreement, including a letter of intent,
105 performance agreement or commitment letter, concerning the
106 establishment of the proposed new motor vehicle dealership.

§17A-6A-4. Cancellation of dealer contract; notification.

1 (1) Notwithstanding any agreement, a manufacturer or
2 distributor shall not cancel, terminate, fail to renew or refuse to
3 continue any dealer agreement with a new motor vehicle dealer
4 unless the manufacturer or distributor has complied with all of
5 the following:

6 (a) Satisfied the notice requirement of section seven of this
7 article;

8 (b) Acted in good faith;

9 (c) Engaged in full and open communication with franchised
10 dealer; and

11 (d) Has good cause for the cancellation, termination,
12 nonrenewal or discontinuance.

13 (2) Notwithstanding any agreement, good cause exists when
14 a manufacturer or distributor can demonstrate termination is
15 necessary due to a material breach of a reasonable term or terms

16 of the agreement by a dealer when weighed against the interests
17 of the dealer and the public. The burden of proof is on the
18 manufacturer to prove good cause by a preponderance of the
19 evidence. The interests of the dealer and the public shall include
20 consideration of:

21 (a) The relationship of the dealer's sales to the sales in the
22 relevant market;

23 (b) The investment and financial obligations of the dealer
24 under the terms of the franchise agreement;

25 (c) The effect on the public cancellation of the franchise
26 agreement would cause;

27 (d) The adequacy of the dealer's sales and service facilities,
28 equipment, parts and personnel in relation to other dealers in the
29 relevant market;

30 (e) Whether the dealer is honoring existing warranties;

31 (f) Whether the dealer is complying, or can comply within
32 a reasonable time, with reasonable capitalization requirements;
33 and

34 (g) The dealer's overall performance under the reasonable
35 terms of the franchise agreement. This shall include the overall
36 fairness of the agreement terms, the enforceability of the
37 agreement and the relative bargaining power of the parties.

38 (h) Whether the manufacturer made available the appropriate
39 volumes and type of motor vehicles to the dealer and a
40 reasonable opportunity for sales and service training to the
41 dealer.

42 (3) In addition to the requirements of subsection (2) of this
43 section, if the failure by the new motor vehicle dealer to comply

44 with a provision of the dealer agreement relates to the
45 performance of the new motor vehicle dealer in sales or service,
46 good cause exists for the purposes of a termination, cancellation,
47 nonrenewal or discontinuance under subsection (1) of this
48 section when the new motor vehicle dealer failed to effectively
49 carry out the performance provisions of the dealer agreement if
50 all of the following have occurred:

51 (a) The new motor vehicle dealer was given written notice
52 by the manufacturer or distributor of the failure;

53 (b) The notification stated that the notice of failure of
54 performance was provided pursuant to this article;

55 (c) The new motor vehicle dealer was afforded a reasonable
56 opportunity to exert good faith efforts to carry out the dealer
57 agreement; and

58 (d) The failure continued for more than three hundred sixty
59 days after the date notification was given pursuant to subdivision
60 (a) of this subsection.

§17A-6A-5. Circumstances not constituting good cause.

1 Notwithstanding any agreement, the following alone does
2 not constitute good cause for the termination, cancellation,
3 nonrenewal or discontinuance of a dealer agreement under
4 subdivision (d), subsection (1), section four of this article:

5 (a) A change in ownership of the new motor vehicle dealer's
6 dealership. This subdivision does not authorize any change in
7 ownership which would have the effect of a sale or an
8 assignment of the dealer agreement or a change in the principal
9 management of the dealership without the manufacturer's or
10 distributor's prior written consent which may not be
11 unreasonably or untimely withheld.

12 (b) The refusal of the new motor vehicle dealer to purchase
13 or accept delivery of any new motor vehicle parts, accessories or
14 any other commodity or services not ordered by the new motor
15 vehicle dealer.

16 (c) The fact that the new motor vehicle dealer owns, has an
17 investment in, participates in the management of, or holds a
18 dealer agreement for the sale of another make or line of new
19 motor vehicles, or that the new motor vehicle dealer has
20 established another make or line of new motor vehicles in the
21 same dealership facilities as those of the manufacturer or
22 distributor: *Provided*, That the new motor vehicle dealer
23 maintains a reasonable line of credit for each make or line of
24 new motor vehicles, and that the new motor vehicle dealer
25 remains in substantial compliance with the terms and conditions
26 of the dealer agreement and with any reasonable facilities'
27 requirements of the manufacturer or distributor.

28 (d) The fact that the new motor vehicle dealer sells or
29 transfers ownership of the dealership or sells or transfers capital
30 stock in the dealership to the new motor vehicle dealer's spouse,
31 son or daughter: *Provided*, That the sale or transfer shall not
32 have the effect of a sale or an assignment of the dealer
33 agreement or a change in the principal management of the
34 dealership without the manufacturer's or distributor's prior
35 written consent.

36 (e) This section does not apply to any voluntary agreement
37 entered into after a disagreement or civil action has arisen for
38 which the dealer has accepted separate and valuable
39 consideration. Any prospective agreement is void as a matter of
40 law.

§17A-6A-6. Burden of proof.

1 For each termination, cancellation, nonrenewal or
2 discontinuance, the manufacturer or distributor has the burden of

3 proof by a preponderance of the evidence for showing that he or
4 she has acted in good faith, that the notice requirement has been
5 complied with and that there was good cause by a preponderance
6 of the evidence for the termination, cancellation, nonrenewal or
7 discontinuance.

§17A-6A-8. Reasonable compensation to dealer.

1 (1) Upon the termination, cancellation, nonrenewal or
2 discontinuance of any dealer agreement, the new motor vehicle
3 dealer shall be allowed fair and reasonable compensation by the
4 manufacturer or distributor for the following:

5 (a) Any new motor vehicle inventory, manufactured for sale
6 in the United States, purchased from the manufacturer,
7 distributor or other dealers, in the ordinary course of business,
8 which has not been materially altered, substantially damaged or
9 driven for more than one thousand miles, except that for any new
10 motorcycle, new all-terrain vehicle or utility terrain vehicle
11 inventory, including motorhomes and travel trailers, regardless
12 of gross vehicle weight, purchased from the manufacturer or
13 distributor, that inventory must not have been materially altered,
14 substantially damaged or driven for more than fifty miles and for
15 motor vehicles with a rating greater than twenty-six thousand
16 one pounds gross vehicle weight driven no more than five
17 thousand miles. For purposes of a school bus, truck tractor, road
18 tractor or truck, materially altered does not include dealer add-
19 ons, such as, but not limited to, racks, mud flaps, fifth wheel
20 assemblies, dump or tank bodies;

21 (b) Supplies and parts inventory purchased at the published
22 list price purchased from, or at the direction of, the manufacturer
23 or distributor. Parts shall be restricted to those listed in the
24 manufacturer's or distributor's current parts catalog;

25 (c) Equipment, special tools, furnishings and signs purchased
26 or leased from, or at the direction of, the manufacturer or
27 distributor; and

28 (d) Special computer software, hardware, license fees and
29 other programs mandated by the manufacturer to provide
30 training or communication with the manufacturer.

31 (2) Upon the termination, cancellation, nonrenewal or
32 discontinuance of a dealer agreement by the manufacturer or
33 distributor, the manufacturer or distributor shall also pay to the
34 new motor vehicle dealer a sum equal to the current, fair rental
35 value of his or her established place of business for a period of
36 three years from the effective date of termination, cancellation,
37 nonrenewal or discontinuance, or the remainder of the lease,
38 whichever is less. If the dealer, directly or indirectly, owns the
39 dealership facility, the manufacturer shall pay the dealer a sum
40 equal to the reasonable rental value of the dealership premises
41 for three years. However, the dealer shall have the obligation to
42 mitigate his or her damages, including, but not limited to, listing
43 the facility with a commercial real estate agent and other
44 reasonable steps to sell or lease the property. During this three-
45 year period the manufacturer shall have the right to occupy and
46 use the facilities until such time as the dealer is able to otherwise
47 sell or lease the property to another party. The payment required
48 by this subsection does not apply to any termination,
49 cancellation, nonrenewal or discontinuance made pursuant to
50 subsection (c), section seven of this article.

51 (3) In addition to the items listed in subsections (1) and (2)
52 of this section, the termination, cancellation or nonrenewal
53 where the manufacturer or distributor is discontinuing the sale of
54 a product line, the manufacturer or distributor shall pay or
55 provide to the motor vehicle dealer:

56 (a) Support of the manufacturer's or distributor's warranty
57 obligations by making parts available and compensating dealers
58 for warranty parts and labor for five years: *Provided*, That the
59 motor vehicle dealer has adequate facilities, trained personnel
60 and equipment to perform warranty repairs;

61 (b) Any actual damages that can be proven by a dealer by a
62 preponderance of the evidence;

63 (c) Any costs the dealer incurred for facility upgrades or
64 alternations required by the manufacturer, distributor or factory
65 branch within the previous five years; and

66 (d) Within forty-five days after termination, dealer shall
67 submit evidence of items to the manufacturer in accordance with
68 reasonable manufacturer requirements. The manufacturer shall
69 have thirty days from receipt of this evidence to note any
70 objection. If not objected thereto, payment by the manufacturer
71 to the dealer shall be made within thirty days. Thereafter, interest
72 accumulates at the rate of the Fifth Federal Reserve District's
73 secondary discount rate in effect on January 2 of the year in
74 which payment is due plus five percentage points. If a dispute
75 arises over the sufficiency of any evidence or an amount
76 submitted, when interest begins to accumulate will be
77 determined in accordance with West Virginia common law.

§17A-6A-8a. Compensation to dealers for service rendered.

1 (1) Every motor vehicle manufacturer, distributor or
2 wholesaler, factory branch or distributor branch, or officer, agent
3 or representative thereof, shall:

4 (a) Specify in writing to each of its motor vehicle dealers,
5 the dealer's obligation for delivery, preparation, warranty and
6 factory recall services on its products;

7 (b) Compensate the motor vehicle dealer for warranty and
8 factory recall service required of the dealer by the manufacturer,
9 distributor or wholesaler, factory branch or distributor branch or
10 officer, agent or representative thereof; and

11 (c) Provide the dealer the schedule of compensation to be
12 paid the dealer for parts, work and service in connection with

13 warranty and recall services and the time allowance for the
14 performance of the work and service.

15 (2) In no event may:

16 (a) The schedule of compensation fail to compensate the
17 dealers for the work and services they are required to perform in
18 connection with the dealer's delivery and preparation
19 obligations, or fail to adequately and fairly compensate the
20 dealers for labor, parts and other expenses incurred by the dealer
21 to perform under and comply with manufacturer's warranty
22 agreements and factory recalls;

23 (b) Any manufacturer, distributor or wholesaler, or
24 representative thereof, pay its dealers an amount of money for
25 warranty or recall work that is less than that charged by the
26 dealer to the retail customers of the dealer for nonwarranty and
27 nonrecall work of the like kind; and

28 (c) Any manufacturer, distributor or wholesaler, or
29 representative thereof, compensate for warranty and recall work
30 based on a flat-rate figure that is less than what the dealer
31 charges for retail work.

32 (3) It is a violation of this section for any manufacturer,
33 distributor, wholesaler or representative to require any dealer to
34 pay in any manner, surcharges, limited allocation, audits, charge
35 backs or other retaliation if the dealer seeks to recover its
36 nonwarranty retail rate for warranty and recall work.

37 (4) The retail rate charged by the dealer for parts is
38 established by the dealer submitting to the manufacturer or
39 distributor one hundred sequential nonwarranty customer-paid
40 service repair orders that contain warranty-like parts or ninety
41 consecutive days of nonwarranty customer-paid service repair
42 orders that contain warranty-like parts covering repairs made no

43 more than one hundred eighty days before the submission and
44 declaring the average percentage markup.

45 (5) The retail rate customarily charged by the dealer for
46 labor rate must be established using the same process as
47 provided under subsection (4) of this section and declaring the
48 average labor rate. The average labor rate must be determined by
49 dividing the amount of the dealer's total labor sales by the
50 number of total hours that generated those sales. If a labor rate
51 and parts markup rate simultaneously declared by the dealer, the
52 dealer may use the same repair orders to complete each
53 calculation as provided under subsection (4) of this section. A
54 reasonable allowance for labor for diagnostic time shall be either
55 included in the manufacturer's labor time allowance or listed as
56 a separate compensable item. A dealer may request additional
57 time allowance for either diagnostic or repair time, which
58 request shall not be unreasonable denied by the manufacturer.

59 (6) In calculating the retail rate customarily charged by the
60 dealer for parts and labor, the following work may not be
61 included in the calculation:

62 (a) Repairs for manufacturer or distributor special events,
63 specials or promotional discounts for retain customer repairs;

64 (b) Parts sold at wholesale;

65 (c) Routine maintenance not covered under any retail
66 customer warranty, including fluids, filters and belts not
67 provided in the course of repairs;

68 (d) Nuts, bolts fasteners and similar items that do not have
69 an individual part number;

70 (e) Tires;

71 (f) Vehicle reconditioning.

72 (7) The average of the parts markup rates and labor rate is
73 presumed to be reasonable and must go into effect thirty days
74 following the manufacturer's approval. A manufacturer or
75 distributor may rebut the presumption by a preponderance of the
76 evidence that a rate is unreasonable in light of the practices of all
77 other same line-make franchised motor vehicle dealers in an
78 economically similar area of the state offering the same line-
79 make vehicles, not later than thirty days after submission. If the
80 average parts markup rate or average labor rate is rebutted, or
81 both, the manufacturer or distributor shall propose an adjustment
82 of the average percentage markup based on that rebuttal not later
83 than thirty days after submission.

84 (8) Each manufacturer, in establishing a schedule of
85 compensation for warranty work, shall rely on the vehicle
86 dealer's declaration of hourly labor rates and parts as stated in
87 subsections (4), (5) and (6) of this section and may not obligate
88 any vehicle dealer to engage in unduly burdensome or time-
89 consuming documentation of rates or parts, including obligating
90 vehicle dealers to engage in transaction-by-transaction or part-
91 by-part calculations.

92 (9) A dealer or manufacturer may demand that the average
93 parts markup or average labor rate be calculated using the
94 process provided under subsections (4) and (5) of this section;
95 however, the demand for the average parts markup may not be
96 made within twelve months of the last parts markup declaration
97 and the demand for the average labor rate may not be made
98 within twelve months of the last labor rate declaration. If a parts
99 markup or labor rate is demanded by the dealer or manufacturer,
100 the dealer shall determine the repair orders to be included in the
101 calculation under subsections (4) and (5) of this section.

102 (10) As it applies to a school bus, truck tractor, road tractor
103 and truck as defined in section one, article one of this chapter,
104 with a gross vehicle weight on excess of twenty-six thousand one

105 pounds the manufacturer, distributor and/or O. E. M. supplier
106 shall pay the dealer its incurred actual time at the retail labor rate
107 for retrieving a motor vehicle and returning a motor vehicle to
108 dealer's designated parking area. Dealer shall be paid \$50
109 minimum for each operation that requires the use of each
110 electronic tool (i.e. laptop computer). The manufacturer or
111 distributor may not reduce what is paid to a dealer for this
112 retrieval or return time, or for the electronic tool charge. The
113 dealer is allowed to add to a completed warranty repair order
114 three hours for every twenty-four hours the manufacturer,
115 distributor and/or O. E. M. supplier makes the dealer stop
116 working on a vehicle while the manufacturer, distributor and/or
117 O. E. M. supplier decides how it wants the dealer to proceed
118 with the repairs.

119 (11) All claims made by motor vehicle dealers pursuant to
120 the section for compensation for delivery, preparation, warranty
121 and recall work, including labor, parts and other expenses, shall
122 be paid by the manufacturer within thirty days after approval and
123 shall be approved or disapproved by the manufacturer within
124 thirty days after receipt. When any claim is disapproved, the
125 dealer shall be notified in writing of the grounds for disapproval.
126 No claim which has been approved and paid may be charged
127 back to the dealer unless it can be shown that the claim was false
128 or fraudulent, that the repairs were not properly made or were
129 unnecessary to correct the defective condition or the dealer failed
130 to reasonable substantiate the claim in accordance with the
131 written requirements of the manufacturer or distributor in effect
132 at the time the claim arose. No charge back may be made until
133 the dealer has had notice and an opportunity to support the claim
134 in question. No otherwise valid reimbursement claims may be
135 denied once properly submitted within manufacturers'
136 submission guidelines due to a clerical error or omission or
137 based on a different level of technician technical certification or
138 the dealer's failure to subscribe to any manufacturer's
139 computerized training programs.

140 (12) Notwithstanding the terms of a franchise agreement or
141 provision of law in conflict with this section, the dealer's
142 delivery, preparation, warranty and recall obligations constitutes
143 the dealer's sole responsibility for product liability as between
144 the dealer and manufacturer and, except for a loss caused by the
145 dealer's failure to adhere to the obligations, a loss caused by the
146 dealer's negligence or intentional misconduct or a loss caused by
147 the dealer's modification of a product without manufacturer
148 authorization, the manufacturer shall reimburse the dealer for all
149 loss incurred by the dealer, including legal fees, court costs and
150 damages, as a result of the dealer having been named a party in
151 a product liability action.

§17A-6A-9. Payment of compensation.

1 (1) Compensation for new motor vehicle inventory under
2 subdivision (a), subsection (1), section eight of this article shall
3 be paid within sixty days after the effective date of the
4 termination, cancellation, nonrenewal or discontinuance.
5 Compensation for items of personal property required by
6 subdivisions (b), (c) and (d), subsection (1), section eight of this
7 article shall be paid within sixty days after the effective date of
8 the termination, cancellation, nonrenewal or discontinuance. The
9 new motor vehicle dealer will meet all reasonable requirements
10 of the dealer agreement with respect to the return of the
11 repurchased personal property, including providing clear title.

12 (2) Reasonable compensation pursuant to subdivision (a),
13 subsection (1), section eight of this article may not be less than
14 the new motor vehicle dealer's net acquisition cost, including
15 any special promotions ordered by the manufacturer, such as
16 advertising charges. Reasonable compensation pursuant to
17 subdivision (b) of said subsection shall be the amount stated in
18 the manufacturer's or distributor's current parts price list.
19 Reasonable compensation pursuant to subdivisions (c) and (d) of
20 said subsection shall be the fair market value of the personal

21 property determined by a five-year straight line depreciation
22 schedule.

23 (3) In the event payment is not made within ninety days as
24 provided in subsection (1) of this section, interest shall
25 accumulate at the rate of the Fifth Federal Reserve District's
26 secondary discount rate in effect on January 2 of the year in
27 which payment is due plus five percentage points. In
28 determining when interest begins to accumulate, the court may
29 consider whether the dealer reasonably complied with the
30 reasonable manufacturer's submission requirements and the
31 reasonableness of the manufacturer's determinations in refusing
32 or delaying payment to the dealer.

§17A-6A-10. Prohibited practices.

1 (1) A manufacturer or distributor may not require any new
2 motor vehicle dealer in this state to do any of the following:

3 (a) Order or accept delivery of any new motor vehicle, part
4 or accessory of the vehicle, equipment or any other commodity
5 not required by law which was not voluntarily ordered by the
6 new motor vehicle dealer. This section does not prevent the
7 manufacturer or distributor from requiring that new motor
8 vehicle dealers carry a reasonable inventory of models offered
9 for sale by the manufacturer or distributor;

10 (b) Order or accept delivery of any new motor vehicle with
11 special features, accessories or equipment not included in the list
12 price of the new motor vehicle as publicly advertised by the
13 manufacturer or distributor;

14 (c) Unreasonably participate monetarily in any advertising
15 campaign or contest, or purchase any promotional materials,
16 display devices, display decorations, brand signs and dealer
17 identification, nondiagnostic computer equipment and displays
18 or other materials at the expense of the new motor vehicle
19 dealer;

20 (d) Enter into any agreement with the manufacturer or
21 distributor or do any other act prejudicial to the new motor
22 vehicle dealer by threatening to terminate a dealer agreement,
23 limit inventory, invoke sales and service warranty or other types
24 of audits or any contractual agreement or understanding existing
25 between the dealer and the manufacturer or distributor. Notice in
26 good faith to any dealer of the dealer's violation of any terms or
27 provisions of the dealer agreement is not a violation of this
28 article;

29 (e) Change the capital structure or financial requirements of
30 the new motor vehicle dealership without reasonable business
31 justification in light of the dealer's market, historical
32 performance and compliance with prior capital structure or
33 financial requirements and business necessity, or the means by
34 or through which the dealer finances the operation of the
35 dealership if the dealership at all times meets any reasonable
36 capital standards determined by the manufacturer in accordance
37 with uniformly applied criteria. The burden of proof is on the
38 manufacturer to prove business justification by a preponderance
39 of the evidence;

40 (f) Refrain from participation in the management of,
41 investment in or the acquisition of any other line of new motor
42 vehicle or related products, provided that the dealer maintains a
43 reasonable line of credit for each make or line of vehicle,
44 remains in compliance with reasonable facilities requirements
45 and makes no change in the principal management of the dealer.
46 Notwithstanding the terms of any franchise agreement, a
47 manufacturer or distributor may not enforce any requirements,
48 including facility requirements, that a new motor vehicle dealer
49 establish or maintain exclusive facilities, personnel or display
50 space, when the requirements are unreasonable considering
51 current economic conditions and are not otherwise justified by
52 reasonable business considerations. The burden of proving that
53 current economic conditions or reasonable business

54 considerations justify exclusive facilities is on the manufacturer
55 or distributor and must be proven by a preponderance of the
56 evidence;

57 (g) Change the location of the new motor vehicle dealership
58 or make any substantial alterations to the dealership premises,
59 where to do so would be unreasonable. The burden is on the
60 manufacturer or distributor to prove reasonableness by a
61 preponderance of the evidence;

62 (h) Prospectively assent to a waiver of trial by jury release,
63 arbitration, assignment, novation, waiver or estoppel which
64 would relieve any person from liability imposed by this article
65 or require any controversy between a new motor vehicle dealer
66 and a manufacturer or distributor to be referred to a person other
67 than the duly constituted courts of this state or the United States
68 District Courts of the Northern or Southern Districts of West
69 Virginia. Nothing in this prevents a motor vehicle dealer, after
70 a civil action is filed, from entering into any agreement of
71 settlement, arbitration, assignment or waiver of a trial by jury;

72 (i) To coerce or require any dealer, whether by agreement,
73 program, incentive provision or otherwise, to construct
74 improvements to its facilities or to install new signs or other
75 franchisor image elements that replace or substantially alter
76 those improvements, signs or franchisor image elements
77 completed within the proceeding ten years that were required
78 and approved by the manufacturer, factory branch, distributor or
79 distributor branch or one of its affiliates. If a manufacturer,
80 factory branch, distributor or distributor branch offers incentives
81 or other payments to a consumer or dealer paid on individual
82 vehicle sales under a program offered after the effective date of
83 this subdivision and available to more than one dealer in the state
84 that are premised, wholly or in part, on dealer facility
85 improvements or installation of franchiser image elements
86 required by and approved by the manufacturer, factory branch,
87 distributor or distributor branch and completed within ten years

88 preceding the program shall be deemed to be in compliance with
89 the program requirements pertaining to construction of facilities
90 or installation of signs or other franchisor image elements that
91 would replace or substantially alter those previously constructed
92 or installed with that ten year period. This subdivision shall not
93 apply to a program that is in effect with more than one dealer in
94 the state on the effective date of this subsection, nor to any
95 renewal of such program, nor to a modification that is not a
96 substantial modification of a material term or condition of such
97 program;

98 (j) To condition the award, sale, transfer, relocation or
99 renewal of a franchise or dealer agreement or to condition sales,
100 service, parts or finance incentives upon site control or an
101 agreement to renovate or make substantial improvements to a
102 facility: *Provided*, That voluntary and noncoerced acceptance of
103 such conditions by the dealer in writing, including, but not
104 limited to, a written agreement for which the dealer has accepted
105 separate and valuable consideration, does not constitute a
106 violation;

107 (k) To enter into a contractual requirement imposed by the
108 manufacturer, distributor or a captive finance source as follows:

109 (i) In this section, "captive finance source" means any
110 financial source that provides automotive-related loans or
111 purchases retail installment contracts or lease contracts for motor
112 vehicles in this state and is, directly or indirectly, owned,
113 operated or controlled by such manufacturer, factory branch,
114 distributor or distributor branch.

115 (ii) It shall be unlawful for any manufacturer, factory branch,
116 captive finance source, distributor or distributor branch, or any
117 field representative, officer, agent or any representative of them,
118 notwithstanding the terms, provisions or conditions of any
119 agreement or franchise, to require any of its franchised dealers
120 located in this state to agree to any terms, conditions or

121 requirements in subdivisions (a) through (j), inclusive, of this
122 subsection in order for any such dealer to sell to any captive
123 finance source any retail installment contract, loan or lease of
124 any motor vehicles purchased or leased by any of the dealer's
125 customers, or to be able to participate in, or otherwise, directly
126 or indirectly, obtain the benefits of the consumer transaction
127 incentive program payable to the consumer or the dealer and
128 offered by or through any captive finance source as to that
129 incentive program.

130 (iii) The applicability of this section is not affected by a
131 choice of law clause in any agreement, waiver, novation or any
132 other written instrument.

133 (iv) It shall be unlawful for a manufacturer or distributor to
134 use any subsidiary corporation, affiliated corporation or any
135 other controlled corporation, partnership, association or person
136 to accomplish what would otherwise be illegal conduct under
137 this section on the part of the manufacturer or distributor.

138 (2) A manufacturer or distributor may not do any of the
139 following:

140 (a) (i) Fail to deliver new motor vehicles or new motor
141 vehicle parts or accessories within a reasonable time and in
142 reasonable quantities relative to the new motor vehicle dealer's
143 market area and facilities, unless the failure is caused by acts or
144 occurrences beyond the control of the manufacturer or
145 distributor, or unless the failure results from an order by the new
146 motor vehicle dealer in excess of quantities reasonably and fairly
147 allocated by the manufacturer or distributor. No manufacturer or
148 distributor may penalize a new motor vehicle dealer for an
149 alleged failure to meet sales quotas where the alleged failure is
150 due to actions of the manufacturer or distributor;

151 (ii) Refuse to offer to its same line-make new motor vehicle
152 dealers all models manufactured for that line-make, including,

153 but not limited to, any model that contains a separate label or
154 badge indicating a upgraded version of the same model. This
155 provision does not apply to motorhome, travel trailer or
156 fold-down camping trailer manufacturers; or

157 (iii) Require as a prerequisite to receiving a model or series
158 of vehicles that a new motor vehicle dealer pay an extra
159 unreasonable acquisition fee or surcharge, or purchase
160 unreasonable advertising displays or other materials, or conduct
161 unreasonable remodeling, renovation or reconditioning of the
162 dealer's facilities, or any other type of unreasonable upgrade
163 requirement;

164 (b) Refuse to disclose to a new motor vehicle dealer the
165 method and manner of distribution of new motor vehicles by the
166 manufacturer or distributor, including any numerical calculation
167 or formula used, nationally or within the dealer's market, to
168 make the allocations within thirty days of a request. Any
169 information or documentation provided by the manufacturer may
170 be subject to a reasonable confidentiality agreement;

171 (c) Refuse to disclose to a new motor vehicle dealer the total
172 number of new motor vehicles of a given model, which the
173 manufacturer or distributor has sold during the current model
174 year within the dealer's marketing district, zone or region,
175 whichever geographical area is the smallest within thirty days of
176 a request;

177 (d) Increase prices of new motor vehicles which the new
178 motor vehicle dealer had ordered and then eventually delivered
179 to the same retail consumer for whom the vehicle was ordered,
180 if the order was made prior to the dealer's receipt of the written
181 official price increase notification. A sales contract signed by a
182 private retail consumer and binding on the dealer which has been
183 submitted to the vehicle manufacturer is evidence of each order.
184 In the event of manufacturer or distributor price reductions or

185 cash rebates, the amount of any reduction or rebate received by
186 a dealer shall be passed on to the private retail consumer by the
187 dealer. Any price reduction in excess of \$5 shall apply to all
188 vehicles in the dealer's inventory which were subject to the price
189 reduction. A price difference applicable to new model or series
190 motor vehicles at the time of the introduction of the new models
191 or the series is not a price increase or price decrease. This
192 subdivision does not apply to price changes caused by the
193 following:

194 (i) The addition to a motor vehicle of required or optional
195 equipment pursuant to state or federal law;

196 (ii) In the case of foreign-made vehicles or components,
197 revaluation of the United States dollar; or

198 (iii) Any increase in transportation charges due to an
199 increase in rates charged by a common carrier and transporters;

200 (e) Offer any refunds or other types of inducements to any
201 dealer for the purchase of new motor vehicles of a certain line-
202 make to be sold to this state or any political subdivision of this
203 state without making the same offer available upon request to all
204 other new motor vehicle dealers of the same line-make;

205 (f) Release to an outside party, except under subpoena or in
206 an administrative or judicial proceeding to which the new motor
207 vehicle dealer or the manufacturer or distributor are parties, any
208 business, financial or personal information which has been
209 provided by the dealer to the manufacturer or distributor, unless
210 the new motor vehicle dealer gives his or her written consent;

211 (g) Deny a new motor vehicle dealer the right to associate
212 with another new motor vehicle dealer for any lawful purpose;

213 (h) Establish a new motor vehicle dealership. A
214 manufacturer or distributor is not considered to have established

215 a new motor vehicle dealership if the manufacturer or distributor
216 is:

217 (A) Operating a preexisting dealership temporarily for a
218 reasonable period.

219 (B) Operating a preexisting dealership which is for sale at a
220 reasonable price.

221 (C) Operating a dealership with another person who has
222 made a significant investment in the dealership and who will
223 acquire full ownership of the dealership under reasonable terms
224 and conditions;

225 (i) A manufacturer may not, except as provided by this
226 section, directly or indirectly:

227 (A) Own an interest in a dealer or dealership: *Provided*, That
228 a manufacturer may own stock in a publicly held company solely
229 for investment purposes;

230 (B) Operate a dealership, including, but not limited to,
231 displaying a motor vehicle intended to facilitate the sale of new
232 motor vehicles other than through franchised dealers, unless the
233 display is part of an automobile trade show that more than two
234 automobile manufacturers participate in; or

235 (C) Act in the capacity of a new motor vehicle dealer;

236 (j) A manufacturer or distributor may own an interest in a
237 franchised dealer, or otherwise control a dealership, for a period
238 not to exceed twelve months from the date the manufacturer or
239 distributor acquires the dealership if:

240 (i) The person from whom the manufacturer or distributor
241 acquired the dealership was a franchised dealer; and

242 (ii) The dealership is for sale by the manufacturer or
243 distributor at a reasonable price and on reasonable terms and
244 conditions;

245 (k) The twelve-month period may be extended for an
246 additional twelve months. Notice of any such extension of the
247 original twelve-month period must be given to any dealer of the
248 same line-make whose dealership is located in the same county,
249 or within twenty air miles of, the dealership owned or controlled
250 by the manufacturer or distributor prior to the expiration of the
251 original twelve-month period. Any dealer receiving the notice
252 may protest the proposed extension within thirty days of
253 receiving notice by bringing a declaratory judgment action in the
254 circuit court for the county in which the new motor vehicle
255 dealer is located to determine whether good cause exists for the
256 extension;

257 (l) For the purpose of broadening the diversity of its dealer
258 body and enhancing opportunities for qualified persons who are
259 part of a group who have historically been under represented in
260 its dealer body, or other qualified persons who lack the resources
261 to purchase a dealership outright, but for no other purpose, a
262 manufacturer or distributor may temporarily own an interest in
263 a dealership if the manufacturer's or distributor's participation
264 in the dealership is in a bona fide relationship with a franchised
265 dealer who:

266 (i) Has made a significant investment in the dealership,
267 subject to loss;

268 (ii) Has an ownership interest in the dealership; and

269 (iii) Operates the dealership under a plan to acquire full
270 ownership of the dealership within a reasonable time and under
271 reasonable terms and conditions;

272 (m) Unreasonably withhold consent to the sale, transfer or
273 exchange of the dealership to a qualified buyer capable of being
274 licensed as a new motor vehicle dealer in this state;

275 (n) Fail to respond in writing to a request for consent to a
276 sale, transfer or exchange of a dealership within sixty days after
277 receipt of a written application from the new motor vehicle
278 dealer on the forms generally utilized by the manufacturer or
279 distributor for such purpose and containing the information
280 required therein. Failure to respond to the request within the
281 sixty days is consent;

282 (o) Unfairly prevent a new motor vehicle dealer from
283 receiving reasonable compensation for the value of the new
284 motor vehicle dealership;

285 (p) Audit any motor vehicle dealer in this state for warranty
286 parts or warranty service compensation, service compensation,
287 service or sales incentives, manufacturer rebates or other forms
288 of sales incentive compensation more than twelve months after
289 the claim for payment or reimbursement has been made by the
290 automobile dealer. No chargeback may be made until the dealer
291 has had notice and an opportunity to support the claim in
292 question within thirty days of receiving notice of the chargeback.
293 No otherwise valid reimbursements claims may be denied once
294 properly submitted in accordance with the manufacturer's
295 submission guidelines due to clerical error or omission. This
296 subsection does not apply where a claim is fraudulent. In
297 addition, the manufacturer or distributor is responsible for
298 reimbursing the audited dealer for all copying, postage and
299 administrative costs incurred by the dealer during the audit. Any
300 charges to a dealer as a result of the audit must be separately
301 billed to the dealer;

302 (q) Unreasonably restrict a dealer's ownership of a
303 dealership through noncompetition covenants, site control,

304 sublease, collateral pledge of lease, right of first refusal, option
305 to purchase, or otherwise. A right of first refusal is created when:

306 (i) A manufacturer has a contractual right of first refusal to
307 acquire the new motor vehicle dealer's assets where the dealer
308 owner receives consideration, terms and conditions that are
309 either the same as or better than those they have already
310 contracted to receive under the proposed change of more than
311 fifty percent of the dealer's ownership.

312 (ii) The proposed change of the dealership's ownership or
313 the transfer of the new vehicle dealer's assets does not involve
314 the transfer of assets or the transfer or issuance of stock by the
315 dealer or one of the dealer's owners to one of the following:

316 (A) A designated family member of one or more of the
317 dealer owners;

318 (B) A manager employed by the dealer in the dealership
319 during the previous five years and who is otherwise qualified as
320 a dealer operator;

321 (C) A partnership or corporation controlled by a designated
322 family member of one of the dealers;

323 (D) A trust established or to be established:

324 (i) For the purpose of allowing the new vehicle dealer to
325 continue to qualify as such under the manufacturer's or
326 distributor's standards; or

327 (ii) To provide for the succession of the franchise agreement
328 to designated family members or qualified management in the
329 event of death or incapacity of the dealer or its principle owner
330 or owners.

331 (iii) Upon exercising the right of first refusal by a
332 manufacturer, it eliminates any requirement under its dealer

333 agreement or other applicable provision of this statute that the
334 manufacturer evaluate, process or respond to the underlying
335 proposed transfer by approving or rejecting the proposal, is not
336 subject to challenge as a rejection or denial of the proposed
337 transfer by any party.

338 (iv) Except as otherwise provided in this subsection, the
339 manufacturer or distributor agrees to pay the reasonable
340 expenses, including reasonable out-of-pocket professional fees
341 which shall include, but not be limited to, accounting, legal or
342 appraisal services fees that are incurred by the proposed owner
343 or transferee before the manufacturer's or distributor's exercise
344 of its right of first refusal. Payment of the expenses and fees for
345 professional services are not required if the dealer fails to submit
346 an accounting of those expenses and fees within twenty days of
347 the dealer's receipt of the manufacturer's or distributor's written
348 request for such an accounting. Such a written account of fees
349 and expenses may be requested by a manufacturer or distributor
350 before exercising its right of first refusal;

351 (r) Except for experimental low-volume not-for-retail sale
352 vehicles, cause warranty and recall repair work to be performed
353 by any entity other than a new motor vehicle dealer;

354 (s) Make any material or unreasonable change in any
355 franchise agreement, including, but not limited to, the dealer's
356 area of responsibility without giving the new motor vehicle
357 dealer written notice by certified mail of the change at least sixty
358 days prior to the effective date of the change, and shall include
359 an explanation of the basis for the alteration. Upon written
360 request from the dealer, this explanation shall include, but is not
361 limited to, a reasonable and commercially acceptable copy of all
362 information, data, evaluations, and methodology relied on or
363 based its decision on, to propose the change to the dealer's area
364 of responsibility. Any information or documentation provided by
365 the manufacturer or distributor may be produced subject to a

366 reasonable confidentiality agreement. At any time prior to the
367 effective date of an alteration of a new motor vehicle dealer's
368 area of responsibility and after the completion of any internal
369 appeal process pursuant to the manufacturer's or distributor's
370 policy manual, the motor vehicle dealer may petition the court
371 to enjoin or prohibit the alteration within thirty days of receipt of
372 the manufacturer's internal appeal process decision. The court
373 shall enjoin or prohibit the alteration of a motor vehicle dealer's
374 area of responsibility unless the franchisor shows, by a
375 preponderance of the evidence, that the alteration is reasonable
376 and justifiable in light of market conditions. If a motor vehicle
377 dealer petitions the court, no alteration to a motor vehicle
378 dealer's area of responsibility shall become effective until a final
379 determination by the court. If a new motor vehicle dealer's area
380 of responsibility is altered, the manufacturer shall allow twenty-
381 four months for the motor vehicle dealer to become sales
382 effective prior to taking any action claiming a breach or
383 nonperformance of the motor vehicle dealer's sales performance
384 responsibilities;

385 (t) Fail to reimburse a new motor vehicle dealer, at the
386 dealer's regular rate, or the full and actual cost of providing a
387 loaner vehicle to any customer who is having a vehicle serviced
388 at the dealership if the provision of the loaner vehicle is required
389 by the manufacturer;

390 (u) Compel a new motor vehicle dealer through its finance
391 subsidiaries to agree to unreasonable operating requirements or
392 to directly or indirectly terminate a franchise through the actions
393 of a finance subsidiary of the franchisor. This subsection does
394 not limit the right of a finance subsidiary to engage in business
395 practices in accordance with the usage of trade in retail or
396 wholesale vehicle financing;

397 (v) Discriminate directly or indirectly between dealers on
398 vehicles of like grade or quantity where the effect of the
399 discrimination would substantially lessen competition;

400 (w) Use or employ any performance standard that is not fair
401 and reasonable and based upon accurate and verifiable data made
402 available to the dealer;

403 (x) To require or coerce any new motor vehicle dealer to
404 sell, offer to sell or sell exclusively extended service contract,
405 maintenance plan or similar product, including gap or other
406 products, offered, endorsed or sponsored by the manufacturer or
407 distributor by the following means:

408 (i) By an act of statement that the manufacturer or distributor
409 will adversely impact the dealer, whether it is express or
410 implied;

411 (ii) By a contract made to the dealer on the condition that the
412 dealer shall sell, offer to sell or sell exclusively an extended
413 service contract, extended maintenance plan or similar product
414 offered, endorsed or sponsored by the manufacturer or
415 distributor;

416 (iii) By measuring the dealer's performance under the
417 franchise agreement based on the sale of extended service
418 contracts, extended maintenance plans or similar products
419 offered, endorsed or sponsored by the manufacturer or
420 distributor;

421 (iv) By requiring the dealer to actively promote the sale of
422 extended service contracts, extended maintenance plans or
423 similar products offered, endorsed or sponsored by the
424 manufacturer or distributor;

425 (v) Nothing in this paragraph prohibits a manufacturer or
426 distributor from providing incentive programs to a new vehicle
427 dealer who makes the voluntary decision to offer to sell, sell or
428 sell exclusively an extended service contract, extended
429 maintenance plan or similar product offered, endorsed or
430 sponsored by the manufacturer or distributor;

431 (y) Require a dealer to purchase goods or services from a
432 vendor selected, identified or designated by a manufacturer,
433 factory branch, distributor, distributor branch or one of its
434 affiliates by agreement, program, incentive provision or
435 otherwise without making available to the dealer the option to
436 obtain the goods or services of substantially similar quality and
437 overall design from a vendor chosen by the dealer and approved
438 by the manufacturer, factory branch, distributor or distributor
439 branch: *Provided*, That such approval may not be unreasonably
440 withheld: *Provided, however*, That the dealer's option to select
441 a vendor is not available if the manufacturer or distributor
442 provides substantial reimbursement for the goods or services
443 offered. Substantial reimbursement is equal to the difference in
444 price of the goods and services from manufacturer's proposed
445 vendor and the motor vehicle dealer's selected vendor: *Provided*
446 *further*, That the goods are not subject to the manufacturer or
447 distributor's intellectual property or trademark rights, or trade
448 dress usage guidelines.

449 (3) A manufacturer or distributor, either directly or through
450 any subsidiary, may not terminate, cancel, fail to renew or
451 discontinue any lease of the new motor vehicle dealer's
452 established place of business except for a material breach of the
453 lease.

454 (4) Except as may otherwise be provided in this article, no
455 manufacturer or franchisor may sell, directly or indirectly, any
456 new motor vehicle to a consumer in this state, except through a
457 new motor vehicle dealer holding a franchise for the line-make
458 covering such new motor vehicle. This subsection does not
459 apply to manufacturer or franchisor sales of new motor vehicles
460 to charitable organizations, qualified vendors or employees of
461 the manufacturer or franchisor.

462 (5) Except when prevented by an act of God, labor strike,
463 transportation disruption outside the control of the manufacturer

464 or time of war, a manufacturer or distributor may not refuse or
465 fail to deliver, in reasonable quantities and within a reasonable
466 time, to a dealer having a franchise agreement for the retail sale
467 of any motor vehicle sold or distributed by the manufacturer, any
468 new motor vehicle or parts or accessories to new motor vehicles
469 as are covered by the franchise if the vehicles, parts and
470 accessories are publicly advertised as being available for
471 delivery or are actually being delivered.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

1 (1) Any designated family member of a deceased or
2 incapacitated new motor vehicle dealer may succeed the dealer
3 in the ownership or operation of the dealership under the existing
4 dealer agreement if the designated family member gives the
5 manufacturer or distributor written notice of his or her intention
6 to succeed to the dealership within one hundred twenty days
7 after the dealer's death or incapacity, agrees to be bound by all
8 of the terms and conditions of the dealer agreement, and the
9 designated family member meets the current criteria generally
10 applied by the manufacturer or distributor in qualifying new
11 motor vehicle dealers. A manufacturer or distributor may refuse
12 to honor the existing dealer agreement with the designated
13 family member only for good cause. In determining whether
14 good cause exists for refusing to honor the agreement, the
15 manufacturer or distributor has the burden of proving that the
16 designated successor is a person who is not of good moral
17 character or does not meet the manufacturer's existing written,
18 reasonable and uniformly applied standards for business
19 experience and financial qualifications. The designated family
20 member will have a minimum of one year to satisfy that
21 manufacturer's written and reasonable standards and financial
22 qualifications for appointment as the dealer and principal.

23 (2) The manufacturer or distributor may request from a
24 designated family member such personal and financial data as is

25 reasonably necessary to determine whether the existing dealer
26 agreement should be honored. The designated family member
27 shall supply the personal and financial data promptly upon the
28 request.

29 (3) If a manufacturer or distributor believes that good cause
30 exists for refusing to honor the succession, the manufacturer or
31 distributor may, within forty-five days after receipt of the notice
32 of the designated family member's intent to succeed the dealer
33 in the ownership and operation of the dealership, or within forty-
34 five days after the receipt of the requested personal and financial
35 data, serve upon the designated family member notice of its
36 refusal to approve the succession.

37 (4) The notice of the manufacturer or distributor provided in
38 subsection (3) of this section shall state the specific grounds for
39 the refusal to approve the succession and that discontinuance of
40 the agreement shall take effect not less than one hundred-eighty
41 days after the date the notice is served.

42 (5) If notice of refusal is not served within the sixty days
43 provided for in subsection (3) of this section, the dealer
44 agreement continues in effect and is subject to termination only
45 as otherwise permitted by this article.

46 (6) This section does not preclude a new motor vehicle
47 dealer from designating any person as his or her successor by
48 will or any other written instrument filed with the manufacturer
49 or distributor, and if such an instrument is filed, it alone
50 determines the succession rights to the management and
51 operation of the dealership.

52 (7) If the manufacturer challenges the succession, it
53 maintains the burden of proof to show good cause by a
54 preponderance of the evidence. If the person seeking succession
55 files a civil action within the one hundred eighty days set forth

56 in subsection (4) of this section, no action may be taken by the
57 manufacturer contrary to the dealer agreement until such time as
58 the civil action and any appeal has been exhausted: *Provided,*
59 That when a motor vehicle dealer appeals a decision upholding
60 a manufacturer's decision to not allow succession based upon the
61 designated person's insolvency, conviction of a crime punishable
62 by imprisonment in excess of one year under the law which the
63 designated person was convicted, the dealer agreement shall
64 remain in effect pending exhaustion of all appeals only if the
65 motor vehicle dealer establishes a likelihood of success on
66 appeal and the public interest will not be harmed by keeping the
67 dealer agreement in effect pending entry of final judgment after
68 the appeal.

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

1 (1) As used in this section, "relocate" and "relocation" do
2 not include the relocation of a new motor vehicle dealer within
3 four miles of its established place of business or an existing new
4 motor vehicle dealer sells or transfers the dealership to a new
5 owner and the successor new motor vehicle dealership owner
6 relocates to a location within four miles of the seller's last open
7 new motor vehicle dealership location. The relocation of a new
8 motor vehicle dealer to a site within the area of sales
9 responsibility assigned to that dealer by the manufacturing
10 branch or distributor may not be within six air miles of another
11 dealer of the same line-make.

12 (2) Before a manufacturer or distributor enters into a dealer
13 agreement establishing or relocating a new motor vehicle dealer
14 within a relevant market area where the same line-make is
15 represented, the manufacturer or distributor shall give written
16 notice to each new motor vehicle dealer of the same line-make
17 in the relevant market area of its intention to establish an
18 additional dealer or to relocate an existing dealer within that
19 relevant market area.

20 (3) Within sixty days after receiving the notice provided in
21 subsection (2) of this section, or within sixty days after the end
22 of any appeal procedure provided by the manufacturer or
23 distributor, a new motor vehicle dealer of the same line-make
24 within the affected relevant market area may bring a declaratory
25 judgment action in the circuit court for the county in which the
26 new motor vehicle dealer is located to determine whether good
27 cause exists for the establishing or relocating of the proposed
28 new motor vehicle dealer. *Provided*, That a new motor vehicle
29 dealer of the same line-make within the affected relevant market
30 area shall not be permitted to bring such an action if the
31 proposed relocation site would be further from the location of
32 the new motor vehicle dealer of the same line-make than the
33 location from which the dealership is being moved. Once an
34 action has been filed, the manufacturer or distributor may not
35 establish or relocate the proposed new motor vehicle dealer until
36 the circuit court has rendered a decision on the matter. An action
37 brought pursuant to this section shall be given precedence over
38 all other civil matters on the court's docket. The manufacturer
39 has the burden of proving that good cause exists for establishing
40 or relocating a proposed new motor vehicle dealer.

41 (4) This section does not apply to the reopening in a relevant
42 market area of a new motor vehicle dealer that has been closed
43 within the preceding two years if the established place of
44 business of the new motor vehicle dealer is within four air miles
45 of the established place of business of the closed or sold new
46 motor vehicle dealer.

47 (5) In determining whether good cause exists for establishing
48 or relocating an additional new motor vehicle dealer for the same
49 line-make, the court shall take into consideration the existing
50 circumstances, including, but not limited to, the following:

51 (a) Permanency and amount of the investment, including any
52 obligations incurred by the dealer in making the investment;

53 (b) Effect on the retail new motor vehicle business and the
54 consuming public in the relevant market area;

55 (c) Whether it is injurious or beneficial to the public welfare;

56 (d) Whether the new motor vehicle dealers of the same line-
57 make in the relevant market area are providing adequate
58 competition and convenient consumer care for the motor
59 vehicles of that line-make in the market area, including the
60 adequacy of motor vehicle sales and qualified service personnel;

61 (e) Whether the establishment or relocation of the new motor
62 vehicle dealer would promote competition;

63 (f) Growth or decline of the population and the number of
64 new motor vehicle registrations in the relevant market area; and

65 (g) The effect on the relocating dealer of a denial of its
66 relocation into the relevant market area.

§17A-6A-12a. Restriction on motor vehicle dealer's use of dealership property.

1 (1) A manufacturer shall not require that a new motor
2 vehicle dealer, a proposed new motor vehicle dealer, or any
3 owner of an interest in a dealership facility enter into or agree to
4 a property use agreement as a condition to any of the following:

5 (a) Awarding a dealer agreement to a prospective new motor
6 vehicle dealer.

7 (b) Adding a line make or dealer agreement to an existing
8 new motor vehicle dealer.

9 (c) Renewing a dealer agreement with an existing new motor
10 vehicle dealer.

11 (d) Approving a relocation of a new motor vehicle dealer's
12 place of business.

13 (e) Approving a sale or transfer of the ownership of a
14 dealership or a transfer of a dealer agreement to another person.

15 (2) Subsection (1) of this section does not apply to a property
16 use agreement if any of the following are offered and accepted
17 for that agreement:

18 (a) Monetary consideration.

19 (b) Separate and valuable consideration that can be
20 calculated to a sum certain.

21 (3) If a manufacturer and new motor vehicle dealer are in
22 parties to a property use agreement, the dealer agreement
23 between the manufacturer and new motor vehicle dealer is
24 terminated by a manufacturer or by a successor manufacturer or
25 by operation of law and the reason for the termination is not a
26 reason described in paragraphs (1) through (5), inclusive,
27 subdivision (c), section seven of this article, the property use
28 agreement terminates and ceases to be effective at the time the
29 dealer agreement is terminated.

30 (4) If any provision contained in a property use agreement
31 entered into on or after the effective date of the amendatory act
32 that added this subsection is inconsistent with this section, the
33 provision is voidable at the election of the affected new motor
34 vehicle dealer, proposed new motor vehicle dealer, or owner of
35 an interest in the dealership facility.

36 (5) As used in this section, “property use agreement” means
37 any of the following:

38 (a) An agreement that requires that a new motor vehicle
39 dealer establish or maintain exclusive dealership facilities.

40 (b) An agreement that restricts the ability of a new motor
41 vehicle dealer, or the ability of the dealer’s lessor if the dealer is

42 leasing the dealership facility, to transfer, sell, lease, or change
43 the use of the place of business of the dealership, whether by
44 sublease, lease, collateral pledge of lease, right of first refusal to
45 purchase or lease, option to purchase, option to lease, or other
46 similar agreement, regardless of who the parties to that
47 agreement are.

48 (c) Any similar agreement between a manufacturer and a
49 new motor vehicle dealer and commonly known as a site control
50 agreement or exclusive use agreement.

§17A-6A-13. Obligations regarding warranties.

1 (1) Each new motor vehicle manufacturer or distributor shall
2 specify in writing to each of its new motor vehicle dealers
3 licensed in this state the dealer's obligations for preparation,
4 delivery and warranty service on its products. The manufacturer
5 or distributor shall compensate the new motor vehicle dealer for
6 warranty service required of the dealer by the manufacturer or
7 distributor. The manufacturer or distributor shall provide the new
8 motor vehicle dealer with the schedule of compensation to be
9 paid to the dealer for parts, work and service, and the time
10 allowance for the performance of the work and service in a
11 manner in compliance with section eight-a of this article.

12 (2) The schedule of compensation shall include reasonable
13 compensation for diagnostic work, as well as repair service and
14 labor. Time allowances for the diagnosis and performance of
15 warranty work and service shall be reasonable and adequate for
16 the work to be performed. In the determination of what
17 constitutes reasonable compensation under this section, section
18 eight-a of this article shall govern: *Provided*, That in the case of
19 a dealer of new motorcycles, motorboat trailers, all-terrain
20 vehicles, utility terrain vehicles and snowmobiles, the
21 compensation of a dealer for warranty parts is the greater of the
22 dealer's cost of acquiring the part plus thirty percent or the

23 manufacturer's suggested retail price: *Provided, however,* That
24 in the case of a dealer of travel trailers, fold-down camping
25 trailers and motorhomes, the compensation of a dealer's cost for
26 warranty parts is not less than the dealer's cost of acquiring the
27 part plus twenty percent.

28 (3) A manufacturer or distributor may not do any of the
29 following:

30 (a) Fail to perform any warranty obligation;

31 (b) Fail to include in written notices of factory recalls to new
32 motor vehicle owners and dealers the expected date by which
33 necessary parts and equipment will be available to dealers for the
34 correction of the defects; or

35 (c) Fail to compensate any of the new motor vehicle dealers
36 licensed in this state for repairs effected by the recall.

37 (4) All claims made by a new motor vehicle dealer pursuant
38 to this section for labor and parts shall be paid within thirty days
39 after their approval. All claims shall be either approved or
40 disapproved by the manufacturer or distributor within thirty days
41 after their receipt on a proper form generally used by the
42 manufacturer or distributor and containing the usually required
43 information therein. Any claim not specifically disapproved in
44 writing within thirty days after the receipt of the form is
45 considered to be approved and payment shall be made within
46 thirty days. The manufacturer has the right to initiate an audit of
47 a claim within twelve months after payment and to charge back
48 to the new motor vehicle dealer the amount of any false,
49 fraudulent or unsubstantiated claim, subject to the requirements
50 of section eight-a of this article.

51 (5) The manufacturer shall accept the return of any new and
52 unused part, component or accessory that was ordered by the
53 dealer, and shall reimburse the dealer for the full cost charged to

54 the dealer for the part, component or accessory if the dealer
55 returns the part and makes a claim for the return of the part
56 within one year of the dealer's receipt of the part, component or
57 accessory and provides reasonable documentation, to include any
58 changed part numbers to match new part numbers, provided that
59 the part was ordered for a warranty repair.

§17A-6A-14a. Open account protection.

1 If there is a dispute between the manufacturer, factory
2 branch, distributor or distributor branch and the dealer with
3 respect to any matter referred to this article, either party may
4 notify, in writing, the other party of its request to challenge,
5 through the manufacturer's appeal process or the circuit courts
6 of the state of West Virginia. A manufacturer, factory branch,
7 distributor, or distributor branch may not collect chargebacks,
8 fully or in part, either through direct payment or by charge to the
9 dealer's account, for warranty parts or service compensation,
10 including service incentives, sales incentives, other sales
11 compensation, surcharges, fees, penalties or any financial
12 imposition of any type arising from an alleged failure of the
13 dealer to comply with a policy of, directive from or agreement
14 with the manufacturer, factory branch, distributor or distributor
15 branch until thirty days following final notice of the amount
16 charged to the dealer following all internal processes of the
17 manufacturer, factory, factory branch, distributor or distributor
18 branch. Within thirty days following receipt of final notice, the
19 dealer may, in writing, request a hearing or seek civil relief from
20 the manufacturer's appeal process or the circuit courts of the
21 state of West Virginia. If a dealer requests a hearing or files a
22 civil action, the manufacturer, factory branch, distributor or
23 distributor branch may not collect the chargeback, fully or in
24 part, either through direct payment or by charge to the dealer's
25 account, until the completion of the hearing or civil action, and
26 all appeal, civil or otherwise, have been exhausted concerning
27 the validity of the chargeback.

§17A-6A-15. Indemnity.

1 Notwithstanding the terms of any dealer agreement, a
2 manufacturer or distributor shall indemnify and hold harmless its
3 dealers for any reasonable expenses incurred, including
4 damages, court costs and attorney's fees, arising out of
5 complaints, claims or actions to the extent such complaints,
6 claims or actions relate to the manufacture, assembly, design of
7 a new motor vehicle or other functions by the manufacturer or
8 distributor beyond the control of the dealer, including, without
9 limitation, the selection by the manufacturer or distributor of
10 parts or components for the vehicle, and any damages to
11 merchandise occurring prior to acceptance of the vehicle by the
12 dealer to the dealer if the carrier is designated by the
13 manufacturer or distributor, if the new motor vehicle dealer
14 gives timely notice to the manufacturer or distributor of the
15 complaint, claim or action.

§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; indemnification of dealer.

1 (a) Except as expressly authorized in this section, a
2 manufacturer or distributor cannot require a motor vehicle dealer
3 to provide it customer information to the manufacturer or
4 distributor unless necessary for the sale and delivery of a new
5 motor vehicle to a consumer, to validate and pay consumer or
6 dealer incentives, for manufacturer's marketing purposes, for
7 evaluation of dealer performance, for analytics or to support
8 claims submitted by the new motor vehicle dealer for
9 reimbursement for warranty parts or repairs. Nothing in this
10 section shall limit the manufacturer's ability to require or use
11 customer information to satisfy any safety or recall notice
12 obligation or other legal obligation.

13 (b) The dealer is only required to provide the customer
14 information to the extent lawfully permissible; and to the extent

15 the requested information relates solely to specific program
16 requirements or goals associated with the manufacturer's or
17 distributor's own vehicle makes. A manufacturer, factory
18 branch, distributor, distributor branch, dealer management
19 computer system vendor or any third party acting on behalf of
20 any manufacturer, factory branch, distributor, distributor branch
21 or dealer management computer system vendor may not prohibit
22 a dealer from providing a means to regularly and continually
23 monitor the specific data accessed from or written to the dealer's
24 computer system and from complying with applicable state and
25 federal laws and any rules or regulations promulgated
26 thereunder. These provisions do not impose an obligation on a
27 manufacturer, factory branch, distributor, distributor branch,
28 dealer management computer system vendor or any third party
29 acting on behalf of any manufacturer, factory branch, distributor,
30 distributor branch or dealer management computer system
31 vendor to provide that capability.

32 (c) A manufacturer, factory branch, distributor, distributor
33 branch, dealer management computer system vendor, or any
34 third party acting on behalf of any manufacturer, factory branch,
35 distributor, distributor branch or dealer management computer
36 system vendor, may not provide access to customer or dealership
37 information maintained in a dealer management computer
38 system used by a motor vehicle dealer located in this state, other
39 than a subsidiary or affiliate of the manufacturer factory branch,
40 distributor or distributor branch without first obtaining the
41 dealer's prior express written consent, revocable by the dealer
42 upon ten business days written notice, to provide the access.

43 Upon a written request from a motor vehicle dealer, the
44 manufacturer, factory branch, distributor, distributor branch,
45 dealer management computer system vendor, or any third party
46 acting on behalf of or through any manufacturer, factory branch,
47 distributor, distributor branch or dealer management computer
48 system vendor shall provide to the dealer a written list of all

49 specific third parties other than a subsidiary or affiliate of the
50 manufacturer, factory branch, distributor or distributor branch to
51 whom any data obtained from the dealer has actually been
52 provided within the twelve-month period prior to date of dealer's
53 written request. If requested by the dealer, the list shall further
54 describe the scope and specific fields of the data provided. The
55 consent does not change the person's obligations to comply with
56 the terms of this section and any additional state or federal laws,
57 and any rules or regulations promulgated thereunder, applicable
58 to them with respect to the access.

59 (d) A manufacturer, factory branch, distributor, distributor
60 branch, dealer management computer system vendor or any third
61 party acting on behalf of or through any dealer management
62 computer system vendor, having electronic access to customer
63 or motor vehicle dealership data in a dealership management
64 computer system used by a motor vehicle dealer located in this
65 state shall provide notice in a reasonable timely manner to the
66 dealer of any security breach of dealership or customer data
67 obtained through the access.

68 (e) As used in this section:

69 (1) "Dealer management computer system" means a
70 computer hardware and software system that is owned or leased
71 by the dealer, including a dealer's use of web applications,
72 excluding a web application operated by a manufacturer,
73 software or hardware, whether located at the dealership or
74 provided at a remote location and that provides access to
75 customer records and transactions by a motor vehicle dealer
76 located in this state and that allows the motor vehicle dealer
77 timely information in order to sell vehicles, parts or services
78 through the motor vehicle dealership.

79 (2) "Dealer management computer system vendor" means a
80 seller or reseller of dealer management computer systems, a

81 person that sells computer software for use on dealer
82 management computer systems or a person who services or
83 maintains dealer management computer systems.

84 (3) "Security breach" means an incident of unauthorized
85 access to and acquisition of records or data containing dealership
86 or dealership customer information where unauthorized use of
87 the dealership or dealership customer information has occurred.

88 (4) "Customer information" means "nonpublic personal" as
89 defined in 16 C. F. R. §313.

90 (f) Notwithstanding the terms or conditions of any consent,
91 authorization, release, novation, franchise or other contract or
92 agreement, every manufacturer, factory branch, distributor,
93 distributor branch, dealer management computer system vendor
94 or any third party acting on behalf of or through a manufacturer,
95 factory branch, distributor, distributor branch or dealer
96 management computer system vendor shall fully indemnify,
97 defend and hold harmless any dealer or manufacturer, factory
98 branch, distributor or distributor branch from all damages,
99 attorney fees and costs, other costs and expenses incurred by the
100 dealer from complaints, claims or actions arising out of
101 manufacturer's, factory's branch, distributor's, distributor's
102 branch, dealer management computer system vendor's or any
103 third party for its willful, negligent or illegal use or disclosure of
104 dealers consumer or customer data or other information in
105 dealer's computer system. The indemnification includes, but is
106 not limited to, judgments, settlements, fines, penalties, litigation
107 costs, defense costs, court costs, costs related to the disclosure of
108 security breaches and attorneys' fees arising out of complaints,
109 claims, civil or administrative actions.

110 (g) This section applies to contracts entered into after the
111 effective date of this section.

§17A-6A-15b. Exports; rebuttable presumption on behalf of dealer.

1 It is unlawful for a manufacturer or distributor to take or
2 threaten to take any adverse action against a dealer pursuant to
3 an export or sale-for-resale prohibition because the dealer sold
4 or leased a vehicle to a customer who either exported the vehicle
5 to a foreign country or resold the vehicle in violation of the
6 prohibition, unless the export or sale-for-resale prohibition
7 policy was provided to the dealer in writing prior to the sale or
8 lease, and the dealer knew or reasonably should have known of
9 the customer's intent to export or resell the vehicle in violation
10 of the prohibition at the time of sale or lease. If the dealer causes
11 the vehicle to be registered in this state or any other state and has
12 determined that the customer is not on a list of known or
13 suspected exporters provided by the manufacturer at the time of
14 sale, a rebuttable presumption is established that the dealer did
15 not have reason to know of the customer's intent to export or
16 resell the vehicle.

§17A-6A-15c. Manufacturer performance standards; uniform application, prohibited practices.

1 A manufacturer may not require dealer adherence to a
2 performance standard or standards which are not applied
3 uniformly to other similarly situated dealers. In addition to any
4 other requirements of the law, the following shall apply:

5 (1) A performance standard, sales objective or program for
6 measuring dealer performance that may have a material effect on
7 a dealer, including the dealer's right to payment under any
8 incentive or reimbursement program, and the application of the
9 standard, sales objective or program by a manufacturer,
10 distributor or factory branch shall be reasonable and based on
11 accurate information.

12 (2) Upon written request from a dealer participating in the
13 program, the manufacturer shall provide in writing the dealer's
14 performance requirement or sales goal or objective, which shall

15 include a reasonable and general explanation of the
16 methodology, criteria and calculations used.

17 (3) A manufacturer shall allocate a reasonable and
18 appropriate supply of vehicles to assist the dealer in achieving
19 any performance standards established by the manufacturer and
20 distributor.

21 (4) The manufacturer or distributor has the burden of
22 proving by a preponderance of the evidence that the performance
23 standard, sales objective or program for measuring dealership
24 performance complies with this article.

§17A-6A-18. West Virginia law to apply.

1 Notwithstanding the terms, provisions or requirements of
2 any franchise agreement, contract or other agreement of any kind
3 between a new motor vehicle dealer and a manufacturer or
4 distributor captive finance source or any subsidiary, affiliate or
5 partner of a manufacturer or distributor, the provisions of this
6 code apply to all such agreements and contracts. Any provisions
7 in the agreements and contracts which violate the terms of this
8 section are null and void.

CHAPTER 173

**(H. B. 2664 - By Delegate(s) Sobonya, Butler,
McCuskey, Stansbury, E. Nelson, Ihle, Householder,
Ellington, Westfall, Marcum and Byrd)**

[Amended and again passed March 18, 2015; as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §17C-5-2 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §17C-5A-2

of said code, all relating to offenses of driving under the influence of alcohol, controlled substances or drugs; defining terms; restating the elements of certain offenses of driving under the influence of alcohol, controlled substances or drugs; requiring that a person's impaired state proximately cause the injury or death in certain offenses; increasing the penalty for driving under the influence of alcohol, controlled substances or drugs causing death; requiring death to have occurred within one year of an offense of driving under the influence of alcohol, controlled substances or drugs causing death; eliminating the misdemeanor offense of driving under the influence of alcohol, controlled substances or drugs causing death; creating felony offense and penalties for driving under the influence of alcohol, controlled substances or drugs causing serious bodily injury; increasing the penalty for certain subsequent offenses of driving under the influence of alcohol, controlled substances or drugs; and providing that the West Virginia Rules of Evidence apply to administrative proceedings concerning license revocation for driving under the influence.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) *Definitions* —
- 2 (1) “Impaired State” means a person:
 - 3 (A) Is under the influence of alcohol;
 - 4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug;

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of eight
9 hundredths of one percent or more, by weight.

10 (2) "Bodily Injury" means injury that causes substantial
11 physical pain, illness or any impairment of physical condition.

12 (3) "Serious Bodily Injury" means bodily injury that creates
13 a substantial risk of death, that causes serious or prolonged
14 disfigurement, prolonged impairment of health or prolonged loss
15 or impairment of the function of any bodily organ.

16 (b) Any person who drives a vehicle in this state while he or
17 she is in an impaired state and such impaired state proximately
18 causes the death of any person is guilty of a felony and, upon
19 conviction thereof, shall be imprisoned in a state correctional
20 facility for not less than three nor more than fifteen years and
21 shall be fined not less than \$1,000 nor more than \$3,000:
22 *Provided*, That any death charged under this subsection must
23 occur within one year of the offense.

24 (c) Any person who drives a vehicle in this state while he or
25 she is in an impaired state and such impaired state proximately
26 causes serious bodily injury to any person other than himself or
27 herself, is guilty of a felony and, upon conviction thereof, shall
28 be imprisoned in a state correctional facility for not less than two
29 nor more than ten years and shall be fined not less than \$1,000
30 nor more than \$3,000.

31 (d) Any person who drives a vehicle in this state while he or
32 she is in an impaired state and such impaired state proximately
33 causes a bodily injury to any person other than himself or
34 herself, is guilty of a misdemeanor and, upon conviction thereof,

35 shall be confined in jail for not less than one day more than one
36 year and shall be fined not less than \$200 nor more than \$1,000:
37 *Provided*, That such jail term shall include actual confinement of
38 not less than twenty-four hours: *Provided, however*, That a
39 person sentenced pursuant to this subsection shall receive credit
40 for any period of actual confinement he or she served upon arrest
41 for the subject offense.

42 (e) Any person who drives a vehicle in this state while he or
43 she is in an impaired state, but has an alcohol concentration in
44 his or her blood of less than fifteen hundredths of one percent by
45 weight, is guilty of a misdemeanor and, upon conviction thereof,
46 shall be confined in jail for up to six months and shall be fined
47 not less than \$100 nor more than \$500: *Provided*, That a person
48 sentenced pursuant to this subsection shall receive credit for any
49 period of actual confinement he or she served upon arrest for the
50 subject offense.

51 (f) Any person who drives a vehicle in this state while he or
52 she has an alcohol concentration in his or her blood of fifteen
53 hundredths of one percent or more, by weight, is guilty of a
54 misdemeanor and, upon conviction thereof, shall be confined in
55 jail for not less than two days nor more than six months, which
56 jail term is to include actual confinement of not less than
57 twenty-four hours, and shall be fined not less than \$200 nor more
58 than \$1,000. A person sentenced pursuant to this subdivision
59 shall receive credit for any period of actual confinement he or
60 she served upon arrest for the subject offense.

61 (g) Any person who, being a habitual user of narcotic drugs
62 or amphetamine or any derivative thereof, drives a vehicle in this
63 state is guilty of a misdemeanor and, upon conviction thereof,
64 shall be confined in jail for not less than one day nor more than
65 six months, which jail term is to include actual confinement of
66 not less than twenty-four hours, and shall be fined not less than
67 \$100 nor more than \$500. A person sentenced pursuant to this

68 subdivision shall receive credit for any period of actual
69 confinement he or she served upon arrest for the subject offense.

70 (h) Any person who knowingly permits his or her vehicle to
71 be driven in this state by any other person who is in an impaired
72 state is guilty of a misdemeanor and, upon conviction thereof,
73 shall be confined in jail for not more than six months and shall
74 be fined not less than \$100 nor more than \$500.

75 (i) Any person who knowingly permits his or her vehicle to
76 be driven in this state by any other person who is a habitual user
77 of narcotic drugs or amphetamine or any derivative thereof is
78 guilty of a misdemeanor and, upon conviction thereof, shall be
79 confined in jail for not more than six months and shall be fined
80 not less than \$100 nor more than \$500.

81 (j) Any person under the age of twenty-one years who drives
82 a vehicle in this state while he or she has an alcohol
83 concentration in his or her blood of two hundredths of one
84 percent or more, by weight, but less than eight hundredths of one
85 percent, by weight, for a first offense under this subsection is
86 guilty of a misdemeanor and, upon conviction thereof, shall be
87 fined not less than \$25 nor more than \$100. For a second or
88 subsequent offense under this subsection, the person is guilty of
89 a misdemeanor and, upon conviction thereof, shall be confined
90 in jail for twenty-four hours and shall be fined not less than \$100
91 nor more than \$500. A person who is charged with a first offense
92 under the provisions of this subsection may move for a
93 continuance of the proceedings, from time to time, to allow the
94 person to participate in the Motor Vehicle Alcohol Test and
95 Lock Program as provided in section three-a, article five-a of this
96 chapter. Upon successful completion of the program, the court
97 shall dismiss the charge against the person and expunge the
98 person's record as it relates to the alleged offense. In the event
99 the person fails to successfully complete the program, the court
100 shall proceed to an adjudication of the alleged offense. A motion

101 for a continuance under this subsection may not be construed as
102 an admission or be used as evidence.

103 A person arrested and charged with an offense under the
104 provisions of this subsection or subsection (b), (c), (d), (e), (f),
105 (g), (h) or (i) of this section may not also be charged with an
106 offense under this subsection arising out of the same transaction
107 or occurrence.

108 (k) Any person who drives a vehicle in this state while he or
109 she is in an impaired state and has within the vehicle one or more
110 other persons who are unemancipated minors who have not yet
111 reached their sixteenth birthday is guilty of a misdemeanor and,
112 upon conviction thereof, shall be confined in jail for not less than
113 two days nor more than twelve months, and shall be fined not
114 less than \$200 nor more than \$1,000: *Provided*, That such jail
115 term shall include actual confinement of not less than forty-eight
116 hours: *Provided, however*, That a person sentenced pursuant to
117 this subdivision shall receive credit for any period of actual
118 confinement he or she served upon arrest for the subject offense.

119 (l) A person violating any provision of subsection (d), (e),
120 (f), (g), (h) or (j) of this section, for the second offense under this
121 section, is guilty of a misdemeanor and, upon conviction thereof,
122 shall be confined in jail for not less than six months nor more
123 than one year and the court may, in its discretion, impose a fine
124 of not less than \$1,000 nor more than \$3,000.

125 (m) A person violating any provision of subsection (d), (e),
126 (f), (g), (h) or (j) of this section, for the third or any subsequent
127 offense under this section, is guilty of a felony and, upon
128 conviction thereof, shall be imprisoned in a state correctional
129 facility for not less than two nor more than five years and the
130 court may, in its discretion, impose a fine of not less than \$3,000
131 nor more than \$5,000.

132 (n) For purposes of subsections (l) and (m) of this section
133 relating to second, third and subsequent offenses, the following
134 events shall be regarded as offenses under this section:

135 (1) Any conviction under the provisions of subsection (b),
136 (c), (d), (e), (f), (g) or (h) of this section or under a prior
137 enactment of this section for an offense which occurred within
138 the ten-year period immediately preceding the date of arrest in
139 the current proceeding;

140 (2) Any conviction under a municipal ordinance of this state
141 or any other state or a statute of the United States or of any other
142 state of an offense which has the same elements as an offense
143 described in subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this
144 section, which offense occurred within the ten-year period
145 immediately preceding the date of arrest in the current
146 proceeding; and

147 (3) Any period of conditional probation imposed pursuant
148 section two-b of this article for violation of subsection (e) of this
149 section, which violation occurred within the ten-year period
150 immediately preceding the date of arrest in the current
151 proceeding.

152 (o) A person may be charged in a warrant or indictment or
153 information for a second or subsequent offense under this section
154 if the person has been previously arrested for or charged with a
155 violation of this section which is alleged to have occurred within
156 the applicable time period for prior offenses, notwithstanding the
157 fact that there has not been a final adjudication of the charges for
158 the alleged previous offense. In that case, the warrant or
159 indictment or information must set forth the date, location and
160 particulars of the previous offense or offenses. No person may
161 be convicted of a second or subsequent offense under this section
162 unless the conviction for the previous offense has become final,
163 or the person has previously had a period of conditional
164 probation imposed pursuant to section two-b of this article.

165 (p) The fact that any person charged with a violation of
166 subsection (b), (c), (d), (e), (f) or (g) of this section, or any person
167 permitted to drive as described under subsection (h) or (i) of this
168 section, is or has been legally entitled to use alcohol, a controlled
169 substance or a drug does not constitute a defense against any
170 charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)
171 of this section.

172 (q) For purposes of this section, the term “controlled
173 substance” has the meaning ascribed to it in chapter sixty-a of
174 this code.

175 (r) The sentences provided in this section upon conviction
176 for a violation of this article are mandatory and are not subject
177 to suspension or probation: *Provided*, That the court may apply
178 the provisions of article eleven-a, chapter sixty-two of this code
179 to a person sentenced or committed to a term of one year or less
180 for a first offense under this section: *Provided further*, That the
181 court may impose a term of conditional probation pursuant to
182 section two-b of this article to persons adjudicated thereunder.
183 An order for home detention by the court pursuant to the
184 provisions of article eleven-b of said chapter may be used as an
185 alternative sentence to any period of incarceration required by
186 this section for a first or subsequent offense: *Provided, however*,
187 That for any period of home incarceration ordered for a person
188 convicted of second offense under this section, electronic
189 monitoring shall be required for no fewer than five days of the
190 total period of home confinement ordered and the offender may
191 not leave home for those five days notwithstanding the
192 provisions of section five, article eleven-b, chapter sixty-two of
193 this code: *Provided further*, That for any period of home
194 incarceration ordered for a person convicted of a third or
195 subsequent violation of this section, electronic monitoring shall
196 be included for no fewer than ten days of the total period of
197 home confinement ordered and the offender may not leave home
198 for those ten days notwithstanding section five, article eleven-b,
199 chapter sixty-two of this code.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-2. Hearing; revocation; review.

1 (a) Written objections to an order of revocation or
2 suspension under the provisions of section one of this article or
3 section seven, article five of this chapter shall be filed with the
4 Office of Administrative Hearings. Upon the receipt of an
5 objection, the Office of Administrative Hearings shall notify the
6 Commissioner of the Division of Motor Vehicles, who shall stay
7 the imposition of the period of revocation or suspension and
8 afford the person an opportunity to be heard by the Office of
9 Administrative Hearings. The written objection must be filed
10 with Office of Administrative Hearings in person, by registered
11 or certified mail, return receipt requested, or by facsimile
12 transmission or electronic mail within thirty calendar days after
13 receipt of a copy of the order of revocation or suspension or no
14 hearing will be granted: *Provided*, That a successful transmittal
15 sheet shall be necessary for proof of written objection in the case
16 of filing by fax. The hearing shall be before a hearing examiner
17 employed by the Office of Administrative Hearings who shall
18 rule on evidentiary issues. The West Virginia Rules of Evidence
19 shall apply to all proceedings before the hearing examiner. Upon
20 consideration of the designated record, the hearing examiner
21 shall, based on the determination of the facts of the case and
22 applicable law, render a decision affirming, reversing or
23 modifying the action protested. The decision shall contain
24 findings of fact and conclusions of law and shall be provided to
25 all parties by registered or certified mail, return receipt
26 requested, or with a party's written consent, by facsimile or
27 electronic mail.

28 (b) The hearing shall be held at an office of the Division of
29 Motor Vehicles suitable for hearing purposes located in or near
30 the county in which the arrest was made in this state or at some
31 other suitable place in the county in which the arrest was made
32 if an office of the division is not available. At the discretion of
33 the Office of Administrative Hearings, the hearing may also be
34 held at an office of the Office of Administrative Hearings
35 located in or near the county in which the arrest was made in this
36 state. The Office of Administrative Hearings shall send a notice
37 of hearing to the person whose driving privileges are at issue and
38 the person's legal counsel if the person is represented by legal
39 counsel, by regular mail, or with the written consent of the
40 person whose driving privileges are at issue or their legal
41 counsel, by facsimile or electronic mail. The Office of
42 Administrative Hearings shall also send a notice of hearing by
43 regular mail, facsimile or electronic mail to the Division of
44 Motor Vehicles, and the Attorney General's Office, if the
45 Attorney General has filed a notice of appearance of counsel on
46 behalf of the Division of Motor Vehicles.

47 (c) (1) Any hearing shall be held within one hundred eighty
48 days after the date upon which the Office of Administrative
49 Hearings received the timely written objection unless there is a
50 postponement or continuance.

51 (2) The Office of Administrative Hearings may postpone or
52 continue any hearing on its own motion or upon application by
53 the party whose license is at issue in that hearing or by the
54 commissioner for good cause shown.

55 (3) The Office of Administrative Hearings may issue
56 subpoenas commanding the appearance of witnesses and
57 subpoenas duces tecum commanding the submission of
58 documents, items or other things. Subpoenas duces tecum shall
59 be returnable on the date of the next scheduled hearing unless
60 otherwise specified. The Office of Administrative hearings shall

61 issue subpoenas and subpoenas duces tecum at the request of a
62 party or the party's legal representative. The party requesting the
63 subpoena shall be responsible for service of the subpoena upon
64 the appropriate individual. Every subpoena or subpoena duces
65 tecum shall be served at least five days before the return date
66 thereof, either by personal service made by a person over
67 eighteen years of age or by registered or certified mail, return
68 receipt requested, and received by the party responsible for
69 serving the subpoena or subpoena duces tecum: *Provided*, That
70 the Division of Motor Vehicles may serve subpoenas to
71 law-enforcement officers through electronic mail to the
72 department of his or her employer. If a person does not obey the
73 subpoena or fails to appear, the party who issued the subpoena
74 to the person may petition the circuit court wherein the action
75 lies for enforcement of the subpoena.

76 (d) Law-enforcement officers shall be compensated for the
77 time expended in their travel and appearance before the Office
78 of Administrative Hearings by the law-enforcement agency by
79 whom they are employed at their regular rate if they are
80 scheduled to be on duty during said time or at their regular
81 overtime rate if they are scheduled to be off duty during said
82 time.

83 (e) The principal question at the hearing shall be whether the
84 person did drive a motor vehicle while under the influence of
85 alcohol, controlled substances or drugs, or did drive a motor
86 vehicle while having an alcohol concentration in the person's
87 blood of eight hundredths of one percent or more, by weight, or
88 did refuse to submit to the designated secondary chemical test,
89 or did drive a motor vehicle while under the age of twenty-one
90 years with an alcohol concentration in his or her blood of two
91 hundredths of one percent or more, by weight, but less than eight
92 hundredths of one percent, by weight.

93 (f) In the case of a hearing in which a person is accused of
94 driving a motor vehicle while under the influence of alcohol,

95 controlled substances or drugs, or accused of driving a motor
96 vehicle while having an alcohol concentration in the person's
97 blood of eight hundredths of one percent or more, by weight, or
98 accused of driving a motor vehicle while under the age of
99 twenty-one years with an alcohol concentration in his or her
100 blood of two hundredths of one percent or more, by weight, but
101 less than eight hundredths of one percent, by weight, the Office
102 of Administrative Hearings shall make specific findings as to:
103 (1) Whether the investigating law-enforcement officer had
104 reasonable grounds to believe the person to have been driving
105 while under the influence of alcohol, controlled substances or
106 drugs, or while having an alcohol concentration in the person's
107 blood of eight hundredths of one percent or more, by weight, or
108 to have been driving a motor vehicle while under the age of
109 twenty-one years with an alcohol concentration in his or her
110 blood of two hundredths of one percent or more, by weight, but
111 less than eight hundredths of one percent, by weight; (2) whether
112 the person was lawfully placed under arrest for an offense
113 involving driving under the influence of alcohol, controlled
114 substances or drugs, or was lawfully taken into custody for the
115 purpose of administering a secondary test: *Provided*, That this
116 element shall be waived in cases where no arrest occurred due to
117 driver incapacitation; (3) whether the person committed an
118 offense involving driving under the influence of alcohol,
119 controlled substances or drugs; and (4) whether the tests, if any,
120 were administered in accordance with the provisions of this
121 article and article five of this chapter.

122 (g) If, in addition to a finding that the person did drive a
123 motor vehicle while under the influence of alcohol, controlled
124 substances or drugs, or did drive a motor vehicle while having an
125 alcohol concentration in the person's blood of eight hundredths
126 of one percent or more, by weight, or did drive a motor vehicle
127 while under the age of twenty-one years with an alcohol
128 concentration in his or her blood of two hundredths of one
129 percent or more, by weight, but less than eight hundredths of one

130 percent, by weight, the Office of Administrative Hearings also
131 finds by a preponderance of the evidence that the person when
132 driving did an act forbidden by law or failed to perform a duty
133 imposed by law, which act or failure proximately caused the
134 death of a person and was committed in reckless disregard of the
135 safety of others and if the Office of Administrative Hearings
136 further finds that the influence of alcohol, controlled substances
137 or drugs or the alcohol concentration in the blood was a
138 contributing cause to the death, the commissioner shall revoke
139 the person's license for a period of ten years: *Provided*, That if
140 the person's license has previously been suspended or revoked
141 under the provisions of this section or section one of this article
142 within the ten years immediately preceding the date of arrest, the
143 period of revocation shall be for the life of the person.

144 (h) If, in addition to a finding that the person did drive a
145 motor vehicle while under the influence of alcohol, controlled
146 substances or drugs, or did drive a motor vehicle while having an
147 alcohol concentration in the person's blood of eight hundredths
148 of one percent or more, by weight, the Office of Administrative
149 Hearings also finds by a preponderance of the evidence that the
150 person when driving did an act forbidden by law or failed to
151 perform a duty imposed by law, which act or failure proximately
152 caused the death of a person, the commissioner shall revoke the
153 person's license for a period of five years: *Provided*, That if the
154 person's license has previously been suspended or revoked under
155 the provisions of this section or section one of this article within
156 the ten years immediately preceding the date of arrest, the period
157 of revocation shall be for the life of the person.

158 (i) If, in addition to a finding that the person did drive a
159 motor vehicle while under the influence of alcohol, controlled
160 substances or drugs, or did drive a motor vehicle while having an
161 alcohol concentration in the person's blood of eight hundredths
162 of one percent or more, by weight, the Office of Administrative
163 Hearings also finds by a preponderance of the evidence that the

164 person when driving did an act forbidden by law or failed to
165 perform a duty imposed by law, which act or failure proximately
166 caused bodily injury to a person other than himself or herself, the
167 commissioner shall revoke the person's license for a period of
168 two years: *Provided*, That if the license has previously been
169 suspended or revoked under the provisions of this section or
170 section one of this article within the ten years immediately
171 preceding the date of arrest, the period of revocation shall be ten
172 years: *Provided, however*, That if the person's license has
173 previously been suspended or revoked more than once under the
174 provisions of this section or section one of this article within the
175 ten years immediately preceding the date of arrest, the period of
176 revocation shall be for the life of the person.

177 (j) If the Office of Administrative Hearings finds by a
178 preponderance of the evidence that the person did drive a motor
179 vehicle while under the influence of alcohol, controlled
180 substances or drugs, or did drive a motor vehicle while having an
181 alcohol concentration in the person's blood of eight hundredths
182 of one percent or more, by weight, but less than fifteen
183 hundredths of one percent or more, by weight, or finds that the
184 person knowingly permitted the persons vehicle to be driven by
185 another person who was under the influence of alcohol,
186 controlled substances or drugs, or knowingly permitted the
187 person's vehicle to be driven by another person who had an
188 alcohol concentration in his or her blood of eight hundredths of
189 one percent or more, by weight the commissioner shall revoke
190 the person's license for a period of six months or a period of
191 fifteen days with an additional one hundred and twenty days of
192 participation in the Motor Vehicle Alcohol Test and Lock
193 Program in accordance with the provisions of section three-a of
194 this article: *Provided*, That any period of participation in the
195 Motor Vehicle Alcohol Test and Lock Program that has been
196 imposed by a court pursuant to section two-b, article five of this
197 chapter shall be credited against any period of participation
198 imposed by the commissioner: *Provided, however*, That a person

199 whose license is revoked for driving while under the influence
200 of drugs is not eligible to participate in the Motor Vehicle
201 Alcohol Test and Lock Program: *Provided further*, That if the
202 person's license has previously been suspended or revoked under
203 the provisions of this section or section one of this article within
204 the ten years immediately preceding the date of arrest, the period
205 of revocation shall be ten years: *And provided further*, That if
206 the person's license has previously been suspended or revoked
207 more than once under the provisions of this section or section
208 one of this article within the ten years immediately preceding the
209 date of arrest, the period of revocation shall be for the life of the
210 person.

211 (k) (1) If in addition to finding by a preponderance of the
212 evidence that the person did drive a motor vehicle while under
213 the influence of alcohol, controlled substance or drugs, the
214 Office of Administrative Hearings also finds by a preponderance
215 of the evidence that the person did drive a motor vehicle while
216 having an alcohol concentration in the person's blood of fifteen
217 hundredths of one percent or more, by weight, the commissioner
218 shall revoke the person's license for a period of forty-five days
219 with an additional two hundred and seventy days of participation
220 in the Motor Vehicle Alcohol Test and Lock Program in
221 accordance with the provisions of section three-a, article five-a,
222 chapter seventeen-c of this code: *Provided*, That if the person's
223 license has previously been suspended or revoked under the
224 provisions of this section or section one of this article within the
225 ten years immediately preceding the date of arrest, the period of
226 revocation shall be ten years: *Provided, however*, That if the
227 person's license has previously been suspended or revoked the
228 person's license more than once under the provisions of this
229 section or section one of this article within the ten years
230 immediately preceding the date of arrest, the period of
231 revocation shall be for the life of the person.

232 (2) If a person whose license is revoked pursuant to
233 subdivision (1) of this subsection proves by clear and convincing
234 evidence that they do not own a motor vehicle upon which the
235 alcohol test and lock device may be installed or is otherwise
236 incapable of participating in the Motor Vehicle Alcohol Test and
237 Lock Program, the period of revocation shall be one hundred
238 eighty days: *Provided*, That if the person's license has
239 previously been suspended or revoked under the provisions of
240 this section or section one of this article within the ten years
241 immediately preceding the date of arrest, the period of
242 revocation shall be ten years: *Provided, however*, That if the
243 person's license has previously been suspended or revoked more
244 than once under the provisions of this section or section one of
245 this article within the ten years immediately preceding the date
246 of arrest, the period of revocation shall be for the life of the
247 person.

248 (l) If, in addition to a finding that the person did drive a
249 motor vehicle while under the age of twenty-one years with an
250 alcohol concentration in his or her blood of two hundredths of
251 one percent or more, by weight, but less than eight hundredths of
252 one percent, by weight, the Office of Administrative Hearings
253 also finds by a preponderance of the evidence that the person
254 when driving did an act forbidden by law or failed to perform a
255 duty imposed by law, which act or failure proximately caused
256 the death of a person, and if the Office of Administrative
257 Hearings further finds that the alcohol concentration in the blood
258 was a contributing cause to the death, the commissioner shall
259 revoke the person's license for a period of five years: *Provided*,
260 That if the person's license has previously been suspended or
261 revoked under the provisions of this section or section one of this
262 article within the ten years immediately preceding the date of
263 arrest, the period of revocation shall be for the life of the person.

264 (m) If, in addition to a finding that the person did drive a
265 motor vehicle while under the age of twenty-one years with an

266 alcohol concentration in his or her blood of two hundredths of
267 one percent or more, by weight, but less than eight hundredths of
268 one percent, by weight, the Office of Administrative Hearings
269 also finds by a preponderance of the evidence that the person
270 when driving did an act forbidden by law or failed to perform a
271 duty imposed by law, which act or failure proximately caused
272 bodily injury to a person other than himself or herself, and if the
273 Office of Administrative Hearings further finds that the alcohol
274 concentration in the blood was a contributing cause to the bodily
275 injury, the commissioner shall revoke the person's license for a
276 period of two years: *Provided*, That if the person's license has
277 previously been suspended or revoked under the provisions of
278 this section or section one of this article within the ten years
279 immediately preceding the date of arrest, the period of
280 revocation shall be ten years: *Provided, however*, That if the
281 person's license has previously been suspended or revoked more
282 than once under the provisions of this section or section one of
283 this article within the ten years immediately preceding the date
284 of arrest, the period of revocation shall be for the life of the
285 person.

286 (n) If the Office of Administrative Hearings finds by a
287 preponderance of the evidence that the person did drive a motor
288 vehicle while under the age of twenty-one years with an alcohol
289 concentration in his or her blood of two hundredths of one
290 percent or more, by weight, but less than eight hundredths of one
291 percent, by weight, the commissioner shall suspend the person's
292 license for a period of sixty days: *Provided*, That if the person's
293 license has previously been suspended or revoked under the
294 provisions of this section or section one of this article, the period
295 of revocation shall be for one year, or until the person's
296 twenty-first birthday, whichever period is longer.

297 (o) If, in addition to a finding that the person did drive a
298 motor vehicle while under the influence of alcohol, controlled
299 substances or drugs, or did drive a motor vehicle while having an

300 alcohol concentration in the person's blood of eight hundredths
301 of one percent or more, by weight, the Office of Administrative
302 Hearings also finds by a preponderance of the evidence that the
303 person when driving did have on or within the Motor vehicle
304 another person who has not reached his or her sixteenth birthday,
305 the commissioner shall revoke the person's license for a period
306 of one year: *Provided*, That if the person's license has previously
307 been suspended or revoked under the provisions of this section
308 or section one of this article within the ten years immediately
309 preceding the date of arrest, the period of revocation shall be ten
310 years: *Provided, however*, That if the person's license has
311 previously been suspended or revoked more than once under the
312 provisions of this section or section one of this article within the
313 ten years immediately preceding the date of arrest, the period of
314 revocation shall be for the life of the person.

315 (p) For purposes of this section, where reference is made to
316 previous suspensions or revocations under this section, the
317 following types of criminal convictions or administrative
318 suspensions or revocations shall also be regarded as suspensions
319 or revocations under this section or section one of this article:

320 (1) Any administrative revocation under the provisions of
321 the prior enactment of this section for conduct which occurred
322 within the ten years immediately preceding the date of arrest;

323 (2) Any suspension or revocation on the basis of a
324 conviction under a municipal ordinance of another state or a
325 statute of the United States or of any other state of an offense
326 which has the same elements as an offense described in section
327 two, article five of this chapter for conduct which occurred
328 within the ten years immediately preceding the date of arrest; or

329 (3) Any revocation under the provisions of section seven,
330 article five of this chapter for conduct which occurred within the
331 ten years immediately preceding the date of arrest.

332 (q) In the case of a hearing in which a person is accused of
333 refusing to submit to a designated secondary test, the Office of
334 Administrative Hearings shall make specific findings as to: (1)
335 Whether the arresting law-enforcement officer had reasonable
336 grounds to believe the person had been driving a motor vehicle
337 in this state while under the influence of alcohol, controlled
338 substances or drugs; (2) whether the person was lawfully placed
339 under arrest for an offense involving driving under the influence
340 of alcohol, controlled substances or drugs, or was lawfully taken
341 into custody for the purpose of administering a secondary test:
342 *Provided*, That this element shall be waived in cases where no
343 arrest occurred due to driver incapacitation; (3) whether the
344 person committed an offense relating to driving a motor vehicle
345 in this state while under the influence of alcohol, controlled
346 substances or drugs; (4) whether the person refused to submit to
347 the secondary test finally designated in the manner provided in
348 section four, article five of this chapter; and (5) whether the
349 person had been given a written statement advising the person
350 that the person's license to operate a motor vehicle in this state
351 would be revoked for at least forty-five days and up to life if the
352 person refused to submit to the test finally designated in the
353 manner provided in said section.

354 (r) If the Office of Administrative Hearings finds by a
355 preponderance of the evidence that: (1) The investigating officer
356 had reasonable grounds to believe the person had been driving
357 a motor vehicle in this state while under the influence of alcohol,
358 controlled substances or drugs; (2) whether the person was
359 lawfully placed under arrest for an offense involving driving
360 under the influence of alcohol, controlled substances or drugs, or
361 was lawfully taken into custody for the purpose of administering
362 a secondary test: *Provided*, That this element shall be waived in
363 cases where no arrest occurred due to driver incapacitation; (3)
364 the person committed an offense relating to driving a motor
365 vehicle in this state while under the influence of alcohol,
366 controlled substances or drugs; (4) the person refused to submit

367 to the secondary test finally designated in the manner provided
368 in section four, article five of this chapter; and (5) the person had
369 been given a written statement advising the person that the
370 person's license to operate a motor vehicle in this state would be
371 revoked for at least forty-five days and up to life if the person
372 refused to submit to the test finally designated, the commissioner
373 shall revoke the person's license to operate a motor vehicle in
374 this state for the periods specified in section seven, article five
375 of this chapter. The revocation period prescribed in this
376 subsection shall run concurrently with any other revocation
377 period ordered under this section or section one of this article
378 arising out of the same occurrence. The revocation period
379 prescribed in this subsection shall run concurrently with any
380 other revocation period ordered under this section or section one
381 of this article arising out of the same occurrence.

382 (s) If the Office of Administrative Hearings finds to the
383 contrary with respect to the above issues, it shall rescind or
384 modify the commissioner's order and, in the case of
385 modification, the commissioner shall reduce the order of
386 revocation to the appropriate period of revocation under this
387 section or section seven, article five of this chapter. A copy of
388 the Office of Administrative Hearings' final order containing its
389 findings of fact and conclusions of law made and entered
390 following the hearing shall be served upon the person whose
391 license is at issue or upon the person's legal counsel if the person
392 is represented by legal counsel by registered or certified mail,
393 return receipt requested, or by facsimile or by electronic mail if
394 available. The final order shall be served upon the commissioner
395 by electronic mail. During the pendency of any hearing, the
396 revocation of the person's license to operate a motor vehicle in
397 this state shall be stayed.

398 A person whose license is at issue and the commissioner
399 shall be entitled to judicial review as set forth in chapter
400 twenty-nine-a of this code. Neither the commissioner nor the

401 Office of Administrative Hearings may stay enforcement of the
402 order. The court may grant a stay or supersede as of the order
403 only upon motion and hearing, and a finding by the court upon
404 the evidence presented, that there is a substantial probability that
405 the appellant shall prevail upon the merits and the appellant will
406 suffer irreparable harm if the order is not stayed: *Provided*, That
407 in no event shall the stay or supersede as of the order exceed one
408 hundred fifty days. The Office of Administrative Hearings may
409 not be made a party to an appeal. The party filing the appeal
410 shall pay the Office of Administrative Hearings for the
411 production and transmission of the certified file copy and the
412 hearing transcript to the court. Notwithstanding the provisions of
413 section four, article five of said chapter, the Office of
414 Administrative Hearings may not be compelled to transmit a
415 certified copy of the file or the transcript of the hearing to the
416 circuit court in less than sixty days. Circuit clerk shall provide a
417 copy of the circuit court's final order on the appeal to the Office
418 of Administrative Hearings by regular mail, by facsimile, or by
419 electronic mail if available.

420 (t) In any revocation or suspension pursuant to this section,
421 if the driver whose license is revoked or suspended had not
422 reached the driver's eighteenth birthday at the time of the
423 conduct for which the license is revoked or suspended, the
424 driver's license shall be revoked or suspended until the driver's
425 eighteenth birthday or the applicable statutory period of
426 revocation or suspension prescribed by this section, whichever
427 is longer.

428 (u) Funds for this section's hearing and appeal process may
429 be provided from the Drunk Driving Prevention Fund, as created
430 by section forty-one, article two, chapter fifteen of this code,
431 upon application for the funds to the Commission on Drunk
432 Driving Prevention.

CHAPTER 174

**(Com. Sub. for H. B. 2148 - By Delegate(s) Gearheart,
Hamrick, R. Smith, E. Nelson, Howell, Arvon, Butler, Azinger,
Espinosa, Frich and Kessinger)**

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and that §60-6-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5D. OPEN CONTAINER LAWS.

§17C-5D-1. Purpose.

- 1 The purpose of this article is to avoid the imposition of
- 2 sanctions against this state and the loss of federal-aid highway
- 3 construction funds under section 1405(a) of the federal

4 Transportation Equity Act for the Twenty-first Century (23
5 U.S.C. §154), as amended, which requires states to enact and
6 enforce a law that prohibits the consumption of an alcoholic
7 beverage or the possession of an open alcoholic beverage
8 container in the passenger area of a motor vehicle that is located
9 on a public highway or the right-of-way adjacent to a public
10 highway.

§17C-5D-2. Definitions.

1 For the purposes of this article, the words or terms defined
2 in this article have the meanings ascribed to them:

3 (a) “Alcoholic beverage” means:

4 (1) Alcoholic liquor as defined in section five, article one,
5 chapter sixty of this code; and

6 (2) Nonintoxicating beer as defined in section three, article
7 sixteen, chapter eleven of this code.

8 (b) “Motor vehicle” means a vehicle driven or drawn by
9 mechanical power and manufactured primarily for use on public
10 highways, but does not include a vehicle operated solely on a rail
11 or rails.

12 (c) “Open alcoholic beverage container” means any bottle,
13 can or other receptacle that:

14 (1) Contains any amount of alcoholic beverage; and

15 (2)(A) Is open or has a broken seal; or

16 (B) Has had its contents partially removed.

17 (d) “Passenger area of a motor vehicle” means the area
18 designed to seat the driver and passengers while the motor
19 vehicle is in operation and any area that is readily accessible to

20 the driver or a passenger while in their seating positions. For
21 purposes of this article, the passenger area of a motor vehicle
22 does not include:

23 (1) (A) A locked glove compartment; or

24 (B) A fixed center console or other similar fixed
25 compartment that is locked;

26 (2) In a motor vehicle that is not equipped with a trunk;

27 (A) The area behind the last upright seat; or

28 (B) An area not normally occupied by the driver or a
29 passenger; or

30 (3) In a pickup truck that has no trunk, camper top or
31 separate enclosed area other than the cab of the truck, in the area
32 behind the front seat of the truck in a locked case or container
33 located so as to not be readily accessible to the driver or
34 passengers while in their seating positions.

35 (e) "Public highway or right-of-way of a public highway"
36 means the entire width between and immediately adjacent to the
37 boundary lines of every way that is publicly maintained, when
38 any part thereof is open to the use of the public for purposes of
39 vehicular travel.

**§17C-5D-3. Possession of an open alcoholic beverage container in
the passenger area of a motor vehicle; exceptions;
penalties.**

1 (a) It is unlawful for the operator or a passenger of a motor
2 vehicle to consume any alcoholic beverage in the passenger area
3 of a motor vehicle located on a public highway or right-of-way
4 of a public highway in this state, whether the vehicle is in motion
5 or at rest.

6 (b) It is unlawful for the operator or a passenger of a motor
7 vehicle to knowingly possess any open alcoholic beverage
8 container in the passenger area of any motor vehicle that is
9 located on a public highway or right-of-way of a public highway
10 in this state, whether the vehicle is in motion or at rest.
11 Possession by a person of one or more open containers in a
12 single criminal occurrence is a single offense.

13 (c) The provisions of this section are not applicable to a
14 passenger:

15 (1) In the passenger area of a motor vehicle designed,
16 maintained or used primarily for the transportation of persons for
17 compensation including, but not limited to, a bus, taxicab or
18 limousine; or

19 (2) In the living quarters of a motorized or nonmotorized
20 house coach, house trailer, motor home or self-contained
21 camper.

22 (d) A person who violates the provisions of subsection (a) or
23 (b) of this section is guilty of a misdemeanor and, upon
24 conviction thereof, shall be fined not less than \$50 nor more than
25 \$100.

§17C-5D-4. Procedure on arrest.

1 If a person is arrested for an offense under the provisions of
2 this article, unless the provisions of section three, article
3 nineteen of this chapter require that the person arrested be taken
4 immediately before a magistrate for an offense described in that
5 section, the provisions of article nineteen of this chapter
6 regarding the issuance of a traffic citation containing a notice to
7 appear applies.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**ARTICLE 6. MISCELLANEOUS PROVISIONS.****§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.**

1 (a) A person may not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Tender a drink of alcoholic liquor to another person in a
5 public place;

6 (4) Possess alcoholic liquor in the amount in excess of ten
7 gallons, in containers not bearing stamps or seals of the
8 commissioner, without having first obtained written authority
9 from the commissioner therefor; or

10 (5) Possess any alcoholic liquor which was manufactured or
11 acquired in violation of the provisions of this chapter.

12 (b) Any law-enforcement officer may arrest without a
13 warrant and take the following actions against a person who, in
14 his or her presence, violates subdivision (1) of subsection (a) of
15 this section: (1) If there is some nonintoxicated person who will
16 accept responsibility for the intoxicated person, the officer may
17 issue the intoxicated person a citation specifying a date for
18 appearance before a judicial officer and release him or her to the
19 custody of the individual accepting responsibility: *Provided*,
20 That the issuance of a citation shall be used whenever feasible;
21 (2) if it does not impose an undue burden on the officer, he or
22 she may, after issuance of the citation, transport the individual

23 to the individual's present residence or arrange for the
24 transportation; (3) if the individual is incapacitated or the
25 alternatives provided in subdivisions (1) and (2) of this
26 subsection are not possible, the officer shall transport or arrange
27 for transportation to the appropriate judicial officer as defined by
28 section seventeen, article eleven, chapter twenty-seven of this
29 code; or (4) if the individual is incapacitated and, in the
30 law-enforcement officer's judgment, is in need of acute medical
31 attention, that officer shall arrange for transportation by
32 ambulance or otherwise to a hospital emergency room. The
33 officer shall accompany the individual until he or she is
34 discharged from the emergency room or admitted to the hospital.
35 If the individual is released from the emergency room, the
36 officer may proceed as described in subdivisions (1), (2) and (3)
37 of this subsection. If the individual is admitted to the hospital,
38 the officer shall issue a citation to the individual specifying a
39 date for appearance before a judicial officer.

40 (c) Upon presentment before the proper judicial officer, the
41 law-enforcement officer serves as the chief complaining witness.
42 The judicial officer shall determine if there is probative evidence
43 that the individual may be guilty of the charge of public
44 intoxication. If such evidence is not presented, the charge shall
45 be dismissed and the individual released. If sufficient evidence
46 is presented, the judicial officer shall issue a warrant and
47 establish bail or issue a summons to the individual. Once a
48 warrant or summons has been issued, the following actions may
49 be taken:

50 (1) If the individual is no longer incapacitated, he or she may
51 be released;

52 (2) If the individual is still incapacitated but a nonintoxicated
53 person is available to accept responsibility for him or her, he or
54 she may be released to the responsible person; or

55 (3) If the individual is still incapacitated and no responsible
56 person is available, the judicial officer shall proceed under the
57 provisions of article five or six-a, chapter twenty-seven of this
58 code.

59 (d) Any law-enforcement officer may arrest and hold in
60 custody, without a warrant, until complaint may be made before
61 a judicial officer and a warrant or summons issued, any person
62 who in the presence of the law-enforcement officer violates any
63 one or more of subdivisions (1) through (6), subsection (a) of
64 this section: *Provided*, That the law-enforcement officer may use
65 reasonable force to prevent harm to himself or herself, the
66 individual arrested or others in carrying out the provisions of this
67 section.

68 (e) Any person who violates subdivision (1), subsection (a)
69 of this section is guilty of a misdemeanor and, upon conviction
70 thereof, shall be sentenced by a judicial officer in accordance
71 with the following options:

72 (1) Upon first offense, a fine of not less than \$5 nor more
73 than \$100. If the individual, prior to conviction, agrees to
74 voluntarily attend an alcohol education program of not more than
75 six hours duration at the nearest community mental health —
76 mental retardation center, the judicial officer may delay
77 sentencing until the program is completed and upon completion
78 may dismiss the charges;

79 (2) Upon conviction for a second offense, a fine of not less
80 than \$5 nor more than \$100 and not more than sixty days in jail
81 or completion of not less than five hours of alcoholism
82 counseling at the nearest community mental health — mental
83 retardation center;

84 (3) Upon third and subsequent convictions, a fine of not less
85 than \$5 nor more than \$100 and not less than five nor more than

86 sixty days in jail or a fine of not less than \$5 nor more than \$100
87 and completion of not less than five hours of alcoholism
88 counseling at the nearest community mental health — mental
89 retardation center: *Provided*, That three convictions for public
90 intoxication within the preceding six months is considered
91 evidence of alcoholism. For the educational counseling programs
92 described in this subsection the community mental health —
93 mental retardation center may charge each participant its usual
94 and customary fee and shall certify in writing to the referring
95 judicial officer the completion or failure to complete the
96 prescribed program for each individual.

97 (f) A person charged with a violation of subdivision (1),
98 subsection (a) of this section who is an alcoholic shall be found
99 not guilty by reason of addiction and proper disposition made
100 pursuant to articles five and six-a, chapter twenty-seven of this
101 code.

102 (g) Any person who violates subdivision (2), subsection (a)
103 of this section is guilty of a misdemeanor and, upon conviction
104 thereof, shall be fined not less than \$5 nor more than \$100; and
105 upon a second or subsequent conviction thereof, shall be fined
106 not less than \$5 nor more than \$100, or confined in jail not more
107 than sixty days, or both.

108 (h) Any person who violates subdivision (3), subsection (a)
109 of this section is guilty of a misdemeanor and, upon conviction
110 thereof, shall be fined not less than \$5 nor more than \$100, or
111 confined in jail not more than sixty days, or both.

112 (i) Any person who violates subdivision (4) or (5),
113 subsection (a) of this section is guilty of a misdemeanor and,
114 upon his or her first conviction, shall be fined not less than \$100
115 nor more than \$500; and upon conviction of second or
116 subsequent offense, he or she is guilty of a felony and, shall be
117 confined in a state correctional facility for a period of not less
118 than one year nor more than three years.

CHAPTER 175

**(Com. Sub. for S. B. 373 - By Senators Nohe, Gaunch,
D. Hall, Karnes and Blair)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §17D-2A-4 of the Code of West Virginia, 1931, as amended, relating to allowing image displayed on a wireless communication device to serve as proof of insurance on a motor vehicle.

Be it enacted by the Legislature of West Virginia:

That §17D-2A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in this state
2 shall supply a certificate to the insured or to any person subject
3 to the registration provisions of article three, chapter seventeen-a
4 of this code certifying that there is in effect a motor vehicle
5 liability policy upon such motor vehicle in accordance with the
6 provisions of article three, chapter seventeen-a of this code. The
7 certificate shall give its effective date and the effective date of
8 the policy and, unless the policy is issued to a person who is not
9 the owner of a motor vehicle, must designate by explicit
10 description, in such detail as the Commissioner of the Division
11 of Motor Vehicles shall by rule require, all motor vehicles
12 covered and all replacement vehicles of similar classification:
13 *Provided*, That on and after July 1, 1984, insurance companies

14 shall supply a certificate of insurance in duplicate for each policy
15 term and for each vehicle included in a policy, except for those
16 listed in a fleet policy. Each such certificate of insurance shall
17 list the name of the policyholder and the name of the vehicle
18 owner if different from the policyholder.

19 The certificate must specify for each vehicle listed therein
20 that there is a minimum liability insurance coverage not less than
21 the requirements of section two, article four, chapter seventeen-d
22 of this code.

23 (b) The certificate provided pursuant to the provisions of this
24 section or other proof of insurance shall be carried by the insured
25 in the appropriate vehicle for use as proof of security, and must
26 be presented at the time of vehicle inspection as required by
27 article sixteen, chapter seventeen-c of this code. Any person
28 violating the provisions of this subsection is guilty of a
29 misdemeanor and, upon conviction thereof, shall be fined not
30 less than \$200 nor more than \$5,000; and upon a second or
31 subsequent conviction, shall be fined not less than \$200 nor
32 more than \$5,000, or confined in the county or regional jail for
33 not less than fifteen days nor more than one year, or both:
34 *Provided*, That an insured shall not be guilty of a violation of
35 this subsection (b) if he or she furnishes proof that such
36 insurance was in effect within seven days of being cited for not
37 carrying such certificate or other proof in such vehicle.

38 (c) As used in this section, proof of insurance means a
39 certificate of insurance, an insurance policy, a mechanically
40 reproduced copy of an insurance policy, a certificate of
41 self-insurance, an image displayed on a wireless communication
42 device, as defined in section one, article one, chapter seventeen-
43 b of this code, that includes the information required by this
44 section as provided by a liability insurer or a copy of the current
45 registration issued to a motor carrier by the Public Service
46 Commission: (1) Through the single state registration system

47 established pursuant to section fourteen, article six-a, chapter
48 twenty-four-a of this code; or (2) pursuant to the provisions of
49 section four, article six, chapter twenty-four-a of this code.

CHAPTER 176

(Com. Sub. for S. B. 323 - By Senator Blair)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to the Municipal Home Rule Pilot Program generally; allowing participation of thirty Class I, Class II and Class III municipalities; allowing participation of four Class IV municipalities; continuing ordinances in effect; removing requirements that Municipal Home Rule Board must approve a municipality's amendment to its home rule plan and that a municipal ordinance is nullified if the municipality's amendment to its home rule plan is not approved by the Municipal Home Rule Board; removing requirement that the board approve each municipal ordinance prior to enactment; removing process for enacting ordinance; authorizing amendments to municipal ordinances, acts, resolutions, rules or regulations enacted pursuant to the municipality's approved written plan; removing provisions prohibiting municipality from enacting ordinance, act, resolution, rule or regulation after the pilot program terminates in 2019; prohibiting municipalities from seeking refunds of moneys collected from taxpayers or moneys distributed to municipalities by the Tax Division under the pilot program: removing obsolete provisions; and reorganizing existing provisions.

Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS;
GENERAL PROVISIONS; CONSTRUCTION.**

§8-1-5a. Municipal Home Rule Pilot Program.

1 (a) *Legislative findings.* — The Legislature finds and
2 declares that:

3 (1) The initial Municipal Home Rule Pilot Program brought
4 innovative results, including novel municipal ideas that became
5 municipal ordinances which later resulted in new statewide
6 statutes;

7 (2) The initial Municipal Home Rule Pilot Program also
8 brought novel municipal ideas that resulted in court challenges
9 against some of the participating municipalities;

10 (3) The Municipal Home Rule Board was an essential part
11 of the initial Municipal Home Rule Pilot Program, but it lacked
12 some needed powers and duties;

13 (4) Municipalities still face challenges delivering services
14 required by federal and state law or demanded by their
15 constituents;

16 (5) Municipalities are sometimes restrained by state statutes,
17 policies and rules that challenge their ability to carry out their
18 duties and responsibilities in a cost-effective, efficient and
19 timely manner;

20 (6) Continuing the Municipal Home Rule Pilot Program is
21 in the public interest; and

22 (7) Increasing the powers and duties of the Municipal Home
23 Rule Board will enhance the Municipal Home Rule Pilot
24 Program.

25 (b) *Continuance of pilot program.* — The Municipal Home
26 Rule Pilot Program is continued until July 1, 2019. The
27 ordinances enacted by the participating municipalities pursuant
28 to the I Municipal Home Rule Pilot Program may remain in
29 effect, subject to the requirements of this section, until the
30 ordinances are repealed: *Provided*, That any ordinance enacting
31 a municipal occupation tax is hereby null and void.

32 (c) *Authorizing participation.* —

33 (1) Commencing July 1, 2015, thirty Class I, Class II and
34 Class III municipalities and four Class IV municipalities that are
35 current in payment of all state fees may participate in the
36 Municipal Home Rule Pilot Program pursuant to the provisions
37 of this section.

38 (2) The municipalities participating in the pilot program on
39 the effective date of the amendment and reenactment of this
40 section are hereby authorized to continue in the pilot program,
41 subject to the requirements of this section, and may amend
42 current written plans and/or submit new written plans in
43 accordance with the provisions of this section.

44 (d) *Municipal Home Rule Board.* — The Municipal Home
45 Rule Board is hereby continued. Effective July 1, 2015, the
46 Municipal Home Rule Board shall consist of the following five
47 voting members:

48 (1) The Governor, or a designee, who shall serve as chair;

49 (2) The Executive Director of the West Virginia
50 Development Office, or a designee;

51 (3) One member representing the Business and Industry
52 Council, appointed by the Governor with the advice and consent
53 of the Senate;

54 (4) One member representing the largest labor organization
55 in the state, appointed by the Governor with the advice and
56 consent of the Senate; and

57 (5) One member representing the West Virginia Chapter of
58 the American Institute of Certified Planners, appointed by the
59 Governor with the advice and consent of the Senate.

60 The Chair of the Senate Committee on Government
61 Organization and the Chair of the House Committee on
62 Government Organization shall continue to be ex officio
63 nonvoting members of the board.

64 (e) *Board's powers and duties.* — The Municipal Home
65 Rule Board has the following powers and duties:

66 (1) Review, evaluate, make recommendations and approve
67 or reject, by a majority vote of the board, each aspect of the
68 written plan submitted by a municipality;

69 (2) By a majority vote of the board, select, based on the
70 municipality's written plan, new Class I, Class II, Class III
71 and/or Class IV municipalities to participate in the Municipal
72 Home Rule Pilot Program;

73 (3) Review, evaluate, make recommendations and approve
74 or reject, by a majority vote of the board, the amendments to the
75 written plans submitted by municipalities;

76 (4) Consult with any agency affected by the written plans or
77 the amendments to the written plans; and

78 (5) Perform any other powers or duties necessary to
79 effectuate the provisions of this section.

80 (f) *Written plan.* — Any Class I, Class II, Class III or Class
81 IV municipality desiring to participate in the Municipal Home
82 Rule Pilot Program shall submit a written plan to the board
83 stating in detail the following:

84 (1) The specific laws, acts, resolutions, policies, rules or
85 regulations which prevent the municipality from carrying out its
86 duties in the most cost-efficient, effective and timely manner;(2)
87 The problems created by the laws, acts, resolutions, policies,
88 rules or regulations;

89 (3) The proposed solutions to the problems, including all
90 proposed changes to ordinances, acts, resolutions, rules and
91 regulations: *Provided*, That the specific municipal ordinance
92 instituting the solution does not have to be included in the
93 written plan; and

94 (4) A written opinion, by an attorney licensed to practice in
95 West Virginia, stating that the proposed written plan does not
96 violate the provisions of this section.

97 (g) *Public hearing on written plan.* — Prior to submitting its
98 written plan to the board, the municipality shall:

99 (1) Hold a public hearing on the written plan;

100 (2) Provide notice at least thirty days prior to the public
101 hearing by a Class II legal advertisement;

102 (3) Make a copy of the written plan available for public
103 inspection at least thirty days prior to the public hearing; and

104 (4) After the public hearing, adopt an ordinance authorizing
105 the municipality to submit a written plan to the Municipal Home
106 Rule Board after the proposed ordinance has been read two
107 times.

108 (h) *Selection of municipalities.* — On or after June 1, 2015,
109 by a majority vote, the Municipal Home Rule Board may select
110 from the municipalities that submitted written plans and were
111 approved by the board by majority vote, new Class I, Class II,
112 Class III and/or Class IV municipalities to participate in the
113 Municipal Home Rule Pilot Program.

114 (i) *Powers and duties of municipalities.* — The
115 municipalities participating in the Municipal Home Rule Pilot
116 Program have the authority to pass an ordinance, act, resolution,
117 rule or regulation, under the provisions of this section, that is not
118 contrary to:

119 (1) Environmental law;

120 (2) Laws governing bidding on government construction and
121 other contracts;

122 (3) The Freedom of Information Act;

123 (4) The Open Governmental Proceedings Act;

124 (5) Laws governing wages for construction of public
125 improvements;

126 (6) The provisions of this section;

127 (7) The provisions of section five-a, article twelve of this
128 chapter;

129 (8) The municipality's written plan;

130 (9) The Constitution of the United States or the Constitution
131 of the State of West Virginia;

132 (10) Federal law or crimes and punishment;

133 (11) Chapters sixty-a, sixty-one and sixty-two of this code
134 or state crimes and punishment;

- 135 (12) Laws governing pensions or retirement plans;
- 136 (13) Laws governing annexation;
- 137 (14) Laws governing taxation: *Provided*, That a participating
138 municipality may enact a municipal sales tax up to one percent
139 if it reduces or eliminates its municipal business and occupation
140 tax: *Provided, however*, That if a municipality subsequently
141 reinstates or raises the municipal business and occupation tax it
142 previously reduced or eliminated under the Municipal Home
143 Rule Pilot Program, it shall eliminate the municipal sales tax
144 enacted under the Municipal Home Rule Pilot Program:
145 *Provided further*, That any municipality that imposes a
146 municipal sales tax pursuant to this section shall use the services
147 of the Tax Commissioner to administer, enforce and collect the
148 tax in the same manner as the state consumers sales and service
149 tax and use tax under the provisions of articles fifteen, fifteen-a
150 and fifteen-b, chapter eleven of this code and all applicable
151 provisions of the Streamlined Sales and Use Tax Agreement:
152 *And provided further*, That such tax will not apply to the sale of
153 motor fuel or motor vehicles;
- 154 (15) Laws governing tax increment financing;
- 155 (16) Laws governing extraction of natural resources; and
- 156 (17) Marriage and divorce laws.
- 157 (j) Municipalities may not pass an ordinance, act, resolution,
158 rule or regulation under the provisions of this section that:
- 159 (1) Affects persons or property outside the boundaries of the
160 municipality: *Provided*, That this prohibition under the
161 Municipal Home Rule Pilot Program does not limit a
162 municipality's powers outside its boundary lines under other
163 provisions of this section, other sections of this chapter, other
164 chapters of this code or court decisions; or

165 (2) Enacts an occupation tax, fee or assessment payable by
166 a nonresident of a municipality.

167 (k) *Amendments to written plans.* — A municipality
168 participating in the Municipal Home Rule Pilot Program may
169 amend its written plan at any time.

170 (l) *Amendments to ordinances, acts, resolutions, rules or*
171 *regulations.* — A municipality participating in the Municipal
172 Home Rule Pilot Program may amend any ordinance, act,
173 resolution, rule or regulation enacted pursuant to the
174 municipality's approved written plan at any time so long as any
175 amendment is consistent with the municipality's approved
176 written plan, complies with the provisions of subsections (i) and
177 (j) of this section, and the municipality complies with all
178 applicable state law procedures for enacting municipal
179 legislation.

180 (m) *Reporting requirements.* — Commencing December 1,
181 2015, and each year thereafter, each participating municipality
182 shall give a progress report to the Municipal Home Rule Board
183 and commencing January 1, 2016, and each year thereafter, the
184 Municipal Home Rule Board shall give a summary report of all
185 the participating municipalities to the Joint Committee on
186 Government and Finance.

187 (n) *Termination of the pilot program.* — The Municipal
188 Home Rule Pilot Program terminates on July 1, 2019. An
189 ordinance, act, resolution, rule or regulation enacted by a
190 participating municipality under the provisions of this section
191 during the period of the Municipal Home Rule Pilot Program
192 shall continue in full force and effect until repealed.

193 (o) Notwithstanding any other provision of this code to the
194 contrary, on and after the effective date of the enactment of this
195 provision in 2015, no distributee under the provisions of this

196 section may seek from the Tax Division of the Department of
197 Revenue a refund of revenues or moneys collected by, or
198 remitted to, the Tax Division of the Department of Revenue, nor
199 seek a change in past amounts distributed, or any other
200 retrospective adjustment relating to any amount distributed, to
201 the extent that the moneys in question have been distributed to
202 another distributee, regardless of whether those distributions
203 were miscalculated, mistaken, erroneous, misdirected or
204 otherwise inaccurate or incorrect. For purposes of this section,
205 the term ‘distributee’ means any municipality that receives or is
206 authorized to receive a specific distribution of revenues or
207 moneys collected by, or remitted to, the Tax Division of the
208 Department of Revenue pursuant to this section.

CHAPTER 177

(S. B. 515 - By Senators Gaunch and Plymale)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, all relating to Municipal Pensions Oversight Board; and retention, allocation, distribution and investment of funds.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND;

**PENSION PLANS FOR EMPLOYEES OF
WATERWORKS SYSTEM, SEWERAGE
SYSTEM OR COMBINED WATERWORKS
AND SEWERAGE SYSTEM.**

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

1 (a) (1) The West Virginia Municipal Pensions Oversight
2 Board, established in 2009, is hereby continued as a public body
3 corporate for the purpose of monitoring and improving the
4 performance of municipal policemen's and firemen's pension
5 and relief funds to assure prudent administration, investment and
6 management of the funds. Management of the oversight board
7 shall be vested solely in the members of the oversight board.
8 Duties of the oversight board shall include, but not be limited to,
9 assisting municipal boards of trustees in performing their duties,
10 assuring the funds' compliance with applicable laws, providing
11 for actuarial studies, distributing tax revenues to the funds,
12 initiating or joining legal actions on behalf of active or retired
13 pension fund members or municipal boards of trustees to protect
14 interests of the members in the funds and taking other actions as
15 may be reasonably necessary to provide for the security and
16 fiscal integrity of the pension funds. The oversight board's
17 authority to initiate legal action does not preempt the authority
18 of municipalities, municipal policemen's and firemen's boards
19 of trustees or pension fund active members, beneficiaries or
20 others to initiate legal action to protect interests in the funds.
21 Further, the oversight board may, in its discretion, investigate the
22 actions or practices of municipal boards of trustees or of their
23 administrators or employees that, in the oversight board's
24 judgment, have the potential to threaten the security or fiscal
25 integrity of the pension funds, and the boards of trustees,
26 administrators and employees shall cooperate with the oversight
27 board in any investigation. Regardless of whether it has

28 previously conducted an investigation, the oversight board may
29 initiate or intervene in legal actions to challenge or prevent any
30 action or practice which, in the oversight board's judgment, has
31 the potential to threaten the security or fiscal integrity of the
32 pension funds. Establishment of the oversight board does not
33 relieve the municipal funds' boards of trustees from their
34 fiduciary and other duties to the funds, nor does it create any
35 liability for the funds on the part of the state. The failure of the
36 oversight board to investigate or initiate legal actions regarding
37 the actions or practices of municipal boards of trustees, their
38 administrators or employees does not render the oversight board
39 liable for the actions or practices. Members and employees of the
40 oversight board are not liable personally, either jointly or
41 severally, for debts or obligations of the municipal pension and
42 relief funds. Except as otherwise provided herein, members and
43 employees of the oversight board have a fiduciary duty toward
44 the municipal pension and relief funds and are liable for
45 malfeasance or gross negligence. Employees of the oversight
46 board are classified-exempt state employees.

47 (2) The oversight board shall consist of nine members. The
48 Executive Director of the state's Investment Management Board
49 and the Executive Director of the state's Consolidated Public
50 Retirement Board, or their designees, shall serve as voting ex
51 officio members. The other seven members shall be citizens of
52 the state who have been qualified electors of the state for a
53 period of at least one year next preceding their appointment and
54 shall be as follows: An active or retired member of a Municipal
55 Policemen's Pension and Relief Fund chosen from a list of three
56 persons submitted to the Governor by the state's largest
57 professional municipal police officers organization, an active or
58 retired member of a Municipal Firemen's Pension and Relief
59 Fund chosen from a list of three persons submitted to the
60 Governor by the state's largest professional firefighters
61 organization, an attorney experienced in finance and investment
62 matters related to pensions management, two persons

63 experienced in pension funds management, one person who is a
64 certified public accountant experienced in auditing and one
65 person chosen from a list of three persons submitted to the
66 Governor by the state's largest association of municipalities.

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

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

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

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

78 (3) Maintain accounts and invest those funds which the
79 oversight board is charged with receiving and distributing.
80 Investment of those funds may be with the Board of Treasury
81 Investments or the Investment Management Board at the
82 discretion of the oversight board;

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

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

91 (6) Do all things necessary and appropriate to implement and
92 operate the board in performance of its duties. Expenses shall be
93 paid from the moneys in the Municipal Pensions Security Fund

94 created in section eighteen-b of this article or, prior to the
95 transition provided in section eighteen-b of this article, the
96 Municipal Pensions and Protection Fund: *Provided*, That the
97 board may request special appropriation for special projects. The
98 oversight board is exempt from provisions of article three,
99 chapter five-a of this code for the purpose of contracting for
100 actuarial services, including the services of a reviewing actuary.

101 (c) Except for ex officio members, the terms of oversight
102 board members shall be staggered initially from January 1, 2010.
103 The Governor shall appoint initially one member for a term of
104 one year, one member for a term of two years, two members for
105 terms of three years, one member for a term of four years and
106 two members for terms of five years. Subsequent appointments
107 shall be for terms of five years. A member serving two full
108 consecutive terms may not be reappointed for one year after
109 completion of his or her second full term. Each member shall
110 serve until that member's successor is appointed and qualified.
111 Any member may be removed by the Governor in case of
112 incompetency, neglect of duty, gross immorality or malfeasance
113 in office. Any vacancy on the oversight board shall be filled by
114 appointment by the Governor for the balance of the unexpired
115 term.

116 (d) A majority of the full authorized membership of the
117 oversight board constitutes a quorum. The board shall meet at
118 least quarterly each year, but more often as duties require, at
119 times and places that it determines. The oversight board shall
120 elect a chairperson and a vice chairperson from their
121 membership who shall serve for terms of two years and shall
122 select annually a secretary/treasurer who may be either a
123 member or employee of the board. The oversight board shall
124 employ an executive director and other staff as needed and shall
125 fix their duties and compensation. The compensation of the
126 executive director shall be subject to approval of the Governor.
127 Except for any special appropriation as provided in subsection
128 (b) of this section, all personnel and other expenses of the board

129 shall be paid from revenue collected and allocated for municipal
130 policemen's or municipal firemen's pension and relief funds
131 pursuant to section fourteen-d, article three, chapter thirty-three
132 of this code and distributed through the Municipal Pensions and
133 Protection Fund or the Municipal Pensions Security Fund created
134 in section eighteen-b of this article. Expenses during the initial
135 year of the board's operation shall be from proceeds of the
136 allocation for the municipal pensions and relief funds.
137 Expenditures in years thereafter shall be by appropriation from
138 the Municipal Pensions Security Fund. Money allocated for
139 municipal policemen's and firemen's pension and relief funds to
140 be distributed from the Municipal Pensions and Protection Fund
141 or the Municipal Pensions Security Fund shall be first allocated
142 to pay expenses of the oversight board and the remainder in the
143 fund distributed among the various municipal pension and relief
144 funds as provided in section fourteen-d, article three, chapter
145 thirty-three of this code. The board is exempt from the
146 provisions of sections seven and eleven, article three, chapter
147 twelve of this code relating to compensation and expenses of
148 members, including travel expenses.

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

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

164 (g) The board shall propose rules for legislative approval in
165 accordance with the provisions of article three, chapter
166 twenty-nine-a of this code as necessary to implement the
167 provisions of this article, and may initially promulgate
168 emergency rules pursuant to the provisions of section fifteen,
169 article three, chapter twenty-nine-a of this code.

170 (h) The oversight board shall report annually to the
171 Legislature's Joint Committee on Government and Finance and
172 the Joint Committee on Pensions and Retirement concerning the
173 status of municipal policemen's and firemen's pension and relief
174 funds and shall present recommendations for strengthening and
175 protecting the funds and the benefit interests of the funds'
176 members.

177 (i) The oversight board shall cooperate with the West
178 Virginia Investment Management Board and the Board of
179 Treasury Investments to educate members of the local pension
180 boards of trustees on the services offered by the two state
181 investment boards. No later than October 31, 2013, the board
182 shall report to the Joint Committee on Government and Finance
183 and the Joint Committee on Pensions and Retirement a detailed
184 comparison of returns on long-term investments of moneys held
185 by or allocated to municipal pension and relief funds managed
186 by the West Virginia Investment Management Board and those
187 managed by others than the Investment Management Board. The
188 oversight board shall also report at that time on short-term
189 investment returns by local pension boards using the West
190 Virginia Board of Treasury Investments compared to short-term
191 investment returns by those local boards of trustees not using the
192 Board of Treasury Investments.

193 (j) The oversight board shall establish minimum
194 requirements for training to be completed by each member of the
195 board of trustees of a municipal policemen's or firemen's
196 pension and relief fund. The requirements should include, but

197 not be limited to, training in ethics, fiduciary duty and
198 investment responsibilities.

**§8-22-18b. Creation of Municipal Pensions Security Fund;
transfer of certain powers, duties and functions of
Treasurer's office to Municipal Pensions
Oversight Board.**

1 (a) The Legislature finds that an important part of oversight
2 of municipal policemen's and firemen's pension and relief funds
3 is monitoring the performance required of the various funds to
4 qualify to receive distribution of insurance premium tax
5 revenues provided by section fourteen-d, article three, chapter
6 thirty-three of this code. The duties and functions of the State
7 Treasurer's office with respect to monitoring and distribution are
8 transferred from the State Treasurer's office to the West Virginia
9 Municipal Pensions Oversight Board effective January 1, 2010:
10 *Provided*, That until the oversight board is fully organized and
11 operating, some duties and functions being performed by the
12 State Treasurer's office prior to January 1, 2010, may be
13 continued by that office temporarily as necessary to effect an
14 orderly transition of responsibilities and provide for prompt
15 distribution of the insurance premium tax proceeds for expenses
16 of the oversight board and to the municipal policemen's and
17 firemen's pension and relief funds.

18 (b) There is hereby created in the State Treasury a
19 nonexpiring special revenue fund designated the West Virginia
20 Municipal Pensions Security Fund which shall be administered
21 by the West Virginia Municipal Pensions Oversight Board solely
22 for the purposes as provided in this article and article three,
23 chapter thirty-three of this code. All earnings shall accrue to and
24 be retained by the fund unless otherwise provided in this article.

25 (c) Until the oversight board advises the Insurance
26 Commissioner and the State Treasurer in writing that the
27 oversight board is prepared to receive into and distribute from

28 the West Virginia Municipal Pensions Security Fund premium
29 tax revenues as provided in section fourteen-d, article three,
30 chapter thirty-three of this code and section seven, article
31 twelve-c of said chapter, the commissioner shall continue to
32 transfer the funds into the Municipal Pensions and Protection
33 Fund and the State Treasurer shall continue to disburse funds to
34 the qualifying municipal pension and relief funds, and shall
35 disburse funds as necessary for the establishment and early
36 operation of the oversight board. The Insurance Commissioner,
37 the State Treasurer and oversight board shall share information
38 freely as required for efficient transfer of powers and duties
39 related to the premium tax revenues generated pursuant to
40 chapter thirty-three of this code to be allocated to the municipal
41 policemen's and firemen's pension and relief funds. When the
42 oversight board assumes full responsibility to receive funds into
43 and disburse funds from the Municipal Pensions Security Fund,
44 the State Treasurer shall transfer to it all funds remaining in the
45 Municipal Pensions and Protection Fund and close the Municipal
46 Pensions and Protection Fund.

CHAPTER 178

**(H. B. 2274 - By Delegate(s) Hanshaw,
Hamilton, A. Evans and Azinger)**

[Passed February 20, 2015; in effect ninety days from passage.]

[Approved by the Governor on February 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-5a, relating to authorizing the Commissioner of Corrections to enter into mutual aid agreements with political subdivisions of this state, other states and the federal government for numerous salutary purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §25-1-5a, to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-5a. Mutual aid agreements.

1 (a) The commissioner may enter into agreements to provide
2 for the rendering of mutual aid with the political subdivisions of
3 this state, other states and the federal government to provide for
4 the common defense, protect the public peace, health and safety
5 and to preserve the lives and property of the people of this state.

6 (b) Any agreement entered into under this section shall be
7 with the consent and approval of the Secretary of the Department
8 of Military Affairs and Public Safety, and shall include a
9 provision within each agreement allowing for the immediate
10 termination by the Secretary at any time.

CHAPTER 179

**(Com. Sub for H. B. 2227 - By Delegate(s) L. Phillips,
Eldridge, Gearheart, Moffatt, J. Nelson, H. White, Guthrie,
Rowe, Marcum, Perdue and Hornbuckle)**

[Passed February 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on February 18, 2015.]

AN ACT to repeal §29-28-1, §29-28-2, §29-28-3, §29-28-4, §29-28-5, §29-28-6, §29-28-7, §29-28-8, §29-28-9, §29-28-10, §29-28-11, §29-28-12 and §29-28-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-27-1, §29-27-2, §29-27-3,

§29-27-4 and §29-27-6 of said code, all relating to the National Coal Heritage Area Authority; adding Lincoln and Kanawha counties as member counties; increasing number of authority board members; adding ex-officio non-voting member to the authority board from Marion County; adding working in member counties to qualifications of appointed members; providing for county commissions of member counties to recommend three nominees to Governor; providing for the Secretary of Education and the Arts to recommend three nominees for chairperson to Governor; creating a standing committee; establishing standing committee responsibilities; repealing article relating to the Coal Heritage Highway Authority; and transferring all assets and responsibilities of the Coal Heritage Highway Authority to the National Coal Heritage Area Authority.

Be it enacted by the Legislature of West Virginia:

That §29-28-1, §29-28-2, §29-28-3, §29-28-4, §29-28-5, §29-28-6, §29-28-7, §29-28-8, §29-28-9, §29-28-10, §29-28-11, §29-28-12 and §29-28-13 of the Code of West Virginia, 1931, as amended, be repealed; and that §29-27-1, §29-27-2, §29-27-3, §29-27-4 and §29-27-6 of said code be amended and reenacted to read as follows:

ARTICLE 27. NATIONAL COAL HERITAGE AREA AUTHORITY.

§29-27-1. Legislative findings.

1 The West Virginia Legislature finds that there is a
 2 significant need for a public body to promote and enhance
 3 historic preservation, tourism and economic development
 4 activities that relate to the state's history as a coal producing
 5 state within the counties of Boone, Cabell, Fayette, Lincoln,
 6 Logan, Kanawha, Marion, McDowell, Mercer, Mingo, Raleigh,
 7 Summers, Wayne and Wyoming.

8 The Legislature further finds that the creation and
9 empowering of a statutory corporation to work with the
10 landowners, county officials and community leaders, state and
11 federal government agencies, and other interested parties to
12 enable and facilitate the development of the national coal
13 heritage area will greatly assist in the realization of these
14 potential benefits.

§29-27-2. Definitions.

1 Unless the context clearly requires a different meaning, the
2 terms used in this article have the following meanings:

3 (a) “Authority” means the national coal heritage area
4 authority;

5 (b) “Board” means the board of the national coal heritage
6 area authority; and

7 (c) “National coal heritage area” means and is comprised of
8 the counties of Boone, Cabell, Fayette, Lincoln, Logan,
9 Kanawha, McDowell, Mercer, Mingo, Raleigh, Summers,
10 Wayne and Wyoming.

**§29-27-3. Creation; appointment of board; terms; expenses;
executive director.**

1 (a) There is hereby created the “national coal heritage area
2 authority” which is a public corporation and a government
3 instrumentality existing for the purposes of providing direction
4 to and assistance with state and federal historic preservation,
5 economic development, and tourism projects in the national coal
6 heritage area and aiding in the development and implementation
7 of integrated cultural, historical, and land resource management
8 policies and programs in order to retain, enhance, and interpret
9 the significant values of the lands, waters and structures in the
10 national coal heritage area.

11 (b) The authority board shall be comprised of twenty
12 members. The following six persons shall be non-voting
13 members and shall serve by virtue of their offices and may be
14 represented at meetings of the board by designees: The secretary
15 of the Department of Education and the Arts, the commissioner
16 of the bureau of the environment, the commissioner of the
17 Division of Tourism, the commissioner of the Division of
18 Culture and History, the director of the Division of Natural
19 Resources and the executive director of the West Virginia
20 Development Office. The remaining fourteen members shall be
21 appointed for terms of four years by the Governor with the
22 advice and consent of the Senate. The county commission of
23 each of the county within the National Coal Heritage Area may
24 submit to the Governor a list of three candidates to be considered
25 for Board appointment. Of the fourteen members appointed by
26 the Governor, one member must reside or work in Boone
27 County; one member must reside or work in Cabell County; one
28 member must reside or work in Fayette County; one member
29 must reside or work in Lincoln County; one member must reside
30 or work in Logan County; one member must reside or work in
31 Kanawha county; one member must reside or work in Marion
32 county: *Provided*, That this member shall be an ex-officio non-
33 voting member; one member must reside or work in McDowell
34 County; one member must reside or work in Mercer County; one
35 member must reside or work in Mingo County; one member
36 must reside or work in Raleigh County; one member must reside
37 or work in Summers County; one member must reside or work
38 in Wayne County; one member must reside or work in Wyoming
39 County; and the appointees must be representative of the tourism
40 industry, the coal industry, the united mine workers of America,
41 economic development activity, historic preservation activity or
42 higher education.

43 (c) The terms of office shall be four years and shall expire on
44 June 30. No appointed member may serve more than two

45 consecutive full terms. A member shall continue to serve until
46 his or her successor has been appointed and qualified.

47 (d) If an appointed member is unable to complete a term, the
48 Governor shall appoint a person to complete the unexpired term.
49 Each vacancy occurring on the board must be filled within sixty
50 days after the vacancy is created.

51 (e) Any appointed member of the board shall immediately
52 and automatically forfeit his or her membership on the board if
53 he or she becomes a nonresident of the county, or ceases to be
54 employed in that county, from which he or she was appointed.

55 (f) Each member of the board shall serve without
56 compensation, but shall receive expense reimbursement for all
57 reasonable and necessary expenses actually incurred in the
58 performance of the duties of the office, in the same amount paid
59 to members of the Legislature for their interim duties as
60 recommended by the citizens legislative compensation
61 commission and authorized by law: *Provided*, That no member
62 may be reimbursed for expenses paid by a third party.

63 (g) The board shall appoint an executive director to act as its
64 chief executive officer, to serve at the will and pleasure of the
65 board. The board, acting through its executive director, may
66 employ any other personnel considered necessary and may
67 appoint staff for the authority and retain such temporary
68 consultants or technicians as may be required for any special
69 study or survey consistent with the provisions of this article. The
70 executive director shall carry out plans to implement the
71 provisions of this article and to exercise those powers. The
72 executive director shall prepare annually a budget to be
73 submitted to the board for its review and approval.

§29-27-4. Board; quorum; chairperson; bylaws.

1 (a) The board is the governing body of the authority and the
2 board shall exercise all the powers given the authority in this
3 article.

4 (b) A chairperson shall be appointed by and shall serve at the
5 will and pleasure of the Governor, with the advice and consent
6 of the Senate. The Secretary of Education and the Arts may
7 submit to the Governor a list of three candidates to be considered
8 for chairperson appointment. The authority shall meet at such
9 times as shall be specified by the chairperson, but in no case less
10 than once each three months. Notice of the meeting must be
11 given in accordance with the provisions of section three, article
12 nine-a, chapter six of this code. A majority of the members may
13 also call a meeting upon such notice as provided in this section.
14 A majority of seven appointed members shall constitute a
15 quorum for the transaction of business. The chairperson of the
16 board shall appoint from the membership of the authority certain
17 members to serve as secretary and as treasurer.

18 (c) There shall be a standing committee of the National Coal
19 Heritage Area Authority known as the "Coal Heritage Trail
20 Committee" comprised of the chairperson and members of the
21 national coal heritage area from the counties that the Coal
22 Heritage Trail passes through. These counties are Mercer,
23 McDowell, Wyoming, Raleigh and Fayette. This standing
24 committee shall be responsible for making recommendations to
25 the full board regarding development and promotion of the Coal
26 Heritage Trail, a national scenic byway.

27 (d) The board shall prescribe, amend and repeal bylaws and
28 rules governing the manner in which the business of the
29 authority is conducted, shall keep a record of its proceedings,
30 and shall review and approve an annual budget.

§29-27-6. Continuation of legal obligations.

1 Nothing in this article may be considered as superseding,
2 amending, modifying or repealing any contract or agreement
3 entered into for the benefit of the national coal heritage area
4 prior to the date of enactment of this article. All obligations,
5 contracts, grants and assets currently belonging to the Coal
6 Heritage Highway Authority shall be transferred to and become
7 the responsibility and property of the National Coal Heritage
8 Area Authority.

CHAPTER 180

**(H. B. 2201 - By Delegate(s) Ireland, Folk, Manchin, Lynch,
Rowe, Fleischauer, Skinner, Fast, Fluharty, Byrd and Summers)**

[Amended and again passed February 28, 2015; as a result of objections of the Governor;
in effect from passage.]

[Approved by the Governor on March 12, 2015.]

AN ACT to amend and reenact §24-2F-8 of the Code of West Virginia, 1931, as amended, relating to net metering; defining net metering; defining customer-generator; defining cross-subsidization; requiring the Public Service Commission to prohibit cross-subsidization; requiring the Public Service Commission adopt certain net metering and interconnection rules and standards; striking deadlines for rulemaking by the Public Service Commission; and capping the amount of generating capacity subject to net metering.

Be it enacted by the Legislature of West Virginia:

That §24-2F-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2F. NET METERING OF CUSTOMER-GENERATORS.**§24-2F-8. Net metering and interconnection standards.**

1 (a) “Net metering” means measuring the difference between
2 electricity supplied by an electric utility and electricity generated
3 from a facility owned or leased and operated by a customer
4 generator when any portion of the electricity generated from the
5 facility is used to offset part or all of the electric retail
6 customer’s requirements for electricity.

7 (b) “Customer-generator” means an electric retail customer
8 who owns or leases and operates a customer-sited generation
9 project utilizing an alternative or renewable energy resource or
10 a net metering system in this state.

11 (c) “Cross-subsidization”, for purposes of this section,
12 means the practice of charging costs directly incurred by the
13 electric utility in accommodating a net metering system to
14 electric retail customers who are not customer generators.

15 (d) The Public Service Commission shall adopt a rule
16 requiring that all electric utilities provide a rebate or discount at
17 fair value, to be determined by the Public Service Commission,
18 to customer-generators for any electricity generation that is
19 delivered to the utility under a net metering arrangement. The
20 commission shall assure that any net metering tariff does not
21 create a cross-subsidization between customers within one class
22 of service.

23 (e) The Public Service Commission shall also consider
24 adopting, by rule, a requirement that all sellers of electricity to
25 retail customers in the state, including rural electric cooperatives,
26 municipally owned electric facilities or utilities serving less than
27 thirty thousand residential electric customers in this state, offer
28 net metering rebates or discounts to customer-generators.

29 (f) The Public Service Commission shall institute a general
30 investigation for the purpose of adopting rules pertaining to net
31 metering and the interconnection of eligible electric generating
32 facilities intended to operate in parallel with an electric utility's
33 system. As part of its investigation, the Public Service
34 Commission shall take into consideration rules of other states
35 within the applicable region of the regional transmission
36 organization, as that term is defined in 18 C.F.R. §35.34, that
37 manages a utility's transmission system in any part of this state.
38 Furthermore, the Public Service Commission shall consider
39 increasing the allowed kilowatt capacity for commercial
40 customer-generators to an amount not to exceed five hundred
41 kilowatts and for industrial customer-generators to an amount
42 not to exceed two megawatts. The Public Service Commission
43 shall further consider interconnection standards for combined
44 heat and power.

45 (g) An electric utility shall offer net metering to a customer-
46 generator that generates electricity on the customer-generator
47 side of the meter using alternative or renewable energy sources,
48 on a first-come, first-served basis, based on the date of
49 application for interconnection as provided in the rules
50 promulgated by the commission and pursuant to a standard tariff.
51 An electric utility may offer net metering to customer-
52 generators, on a first-come, first-served basis, so long as the total
53 generation capacity installed by all customer-generators is no
54 greater than three percent (3%) of the electric utility aggregate
55 customer peak demand in the state during the previous year, of
56 which no less than one-half percent (0.5%) is reserved for
57 residential customer-generators.

58 (h) The Public Service Commission shall adopt a rule
59 requiring compliance with the Institute of the Electrical and
60 Electronics Engineers (IEEE) standards at all times, and as the
61 same shall be amended, including having a disconnect readily

62 accessible to the utility between the facilities of the customer-
63 generator and the electric utility.

CHAPTER 181

**(Com. Sub. for H. B. 2568 - By Delegate(s) Sobonya, Arvon,
Kessinger, Rowan, Summers, Border, Blair, Espinosa,
Waxman, Moye and Eldridge)**

[Passed February 25, 2015; in effect ninety days from passage. Vetoed by the Governor.
Repassed notwithstanding the objections of the Governor, March 6, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6 and §16-2M-7, all relating to prohibiting certain abortions; stating legislative findings; defining terms; requiring a calculation of gestational age before an abortion is performed or attempted, except in certain cases; prohibiting abortions when the gestational age of the fetus reaches pain capable gestational age; creating certain exceptions to that prohibition; requiring a physician performing an abortion of a fetus that has reached pain capable gestational age to use the process most likely to allow the fetus to survive, with certain exceptions; requiring reporting of all completed abortions and that the reports contain certain information regarding the abortion; requiring an annual public report that provides statistics of the abortions while keeping the identities of the persons involved confidential; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is permitted by law; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and

nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; clarifying that no penalty may be assessed against a patient; and making provisions severable.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5, §16-2M-6 and §16-2M-7, all to read as follows:

ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-1. Legislative findings.

1 The Legislature makes the following findings:

2 (1) Pain receptors (unborn child's entire body nociceptors)
3 are present no later than sixteen weeks after fertilization and
4 nerves link these receptors to the brain's thalamus and
5 subcortical plate by no later than twenty weeks.

6 (2) By eight weeks after fertilization, the unborn child reacts
7 to stimuli that would be recognized as painful if applied to an
8 adult human, for example, by recoiling.

9 (3) In the unborn child, application of painful stimuli is
10 associated with significant increases in stress hormones known
11 as the stress response.

12 (4) Subjection to painful stimuli is associated with long-
13 term harmful neuro developmental effects, such as altered pain
14 sensitivity and, possibly, emotional, behavioral and learning
15 disabilities later in life.

16 (5) For the purposes of surgery on unborn children, fetal
17 anesthesia is routinely administered and is associated with a
18 decrease in stress hormones compared to their level when painful
19 stimuli is applied without the anesthesia.

20 (6) The position, asserted by some medical experts, that the
21 unborn child is incapable of experiencing pain until a point later
22 in pregnancy than twenty weeks after fertilization, which point
23 in the pregnancy is generally consistent with twenty-two weeks
24 following the woman's last menstrual cycle, predominately rests
25 on the assumption that the ability to experience pain depends on
26 the cerebral cortex and requires nerve connections between the
27 thalamus and the cortex. However, recent medical research and
28 analysis, especially since 2007, provides strong evidence for the
29 conclusion that a functioning cortex is not necessary to
30 experience pain.

31 (7) Substantial evidence indicates that children born missing
32 the bulk of the cerebral cortex, those with hydranencephaly,
33 nevertheless experience pain.

34 (8) In adults, stimulation or ablation of the cerebral cortex
35 does not alter pain perception while stimulation or ablation of
36 the thalamus does.

37 (9) Substantial evidence indicates that structures used for
38 pain processing in early development differ from those of adults,
39 using different neural elements available at specific times during
40 development, such as the subcortical plate, to fulfill the role of
41 pain processing.

42 (10) Consequently, there is substantial medical evidence that
43 an unborn child is capable of experiencing pain by pain capable
44 gestational age as defined in subsection (7), section two, article
45 two-m of this chapter.

46 (11) It is the purpose of the state to assert a compelling state
47 interest in protecting the lives of unborn children from the stage
48 at which substantial medical evidence indicates that they are
49 capable of feeling pain.

§16-2M-2. Definitions.

1 For purposes of this article:

2 (1) “Abortion” means abortion as that term is defined in
3 section two, article two-f of this chapter.

4 (2) “Attempt to perform or induce an abortion” means an act
5 or an omission of a statutorily required act that, under the
6 circumstances as the person believes them to be, constitutes a
7 substantial step in a course of conduct planned to culminate in
8 the performance or induction of an abortion in this state in
9 violation of the applicable provisions of this code.

10 (3) “Fertilization” means the fusion of a human
11 spermatozoon with a human ovum.

12 (4) “Fetus” means the developing young in the uterus,
13 specifically the unborn offspring in the postembryonic period
14 from nine weeks after fertilization until birth.

15 (5) “Medical emergency” means a condition that, on the
16 basis of a reasonably prudent physician’s reasonable medical
17 judgment, so complicates the medical condition of a pregnant
18 female that it necessitates the immediate abortion of her
19 pregnancy without first determining gestational age to avert her
20 death or for which the delay necessary to determine gestational
21 age will create serious risk of substantial and irreversible
22 physical impairment of a major bodily function, not including
23 psychological or emotional conditions. No condition may be
24 deemed a medical emergency if based on a claim or diagnosis
25 that the woman will engage in conduct which she intends to

26 result in her death or in substantial and irreversible physical
27 impairment of a major bodily function.

28 (6) “Nonmedically viable fetus” means a fetus that contains
29 sufficient lethal fetal anomalies so as to render the fetus
30 medically futile or incompatible with life outside the womb in
31 the reasonable medical judgment of a reasonably prudent
32 physician.

33 (7) “Pain capable gestational age” means twenty-two weeks
34 since the first day of the woman’s last menstrual period. The
35 pain capable gestational age defined herein is generally
36 consistent with the time that is twenty weeks after fertilization.

37 (8) “Physician” means a person with an unrestricted license
38 to practice allopathic medicine pursuant to article three of
39 chapter thirty of this code or osteopathic medicine pursuant to
40 article fourteen, chapter thirty of this code.

41 (9) “Probable gestational age of the fetus” means, in
42 reasonable medical judgment and with reasonable probability,
43 the gestational age of the fetus at the time an abortion is planned
44 to be performed.

45 (10) “Reasonable medical judgment” means a medical
46 judgment that would be made by a reasonably prudent physician,
47 knowledgeable about the case and the treatment possibilities
48 with respect to the medical conditions involved.

§16-2M-3. Determination of gestational age.

1 Except in the case of a medical emergency or a
2 nonmedically viable fetus, no abortion may be performed or
3 induced or be attempted to be performed or induced unless the
4 physician performing or inducing it has first made a
5 determination of the probable gestational age of the fetus or
6 relied upon such a determination made by another physician. In

7 making this determination, the physician shall make inquiries of
8 the patient and perform or cause to be performed medical
9 examinations and tests as a reasonably prudent physician,
10 knowledgeable about the case and the medical conditions
11 involved, would consider necessary to perform in making an
12 accurate diagnosis with respect to gestational age.

§16-2M-4. Abortion of fetus of pain capable gestational age prohibited.

1 (a) No person may perform or induce, or attempt to perform
2 or induce, an abortion when it has been determined, by the
3 physician performing or inducing or attempting to perform or
4 induce the abortion or by another physician upon whose
5 determination that physician relies, that the probable gestational
6 age of the fetus has reached the pain capable gestational age,
7 unless in the reasonable medical judgment of a reasonably
8 prudent physician there exists a nonmedically viable fetus or the
9 patient has a condition that, on the basis of a reasonably prudent
10 physician's reasonable medical judgment, so complicates her
11 medical condition as to necessitate the abortion of her pregnancy
12 to avert her death or to avert serious risk of substantial and
13 irreversible physical impairment of a major bodily function, not
14 including psychological or emotional conditions. No condition
15 may be deemed a medical emergency if based on a claim or
16 diagnosis that the woman will engage in conduct which she
17 intends to result in her death or in substantial and irreversible
18 physical impairment of a major bodily function.

19 (b) When an abortion upon a patient whose fetus has been
20 determined to have a probable gestational age that has reached
21 the pain capable gestational age is not prohibited by subsection
22 (a) of this section, the physician shall terminate the pregnancy in
23 the manner which, in reasonable medical judgment, provides the
24 best opportunity for the fetus to survive, unless, in reasonable
25 medical judgment, termination of the pregnancy in that manner

26 would pose a greater risk either of the death of the patient or of
27 the substantial and irreversible physical impairment of a major
28 bodily function of the patient than would other available
29 methods.

§16-2M-5. Reporting.

1 (a) Any physician who performs or induces an abortion shall
2 report to the Bureau for Public Health. The reporting shall be on
3 a schedule and on forms set forth by the Secretary of the
4 Department of Health and Human Resources annually, no later
5 than December 31. The reports shall include the following
6 information:

7 (1) Probable gestational age:

8 (A) If a determination of probable gestational age was made,
9 whether ultrasound was employed in making the determination,
10 and the week of probable gestational age determined.

11 (B) If a determination of probable gestational age was not
12 made, the basis of the determination that a medical emergency
13 existed or that there existed a nonmedically viable fetus.

14 (2) Method of abortion;

15 (3) If the probable gestational age was determined to have
16 reached the pain capable gestational age, the basis of the
17 determination that there existed a nonmedically viable fetus or
18 that the patient had a condition which so complicated the
19 medical condition of the patient that it necessitated the abortion
20 of her pregnancy in order to avert her death or avert a serious
21 risk of substantial and irreversible physical impairment of a
22 major bodily function; and

23 (4) If the probable gestational age was determined to have
24 reached the pain capable gestational age, whether the method of

25 abortion used was one that, in reasonable medical judgment,
26 provided the best opportunity for the fetus to survive and, if such
27 a method was not used, the basis of the determination that
28 termination of the pregnancy in that manner would pose a
29 greater risk either of the death of the patient or of the substantial
30 and irreversible physical impairment of a major bodily function
31 of the patient than would other available methods.

32 (b) Reports required by subsection (a) of this section may
33 not contain the name or the address of the patient whose
34 pregnancy was terminated nor may the report contain any
35 information identifying the patient. These reports shall be
36 maintained in strict confidence by the department, may not be
37 available for public inspection, and may not be made available
38 except pursuant to court order.

39 (c) Beginning June 30, 2016, and annually after that, the
40 Department of Health and Human Resources shall issue a public
41 report providing statistics for the previous calendar year
42 compiled from all of the reports covering that year submitted in
43 accordance with this section for each of the items listed in
44 subsection (a) of this section. Each report shall provide the
45 statistics for all previous calendar years from the effective date
46 of this section, adjusted to reflect any additional information
47 from late or corrected reports. The Department of Health and
48 Human Resources shall take care to ensure that none of the
49 information included in the public reports could reasonably lead
50 to the identification of any patient upon whom an abortion was
51 performed or induced.

§16-2M-6. Penalties.

1 (a) Any physician or other licensed medical practitioner who
2 intentionally or recklessly performs or induces an abortion in
3 violation of this article is considered to have acted outside the
4 scope of practice permitted by law or otherwise in breach of the

5 standard of care owed to patients, and is subject to discipline
6 from the applicable licensure board for that conduct, including,
7 but not limited to, loss of professional license to practice.

8 (b) Any person, not subject to subsection (a) of this section,
9 who intentionally or recklessly performs or induces an abortion
10 in violation of this article is considered to have engaged in the
11 unauthorized practice of medicine in violation of section
12 thirteen, article three, chapter thirty of this code, and upon
13 conviction, subject to the penalties contained in that section.

14 (c) In addition to the penalties set forth in subsections (a)
15 and (b) of this section, a patient may seek any remedy otherwise
16 available to such patient by applicable law.

17 (d) No penalty may be assessed against any patient upon
18 whom an abortion is performed or induced or attempted to be
19 performed or induced.

§16-2M-7. Severability.

1 If any one or more provisions, sections, subsections,
2 sentences, clauses, phrases or words of this article or the
3 application thereof to any person or circumstance is found to be
4 unconstitutional or temporarily or permanently restrained or
5 enjoined by judicial order, or both, the same is declared to be
6 severable and the balance of this article shall remain effective
7 notwithstanding such judicial decision, including for all other
8 applications of each of the provisions, sections, subsections,
9 sentences, clauses, phrases or words of this article: *Provided,*
10 That whenever any judicial decision is stayed, dissolved, or
11 otherwise ceases to have effect, such provisions shall have full
12 force and effect.

CHAPTER 182

(Com. Sub. for S. B. 366 - By Senators Ferns, Stollings,
Walters and D. Hall)

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; defining terms; requiring certain information be published on a website; providing online information to assist consumers in making informed decisions concerning purchase of a qualified health plan; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all to read as follows:

ARTICLE 50. PATIENT PROTECTION AND TRANSPARENCY ACT.

§33-50-1. Definitions.

1 For the purposes of this article, the following words and
2 terms mean the following:

3 (1) “Commissioner” means the West Virginia Insurance
4 Commissioner.

5 (2) “Consumer” means an individual or family purchasing
6 insurance coverage through the exchange.

7 (3) “Exchange” means the West Virginia Health Benefit
8 Exchange or an exchange website operated by the federal
9 government.

10 (4) “Health care provider” means a provider of medical or
11 health services and any other person or organization who
12 furnishes, bills or is paid for health care in the normal course of
13 business.

14 (5) “Health carrier” means an entity subject to the insurance
15 laws of this state, or subject to the jurisdiction of the
16 commissioner, that contracts or offers to contract to provide,
17 deliver, arrange for, pay for or reimburse any of the costs of
18 health care services, including a sickness and accident insurance
19 company, a health maintenance organization, a nonprofit
20 hospital and health service corporation or any other entity
21 providing a plan of health insurance, health benefits or health
22 services.

23 (6) “Network” means a group of health care providers that
24 have contracted with a health plan to provide care at a
25 discounted rate.

26 (7) “Qualified health plan” means a health plan certified to
27 be offered for sale through the exchange.

28 (8) “West Virginia Health Benefit Exchange” means the
29 government-regulated marketplace of qualified health plans with
30 multiple levels of coverage established pursuant to article
31 sixteen-g of this chapter.

**§33-50-2. Information available to the public and disclosures
required of health carriers.**

1 (a) The commissioner shall on his or her website provide
2 information regarding the qualified health plans being offered
3 for sale through the exchange in a format easily found by a
4 consumer on such website. Information may be provided through
5 links to specific information, including through links to the

6 website of each health carrier offering a qualified health plan for
7 sale through the exchange.

8 (b) Information to be made available to consumers for each
9 qualified health plan offered for sale through the exchange
10 include:

11 (1) The names of the physicians, hospitals and other health
12 care providers that are in network;

13 (2) A list of the types of specialists that are in network;

14 (3) Exclusions from coverage by category of benefits;

15 (4) Restrictions on use or quantity of covered items and
16 services by category of benefits;

17 (5) The dollar amount of copayments;

18 (6) The percentage of coinsurance by item and service;

19 (7) Required cost-sharing;

20 (8) Information sufficient to determine whether a specific
21 drug is available on formulary;

22 (9) Clinical prerequisites or authorization requirements for
23 coverage of specific drugs;

24 (10) A description of how medications will be included in or
25 excluded from the deductible;

26 (11) A description of out-of-pocket costs that may not apply
27 to the deductible for a medication;

28 (12) Information sufficient to determine whether a specific
29 drug is covered when furnished by a physician or clinic;

30 (13) An explanation of the amount of coverage for out-of-
31 network providers or noncovered services;

32 (14) The process for a patient to appeal a health plan
33 decision; and

34 (15) Contact information for the qualified health plan.

35 (c) The commissioner may require a qualified health plan to
36 make the information listed in subsection (b) of this section
37 available, including for website usage, and to provide for the
38 reasonable updating of such information.

39 (d) The commissioner's website should provide general
40 information concerning the exchange, qualified health plans,
41 health insurance terminology and other information consumers
42 may need to assist them in making informed decisions
43 concerning the purchase of a qualified health plan through the
44 exchange.

§33-50-3. Rule-making authority.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to implement the provisions
4 of this article.

CHAPTER 183

(Com. Sub. for S. B. 361 - By Senator Blair)

[Passed March 3, 2015; in effect April 13, 2015.]

[Approved by the Governor on March 12, 2015.]

AN ACT to amend and reenact §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-5A-12, all relating to

the fair minimum rate of wages; eliminating, modifying and defining terms; providing for determination and methodology of determining fair minimum rate of wages by Workforce West Virginia; applying fair minimum rate of wages based on monetary threshold; establishing prevailing wages at specific intervals and exception; providing for review of determinations and methodology; addressing data used in determining prevailing wage rates; providing limitation on use of confidential, individual proprietor-level data and excluding from definition of public record under section three, article one, chapter twenty-nine-b; requiring contract provisions and exceptions; keeping wage records; requiring Workforce West Virginia to propose emergency and legislative rules; and providing provisions of article are severable.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-5A-12, all to read as follows:

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

§21-5A-1. Definitions.

- 1 (1) The term “public authority”, as used in this article, shall
- 2 mean any officer, board or commission or other agency of the
- 3 State of West Virginia, or any political subdivision thereof,
- 4 authorized by law to enter into a contract for the construction of
- 5 a public improvement, including any institution supported, in
- 6 whole or in part, by public funds of the State of West Virginia or
- 7 its political subdivisions.

8 (2) The term “construction”, as used in this article, shall
9 mean any construction, reconstruction, improvement,
10 enlargement, painting, decorating or repair of any public
11 improvement let to contract. The term “construction” shall not
12 be construed to include temporary or emergency repairs.

13 (3) The term “regions of this state”, as used in this article,
14 means the breakup of regions within the state as determined by
15 Workforce West Virginia for the purposes of developing a
16 methodology pursuant to the sections of this article.

17 (4) The term “public improvement”, as used in this article,
18 shall include all buildings, roads, highways, bridges, streets,
19 alleys, sewers, ditches, sewage disposal plants, waterworks,
20 airports and all other structures upon which construction may be
21 let to contract by the State of West Virginia or any political
22 subdivision thereof.

23 (5) The term “construction industry”, as used in this article,
24 shall mean that industry which is composed of employees and
25 employers engaged in construction of buildings, roads,
26 highways, bridges, streets, alleys, sewers, ditches, sewage
27 disposal plants, waterworks, airports and all other structures or
28 works, whether private or public, on which construction work as
29 defined in subsection (2) of this section is performed.

30 (6) The term “employee”, for the purposes of this article,
31 shall not be construed to include such persons as are employed
32 or hired by the public authority on a regular or temporary basis
33 or engaged in making temporary or emergency repairs.

34 (7) The term “public money” means funds obtained by a
35 public authority through taxes, fees, fines or penalties. For
36 purposes of this article, public money does not include funds
37 obtained by private donation, contribution, fundraising or
38 insurance proceeds.

39 (8) The term “wages” means the hourly rate paid for work
40 performed by an employee for an employer.

§21-5A-2. Policy declared.

1 It is hereby declared to be the policy of the State of West
2 Virginia that a wage of no less than the prevailing hourly rate of
3 wages for work of a similar character in the regions of this state
4 in which the construction is performed shall be paid to all
5 workers employed by or on behalf of any public authority
6 engaged in the construction of public improvements.

**§21-5A-3. Fair minimum rate of wages; determination; filing;
schedule of wages part of specifications.**

1 Any public authority authorized to let to contract the
2 construction of a public improvement shall, before advertising
3 for bids for the construction thereof, ascertain from Workforce
4 West Virginia, the fair minimum rate of wages to be paid by the
5 successful bidder to the laborers, workers or mechanics in the
6 various branches or classes of the construction to be performed;
7 and such schedule of wages shall be made a part of the
8 specifications for the construction and shall be published in an
9 electronic or other medium and incorporated in the bidding
10 blanks by reference when approved by Workforce West Virginia
11 where the construction is to be performed by contract. The fair
12 minimum rate of wages, for the intents and purposes of this
13 article, shall be the prevailing rate of wages paid in the regions
14 of this state as hereinbefore defined to the workers, laborers or
15 mechanics in the same trade or occupation in the construction
16 industry. Workforce West Virginia shall assemble the data as to
17 the fair minimum wage rates and shall file wage rates. Rates
18 shall be established and filed as hereinafter provided on January
19 1, of each year, unless otherwise specified within this article.
20 These rates shall prevail as the minimum wage rate for all public
21 improvements for which bids are asked during the year

22 beginning with the date when such new rates are filed and, until
23 the new rates are filed, the rates for the preceding year shall
24 remain in effect: *Provided*, That such rates shall not remain in
25 effect for a period longer than fifteen months from the date they
26 are published, but this provision shall not affect construction of
27 a public improvement then underway: *Provided, however*, That
28 this section applies only to contracts let for public improvements
29 whose cost at the time the contract is awarded will be paid with
30 public money in an amount greater than \$500,000.

§21-5A-5. Prevailing wages established at specified intervals; how determined; filing; legislative review.

1 (1) Workforce West Virginia, in coordination with the West
2 Virginia University Bureau of Business and Economic Research
3 and the Center for Business and Economic Research at Marshall
4 University in furtherance of section four, article three, chapter
5 eighteen-b of this code, shall investigate and determine the
6 prevailing hourly rate of wages in the regions of this state.
7 Determinations thereof shall be made annually on January 1 of
8 each year, unless otherwise specified within this article, and shall
9 remain in effect during the successive year: *Provided*, That such
10 rates shall not remain in effect for a period longer than fifteen
11 months from the date they are published. A copy of the
12 determination so made, certified by Workforce West Virginia,
13 shall be filed immediately with the Secretary of State.

14 (2) On or before June 1, 2015, Workforce West Virginia, in
15 coordination with the West Virginia University Bureau of
16 Business and Economic Research and the Center for Business
17 and Economic Research at Marshall University, shall determine
18 the methodology for annually calculating the prevailing hourly
19 rate of wages as evidenced by all appropriate economic data,
20 including, but not limited to, the average rate of wages published
21 by the U. S. Bureau of Labor Statistics and the actual rate of
22 wages paid in the regions of this state to the workers, laborers or

23 mechanics in the same trade or occupation in the construction
24 industry, regardless of the wages listed in collective bargaining
25 agreements, to ascertain the prevailing rate of wages paid in the
26 regions of the state in which the construction of the public
27 improvement is to be performed. Workforce West Virginia shall
28 present such methodology for the determination of the prevailing
29 hourly rate of wages to the Joint Committee on Government and
30 Finance, which shall review the methodology being used to
31 determine annually the prevailing hourly rate of wages and
32 recommend to the Legislature any statutory changes needed to
33 clarify the method for determining prevailing wages.

34 (3) On or before July 1, 2015, Workforce West Virginia, in
35 coordination with the West Virginia University Bureau of
36 Business and Economic Research and the Center for Business
37 and Economic Research at Marshall University, shall determine
38 the prevailing hourly rate of wages for the remainder of 2015 in
39 accordance with the approved methodology set forth in
40 subsection (2) of this section: *Provided*, That if the
41 determination is not in place on July 1, 2015, for any reason, no
42 prevailing hourly rate of wages shall be in effect until the
43 determination is made: *Provided, however*, That in the event the
44 determination is not in place on July 1, 2015, the Joint
45 Committee on Government and Finance may extend the deadline
46 to a date thereafter, but, in any event, no later than September
47 30, 2015. During the extension period only, the prevailing wage
48 in place prior to July 1, 2015, shall remain the prevailing wage:
49 *Provided further*, That in the event the determination is not in
50 place at the conclusion of such extension period, no prevailing
51 hourly rate of wages shall be in effect until the determination is
52 made.

53 (4) On or before September 30 of every year, Workforce
54 West Virginia, in coordination with the West Virginia University
55 Bureau of Business and Economic Research and the Center for

56 Business and Economic Research at Marshall University, shall
57 determine the prevailing hourly rate of wages for the following
58 year in accordance with the approved methodology set forth in
59 subsection (2) of this section.

60 (5) On or before September 30, 2018, and in every third year
61 thereafter, Workforce West Virginia shall review the
62 methodology for determining the prevailing hourly rate of
63 wages, as set forth in subsection (2) of this section, with the
64 West Virginia University Bureau of Business and Economic
65 Research and the Center for Business and Economic Research at
66 Marshall University, and present such review and make any
67 recommendations regarding such methodology to the Joint
68 Committee on Government and Finance. The Joint Committee
69 on Government and Finance shall review the methodology being
70 used to determine the prevailing hourly rate of wages and
71 recommend to the Legislature any statutory changes needed to
72 clarify the method for determining prevailing wages.

73 (6) Any confidential, individual proprietor-level data
74 submitted to Workforce West Virginia, the West Virginia
75 University Bureau of Business and Economic Research or the
76 Center for Business and Economic Research at Marshall
77 University for the purpose of determining the prevailing rates
78 may not be used for any purpose other than the calculation of the
79 prevailing wage rates: *Provided*, That any such data may be
80 available for purposes of the appeals process referenced in
81 section eleven of this article: *Provided, however*, That any
82 confidential, individual proprietor-level data submitted to
83 Workforce West Virginia, the West Virginia University Bureau
84 of Business and Economic Research or the Center for Business
85 and Economic Research at Marshall University for the purpose
86 of determining the prevailing wage rates shall not be considered
87 a public record for purposes of section three, article one, chapter
88 twenty-nine-b of this code.

§21-5A-6. Contracts to contain provisions relative to minimum wages to be paid; exceptions.

1 In cases where any public authority has ascertained a fair
2 minimum rate or rates of wages as herein provided, and
3 construction of a public improvement is let to contract, the
4 contract executed between the public authority and the
5 successful bidder shall contain a provision requiring the
6 successful bidder and all his or her subcontractors to pay a rate
7 or rates of wages which shall not be less than the fair minimum
8 rate or rates of wages as provided by this article: *Provided*, That
9 the provisions of this article only apply to contracts let for public
10 improvements whose cost at the time the contract is awarded
11 will be paid with public money in an amount greater than
12 \$500,000.

§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to inspection.

1 The contractor and each subcontractor or the officer of the
2 public authority in charge of the construction of a public
3 improvement shall keep an accurate record showing the names
4 and occupations of all such skilled laborers, workers and
5 mechanics employed by them, in connection with the
6 construction on the public improvement and showing also the
7 actual wages paid to each of the skilled laborers, workers and
8 mechanics, which record shall be open at all reasonable hours to
9 the inspection of Workforce West Virginia and the public
10 authority which let the contract, its officers and agents. It shall
11 not be necessary to preserve such record for a period longer than
12 three years after the termination of the contract.

§21-5A-10. Existing contracts.

1 This article shall apply only to contracts for construction on
2 public improvements let after the effective date of this article

3 and to construction on public improvements for which there has
4 been determined, pursuant to section five of this article, the fair
5 minimum wage rates.

§21-5A-11. Rulemaking.

1 (a) The Executive Director of Workforce West Virginia shall
2 promulgate emergency rules and propose, for legislative
3 promulgation, legislative rules pursuant to the provisions of
4 article three, chapter twenty-nine-a of this code to effectuate the
5 provisions of this article. All rules, whether emergency or not,
6 promulgated pursuant to this section shall at a minimum:

7 (1) Define the regions of the state as used in the article;

8 (2) Establish a process for addressing written objections
9 regarding the methodology for calculating the prevailing hourly
10 rate of wages and the calculation of the hourly rate of wages:
11 *Provided*, That Workforce West Virginia may consolidate
12 written objections for hearing and final determination purposes;
13 and

14 (3) Propose any other rules necessary to effectuate the
15 purposes of this article.

16 (b) Any legislative rule in effect prior to the effective date of
17 this article implementing the provisions of this article is hereby
18 repealed.

§21-5A-12. Provisions of article severable.

1 Each section of this article, and every part thereof, is hereby
2 declared to be an independent section or part of a section and if
3 any section, subsection, sentence, clause or phrase of this article
4 shall for any reason be held unconstitutional, the validity of the
5 remaining phrases, clauses, sentences, subsections and sections
6 of this article shall not be affected thereby.

CHAPTER 184

(Com. Sub. for S. B. 374 - By Senators Trump and D. Hall)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to permitting parole hearings to be conducted without the presence of the inmate when a documented medical condition precludes his or her appearance.

Be it enacted by the Legislature of West Virginia:

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The Parole Board, whenever it is of the opinion that the
2 best interests of the state and of the inmate will be served, and
3 subject to the limitations provided in this section, shall release
4 any inmate on parole for terms and upon conditions provided by
5 this article.

6 (b) Any inmate of a state correctional institution is eligible
7 for parole if he or she:

8 (1) (A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or her
10 definite term sentence, as the case may be; or

11 (B) He or she:

12 (i) Has applied for and been accepted by the Commissioner
13 of Corrections into an accelerated parole program;

14 (ii) Does not have a prior criminal conviction for a felony
15 crime of violence against the person, a felony offense involving
16 the use of a firearm or a felony offense where the victim was a
17 minor child;

18 (iii) Is not serving a sentence for a crime of violence against
19 the person, or more than one felony for a controlled substance
20 offense for which the inmate is serving a consecutive sentence,
21 a felony offense involving the use of a firearm or a felony
22 offense where the victim was a minor child; and

23 (iv) Has successfully completed a rehabilitation treatment
24 program created with the assistance of a standardized risk and
25 needs assessment.

26 (C) Notwithstanding any provision of this code to the
27 contrary, any inmate who committed, or attempted to commit, a
28 felony with the use, presentment or brandishing of a firearm, is
29 not eligible for parole prior to serving a minimum of three years
30 of his or her sentence or the maximum sentence imposed by the
31 court, whichever is less: *Provided*, That any inmate who
32 committed, or attempted to commit, any violation of section
33 twelve, article two, chapter sixty-one of this code, with the use,
34 presentment or brandishing of a firearm, is not eligible for parole
35 prior to serving a minimum of five years of his or her sentence
36 or one third of his or her definite term sentence, whichever is
37 greater. Nothing in this paragraph applies to an accessory before
38 the fact or a principal in the second degree who has been
39 convicted as if he or she were a principal in the first degree if, in
40 the commission of or in the attempted commission of the felony,
41 only the principal in the first degree used, presented or

42 brandished a firearm. An inmate is not ineligible for parole under
43 the provisions of this paragraph because of the commission or
44 attempted commission of a felony with the use, presentment or
45 brandishing of a firearm unless that fact is clearly stated and
46 included in the indictment or presentment by which the person
47 was charged and was either: (i) Found guilty by the court at the
48 time of trial upon a plea of guilty or nolo contendere; (ii) found
49 guilty by the jury, upon submitting to the jury a special
50 interrogatory for such purpose if the matter was tried before a
51 jury; or (iii) found guilty by the court, if the matter was tried by
52 the court without a jury.

53 (D) The amendments to this subsection adopted in the year
54 1981:

55 (i) Apply to all applicable offenses occurring on or after
56 August 1 of that year;

57 (ii) Apply with respect to the contents of any indictment or
58 presentment returned on or after August 1 of that year
59 irrespective of when the offense occurred;

60 (iii) Apply with respect to the submission of a special
61 interrogatory to the jury and the finding to be made thereon in
62 any case submitted to the jury on or after August 1 of that year
63 or to the requisite findings of the court upon a plea of guilty or
64 in any case tried without a jury: *Provided*, That the state gives
65 notice in writing of its intent to seek such finding by the jury or
66 court, as the case may be. The notice shall state with particularity
67 the grounds upon which the finding will be sought as fully as the
68 grounds are otherwise required to be stated in an indictment,
69 unless the grounds upon which the finding will be sought are
70 alleged in the indictment or presentment upon which the matter
71 is being tried; and

72 (iv) Does not apply with respect to cases not affected by the
73 amendments and in those cases the prior provisions of this

74 section apply and are construed without reference to the
75 amendments.

76 (v) Insofar as the amendments relate to mandatory sentences
77 restricting the eligibility for parole, all matters requiring a
78 mandatory sentence shall be proved beyond a reasonable doubt
79 in all cases tried by the jury or the court.

80 (E) As used in this section, “felony crime of violence against
81 the person” means felony offenses set forth in article two, three-
82 e, eight-b or eight-d, chapter sixty-one of this code; and

83 (F) As used in this section, “felony offense where the victim
84 was a minor child” means any felony crime of violence against
85 the person and any felony violation set forth in article eight,
86 eight-a, eight-c or eight-d, chapter sixty-one of this code.

87 (G) For the purpose of this section, the term “firearm” means
88 any instrument which will, or is designed to, or may readily be
89 converted to expel a projectile by the action of an explosive,
90 gunpowder or any other similar means.

91 (2) Is not in punitive segregation or administrative
92 segregation as a result of disciplinary action;

93 (3) Has prepared and submitted to the Parole Board a written
94 parole release plan setting forth proposed plans for his or her
95 place of residence, employment and, if appropriate, his or her
96 plans regarding education and post-release counseling and
97 treatment: *Provided*, That an inmate’s application for parole may
98 be considered by the board without the prior submission of a
99 home plan, but the inmate shall have a home plan approved by
100 the board prior to his or her release on parole. The
101 Commissioner of Corrections or his or her designee shall review
102 and investigate the plan and provide recommendations to the
103 board as to the suitability of the plan: *Provided, however*, That
104 in cases in which there is a mandatory thirty-day notification

105 period required prior to the release of the inmate, pursuant to
106 section twenty-three of this article, the board may conduct an
107 initial interview and deny parole without requiring the
108 development of a plan. In the event the board believes parole
109 should be granted, it may defer a final decision pending
110 completion of an investigation and receipt of recommendations.
111 Upon receipt of the plan together with the investigation and
112 recommendation, the board, through a panel, shall make a final
113 decision regarding the granting or denial of parole; and

114 (4) Has satisfied the board that if released on parole he or
115 she will not constitute a danger to the community.

116 (c) Except in the case of an inmate serving a life sentence, a
117 person who has been previously twice convicted of a felony may
118 not be released on parole until he or she has served the minimum
119 term provided by law for the crime for which he or she was
120 convicted. An inmate sentenced for life may not be paroled until
121 he or she has served ten years, and an inmate sentenced for life
122 who has been previously twice convicted of a felony may not be
123 paroled until he or she has served fifteen years: *Provided*, That
124 an inmate convicted of first degree murder for an offense
125 committed on or after June 10, 1994, is not eligible for parole
126 until he or she has served fifteen years.

127 (d) In the case of an inmate sentenced to a state correctional
128 institution regardless of the inmate's place of detention or
129 incarceration, the Parole Board, as soon as that inmate becomes
130 eligible, shall consider the advisability of his or her release on
131 parole.

132 (e) If, upon consideration, parole is denied, the board shall
133 promptly notify the inmate of the denial. The board shall, at the
134 time of denial, notify the inmate of the month and year he or she
135 may apply for reconsideration and review. The board shall at
136 least once a year reconsider and review the case of every inmate

137 who was denied parole and who is still eligible: *Provided*, That
138 the board may reconsider and review parole eligibility any time
139 within three years following the denial of parole of an inmate
140 serving a life sentence with the possibility of parole.

141 (f) Any inmate in the custody of the commissioner for
142 service of a sentence who reaches parole eligibility is entitled to
143 a timely parole hearing without regard to the location in which
144 he or she is housed.

145 (g) The board shall, with the approval of the Governor, adopt
146 rules governing the procedure in the granting of parole. No
147 provision of this article and none of the rules adopted under this
148 article are intended or may be construed to contravene, limit or
149 otherwise interfere with or affect the authority of the Governor
150 to grant pardons and reprieves, commute sentences, remit fines
151 or otherwise exercise his or her constitutional powers of
152 executive clemency.

153 (h) (1) The Division of Corrections shall promulgate policies
154 and procedures for developing a rehabilitation treatment plan
155 created with the assistance of a standardized risk and needs
156 assessment. The policies and procedures shall provide for, at a
157 minimum, screening and selecting inmates for rehabilitation
158 treatment and development, using standardized risk and needs
159 assessment and substance abuse assessment tools, and
160 prioritizing the use of residential substance abuse treatment
161 resources based on the results of the standardized risk and needs
162 assessment and a substance abuse assessment. The results of all
163 standardized risk and needs assessments and substance abuse
164 assessments are confidential.

165 (2) An inmate shall not be paroled under paragraph (B),
166 subdivision (1), subsection (b) of this section solely due to
167 having successfully completed a rehabilitation treatment plan,
168 but completion of all the requirements of a rehabilitation

169 treatment plan along with compliance with the requirements of
170 subsection (b) of this section creates a rebuttable presumption
171 that parole is appropriate. The presumption created by this
172 subdivision may be rebutted by a Parole Board finding that,
173 according to the standardized risk and needs assessment, at the
174 time parole release is sought the inmate still constitutes a
175 reasonable risk to the safety or property of other persons if
176 released. Nothing in subsection (b) of this section or in this
177 subsection may be construed to create a right to parole.

178 (i) Notwithstanding the provisions of subsection (b) of this
179 section, the Parole Board may grant or deny parole to an inmate
180 against whom a detainer is lodged by a jurisdiction other than
181 West Virginia for service of a sentence of incarceration, upon a
182 written request for parole from the inmate. A denial of parole
183 under this subsection precludes consideration for parole for a
184 period of one year or until the provisions of subsection (b) of this
185 section are applicable.

186 (j) If an inmate is otherwise eligible for parole pursuant to
187 subsection (b) of this section and has completed the
188 rehabilitation treatment program required under subsection (g)
189 of this section, the Parole Board may not require the inmate to
190 participate in an additional program, but may determine that the
191 inmate must complete an assigned task or tasks prior to actual
192 release on parole. The board may grant parole contingently,
193 effective upon successful completion of the assigned task or
194 tasks, without the need for a further hearing.

195 (k) (1) The Division of Corrections shall supervise all
196 probationers and parolees whose supervision may have been
197 undertaken by this state by reason of any interstate compact
198 entered into pursuant to the Uniform Act for Out-of-State
199 Parolee Supervision.

200 (2) The Division of Corrections shall provide supervision,
201 treatment/recovery and support services for all persons released

202 to mandatory supervision under section twenty-seven, article
203 five, chapter twenty-eight of this code.

204 (I) (1) When considering an inmate of a state correctional
205 center for release on parole, the Parole Board panel considering
206 the parole shall have before it an authentic copy of or report on
207 the inmate's current criminal record as provided through the
208 West Virginia State Police, the United States Department of
209 Justice or any other reliable criminal information sources and
210 written reports of the warden or superintendent of the state
211 correctional institution to which the inmate is sentenced:

212 (A) On the inmate's conduct record while in custody,
213 including a detailed statement showing any and all infractions of
214 disciplinary rules by the inmate and the nature and extent of
215 discipline administered for the infractions;

216 (B) On improvement or other changes noted in the inmate's
217 mental and moral condition while in custody, including a
218 statement expressive of the inmate's current attitude toward
219 society in general, toward the judge who sentenced him or her,
220 toward the prosecuting attorney who prosecuted him or her,
221 toward the policeman or other officer who arrested the inmate
222 and toward the crime for which he or she is under sentence and
223 his or her previous criminal record;

224 (C) On the inmate's industrial record while in custody which
225 shall include: The nature of his or her work, occupation or
226 education, the average number of hours per day he or she has
227 been employed or in class while in custody and a
228 recommendation as to the nature and kinds of employment
229 which he or she is best fitted to perform and in which the inmate
230 is most likely to succeed when he or she leaves the state
231 correctional institution; and

232 (D) On any physical, mental, psychological or psychiatric
233 examinations of the inmate.

234 (2) The Parole Board panel considering the parole may
235 waive the requirement of any report when not available or not
236 applicable as to any inmate considered for parole but, in every
237 case, shall enter in its record its reason for the waiver: *Provided*,
238 That in the case of an inmate who is incarcerated because the
239 inmate has been found guilty of, or has pleaded guilty to, a
240 felony under the provisions of section twelve, article eight,
241 chapter sixty-one of this code or under the provisions of article
242 eight-b or eight-c of said chapter, the Parole Board panel may
243 not waive the report required by this subsection. The report shall
244 include a study and diagnosis of the inmate, including an on-
245 going treatment plan requiring active participation in sexual
246 abuse counseling at an approved mental health facility or
247 through some other approved program: *Provided, however*, That
248 nothing disclosed by the inmate during the study or diagnosis
249 may be made available to any law-enforcement agency, or other
250 party without that inmate's consent, or admissible in any court
251 of this state, unless the information disclosed indicates the
252 intention or plans of the parolee to do harm to any person,
253 animal, institution or to property. Progress reports of outpatient
254 treatment are to be made at least every six months to the parole
255 officer supervising the parolee. In addition, in such cases, the
256 Parole Board shall inform the prosecuting attorney of the county
257 in which the person was convicted of the parole hearing and
258 shall request that the prosecuting attorney inform the Parole
259 Board of the circumstances surrounding a conviction or plea of
260 guilty, plea bargaining and other background information that
261 might be useful in its deliberations.

262 (m) Before releasing any inmate on parole, the Parole Board
263 shall arrange for the inmate to appear in person before a Parole
264 Board panel and the panel may examine and interrogate him or
265 her on any matters pertaining to his or her parole, including
266 reports before the Parole Board made pursuant to the provisions
267 of this section: *Provided*, That an inmate may appear by video
268 teleconference if the members of the Parole Board panel
269 conducting the examination are able to contemporaneously see

270 the inmate and hear all of his or her remarks and if the inmate is
271 able to contemporaneously see each of the members of the panel
272 conducting the examination and hear all of the members'
273 remarks: *Provided, however,* That the requirement that an inmate
274 personally appear may be waived where a physician authorized
275 to do so by the Commissioner of Corrections certifies that the
276 inmate, due to a medical condition or disease, is too debilitated,
277 either physically or cognitively, to appear. The panel shall reach
278 its own written conclusions as to the desirability of releasing the
279 inmate on parole and the majority of the panel considering the
280 release must concur in the decision. The warden or
281 superintendent shall furnish all necessary assistance and
282 cooperate to the fullest extent with the Parole Board. All
283 information, records and reports received by the Parole Board
284 shall be kept on permanent file.

285 (n) The Parole Board and its designated agents are at all
286 times to have access to inmates imprisoned in any state
287 correctional institution or in any jail in this state and may obtain
288 any information or aid necessary to the performance of its duties
289 from other departments and agencies of the state or from any
290 political subdivision of the state.

291 (o) The Parole Board shall, if requested by the Governor,
292 investigate and consider all applications for pardon, reprieve or
293 commutation and shall make recommendation on the
294 applications to the Governor.

295 (p) (1) Prior to making a recommendation for pardon,
296 reprieve or commutation, the board shall notify the sentencing
297 judge and prosecuting attorney at least ten days before the
298 recommendation.

299 (2) Notwithstanding any other provision of law to the
300 contrary, if the board grants a person parole, the board shall
301 provide written notice to the prosecuting attorney and circuit
302 judge of the county in which the inmate was prosecuted, that

303 parole has been granted. The notice shall be sent by certified
304 mail, return receipt requested, and include the anticipated date of
305 release and the person's anticipated future residence. A written
306 statement of reasons for releasing the person, prepared pursuant
307 to subsection (b) of this section, shall be provided upon request.

308 (q) A parolee shall participate as a condition of parole in the
309 litter control program of the county to which he or she is
310 released to the extent directed by the Parole Board, unless the
311 board specifically finds that this alternative service would be
312 inappropriate.

CHAPTER 185

(Com. Sub. for S. B. 375 - By Senator Trump)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §62-12-23 of the Code of West Virginia, 1931, as amended, relating to specifying who receives notice of parole hearings via regular or certified mail.

Be it enacted by the Legislature of West Virginia:

That §62-12-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

- 1 (a) Following the sentencing of a person who has been
- 2 convicted of murder, aggravated robbery, sexual assault in the

3 first or second degree, kidnaping, child abuse resulting in injury,
4 child neglect resulting in injury, arson or a sexual offense against
5 a minor, the prosecuting attorney who prosecuted the offender
6 shall prepare a Parole Hearing Notification Form. This form
7 shall contain the following information:

8 (1) The name of the county in which the offender was
9 prosecuted and sentenced;

10 (2) The name of the court in which the offender was
11 prosecuted and sentenced;

12 (3) The name of the prosecuting attorney or assistant
13 prosecuting attorney who prosecuted the offender;

14 (4) The name of the judge who presided over the criminal
15 case and who sentenced the offender;

16 (5) The names of the law-enforcement agencies and officers
17 who were primarily involved with the investigation of the crime
18 for which the offender was sentenced; and

19 (6) The names, addresses and telephone numbers of the
20 victims of the crime for which the offender was sentenced or the
21 names, addresses and telephone numbers of the immediate
22 family members of each victim of the crime, including, but not
23 limited to, each victim's spouse, father, mother, brothers, sisters
24 and any adult household member residing with the victim.

25 (b) The prosecuting attorney shall retain the original of the
26 Parole Hearing Notification Form and shall provide copies of it
27 to the circuit court which sentenced the offender, the Parole
28 Board, the Commissioner of Corrections and to all persons
29 whose names and addresses are listed on the form.

30 (c) At least forty-five days prior to the date of a parole
31 hearing, the Parole Board shall notify all persons who are listed

32 on the Parole Hearing Notification Form, including the circuit
33 court which sentenced the offender and office of the prosecuting
34 attorney that prosecuted the offender, of the date, time and place
35 of the hearing. Such notice to law-enforcement agencies and
36 officers who were primarily involved with the investigation of
37 the crime for which the offender was sentenced shall be sent by
38 regular mail, properly addressed and postage prepaid. Notice to
39 the prosecuting attorney who prosecuted the offender, the judge
40 who presided over the criminal case and sentencing of the
41 offender and victims of the crime for which the offender was
42 sentenced or the immediate family members of each victim of
43 the crime shall be sent by certified mail, return receipt requested.
44 The notice shall state that the victims of the crime have the right
45 to submit a written statement to the Parole Board and to attend
46 the parole hearing to be heard regarding the propriety of granting
47 parole to the prisoner. The notice shall also state that only the
48 victims may submit written statements and speak at the parole
49 hearing unless a victim is deceased, is a minor or is otherwise
50 incapacitated.

51 (d) The panel considering the parole shall inquire during the
52 parole hearing as to whether the victims of the crime or their
53 representatives, as provided in this section, are present. If so, the
54 panel shall permit those persons to speak at the hearing
55 regarding the propriety of granting parole for the prisoner.

56 (e) If the panel grants parole, it shall immediately set a date
57 on which the prisoner will be released. Such date shall be no
58 earlier than thirty days after the date on which parole is granted.
59 On the date on which parole is granted, the Parole Board shall
60 notify all persons listed on the Parole Hearing Notification Form,
61 including the circuit court which sentenced the offender and
62 office of the prosecuting attorney that prosecuted the offender,
63 that parole has been granted and the date of release. This notice
64 shall be sent by the method prescribed in subsection (c) of this
65 section. A written statement of reasons for releasing the prisoner,

66 prepared pursuant to subsection (b), section thirteen of this
67 article, shall be provided upon request to all persons listed on the
68 Parole Hearing Notification Form, including the circuit court
69 which sentenced the offender and office of the prosecuting
70 attorney that prosecuted the offender.

CHAPTER 186

**(Com. Sub. for H. B. 2496 - By Delegate(s) Ellington, Howell,
Householder, Sobonya, Fleischauer and Frich)**

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

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11, §30-1C-12, §30-1C-13, §30-1C-14, §30-1C-15, §30-1C-16, §30-1C-17, §30-1C-18, §30-1C-19, §30-1C-20, §30-1C-21, §30-1C-22, §30-1C-23 and §30-1C-24, all relating to the establishment and operation of an interstate compact for medical licensure of physicians in multiple states; setting forth purposes for the compact; setting forth definitions; providing physician eligibility requirements; requiring a physician to designate a state of principal license; setting forth the procedure for application and issuance of an expedited license; providing for fees regarding expedited licensure; providing requirements for renewal of an expedited license; establishing a shared database for member boards; providing for joint investigation of physicians by member boards; establishing the effect of disciplinary actions against a physician; creating the interstate medical licensure compact commission to administer the compact; setting forth commission composition; establishing the authority of the

commission; providing for commission meetings; setting forth provisions relating to disclosure of commission information and records; establishing an executive committee; setting forth provisions for funding; establishing member state's right to charge licensing fees; limiting commission authority to incur financial obligation; requiring a financial audit; requiring the creation of bylaws; requiring annual election or appointment of commission officers; establishing that commission officers serve without remuneration; providing certain individuals defense, immunity, or limitation of liability for civil actions in certain circumstances unless their conduct was intentional willful and wanton; requiring the commission to defend certain civil actions; establishing commission rule making authority and procedure; providing for judicial review; providing for state enforcement; requiring state courts take judicial notice of certain matters; providing the commission may intervene in proceedings; requiring service of process upon the commission; establishing that failure to serve process upon the commission voids a judicial decision; providing for legal enforcement of compact rules and provisions; setting forth provisions for default; providing for termination or withdrawal of a member state; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; establishing circumstances, effect and procedures related to dissolution of the compact; establishing provisions related to severability; and, establishing provisions related to the binding effect of the compact.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11, §30-1C-12, §30-1C-13, §30-1C-14, §30-1C-15,

§30-1C-16, §30-1C-17, §30-1C-18, §30-1C-19, §30-1C-20, §30-1C-21, §30-1C-22, §30-1C-23 and §30-1C-24, all to read as follows:

ARTICLE 1C. INTERSTATE MEDICAL LICENSURE COMPACT.

§30-1C-1. Purpose.

1 In order to strengthen access to health care, and in
2 recognition of the advances in the delivery of health care, the
3 member states of the Interstate Medical Licensure Compact have
4 allied in common purpose to develop a comprehensive process
5 that complements the existing licensing and regulatory authority
6 of state medical boards, provides a streamlined process that
7 allows physicians to become licensed in multiple states, thereby
8 enhancing the portability of a medical license and ensuring the
9 safety of patients. The Compact creates another pathway for
10 licensure and does not otherwise change a state's existing
11 medical practice statutes. The Compact also adopts the
12 prevailing standard for licensure and affirms that the practice of
13 medicine occurs where the patient is located at the time of the
14 physician-patient encounter, and therefore, requires the
15 physician to be under the jurisdiction of the state medical board
16 where the patient is located.

17 State medical boards that participate in the Compact retain
18 the jurisdiction to impose an adverse action against a license to
19 practice medicine in that state issued to a physician through the
20 procedures in the Compact.

§30-1C-2. Definitions.

1 In this article adopting the Interstate Medical Licensure
2 Compact:

3 (a) "Bylaws" means those bylaws established by the
4 Interstate Commission pursuant to section eleven of this article

5 for its governance, or for directing and controlling its actions and
6 conduct.

7 (b) “Commissioner” means the voting representative
8 appointed by each member board pursuant to section eleven of
9 this article.

10 (c) “Compact” means the Interstate Medical Licensure
11 Compact.

12 (d) “Conviction” means a finding by a court that an
13 individual is guilty of a criminal offense through adjudication,
14 or entry of a plea of guilt or no contest to the charge by the
15 offender. Evidence of an entry of a conviction of a criminal
16 offense by the court shall be considered final for purposes of
17 disciplinary action by a member board.

18 (e) “Expedited License” means a full and unrestricted
19 medical license granted by a member state to an eligible
20 physician through the process set forth in the Compact.

21 (f) “Interstate Commission” means the Interstate Medical
22 Licensure Compact Commission created pursuant to section
23 eleven of this article.

24 (g) “License” means authorization by a state for a physician
25 to engage in the practice of medicine, which would be unlawful
26 without the authorization.

27 (h) “Medical Practice Act” means laws and regulations
28 governing the practice of allopathic and osteopathic medicine
29 within a member state.

30 (i) “Member Board” means a state agency in a member state
31 that acts in the sovereign interests of the state by protecting the
32 public through licensure, regulation, and education of physicians
33 as directed by the state government.

34 (j) “Member State” means a state that has enacted the
35 Compact.

36 (k) “Practice of Medicine” means the clinical prevention,
37 diagnosis, or treatment of human disease, injury, or condition
38 requiring a physician to obtain and maintain a license in
39 compliance with the Medical Practice Act of a member state.

40 (l) “Physician” means any person who:

41 (1) Is a graduate of a medical school accredited by the
42 Liaison Committee on Medical Education, the Commission on
43 Osteopathic College Accreditation, or a medical school listed in
44 the International Medical Education Directory or its equivalent;

45 (2) Passed each component of the United States Medical
46 Licensing Examination (USMLE) or the Comprehensive
47 Osteopathic Medical Licensing Examination (COMLEX-USA)
48 within three attempts, or any of its predecessor examinations
49 accepted by a state medical board as an equivalent examination
50 for licensure purposes;

51 (3) Successfully completed graduate medical education
52 approved by the Accreditation Council for Graduate Medical
53 Education or the American Osteopathic Association;

54 (4) Holds specialty certification or a time-unlimited specialty
55 certificate recognized by the American Board of Medical
56 Specialties or the American Osteopathic Association’s Bureau
57 of Osteopathic Specialists;

58 (5) Possesses a full and unrestricted license to engage in the
59 practice of medicine issued by a member board;

60 (6) Has never been convicted, received adjudication,
61 deferred adjudication, community supervision, or deferred
62 disposition for any offense by a court of appropriate jurisdiction;

63 (7) Has never held a license authorizing the practice of
64 medicine subjected to discipline by a licensing agency in any
65 state, federal, or foreign jurisdiction, excluding any action
66 related to nonpayment of fees related to a license;

67 (8) Has never had a controlled substance license or permit
68 suspended or revoked by a state or the United States Drug
69 Enforcement Administration; and

70 (9) Is not under active investigation by a licensing agency or
71 law-enforcement authority in any state, federal, or foreign
72 jurisdiction.

73 (m) “Offense” means a felony, gross misdemeanor, or crime
74 of moral turpitude.

75 (n) “Rule” means a written statement by the Interstate
76 Commission promulgated pursuant to section twelve of this
77 article that is of general applicability, implements, interprets, or
78 prescribes a policy or provision of the Compact, or an
79 organizational, procedural, or practice requirement of the
80 Interstate Commission, and has the force and effect of statutory
81 law in a member state, and includes the amendment, repeal, or
82 suspension of an existing rule.

83 (o) “State” means any state, commonwealth, district, or
84 territory of the United States.

85 (p) “State of Principal License” means a member state where
86 a physician holds a license to practice medicine and which has
87 been designated as such by the physician for purposes of
88 registration and participation in the Compact.

§30-1C-3. Eligibility.

1 (a) A physician must meet the eligibility requirements as
2 defined in section two, subsection (l) of this article to receive an

3 expedited license under the terms and provisions of the
4 Compact.

5 (b) A physician who does not meet the requirements of
6 section two of this article may obtain a license to practice
7 medicine in a member state if the individual complies with all
8 laws and requirements, other than the Compact, relating to the
9 issuance of a license to practice medicine in that state.

§30-1C-4. Designation of state of principal license.

1 (a) A physician shall designate a member state as the state of
2 principal license for purposes of registration for expedited
3 licensure through the Compact if the physician possesses a full
4 and unrestricted license to practice medicine in that state, and the
5 state is:

6 (1) The state of primary residence for the physician;

7 (2) The state where at least twenty-five percent of the
8 practice of medicine occurs; or

9 (3) The location of the physician's employer, or

10 (4) If no state qualifies under subdivision (1), (2), or (3) of
11 this subsection, the state designated as state of residence for
12 purpose of federal income tax.

13 (b) A physician may redesignate a member state as state of
14 principal license at any time, as long as the state meets the
15 requirements in subsection (a) of this section.

16 (c) The Interstate Commission is authorized to develop rules
17 to facilitate redesignation of another member state as the state of
18 principal license.

§30-1C-5. Application and issuance of expedited licensure.

1 (a) A physician seeking licensure through the Compact shall
2 file an application for an expedited license with the member
3 board of the state selected by the physician as the state of
4 principal license.

5 (b) Upon receipt of an application for an expedited license,
6 the member board within the state selected as the state of
7 principal license shall evaluate whether the physician is eligible
8 for expedited licensure and issue a letter of qualification,
9 verifying or denying the physician's eligibility, to the Interstate
10 Commission.

11 (1) Static qualifications, which include verification of
12 medical education, graduate medical education, results of any
13 medical or licensing examination, and other qualifications as
14 determined by the Interstate Commission through rule, shall not
15 be subject to additional primary source verification where
16 already primary source verified by the state of principal license.

17 (2) The member board within the state selected as the state
18 of principal license shall, in the course of verifying eligibility,
19 perform a criminal background check of an applicant, including
20 the use of the results of fingerprint or other biometric data
21 checks compliant with the requirements of the Federal Bureau of
22 Investigation, with the exception of federal employees who have
23 suitability determination in accordance with 5 C.F.R. §731.202.

24 (3) Appeal on the determination of eligibility shall be made
25 to the member state where the application was filed and shall be
26 subject to the law of that state.

27 (c) Upon verification in subsection (b) of this section,
28 physicians eligible for an expedited license shall complete the
29 registration process established by the Interstate Commission to
30 receive a license in a member state selected pursuant to

31 subsection (a) of this section, including the payment of any
32 applicable fees.

33 (d) After receiving verification of eligibility under
34 subsection (b) of this section and any fees under subsection (c)
35 of this section, a member board shall issue an expedited license
36 to the physician. This license shall authorize the physician to
37 practice medicine in the issuing state consistent with the Medical
38 Practice Act and all applicable laws and regulations of the
39 issuing member board and member state.

40 (e) An expedited license shall be valid for a period consistent
41 with the licensure period in the member state and in the same
42 manner as required for other physicians holding a full and
43 unrestricted license within the member state.

44 (f) An expedited license obtained through the Compact shall
45 be terminated if a physician fails to maintain a license in the
46 state of principal licensure for a nondisciplinary reason, without
47 redesignation of a new state of principal licensure.

48 (g) The Interstate Commission is authorized to develop rules
49 regarding the application process, including payment of any
50 applicable fees, and the issuance of an expedited license.

§30-1C-6. Fees for expedited licensure.

1 (a) A member state issuing an expedited license authorizing
2 the practice of medicine in that state may impose a fee for a
3 license issued or renewed through the Compact.

4 (b) The Interstate Commission is authorized to develop rules
5 regarding fees for expedited licenses.

§30-1C-7. Renewal and continued participation.

1 (a) A physician seeking to renew an expedited license
2 granted in a member state shall complete a renewal process with
3 the Interstate Commission if the physician:

4 (1) Maintains a full and unrestricted license in a state of
5 principal license;

6 (2) Has not been convicted, received adjudication, deferred
7 adjudication, community supervision, or deferred disposition for
8 any offense by a court of appropriate jurisdiction;

9 (3) Has not had a license authorizing the practice of
10 medicine subject to discipline by a licensing agency in any state,
11 federal, or foreign jurisdiction, excluding any action related to
12 nonpayment of fees related to a license; and

13 (4) Has not had a controlled substance license or permit
14 suspended or revoked by a state or the United States Drug
15 Enforcement Administration.

16 (b) Physicians shall comply with all continuing professional
17 development or continuing medical education requirements for
18 renewal of a license issued by a member state.

19 (c) The Interstate Commission shall collect any renewal fees
20 charged for the renewal of a license and distribute the fees to the
21 applicable member board.

22 (d) Upon receipt of any renewal fees collected in subsection
23 (c) of this section, a member board shall renew the physician's
24 license.

25 (e) Physician information collected by the Interstate
26 Commission during the renewal process will be distributed to all
27 member boards.

28 (f) The Interstate Commission is authorized to develop rules
29 to address renewal of licenses obtained through the Compact.

§30-1C-8. Coordinated information system.

1 (a) The Interstate Commission shall establish a database of
2 all physicians licensed, or who have applied for licensure, under
3 section five of this article.

4 (b) Notwithstanding any other provision of law, member
5 boards shall report to the Interstate Commission any public
6 action or complaints against a licensed physician who has
7 applied or received an expedited license through the Compact.

8 (c) Member boards shall report disciplinary or investigatory
9 information determined as necessary and proper by rule of the
10 Interstate Commission.

11 (d) Member boards may report any nonpublic complaint,
12 disciplinary, or investigatory information not required by
13 subsection (c) of this section to the Interstate Commission.

14 (e) Member boards shall share complaint or disciplinary
15 information about a physician upon request of another member
16 board.

17 (f) All information provided to the Interstate Commission or
18 distributed by member boards shall be confidential, filed under
19 seal, and used only for investigatory or disciplinary matters.

20 (g) The Interstate Commission is authorized to develop rules
21 for mandated or discretionary sharing of information by member
22 boards.

§30-1C-9. Joint investigations.

1 (a) Licensure and disciplinary records of physicians are
2 deemed investigative.

3 (b) In addition to the authority granted to a member board by
4 its respective Medical Practice Act or other applicable state law,
5 a member board may participate with other member boards in
6 joint investigations of physicians licensed by the member boards.

7 (c) A subpoena issued by a member state shall be
8 enforceable in other member states.

9 (d) Member boards may share any investigative, litigation,
10 or compliance materials in furtherance of any joint or individual
11 investigation initiated under the Compact.

12 (e) Any member state may investigate actual or alleged
13 violations of the statutes authorizing the practice of medicine in
14 any other member state in which a physician holds a license to
15 practice medicine.

§30-1C-10. Disciplinary actions.

1 (a) Any disciplinary action taken by any member board
2 against a physician licensed through the Compact shall be
3 deemed unprofessional conduct which may be subject to
4 discipline by other member boards, in addition to any violation
5 of the Medical Practice Act or regulations in that state.

6 (b) If a license granted to a physician by the member board
7 in the state of principal license is revoked, surrendered or
8 relinquished in lieu of discipline, or suspended, then all licenses
9 issued to the physician by member boards shall automatically be
10 placed, without further action necessary by any member board,
11 on the same status. If the member board in the state of principal
12 license subsequently reinstates the physician's license, a licensed
13 issued to the physician by any other member board shall remain
14 encumbered until that respective member board takes action to
15 reinstate the license in a manner consistent with the Medical
16 Practice Act of that state.

17 (c) If disciplinary action is taken against a physician by a
18 member board not in the state of principal license, any other
19 member board may deem the action conclusive as to matter of
20 law and fact decided, and:

21 (i) Impose the same or lesser sanction(s) against the
22 physician so long as such sanctions are consistent with the
23 Medical Practice Act of that state; or

24 (ii) Pursue separate disciplinary action against the physician
25 under its respective Medical Practice Act, regardless of the
26 action taken in other member states.

27 (d) If a license granted to a physician by a member board is
28 revoked, surrendered or relinquished in lieu of discipline, or
29 suspended, then any licenses issued to the physician by any other
30 member boards shall be suspended, automatically and
31 immediately without further action necessary by the other
32 member boards, for ninety days upon entry of the order by the
33 disciplining board, to permit the member boards to investigate
34 the basis for the action under the Medical Practice Act of that
35 state. A member board may terminate the automatic suspension
36 of the license it issued prior to the completion of the ninety day
37 suspension period in a manner consistent with the Medical
38 Practice Act of that state.

§30-1C-11. Interstate Medical Licensure Compact Commission.

1 (a) The member states hereby create the “Interstate Medical
2 Licensure Compact Commission”.

3 (b) The purpose of the Interstate Commission is the
4 administration of the Interstate Medical Licensure Compact,
5 which is a discretionary state function.

6 (c) The Interstate Commission shall be a body corporate and
7 joint agency of the member states and shall have all the
8 responsibilities, powers, and duties set forth in the Compact, and
9 such additional powers as may be conferred upon it by a
10 subsequent concurrent action of the respective Legislatures of
11 the member states in accordance with the terms of the Compact.

12 (d) The Interstate Commission shall consist of two voting
13 representatives appointed by each member state who shall serve
14 as Commissioners. In states where allopathic and osteopathic
15 physicians are regulated by separate member boards, or if the

16 licensing and disciplinary authority is split between multiple
17 member boards within a member state, the member state shall
18 appoint one representative from each member board. A
19 Commissioner shall be an:

20 (1) Allopathic or osteopathic physician appointed to a
21 member board;

22 (2) Executive director, executive secretary, or similar
23 executive of a member board; or

24 (3) Member of the public appointed to a member board.

25 (e) The Interstate Commission shall meet at least once each
26 calendar year. A portion of this meeting shall be a business
27 meeting to address such matters as may properly come before
28 the Commission, including the election of officers. The
29 chairperson may call additional meetings and shall call for a
30 meeting upon the request of a majority of the member states.

31 (f) The bylaws may provide for meetings of the Interstate
32 Commission to be conducted by telecommunication or electronic
33 communication.

34 (g) Each Commissioner participating at a meeting of the
35 Interstate Commission is entitled to one vote. A majority of
36 Commissioners shall constitute a quorum for the transaction of
37 business, unless a larger quorum is required by the bylaws of the
38 Interstate Commission. A Commissioner shall not delegate a
39 vote to another Commissioner. In the absence of its
40 Commissioner, a member state may delegate voting authority for
41 a specified meeting to another person from that state who shall
42 meet the requirements of subsection (d) of this section.

43 (h) The Interstate Commission shall provide public notice of
44 all meetings and all meetings shall be open to the public. The
45 Interstate Commission may close a meeting, in full or in portion,

46 where it determines by a two-thirds vote of the Commissioners
47 present that an open meeting would be likely to:

48 (1) Relate solely to the internal personnel practices and
49 procedures of the Interstate Commission;

50 (2) Discuss matters specifically exempted from disclosure by
51 federal statute;

52 (3) Discuss trade secrets, commercial, or financial
53 information that is privileged or confidential;

54 (4) Involve accusing a person of a crime, or formally
55 censuring a person;

56 (5) Discuss information of a personal nature where
57 disclosure would constitute a clearly unwarranted invasion of
58 personal privacy;

59 (6) Discuss investigative records compiled for law-
60 enforcement purposes; or

61 (7) Specifically relate to the participation in a civil action or
62 other legal proceeding.

63 (i) The Interstate Commission shall keep minutes which
64 shall fully describe all matters discussed in a meeting and shall
65 provide a full and accurate summary of actions taken, including
66 record of any roll call votes.

67 (j) The Interstate Commission shall make its information and
68 official records, to the extent not otherwise designated in the
69 Compact or by its rules, available to the public for inspection.

70 (k) The Interstate Commission shall establish an executive
71 committee, which shall include officers, members, and others as
72 determined by the bylaws. The executive committee shall have

73 the power to act on behalf of the Interstate Commission, with the
74 exception of rulemaking, during periods when the Interstate
75 Commission is not in session. When acting on behalf of the
76 Interstate Commission, the executive committee shall oversee
77 the administration of the Compact including enforcement and
78 compliance with the provisions of the Compact, its bylaws and
79 rules, and other such duties as necessary.

80 (1) The Interstate Commission may establish other
81 committees for governance and administration of the Compact.

§30-1C-12. Powers and duties of the Interstate Commission.

1 The Interstate Commission shall have the duty and power to:

2 (1) Oversee and maintain the administration of the Compact;

3 (2) Promulgate rules which shall be binding to the extent and
4 in the manner provided for in the Compact;

5 (3) Issue, upon the request of a member state or member
6 board, advisory opinions concerning the meaning or
7 interpretation of the Compact, its bylaws, rules, and actions;

8 (4) Enforce compliance with Compact provisions, the rules
9 promulgated by the Interstate Commission, and the bylaws,
10 using all necessary and proper means, including, but not limited
11 to, the use of judicial process;

12 (5) Establish and appoint committees including, but not
13 limited to, an executive committee as required by section eleven
14 of this article, which shall have the power to act on behalf of the
15 Interstate Commission in carrying out its powers and duties;

16 (6) Pay, or provide for the payment of the expenses related
17 to the establishment, organization, and ongoing activities of the
18 Interstate Commission;

- 19 (7) Establish and maintain one or more offices;
- 20 (8) Borrow, accept, hire, or contract for services of
21 personnel;
- 22 (9) Purchase and maintain insurance and bonds;
- 23 (10) Employ an executive director who shall have such
24 powers to employ, select or appoint employees, agents, or
25 consultants, and to determine their qualifications, define their
26 duties, and fix their compensation;
- 27 (11) Establish personnel policies and programs relating to
28 conflicts of interest, rates of compensation, and qualifications of
29 personnel;
- 30 (12) Accept donations and grants of money, equipment,
31 supplies, materials and services, and to receive, utilize, and
32 dispose of it in a manner consistent with the conflict of interest
33 policies established by the Interstate Commission;
- 34 (13) Lease, purchase, accept contributions or donations of,
35 or otherwise to own, hold, improve or use, any property, real,
36 personal, or mixed;
- 37 (14) Sell, convey, mortgage, pledge, lease, exchange,
38 abandon, or otherwise dispose of any property, real, personal, or
39 mixed;
- 40 (15) Establish a budget and make expenditures;
- 41 (16) Adopt a seal and bylaws governing the management and
42 operation of the Interstate Commission;
- 43 (17) Report annually to the Legislatures and Governors of
44 the member states concerning the activities of the Interstate
45 Commission during the preceding year. Such reports shall also

46 include reports of financial audits and any recommendations that
47 may have been adopted by the Interstate Commission;

48 (18) Coordinate education, training, and public awareness
49 regarding the Compact, its implementation, and its operation;

50 (19) Maintain records in accordance with the bylaws;

51 (20) Seek and obtain trademarks, copyrights, and patents;
52 and

53 (21) Perform such functions as may be necessary or
54 appropriate to achieve the purposes of the Compact.

§30-1C-13. Finance powers.

1 (a) The Interstate Commission may levy on and collect an
2 annual assessment from each member state to cover the cost of
3 the operations and activities of the Interstate Commission and its
4 staff. The total assessment must be sufficient to cover the annual
5 budget approved each year for which revenue is not provided by
6 other sources. The aggregate annual assessment amount shall be
7 allocated upon a formula to be determined by the Interstate
8 Commission, which shall promulgate a rule binding upon all
9 member states.

10 (b) The Interstate Commission shall not incur obligations of
11 any kind prior to securing the funds adequate to meet the same.

12 (c) The Interstate Commission shall not pledge the credit of
13 any of the member states, except by, and with the authority of,
14 the member state.

15 (d) The Interstate Commission shall be subject to a yearly
16 financial audit conducted by a certified or licensed public
17 accountant and the report of the audit shall be included in the
18 annual report of the Interstate Commission.

§30-1C-14. Organization and operation of the Interstate Commission.

1 (a) The Interstate Commission shall, by a majority of
2 Commissioners present and voting, adopt bylaws to govern its
3 conduct as may be necessary or appropriate to carry out the
4 purposes of the Compact within twelve months of the first
5 Interstate Commission meeting.

6 (b) The Interstate Commission shall elect or appoint
7 annually from among its Commissioners a chairperson, a vice-
8 chairperson, and a treasurer, each of whom shall have such
9 authority and duties as may be specified in the bylaws. The
10 chairperson, or in the chairperson's absence or disability, the
11 vice-chairperson, shall preside at all meetings of the Interstate
12 Commission.

13 (c) Officers selected in subsection (b) of this section shall
14 serve without remuneration from the Interstate Commission.

15 (d) The officers and employees of the Interstate Commission
16 shall be immune from suit and liability, either personally or in
17 their official capacity, for a claim for damage to or loss of
18 property or personal injury or other civil liability caused or
19 arising out of, or relating to, an actual or alleged act, error, or
20 omission that occurred, or that such person had a reasonable
21 basis for believing occurred, within the scope of Interstate
22 Commission employment, duties, or responsibilities; provided
23 that such person shall not be protected from suit or liability for
24 damage, loss, injury, or liability caused by the intentional or
25 willful and wanton misconduct of such person.

26 (1) The liability of the executive director and employees of
27 the Interstate Commission or representatives of the Interstate
28 Commission, acting within the scope of such person's
29 employment or duties for acts, errors, or omissions occurring

30 within such person's state, may not exceed the limits of liability
31 set forth under the Constitution and laws of that state for state
32 officials, employees, and agents. The Interstate Commission is
33 considered to be an instrumentality of the states for the purposes
34 of any such action. Nothing in this subsection may be construed
35 to protect such person from suit or liability for damage, loss,
36 injury, or liability caused by the intentional or willful and
37 wanton misconduct of such person.

38 (2) The Interstate Commission shall defend the executive
39 director, its employees, and subject to the approval of the
40 Attorney General or other appropriate legal counsel of the
41 member state represented by an Interstate Commission
42 representative, shall defend such Interstate Commission
43 representative in any civil action seeking to impose liability
44 arising out of an actual or alleged act, error or omission that
45 occurred within the scope of Interstate Commission
46 employment, duties or responsibilities, or that the defendant had
47 a reasonable basis for believing occurred within the scope of
48 Interstate Commission employment, duties, or responsibilities,
49 provided that the actual or alleged act, error, or omission did not
50 result from intentional or willful and wanton misconduct on the
51 part of such person.

52 (3) To the extent not covered by the state involved, member
53 state, or the Interstate Commission, the representatives or
54 employees of the Interstate Commission shall be held harmless
55 in the amount of a settlement or judgment, including attorney's
56 fees and costs, obtained against such persons arising out of an
57 actual or alleged act, error, or omission that occurred within the
58 scope of Interstate Commission employment, duties, or
59 responsibilities, or that such persons had a reasonable basis for
60 believing occurred within the scope of Interstate Commission
61 employment, duties, or responsibilities, provided that the actual
62 or alleged act, error, or omission did not result from intentional
63 or willful and wanton misconduct on the part of such persons.

§30-1C-15. Rule-making functions of the Interstate Commission.

1 (a) The Interstate Commission shall promulgate reasonable
2 rules in order to effectively and efficiently achieve the purposes
3 of the Compact. Notwithstanding the foregoing, in the event the
4 Interstate Commission exercises its rule-making authority in a
5 manner that is beyond the scope of the purposes of the Compact,
6 or the powers granted hereunder, then such an action by the
7 Interstate Commission shall be invalid and have no force or
8 effect.

9 (b) Rules deemed appropriate for the operations of the
10 Interstate Commission shall be made pursuant to a rule-making
11 process that substantially conforms to the “Model State
12 Administrative Procedure Act” of 2010, and subsequent
13 amendments thereto.

14 (c) Not later than thirty days after a rule is promulgated, any
15 person may file a petition for judicial review of the rule in the
16 United States District Court for the District of Columbia or the
17 federal district where the Interstate Commission has its principal
18 offices, provided that the filing of such a petition shall not stay
19 or otherwise prevent the rule from becoming effective unless the
20 court finds that the petitioner has a substantial likelihood of
21 success. The court shall give deference to the actions of the
22 Interstate Commission consistent with applicable law and shall
23 not find the rule to be unlawful if the rule represents a reasonable
24 exercise of the authority granted to the Interstate Commission.

§30-1C-16. Oversight of Interstate Compact.

1 (a) The executive, legislative, and judicial branches of state
2 government in each member state shall enforce the Compact and
3 shall take all actions necessary and appropriate to effectuate the
4 Compact’s purposes and intent. The provisions of the Compact
5 and the rules promulgated hereunder shall have standing as

6 statutory law but shall not override existing state authority to
7 regulate the practice of medicine.

8 (b) All courts shall take judicial notice of the Compact and
9 the rules in any judicial or administrative proceeding in a
10 member state pertaining to the subject matter of the Compact
11 which may affect the powers, responsibilities or actions of the
12 Interstate Commission.

13 (c) The Interstate Commission shall be entitled to receive all
14 service of process in any such proceeding, and shall have
15 standing to intervene in the proceeding for all purposes. Failure
16 to provide service of process to the Interstate Commission shall
17 render a judgment or order void as to the Interstate Commission,
18 the Compact, or promulgated rules.

§30-1C-17. Enforcement of Interstate Compact.

1 (a) The Interstate Commission, in the reasonable exercise of
2 its discretion, shall enforce the provisions and rules of the
3 Compact.

4 (b) The Interstate Commission may, by majority vote of the
5 Commissioners, initiate legal action in the United States District
6 Court for the District of Columbia, or, at the discretion of the
7 Interstate Commission, in the federal district where the Interstate
8 Commission has its principal offices, to enforce compliance with
9 the provisions of the Compact, and its promulgated rules and
10 bylaws, against a member state in default. The relief sought may
11 include both injunctive relief and damages. In the event judicial
12 enforcement is necessary, the prevailing party shall be awarded
13 all costs of such litigation including reasonable attorney's fees.

14 (c) The remedies herein shall not be the exclusive remedies
15 of the Interstate Commission. The Interstate Commission may
16 avail itself of any other remedies available under state law or the
17 regulation of a profession.

§30-1C-18. Default procedures.

1 (a) The grounds for default include, but are not limited to,
2 failure of a member state to perform such obligations or
3 responsibilities imposed upon it by the Compact, or the rules and
4 bylaws of the Interstate Commission promulgated under the
5 Compact.

6 (b) If the Interstate Commission determines that a member
7 state has defaulted in the performance of its obligations or
8 responsibilities under the Compact, or the bylaws or
9 promulgated rules, the Interstate Commission shall:

10 (1) Provide written notice to the defaulting state and other
11 member states, of the nature of the default, the means of curing
12 the default, and any action taken by the Interstate Commission.
13 The Interstate Commission shall specify the conditions by which
14 the defaulting state must cure its default; and

15 (2) Provide remedial training and specific technical
16 assistance regarding the default.

17 (c) If the defaulting state fails to cure the default, the
18 defaulting state shall be terminated from the Compact upon an
19 affirmative vote of a majority of the Commissioners and all
20 rights, privileges, and benefits conferred by the Compact shall
21 terminate on the effective date of termination. A cure of the
22 default does not relieve the offending state of obligations or
23 liabilities incurred during the period of the default.

24 (d) Termination of membership in the Compact shall be
25 imposed only after all other means of securing compliance have
26 been exhausted. Notice of intent to terminate shall be given by
27 the Interstate Commission to the Governor, the majority and
28 minority leaders of the defaulting state's Legislature, and each
29 of the member states.

30 (e) The Interstate Commission shall establish rules and
31 procedures to address licenses and physicians that are materially
32 impacted by the termination of a member state, or the
33 withdrawal of a member state.

34 (f) The member state which has been terminated is
35 responsible for all dues, obligations, and liabilities incurred
36 through the effective date of termination including obligations,
37 the performance of which extends beyond the effective date of
38 termination.

39 (g) The Interstate Commission shall not bear any costs
40 relating to any state that has been found to be in default or which
41 has been terminated from the Compact, unless otherwise
42 mutually agreed upon in writing between the Interstate
43 Commission and the defaulting state.

44 (h) The defaulting state may appeal the action of the
45 Interstate Commission by petitioning the United States District
46 Court for the District of Columbia or the federal district where
47 the Interstate Commission has its principal offices. The
48 prevailing party shall be awarded all costs of such litigation
49 including reasonable attorney's fees.

§30-1C-19. Dispute resolution.

1 (a) The Interstate Commission shall attempt, upon the
2 request of a member state, to resolve disputes which are subject
3 to the Compact and which may arise among member states or
4 member boards.

5 (b) The Interstate Commission shall promulgate rules
6 providing for both mediation and binding dispute resolution as
7 appropriate.

§30-1C-20. Member states, effective date and amendment.

1 (a) Any state is eligible to become a member state of the
2 Compact.

3 (b) The Compact shall become effective and binding upon
4 legislative enactment of the Compact into law by no less than
5 seven states. Thereafter, it shall become effective and binding on
6 a state upon enactment of the Compact into law by that state.

7 (c) The governors of nonmember states, or their designees,
8 shall be invited to participate in the activities of the Interstate
9 Commission on a nonvoting basis prior to adoption of the
10 Compact by all states.

11 (d) The Interstate Commission may propose amendments to
12 the Compact for enactment by the member states. No
13 amendment shall become effective and binding upon the
14 Interstate Commission and the member states unless and until it
15 is enacted into law by unanimous consent of the member states.

§30-1C-21. Withdrawal.

1 (a) Once effective, the Compact shall continue in force and
2 remain binding upon each and every member state; provided that
3 a member state may withdraw from the Compact by specifically
4 repealing the statute which enacted the Compact into law.

5 (b) Withdrawal from the Compact shall be by the enactment
6 of a statute repealing the same, but shall not take effect until one
7 year after the effective date of such statute and until written
8 notice of the withdrawal has been given by the withdrawing state
9 to the governor of each other member state.

10 (c) The withdrawing state shall immediately notify the
11 chairperson of the Interstate Commission in writing upon the
12 introduction of legislation repealing the Compact in the
13 withdrawing state.

14 (d) The Interstate Commission shall notify the other member
15 states of the withdrawing state's intent to withdraw within sixty
16 days of its receipt of notice provided under subsection (c) of this
17 section.

18 (e) The withdrawing state is responsible for all dues,
19 obligations and liabilities incurred through the effective date of
20 withdrawal, including obligations, the performance of which
21 extend beyond the effective date of withdrawal.

22 (f) Reinstatement following withdrawal of a member state
23 shall occur upon the withdrawing state reenacting the Compact
24 or upon such later date as determined by the Interstate
25 Commission.

26 (g) The Interstate Commission is authorized to develop rules
27 to address the impact of the withdrawal of a member state on
28 licenses granted in other member states to physicians who
29 designated the withdrawing member state as the state of
30 principal license.

§30-1C-22. Dissolution.

1 (a) The Compact shall dissolve effective upon the date of the
2 withdrawal or default of the member state which reduces the
3 membership in the Compact to one member state.

4 (b) Upon the dissolution of the Compact, the Compact
5 becomes null and void and shall be of no further force or effect,
6 and the business and affairs of the Interstate Commission shall
7 be concluded and surplus funds shall be distributed in
8 accordance with the bylaws.

§30-1C-23. Severability and construction.

1 (a) The provisions of the Compact shall be severable, and if
2 any phrase, clause, sentence, or provision is deemed
3 unenforceable, the remaining provisions of the Compact shall be
4 enforceable.

5 (b) The provisions of the Compact shall be liberally
6 construed to effectuate its purposes.

7 (c) Nothing in the Compact shall be construed to prohibit the
8 applicability of other interstate compacts to which the states are
9 members.

§30-1C-24. Binding effect of Compact and other laws.

1 (a) Nothing herein prevents the enforcement of any other law
2 of a member state that is not inconsistent with the Compact.

3 (b) All laws in a member state in conflict with the Compact
4 are superseded to the extent of the conflict.

5 (c) All lawful actions of the Interstate Commission,
6 including all rules and bylaws promulgated by the Commission,
7 are binding upon the member states.

8 (d) All agreements between the Interstate Commission and
9 the member states are binding in accordance with their terms.

10 (e) In the event any provision of the Compact exceeds the
11 Constitutional limits imposed on the Legislature of any member
12 state, such provision shall be ineffective to the extent of the
13 conflict with the Constitutional provision in question in that
14 member state.

CHAPTER 187

**(Com. Sub. for H. B. 2098 - By Delegate(s) Hamrick,
Householder, Cooper, Arvon, J. Nelson, Howell, Waxman,
Ellington, Trecost, Blair and Kessinger)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-11b; and to amend

said code by adding thereto a new section, designated §30-14-12c, all relating to services provided by allopathic and osteopathic physicians in federal veterans' affairs facilities in this state; authorizing allopathic and osteopathic physicians to provide services to patients or residents of state-run veterans' facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state; limiting scope of the license to practice only in the state-run veterans' facilities; providing rule-making authority to the appropriate licensing agencies of allopathic and osteopathic physicians; and requiring report to the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-3-11b; and to further amend said code by adding thereto a new section, designated §30-14-12c, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11b. License to practice medicine and surgery at certain state veterans nursing home facilities.

- 1 (a) The board is authorized and encouraged to the best of its
- 2 ability to issue a license to practice medicine and surgery in this
- 3 state without examination to a physician that currently holds a
- 4 license to practice medicine and surgery at a Federal Veterans
- 5 Administration Hospital upon completion of an application form
- 6 prescribed by the board and who presents satisfactory proof to
- 7 the board that he or she is currently employed and practicing in
- 8 a Federal Veterans Administration Hospital that is located in a
- 9 county in which a nursing home operated by the West Virginia
- 10 Department of Veteran's Assistance is located: *Provided*, That
- 11 the physician shall maintain an valid, unrestricted license to
- 12 practice medicine in another state.

13 (b) The medical practice for which a physician is licensed
14 under this section is limited to practice in a nursing home
15 operated by the West Virginia Department of Veteran's
16 Assistance that is located in the same county in which the
17 Federal Veterans Administration Hospital where the individual
18 is employed.

19 (c) No fee may be assessed to an individual licensed or
20 seeking licensure pursuant to this section.

21 (d) The board shall propose emergency rules pursuant to the
22 provisions of section fifteen, article three, chapter twenty-nine-a
23 of this code to implement the provisions of this section.

24 (e) The board shall report to the Legislative Oversight
25 Commission on Health and Human Resources Accountability
26 and the Legislative Oversight Commission on Education
27 Accountability by July 1, 2016 on the implementation of this
28 section including the number of licenses issued, number of
29 complaints, and any other pertinent legislation.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12c. License to practice as an osteopathic physician and surgeon at certain state veterans nursing home facilities.

1 (a) The board is authorized and encouraged to the best of its
2 ability to issue a license to practice as an osteopathic physician
3 and surgeon in this state without examination to a physician that
4 currently holds a license to practice as an osteopathic physician
5 and surgeon at a Federal Veterans Administration Hospital upon
6 completion of an application form prescribed by the board and
7 who presents satisfactory proof to the board that he or she is
8 currently employed and practicing in a Federal Veterans
9 Administration Hospital that is located in a county in which a
10 nursing home operated by the West Virginia Department of

11 Veteran's Assistance is located: *Provided*, That the osteopathic
12 physician shall maintain an valid, unrestricted license to practice
13 osteopathic medicine in another state.

14 (b) The practice for which an osteopathic physician and
15 surgeon is licensed under this section is limited to practice in a
16 nursing home operated by the West Virginia Department of
17 Veteran's Assistance that is located in the same county in which
18 the Federal Veterans Administration Hospital where the
19 individual is employed.

20 (c) No fee may be assessed to an individual licensed or
21 seeking licensure pursuant to this section.

22 (d) The board shall propose emergency rules pursuant to the
23 provisions of section fifteen, article three, chapter twenty-nine-a
24 of this code to implement the provisions of this section.

25 (e) The board shall report to the Legislative Oversight
26 Commission on Health and Human Resources Accountability
27 and the Legislative Oversight Commission on Education
28 Accountability by July 1, 2016 on the implementation of this
29 section including the number of licenses issued, number of
30 complaints, and any other pertinent legislation.

CHAPTER 188

**(H. B. 2272 - By Delegate(s) Ellington, Householder,
Arvon, Howell, Kurcaba, Stansbury, Sobonya and Summers)**

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2015.]

AN ACT to repeal §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8 of the Code of West

Virginia, 1931, as amended; and to amend and reenact §30-5-7 of said code, all relating generally to the rule-making authority of the Board of Pharmacy; repealing the current statutory official prescription paper program and allowing the Board of Pharmacy to develop and maintain an official prescription paper program through rule-making; and clarifying rule-making authority of the Board of Pharmacy to include the ability of pharmacy interns to administer certain immunizations.

Be it enacted by the Legislature of West Virginia:

That §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7, and §16-5W-8 of the Code of West Virginia, 1931, as amended, be repealed and that §30-5-7 of said code be amended and reenacted to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-7. Rule-making authority.

- 1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code, to implement the provisions of this article,
4 and articles two, three, eight, nine and ten of chapter sixty-A
5 including:
 - 6 (1) Standards and requirements for a license, permit and
7 registration;
 - 8 (2) Educational and experience requirements;
 - 9 (3) Procedures for examinations and reexaminations;
 - 10 (4) Requirements for third parties to prepare, administer or
11 prepare and administer examinations and reexaminations;

- 12 (5) The passing grade on the examination;
- 13 (6) Procedures for the issuance and renewal of a license,
14 permit and registration;
- 15 (7) A fee schedule;
- 16 (8) Continuing education requirements;
- 17 (9) Set standards for professional conduct;
- 18 (10) Establish equipment and facility standards for
19 pharmacies;
- 20 (11) Approve courses and standards for training pharmacist
21 technicians;
- 22 (12) Regulation of charitable clinic pharmacies;
- 23 (13) Regulation of mail order pharmacies: *Provided*, That
24 until the board establishes requirements that provide further
25 conditions for pharmacists whom consult with or who provide
26 pharmacist care to patients regarding prescriptions dispensed in
27 this state by a mail order pharmacy, the pharmacist in charge of
28 the out-of-state mail order pharmacy shall be licensed in West
29 Virginia and any other pharmacist providing pharmacist care
30 from the mail order pharmacy shall be licensed in the state where
31 the pharmacy is located.
- 32 (14) Agreements with organizations to form pharmacist
33 recovery networks;
- 34 (15) Create an alcohol or chemical dependency treatment
35 program;
- 36 (16) Establish a ratio of pharmacy technicians to on-duty
37 pharmacist operating in any outpatient, mail order or
38 institutional pharmacy;

- 39 (17) Regulation of telepharmacy;
- 40 (18) The minimum standards for a charitable clinic
41 pharmacy and rules regarding the applicable definition of a
42 pharmacist-in-charge, who may be a volunteer, at charitable
43 clinic pharmacies: *Provided*, That a charitable clinic pharmacy
44 may not be charged any applicable licensing fees and such
45 clinics may receive donated drugs.
- 46 (19) Establish standards for substituted drug products;
- 47 (20) Establish the regulations for E-prescribing;
- 48 (21) Establish the proper use of the automated data
49 processing system;
- 50 (22) Registration and control of the manufacture and
51 distribution of controlled substances within this state.
- 52 (23) Regulation of pharmacies;
- 53 (24) Sanitation and equipment requirements for wholesalers,
54 distributors and pharmacies.
- 55 (25) Procedures for denying, suspending, revoking,
56 reinstating or limiting the practice of a licensee, permittee or
57 registrant;
- 58 (26) Regulations on prescription paper as provided in section
59 five, article five-w, chapter sixteen;
- 60 (27) Regulations on controlled substances as provided in
61 article two, chapter sixty-a;
- 62 (28) Regulations on manufacturing, distributing, or
63 dispensing any controlled substance as provided in article three,
64 chapter sixty-a;

65 (29) Regulations on wholesale drug distribution as provided
66 in article eight, chapter sixty-a;

67 (30) Regulations on controlled substances monitoring as
68 provided in article nine, chapter sixty-a;

69 (31) Regulations on Methamphetamine Laboratory
70 Eradication Act as provided in article ten, chapter sixty-a;

71 (32) Establish and maintain an official prescription paper
72 program; and

73 (33) Any other rules necessary to effectuate the provisions
74 of this article.

75 (b) The board may provide an exemption to the pharmacist-
76 in-charge requirement for the opening of a new retail pharmacy
77 or during a declared emergency;

78 (c) The board, the Board of Medicine and the Board of
79 Osteopathic Medicine shall jointly agree and propose rules
80 concerning collaborative pharmacy practice for legislative
81 approval in accordance with the provisions of article three,
82 chapter twenty-nine-a of the code;

83 (d) The board with the advice of the Board of Medicine and
84 the Board of Osteopathic Medicine shall propose rules for
85 legislative approval in accordance with the provisions of article
86 three, chapter twenty-nine-a of this code to perform influenza
87 and pneumonia immunizations, on a person of eighteen years of
88 age or older. These rules shall provide, at a minimum, for the
89 following:

90 (1) Establishment of a course, or provide a list of approved
91 courses, in immunization administration. The courses shall be
92 based on the standards established for such courses by the
93 Centers for Disease Control and Prevention in the public health

94 service of the United States Department of Health and Human
95 Services;

96 (2) Definitive treatment guidelines which shall include, but
97 not be limited to, appropriate observation for an adverse reaction
98 of an individual following an immunization;

99 (3) Prior to administration of immunizations, a pharmacist
100 shall have completed a board approved immunization
101 administration course and completed an American Red Cross or
102 American Heart Association basic life-support training, and
103 maintain certification in the same.

104 (4) Continuing education requirements for this area of
105 practice;

106 (5) Reporting requirements for pharmacists administering
107 immunizations to report to the primary care physician or other
108 licensed health care provider as identified by the person
109 receiving the immunization;

110 (6) Reporting requirements for pharmacists administering
111 immunizations to report to the West Virginia Statewide
112 Immunization Information (WVSII);

113 (7) That a pharmacist may not delegate the authority to
114 administer immunizations to any other person; unless
115 administered by a licensed pharmacy intern under the direct
116 supervision of a pharmacist of whom both pharmacist and intern
117 have successfully completed all board required training; and

118 (8) Any other provisions necessary to implement the
119 provisions of this section.

120 (e) The board, the Board of Medicine and the Board of
121 Osteopathic Medicine shall propose joint rules for legislative
122 approval in accordance with the provisions of article three,

123 chapter twenty-nine-a of this code to permit a licensed
124 pharmacist or pharmacy intern to administer other
125 immunizations such as Hepatitis A, Hepatitis B, Herpes Zoster
126 and Tetanus. These rules shall provide, at a minimum, the same
127 provisions contained in subsection (d)(1) through (d)(8) of this
128 section.

129 (f) All of the board's rules in effect and not in conflict with
130 these provisions, shall remain in effect until they are amended or
131 rescinded.

CHAPTER 189

**(Com. Sub. for H. B. 2432 - By Delegate(s) Ellington,
Householder, Arvon, Howell and Stansbury)**

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §30-5-9 of the Code of West Virginia, 1931, as amended, relating to the licensure requirements to practice pharmacist care.

Be it enacted by the Legislature of West Virginia:

That §30-5-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

30-5-9. Qualifications for licensure as pharmacist;

- 1 (a) To be eligible for a license to practice pharmacist care
- 2 under the provisions of this article, the applicant shall:

- 3 (1) Submit a written application to the board;
- 4 (2) Be eighteen years of age or older;
- 5 (3) Pay all applicable fees;
- 6 (4) Graduate from an accredited school of pharmacy;
- 7 (5) Complete at least fifteen hundred hours of internship in
8 a pharmacy under the instruction and supervision of a
9 pharmacist;
- 10 (6) Pass an examination or examinations approved by the
11 board;
- 12 (7) Not be an alcohol or drug abuser, as these terms are
13 defined in section eleven, article one-a, chapter twenty-seven of
14 this code: *Provided*, That an applicant in an active recovery
15 process, which may, in the discretion of the board, be evidenced
16 by participation in a twelve-step program or other similar group
17 or process, may be considered;
- 18 (8) Present to the board satisfactory evidence that he or she
19 is a person of good moral character, has not been convicted of a
20 felony involving the sale or distribution of controlled substances;
- 21 (9) Not been convicted in any jurisdiction of any other
22 felony or crime which bears a rational nexus to the individual's
23 ability to practice pharmacist care, *Provided*, That an applicant
24 with a felony conviction other than the felony conviction
25 specified in subdivision eight of this section may apply to the
26 board for licensure no sooner than five years after the date of the
27 conviction. The board shall evaluate each applicant on a case by
28 case basis; and
- 29 (10) Has fulfilled any other requirement specified by the
30 board in rule.
- 31 (b) An applicant from another jurisdiction shall comply with
32 all the requirements of this article.

CHAPTER 190

(Com. Sub. for H. B. 2662 - By Delegate(s) Stansbury,
Ellington, Householder, R. Phillips, Byrd, Faircloth, Sponaugle,
Weld, Moore, B. White and Pushkin)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all relating to the practice of optometry; defining certain terms; providing that contact lenses require a prescription that must be performed by a licensee; providing that spectacles require a prescription that must be performed by a licensee; requiring certain actions to be taken with regard to prescriptions; prohibiting the dissemination of contact lenses without a prescription from a licensee; prohibiting the dissemination of spectacles without a prescription from a licensee; providing the board to enforce this article; allowing the board to promulgate rules; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all to read as follows:

ARTICLE 8A. EYE CARE CONSUMER PROTECTION LAW.

§30-8A-1. Definitions.

- 1 As used in this article:
- 2 (a) “Contact Lens” means a lens placed directly on the
- 3 surface of the eye, regardless of whether it is intended to correct

4 a visual defect. Contact lens includes, but is not limited to, a
5 cosmetic, therapeutic, or corrective lens.

6 (b) “Board” means the West Virginia Board of Optometry.

7 (c) “Diagnostic contact lens” means a contact lens used to
8 determine a proper contact lens fit.

9 (d) “Direct supervision” means supervision that occurs when
10 a licensee is actually present in the building.

11 (e) “Examination and evaluation” means an assessment of the
12 ocular health and visual status of a patient that does not consist
13 solely of objective refractive data or information generated by an
14 automated refracting device or other automated testing device
15 for the purpose of writing a valid prescription.

16 (f) “Licensee” means a person who is authorized to engage
17 in the practice of optometry under article eight, chapter thirty of
18 this code.

19 (g) “Special requirements” means the type of lens design,
20 lens material, tint, or lens treatments.

21 (h) “Spectacles” means an optical instrument or device worn
22 or used by an individual that has one or more lenses designed to
23 correct or enhance vision to address the visual needs of the
24 individual wearer. This includes spectacles that may be adjusted
25 to achieve different types or levels of visual correction or
26 enhancement.

27 (i) “Valid prescription” means one of the following, as
28 applicable:

29 (1) For a contact lens, a written or electronic order by a
30 licensee who has conducted an examination and evaluation of a
31 patient and has determined a satisfactory fit for the contact lens
32 based on an analysis of the physiological compatibility of the
33 lens or the cornea and the physical fit and refractive functionality

34 of the lens on the patient's eye. To be a valid prescription under
35 this subdivision, it shall at least include the following:

36 (A) A statement that the prescription is for a contact lens;

37 (B) The contact lens type or brand name, or for a private
38 label contact lens, the name of the manufacturer, trade name of
39 the private label brand, and, if applicable, trade name of the
40 equivalent or similar brand;

41 (C) All specifications necessary to order and fabricate the
42 contact lens, including, if applicable, the power, material, base
43 curve or appropriate designation, and diameter;

44 (D) The quantity of contact lenses to be dispensed;

45 (E) The number of refills;

46 (F) Specific wearing instructions and contact lens disposal
47 parameters;

48 (G) The patient's name;

49 (H) The date of the examination and evaluation;

50 (I) The date the prescription is originated;

51 (J) The prescribing licensee's name, address, and telephone
52 number;

53 (K) The prescribing licensee's written or electronic
54 signature, or other form of authentication; and

55 (L) An expiration date of not less than one year from the
56 date of the examination and evaluation or a statement of the
57 reasons why a shorter time is appropriate based on the medical
58 needs of the patient.

59 (2) For spectacles, a written or electronic order by a licensee
60 who has examined and evaluated a patient. To be a valid

61 prescription under this subdivision, it shall include at least the
62 following:

63 (A) A statement that the prescription is for spectacles;

64 (B) As applicable and as specified for each eye, the lens
65 power including the spherical power, cylindrical power including
66 axis, prism, and power of the multifocal addition;

67 (C) Any special requirements, the omission in the opinion of
68 the prescribing licensee, would adversely affect the vision or
69 ocular health of the patient;

70 (D) The patient's name;

71 (E) The date of the examination and evaluation;

72 (F) The date the prescription is originated;

73 (G) The prescribing licensee's name, address, and telephone
74 number;

75 (H) The prescribing licensee's written or electronic
76 signature, or other form of authentication; and

77 (I) An expiration date of not less than one year from the date
78 of the examination and evaluation or a statement of the reasons
79 why a shorter time is appropriate based on the medical needs of
80 the patient.

§30-8A-2. Prescriptions.

1 (a) Except as otherwise provided in subsection (b),
2 spectacles and contact lenses are medical devices and are subject
3 to the requirements of this article.

4 (b) The requirements of this article do not apply to the
5 following:

6 (1) A diagnostic contact lens that is used by a licensee during
7 an examination and evaluation;

8 (2) An optical instrument or device that is not intended to
9 correct or enhance vision; or

10 (3) An optical instrument or device that is sold without
11 consideration of the visual status of the individual who will use
12 the optical instrument or device.

§30-8A-3. Prohibited Actions.

1 A person may not:

2 (1) Employ objective or subjective physical means to
3 determine the accommodative or refractive condition; the range,
4 power of vision or muscular equilibrium of the human eye or
5 prescribe spectacles or contact lenses based on that
6 determination unless that activity is performed by a licensee or
7 performed by a person under direct supervision.

8 (2) Dispense, give, or sell spectacles or contact lenses unless
9 dispensed, given, or sold pursuant to a valid prescription.

10 (3) Use an automated refractor or other automated testing
11 device to generate objective refractive data unless that use is
12 under direct supervision.

§30-8A-4. Enforcement.

1 (a) The board shall enforce the provisions of this article.

2 (b) The board may promulgate a legislative rule in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code regarding the implementation of this
5 article.

6 (c) The board is not required to wait until harm to human
7 health has occurred to initiate an investigation under this section.

8 (d) If a person is in violation of this article and is licensed by
9 another board, the board shall refer to the appropriate licensing
10 board to enforce the provisions of their article.

§30-8A-5. Criminal Penalty for violation.

1 A person violating this article is guilty of a misdemeanor
2 and, upon conviction thereof, shall be fined not less than \$1,000
3 nor more than \$5,000.

CHAPTER 191

**(S. B. 389 - By Senators Blair, Yost, Maynard,
Facemire, Leonhardt, Williams, Walters, Boso, Palumbo,
Mullins, Gaunch, Miller, Ferns and Snyder)**

[Amended and again passed March 14, 2015;
as a result of the objections of the Governor; in effect from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §30-13-13a, §30-13-17 and §30-13-18 of the Code of West Virginia, 1931, as amended, all relating to the Board of Registration for Professional Engineers; changing time period for renewal from fiscal year to calendar year; authorizing renewal notification by mail or electronically; providing for reinstatement of nonrenewed licenses; authorizing annual or biennial renewal periods; providing a late fee; and requiring emergency rules related to renewal and reinstatement.

Be it enacted by the Legislature of West Virginia:

That §30-13-13a, §30-13-17 and §30-13-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. ENGINEERS.**§30-13-13a. Designations of nonpracticing status.**

1 The board may designate a professional engineer as
2 ineligible to practice or offer to practice engineering in this state
3 using one of the following terms:

4 (1) *Professional engineer-retired.* – A registrant may apply
5 for retired status upon certification that he or she is no longer
6 practicing or offering to practice engineering in this state for
7 remuneration.

8 (2) *Professional engineer-inactive.* – A registrant may
9 request inactive status upon affirmation that he or she is no
10 longer practicing or offering to practice engineering in this state.

11 (3) *Professional engineer-lapsed.* – A registrant’s license is
12 lapsed when the registrant does not respond to renewal notices
13 or pay the required fees.

14 (4) *Professional engineer-invalidated.* – A registrant’s
15 license is invalidated when he or she is unable to provide
16 sufficient proof that any condition of renewal set forth in this
17 article or by board rule has been met.

§30-13-17. Certificates of authorization required; naming of engineering firms.

1 (a) No person or firm is authorized to practice or offer to
2 practice engineering in this state until the person or firm has
3 been issued a certificate of authorization by the board.

4 (b) A person or firm desiring a certificate of authorization
5 must file all the required information with the board on an
6 application form specified by the board. The required
7 information shall include the sworn statement of the engineer in

8 responsible charge who is a professional engineer registered in
9 this state. The board shall issue a certificate of authorization to
10 an applicant who has met all the requirements and paid the fees
11 set forth in board rules.

12 (c) No person or firm is relieved of responsibility for the
13 conduct or acts of its agents, employees, officers or partners due
14 to compliance with the provisions of this article. No individual
15 practicing engineering under the provisions of this article is
16 relieved of responsibility for engineering services performed due
17 to his or her employment or other relationship with a person or
18 firm holding a certificate of authorization.

19 (d) An engineer who renders occasional, part-time or
20 contract engineering services to or for a firm may not be
21 designated as being in responsible charge for the professional
22 activities of the firm unless that engineer is an owner or principal
23 of the firm.

24 (e) The Secretary of State shall not issue a certificate of
25 authority or business registration or license to an applicant
26 whose business includes, among the objectives for which it is
27 established, the words engineer, engineering or any modification
28 or derivation thereof unless the board of registration for this
29 profession has issued to the applicant a certificate of
30 authorization or a letter indicating eligibility to receive the
31 certificate. The certificate or letter from the board shall be filed
32 with the application filed with the Secretary of State to do
33 business in West Virginia.

34 (f) The Secretary of State shall decline to register a trade
35 name or service mark which includes the words engineer,
36 engineering or modifications or derivatives thereof in its
37 business name or logotype except those businesses holding a
38 certificate of authorization issued under the provisions of this
39 article.

40 (g) The certificate of authorization may be renewed or
41 reinstated in accordance with board rule and upon payment of
42 the required fees.

43 (h) Every holder of a certificate of authorization has a duty
44 to notify the board promptly of any change in information
45 previously submitted to the board in an application for a
46 certificate of authorization.

§30-13-18. Renewals and reinstatement.

1 (a) Certificates of registration and certificates of
2 authorization expire on the last day of December of the year
3 indicated on the certificate, and the holder of any certificate that
4 is not timely renewed is ineligible to practice or offer to practice
5 engineering in this state until the certificate has been reinstated
6 in accordance with rules promulgated by the board.

7 (b) Certificates may be renewed only in accordance with
8 board rule, which may include payment of a late fee for renewals
9 not postmarked by December 31 of the year in which renewal is
10 required. The board shall notify every person or firm holding an
11 active certificate under this article of the certificate renewal
12 requirements at least one month prior to the renewal date. The
13 notice shall be made by mail or electronic means using the
14 contact information provided to the board.

15 (c) A certificate that was not timely renewed or for other
16 reason was given a nonpracticing status may be reinstated under
17 rules promulgated by the board and may require reexamination
18 and payment of fees set forth in board rules.

19 (d) Effective July 1, 2015, the board may renew certificates
20 on a biennial basis.

21 (e) The board shall promulgate emergency rules pursuant to
22 section fifteen, article three, chapter twenty-nine-a of this code
23 to implement the provisions of this section.

CHAPTER 192

**(H. B. 2879 - By Delegate(s) Walters, Frich,
Azinger, Shott, E. Nelson, Deem, Waxman,
B. White and Ashley)**

[Passed March 5, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to amend and reenact §12-1-5 of the Code of West Virginia, 1931, as amended, relating to certain limitations on amount of state funds on deposit in any depository; and requiring that the amount of state funds on deposit in excess of the amount insured by an agency of the federal government be secured by certain securities in an amount of at least one hundred two percent of the amount on deposit.

Be it enacted by the Legislature of West Virginia:

That §12-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any depository in
2 excess of the amount insured by an agency of the federal
3 government shall be secured by a deposit guaranty bond issued
4 by a valid bankers surety company or by other securities
5 acceptable to the treasurer in an amount of at least one hundred
6 two percent of the amount on deposit. The value of the collateral
7 shall be determined by the treasurer.

CHAPTER 193

**(Com. Sub. for H. B. 2457 - By Delegate(s) Sobonya,
Miller, Frich, Foster, Overington, J. Nelson, Ellington,
Rohrbach and Walters)**

[Passed February 27, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §6B-2-5c, relating to prohibiting the use of the name or likeness of a public official on publicly-owned vehicles; prohibiting a public official from placing his or her name or likeness on trinkets paid for with public funds; prohibiting a public official from using public funds to distribute certain advertising materials bearing his or her name or likeness; prohibiting a public official from using public funds or public employees for entertainment purposes within forty-five days of a primary, general, or special election in which the public official is a candidate; defining terms; making exceptions; and permitting the Ethics Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6B-2-5c, to read as follows:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE OF
FINANCIAL INTEREST BY PUBLIC
OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC
AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.**

§6B-2-5c. Limitations on a public official from using his or her name or likeness.

1 (a) Public officials, their agents, or anyone on public payroll
2 may not:

3 (1) Use the public official's name or likeness on any
4 publicly-owned vehicles;

5 (2) Place the public official's name or likeness on trinkets
6 paid for by public funds;

7 (3) Use public funds, including funds of the office held by
8 the public official, public employees, or public resources to
9 distribute, disseminate, publish or display the public official's
10 name or likeness for the purpose of advertising including, but not
11 limited to, billboards, public service announcements,
12 communication sent by mass mailing, or any other publication
13 or media communication intended for general dissemination to
14 the public.

15 (4) Use public funds or public employees, other than
16 employees for security services, for entertainment activities
17 within forty-five days of a primary, general, or special election
18 in which the public official or agent is a candidate.

19 (b) For purposes of this section:

20 (1) "Agent" means any volunteer or employee, contractual
21 or permanent, serving at the discretion of a public official; and

22 (2) "Trinkets" means items of tangible personal property that
23 are not vital or necessary to the duties of the public official's or
24 public employee's office, including, but not limited to, the
25 following: magnets, mugs, cups, key chains, pill holders, band-
26 aid dispensers, fans, nail files, matches and bags.

27 (c) This section does not prohibit public officials from using
28 their names or likenesses on any official record or report,
29 letterhead, document or certificate, or instructional material
30 issued in the course of their duties as public officials, or on
31 promotional materials used for tourism promotion.

32 (d) This section shall not be interpreted as prohibiting public
33 officials from using public funds to communicate with
34 constituents in the normal course of their duties as public
35 officials so long as such communications do not include any
36 reference to voting in favor of the public official in an election.

37 (e) The commission may propose rules and emergency rules
38 for legislative approval in accordance with the provisions of
39 article three, chapter twenty-nine-a of this code to effectuate this
40 section by July 1, 2015.

CHAPTER 194

**(Com. Sub. for S. B. 243 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 13, 2015; in effect from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-6a, relating to school nutrition standards during a state of emergency or state of preparedness; authorizing Governor or Legislature to temporarily suspend legislative rules establishing nutrition standards for foods and beverages served to students in public schools during a state of emergency or state of preparedness; providing limitations

thereon; and requiring reporting to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-6a, to read as follows:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND
EMERGENCY MANAGEMENT.**

§15-5-6a. Temporary suspension of nutrition standards in public schools.

1 This section is operative only during the existence of a state
2 of emergency or state of preparedness proclaimed by the
3 Governor or by concurrent resolution of the Legislature. During
4 a state of emergency or state of preparedness, the Governor or
5 the Legislature may, to facilitate uninterrupted days of
6 instruction, temporarily suspend legislative rules establishing
7 nutrition standards for foods and beverages distributed to
8 students in public schools during the school day: *Provided*, That
9 safe alternative foods and beverages are available for distribution
10 to students: *Provided, however*, That the temporary suspension
11 of nutrition standards permitted by this section is limited to the
12 geographic area affected by the state of emergency or state of
13 preparedness and a report of any such action be made to the Joint
14 Committee on Government and Finance.

CHAPTER 195

**(Com. Sub. for S. B. 242 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-19b, relating to creating new offense of disseminating false, misleading or deceptive information during a declared state of emergency or state of preparedness; establishing elements of the offense; providing each call constitutes a separate offense; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-19b, to read as follows:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND
EMERGENCY MANAGEMENT.**

§15-5-19b. Criminal penalties for using automated telephone calls to disseminate false, misleading or deceptive information regarding matters effecting or effected by a proclaimed state of emergency or state of preparedness.

1 (a) Any person or entity who, during a state of emergency or
2 state of preparedness declared pursuant to the provisions of
3 section six of this article:

4 (1) Knowingly and willfully disseminates false, misleading
5 or deceptive information regarding matters effecting or effected
6 by the declaration; and

7 (2) by means of an automated telephone call or calling
8 device, including, but not limited to, technology designed to
9 disseminate a previously recorded message shall be guilty of a
10 misdemeanor and, upon conviction thereof, be confined in jail
11 for not more than one year or fined not more than \$5,000, or
12 both.

13 (b) For purposes of this section each call made shall
14 constitute a separate violation of this section.

CHAPTER 196

**(Com. Sub. for S. B. 234 - By Senators Trump, M. Hall,
Blair and Plymale)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; modifying procedure for sale or lease of municipal public utility; providing procedures for adjustment of rates by certain public service districts and municipal water and sewer utilities; eliminating requirement for consent and approval of Public Service Commission with respect to public service districts borrowing money, issuing bonds and entering into certain engineering contracts; relating to the authority of bondholders to

petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; limiting jurisdiction of Public Service Commission over certain water and sewer utilities owned or operated by political subdivisions of the state; defining terms; providing procedure for providing notice of construction projects to be undertaken by certain water and sewer utilities; requiring all public utilities to file schedules of rates with Public Service Commission; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital reserve; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

Be it enacted by the Legislature of West Virginia:

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

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

31 consider more advantageous to the municipality than the terms
32 of the lease which shall have been previously approved as
33 aforesaid, the governing body shall have the power to accept
34 such subsequent offer, and to make such sale or such lease to the
35 person making the offer, upon approval of the offer by a
36 majority of not less than sixty percent of the members of the
37 governing body; but, if a sale shall have been approved by the
38 governing body as aforesaid, and the subsequent proposition be
39 for a lease, or, if a lease shall have been approved by the
40 governing body, and the subsequent proposition shall be for a
41 sale, the governing body shall have the authority to accept the
42 same upon approval of the offer by a majority of not less than
43 sixty percent of the members of the governing body. The person
44 making such proposition shall furnish bond, with security to be
45 approved by the governing body, in a penalty of not less than
46 twenty-five percent of such proposed bid, conditioned to carry
47 such proposition into execution, if the same shall be approved by
48 the governing body. In any case where any such public utility
49 shall be sold or leased by the governing body as hereinabove
50 provided, no part of the moneys derived from such sale or lease
51 shall be applied to the payment of current expenses of the
52 municipality, but the proceeds of such sale or lease shall be
53 applied in payment and discharge of any indebtedness created in
54 respect to such public utility, and in case there be no
55 indebtedness, the governing body, in its discretion, shall have the
56 power and authority to expend all such moneys when received
57 for the purchase or construction of firefighting equipment and
58 buildings for housing such equipment, a municipal building or
59 city hall, and the necessary land upon which to locate the same,
60 or for the construction of paved streets, avenues, roads, alleys,
61 ways, sidewalks, sewers and other like permanent improvements,
62 and for no other purposes. In case there be a surplus after the
63 payment of such indebtedness, the surplus shall be used as
64 aforesaid.

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

§8-16-19. Appeal to Public Service Commission from rates fixed.

1 If any party in interest is dissatisfied with the rates fixed
2 under the provisions of section eighteen of this article, such party
3 shall have the right to appeal to the Public Service Commission
4 at any time within thirty days after the fixing of such rates by the
5 governing body, but the rates so fixed by the governing body
6 shall remain in full force and effect, until set aside, altered or
7 amended by the Public Service Commission.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS
AND ELECTRIC POWER SYSTEMS.**

**§8-19-4. Estimate of cost; ordinance or order for issuance of
revenue bonds; interest on bonds; rates for services;
exemption from taxation.**

1 Whenever a municipality or county commission shall, under
2 the provisions of this article, determine to acquire, by purchase
3 or otherwise, construct, establish, extend or equip a waterworks
4 system or an electric power system, or to construct any
5 additions, betterments or improvements to any waterworks or
6 electric power system, it shall cause an estimate to be made of
7 the cost thereof, and may, by ordinance or order, provide for the
8 issuance of revenue bonds under the provisions of this article,
9 which ordinance or order shall set forth a brief description of the
10 contemplated undertaking, the estimated cost thereof, the
11 amount, rate or rates of interest, the time and place of payment
12 and other details in connection with the issuance of the bonds.
13 The bonds shall be in such form and shall be negotiated and sold
14 in such manner and upon such terms as the governing body of
15 such municipality or county commission may, by ordinance or

16 order, specify. All the bonds and the interest thereon shall be
17 exempt from all taxation by this state, or any county,
18 municipality or county commission, political subdivision or
19 agency thereof. Notwithstanding any other provision of this code
20 to the contrary, the real and personal property which a
21 municipality or county has acquired and constructed according
22 to the provisions of this article, and any leasehold interest therein
23 held by other persons, shall be deemed public property and shall
24 be exempt from taxation by the state, or any county,
25 municipality or other levying body, so long as the same is owned
26 by the municipality or county: *Provided*, That with respect to
27 electric power systems, this exemption for real and personal
28 property shall be applicable only for the real and personal
29 property: (1) Physically situate within the municipal or county
30 boundaries of the municipality or county which acquired or
31 constructed the electric power system and there was in place
32 prior to the effective date of the amendments to this section
33 made in the year 1992 an agreement between the municipality
34 and the county commission for payments in lieu of tax; or (2)
35 acquired or constructed with the written agreement of the county
36 school board, county commission and any municipal authority
37 within whose jurisdiction the electric power system is or is to be
38 physically situate. Notwithstanding anything contained in this
39 statute to the contrary, this exemption shall be applicable to any
40 leasehold or similar interest held by persons other than a
41 municipality or county only if acquired or constructed with the
42 written agreement of the county school board, county
43 commission and any municipal authority within whose
44 jurisdiction the electric power system is or is to be physically
45 situate: *Provided, however*, That payments made to any county
46 commission, county school board or municipality in lieu of tax
47 pursuant to such an agreement shall be distributed as if the
48 payments resulted from ad valorem property taxation. The bonds
49 shall bear interest at a rate per annum set by the municipality or
50 county commission, payable at such times, and shall be payable

51 as to principal at such times, not exceeding fifty years from their
52 date, and at such place or places, within or without the state, as
53 shall be prescribed in the ordinance or order providing for their
54 issuance. Unless the governing body of the municipality or
55 county commission shall otherwise determine, the ordinance or
56 order shall also declare that a statutory mortgage lien shall exist
57 upon the property so to be acquired, constructed, established,
58 extended or equipped, fix minimum rates or charges for water or
59 electricity to be collected prior to the payment of all of said
60 bonds and shall pledge the revenues derived from the
61 waterworks or electric power system for the purpose of paying
62 the bonds and interest thereon, which pledge shall definitely fix
63 and determine the amount of revenues which shall be necessary
64 to be set apart and applied to the payment of the principal of and
65 interest upon the bonds and the proportion of the balance of the
66 revenues, which are to be set aside as a proper and adequate
67 depreciation account, and the remainder shall be set aside for the
68 reasonable and proper maintenance and operation thereof. The
69 rates or charges to be charged for the services from the
70 waterworks or electric power system shall be sufficient at all
71 times to provide for the payment of interest upon all bonds and
72 to create a sinking fund to pay the principal thereof as and when
73 the same become due, and reasonable reserves therefor, and to
74 provide for the repair, maintenance and operation of the
75 waterworks or electric power system, and to provide an adequate
76 depreciation fund, and to make any other payments which shall
77 be required or provided for in the ordinance or order authorizing
78 the issuance of said bonds.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-1a. Jurisdiction of the Public Service Commission.

1 The jurisdiction of the Public Service Commission relating
2 to public service districts shall be expanded to include the

3 following powers and the powers shall be in addition to all other
4 powers of the Public Service Commission set forth in this code:

5 (a) To study, modify, approve, deny or amend the plans
6 created under section one-b of this article for consolidation or
7 merger of public service districts and their facilities, personnel
8 or administration;

9 (b) To petition the appropriate circuit court for the removal
10 of a public service district board member or members; and

11 (c) To create by general order a separate division within the
12 Public Service Commission to provide assistance to public
13 service districts in technological, operational, financial and
14 regulatory matters, including, upon written request of the public
15 service board, assistance to the board in deliberations regarding
16 a proposed rate change or project.

**§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections; lien
for delinquent fees.**

1 (a) (1) The board may make, enact and enforce all needful
2 rules in connection with the acquisition, construction,
3 improvement, extension, management, maintenance, operation,
4 care, protection and the use of any public service properties
5 owned or controlled by the district. The board shall establish, in
6 accordance with this article, rates, fees and charges for the
7 services and facilities it furnishes, which shall be sufficient at all
8 times, notwithstanding the provisions of any other law or laws,
9 to pay the cost of maintenance, operation and depreciation of the
10 public service properties and principal of and interest on all
11 bonds issued, other obligations incurred under the provisions of
12 this article and all reserve or other payments provided for in the
13 proceedings which authorized the issuance of any bonds under
14 this article. The schedule of the rates, fees and charges may be
15 based upon:

16 (A) The consumption of water or gas on premises connected
17 with the facilities, taking into consideration domestic,
18 commercial, industrial and public use of water and gas;

19 (B) The number and kind of fixtures connected with the
20 facilities located on the various premises;

21 (C) The number of persons served by the facilities;

22 (D) Any combination of paragraphs (A), (B) and (C) of this
23 subdivision; or

24 (E) May be determined on any other basis or classification
25 which the board may determine to be fair and reasonable, taking
26 into consideration the location of the premises served and the
27 nature and extent of the services and facilities furnished.
28 However, no rates, fees or charges for stormwater services may
29 be assessed against highways, road and drainage easements or
30 stormwater facilities constructed, owned or operated by the West
31 Virginia Division of Highways.

32 (2) The board of a public service district with at least four
33 thousand five hundred customers and annual combined gross
34 revenue of \$3 million or more from its separate or combined
35 services may make, enact and enforce all needful rules in
36 connection with the enactment or amendment of rates, fees and
37 charges of the district. At a minimum, these rules shall provide
38 for:

39 (A) Adequate prior public notice of the contemplated rates,
40 fees and charges by causing a notice of intent to effect such a
41 change to be specified on the monthly billing statement of the
42 customers of the district for the month next preceding the month
43 in which the contemplated change is to be before the board on
44 first reading.

45 (B) Adequate prior public notice of the contemplated rates,
46 fees and charges by causing to be published as a Class I legal

47 advertisement of the proposed action, in compliance with the
48 provisions of article three, chapter fifty-nine of the code. The
49 publication area for publication shall be all territory served by
50 the district. If the district provides service in more than one
51 county, publication shall be made in a newspaper of general
52 circulation in each county that the district provides service.

53 (C) The public notice of the proposed action shall state the
54 current rates, fees and charges and the proposed changes to said
55 rates, fees and charges; the date, time and place of both a public
56 hearing on the proposal and the proposed final vote on adoption;
57 and the place or places within the district where the proposed
58 rates, fees and charges may be inspected by the public. A
59 reasonable number of copies of the proposal shall be kept at the
60 place or places and be made available for public inspection. The
61 notice shall also advise that interested parties may appear at the
62 public hearing before the board and be heard with respect to the
63 proposed rates, fees and charges.

64 (D) The proposed rates, fees and charges shall be read at two
65 meetings of the board with at least two weeks intervening
66 between each meeting. The public hearing may be conducted
67 with or following the second reading.

68 (E) Rates, fees and charges approved by an affirmative vote
69 of the board shall be forwarded in writing to the county
70 commission appointing the approving board. The county
71 commission shall publish notice of the proposed rates, fees and
72 charges by a Class 1 legal advertisement in compliance with the
73 provisions of article three, chapter fifty-nine of the code. Within
74 forty-five days of receipt of the proposed rates, fees and charges,
75 the county commission shall take action to approve or reject the
76 proposed rates, fees and charges. After forty-five days, the
77 proposed rates, fees and charges shall be effective with no
78 further action by the board or county commission. In any event,
79 this 45-day period shall be mandatory unless extended by the

80 official action of both the board proposing the rates, fees and
81 charges, and the appointing county commission.

82 (F) Enactment of the proposed rates, fees and charges shall
83 follow an affirmative vote by the county commission and shall
84 be effective no sooner than forty-five days following action. The
85 45-day waiting period may be waived by public vote of the
86 county commission only if the commission finds and declares
87 the district to be in financial distress such that the 45-day waiting
88 period would be detrimental to the ability of the district to
89 deliver continued and compliant public services.

90 (3) Where water, sewer, stormwater or gas services, or any
91 combination thereof, are all furnished to any premises, the
92 schedule of charges may be billed as a single amount for the
93 aggregate of the charges. The board shall require all users of
94 services and facilities furnished by the district to designate on
95 every application for service whether the applicant is a tenant or
96 an owner of the premises to be served. If the applicant is a
97 tenant, he or she shall state the name and address of the owner or
98 owners of the premises to be served by the district.
99 Notwithstanding the provisions of section eight, article three,
100 chapter twenty-four of this code to the contrary, all new
101 applicants for service shall deposit the greater of a sum equal to
102 two twelfths of the average annual usage of the applicant's
103 specific customer class or \$50, with the district to secure the
104 payment of service rates, fees and charges in the event they
105 become delinquent as provided in this section. If a district
106 provides both water and sewer service, all new applicants for
107 service shall deposit the greater of a sum equal to two twelfths
108 of the average annual usage for water service or \$50 and the
109 greater of a sum equal to two twelfths of the average annual
110 usage for wastewater service of the applicant's specific customer
111 class or \$50. In any case where a deposit is forfeited to pay
112 service rates, fees and charges which were delinquent at the time
113 of disconnection or termination of service, no reconnection or

114 reinstatement of service may be made by the district until
115 another deposit equal to the greater of a sum equal to two
116 twelfths of the average usage for the applicant's specific
117 customer class or \$50 has been remitted to the district. After
118 twelve months of prompt payment history, the district shall
119 return the deposit to the customer or credit the customer's
120 account at a rate as the Public Service Commission may
121 prescribe: *Provided*, That where the customer is a tenant, the
122 district is not required to return the deposit until the time the
123 tenant discontinues service with the district. Whenever any rates,
124 fees, rentals or charges for services or facilities furnished remain
125 unpaid for a period of twenty days after the same become due
126 and payable, the user of the services and facilities provided is
127 delinquent and the user is liable at law until all rates, fees and
128 charges are fully paid. The board may, under reasonable rules
129 promulgated by the Public Service Commission, shut off and
130 discontinue water or gas services to all delinquent users of either
131 water or gas facilities, or both, ten days after the water or gas
132 services become delinquent: *Provided, however*, That nothing
133 contained within the rules of the Public Service Commission
134 shall be deemed to require any agents or employees of the board
135 to accept payment at the customer's premises in lieu of
136 discontinuing service for a delinquent bill.

137 (b) In the event that any publicly or privately owned utility,
138 city, incorporated town, other municipal corporation or other
139 public service district included within the district owns and
140 operates separately water facilities, sewer facilities or
141 stormwater facilities and the district owns and operates another
142 kind of facility, either water or sewer, or both, as the case may
143 be, then the district and the publicly or privately owned utility,
144 city, incorporated town or other municipal corporation or other
145 public service district shall covenant and contract with each
146 other to shut off and discontinue the supplying of water service
147 for the nonpayment of sewer or stormwater service fees and
148 charges: *Provided*, That any contracts entered into by a public

149 service district pursuant to this section shall be submitted to the
150 Public Service Commission for approval. Any public service
151 district which provides water and sewer service, water and
152 stormwater service or water, sewer and stormwater service has
153 the right to terminate water service for delinquency in payment
154 of water, sewer or stormwater bills. Where one public service
155 district is providing sewer service and another public service
156 district or a municipality included within the boundaries of the
157 sewer or stormwater district is providing water service and the
158 district providing sewer or stormwater service experiences a
159 delinquency in payment, the district or the municipality included
160 within the boundaries of the sewer or stormwater district that is
161 providing water service, upon the request of the district
162 providing sewer or stormwater service to the delinquent account,
163 shall terminate its water service to the customer having the
164 delinquent sewer or stormwater account: *Provided, however,*
165 That any termination of water service must comply with all rules
166 and orders of the Public Service Commission: *Provided further,*
167 That nothing contained within the rules of the Public Service
168 Commission shall be deemed to require any agents or employees
169 of the public service districts to accept payment at the
170 customer's premises in lieu of discontinuing service for a
171 delinquent bill.

172 (c) Any district furnishing sewer facilities within the district
173 may require or may, by petition to the circuit court of the county
174 in which the property is located, compel or may require the
175 Division of Health to compel all owners, tenants or occupants of
176 any houses, dwellings and buildings located near any sewer
177 facilities where sewage will flow by gravity or be transported by
178 other methods approved by the Division of Health, including, but
179 not limited to, vacuum and pressure systems, approved under the
180 provisions of section nine, article one, chapter sixteen of this
181 code, from the houses, dwellings or buildings into the sewer
182 facilities, to connect with and use the sewer facilities and to
183 cease the use of all other means for the collection, treatment and

184 disposal of sewage and waste matters from the houses, dwellings
185 and buildings where there is gravity flow or transportation by
186 any other methods approved by the Division of Health,
187 including, but not limited to, vacuum and pressure systems,
188 approved under the provisions of section nine, article one of this
189 chapter and the houses, dwellings and buildings can be
190 adequately served by the sewer facilities of the district and it is
191 declared that the mandatory use of the sewer facilities provided
192 for in this subsection is necessary and essential for the health and
193 welfare of the inhabitants and residents of the districts and of the
194 state. If the public service district requires the property owner to
195 connect with the sewer facilities even when sewage from
196 dwellings may not flow to the main line by gravity and the
197 property owner incurs costs for any changes in the existing
198 dwellings' exterior plumbing in order to connect to the main
199 sewer line, the public service district board shall authorize the
200 district to pay all reasonable costs for the changes in the exterior
201 plumbing, including, but not limited to, installation, operation,
202 maintenance and purchase of a pump or any other method
203 approved by the Division of Health. Maintenance and operation
204 costs for the extra installation should be reflected in the users
205 charge for approval of the Public Service Commission. The
206 circuit court shall adjudicate the merits of the petition by
207 summary hearing to be held not later than thirty days after
208 service of petition to the appropriate owners, tenants or
209 occupants.

210 (d) Whenever any district has made available sewer facilities
211 to any owner, tenant or occupant of any house, dwelling or
212 building located near the sewer facility and the engineer for the
213 district has certified that the sewer facilities are available to and
214 are adequate to serve the owner, tenant or occupant and sewage
215 will flow by gravity or be transported by other methods approved
216 by the Division of Health from the house, dwelling or building
217 into the sewer facilities, the district may charge, and the owner,
218 tenant or occupant shall pay, the rates and charges for services

219 established under this article only after thirty days' notice of the
220 availability of the facilities has been received by the owner,
221 tenant or occupant. Rates and charges for sewage services shall
222 be based upon actual water consumption or the average monthly
223 water consumption based upon the owner's, tenant's or
224 occupant's specific customer class.

225 (e) The owner, tenant or occupant of any real property may
226 be determined and declared to be served by a stormwater system
227 only after each of the following conditions is met: (1) The
228 district has been designated by the Environmental Protection
229 Agency as an entity to serve a West Virginia Separate Storm
230 Sewer System community, as defined in 40 C. F. R. §122.26; (2)
231 the district's authority has been properly expanded to operate
232 and maintain a stormwater system; (3) the district has made
233 available a stormwater system where stormwater from the real
234 property affects or drains into the stormwater system; and (4) the
235 real property is located in the Municipal Separate Storm Sewer
236 System's designated service area. It is further hereby found,
237 determined and declared that the mandatory use of the
238 stormwater system is necessary and essential for the health and
239 welfare of the inhabitants and residents of the district and of the
240 state. The district may charge and the owner, tenant or occupant
241 shall pay the rates, fees and charges for stormwater services
242 established under this article only after thirty days' notice of the
243 availability of the stormwater system has been received by the
244 owner. An entity providing stormwater service shall provide a
245 tenant a report of the stormwater fee charged for the entire
246 property and, if appropriate, that portion of the fee to be assessed
247 to the tenant.

248 (f) All delinquent fees, rates and charges of the district for
249 either water facilities, sewer facilities, gas facilities or
250 stormwater systems or stormwater management programs are
251 liens on the premises served of equal dignity, rank and priority
252 with the lien on the premises of state, county, school and

253 municipal taxes. Nothing contained within the rules of the Public
254 Service Commission shall be deemed to require any agents or
255 employees of the public service districts to accept payment at the
256 customer's premises in lieu of discontinuing service for a
257 delinquent bill. In addition to the other remedies provided in this
258 section, public service districts are granted a deferral of filing
259 fees or other fees and costs incidental to the bringing and
260 maintenance of an action in magistrate court for the collection of
261 delinquent water, sewer, stormwater or gas bills. If the district
262 collects the delinquent account, plus reasonable costs, from its
263 customer or other responsible party, the district shall pay to the
264 magistrate the normal filing fee and reasonable costs which were
265 previously deferred. In addition, each public service district may
266 exchange with other public service districts a list of delinquent
267 accounts: *Provided*, That an owner of real property may not be
268 held liable for the delinquent rates or charges for services or
269 facilities of a tenant, nor may any lien attach to real property for
270 the reason of delinquent rates or charges for services or facilities
271 of a tenant of the real property unless the owner has contracted
272 directly with the public service district to purchase the services
273 or facilities.

274 (g) Anything in this section to the contrary notwithstanding,
275 any establishment, as defined in section three, article eleven,
276 chapter twenty-two of this code, now or hereafter operating its
277 own sewage disposal system pursuant to a permit issued by the
278 Department of Environmental Protection, as prescribed by
279 section eleven of said article, is exempt from the provisions of
280 this section.

281 (h) A public service district which has been designated by
282 the Environmental Protection Agency as an entity to serve a
283 West Virginia Separate Storm Sewer System community shall
284 prepare an annual report detailing the collection and expenditure
285 of rates, fees or charges and make it available for public review

286 at the place of business of the governing body and the
287 stormwater utility main office.

§16-13A-25. Borrowing and bond issuance; procedure.

1 A public service district has plenary power to borrow
2 money, enter into contracts for the provision of engineering,
3 design or feasibility studies, issue or contract to issue revenue
4 bonds or exercise any of the powers conferred by the provisions
5 of section thirteen, twenty or twenty-four of this article. Upon
6 written request of the public service board contemplating such
7 transaction or project, the Public Service Commission shall
8 provide technical support to the public service board, including,
9 but not limited to, engineering, design and financial analysis of
10 the proposed transaction or project.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.

1 (a) It is the purpose and policy of the Legislature in enacting
2 this chapter to confer upon the Public Service Commission of
3 this state the authority and duty to enforce and regulate the
4 practices, services and rates of public utilities in order to:

5 (1) Ensure fair and prompt regulation of public utilities in
6 the interest of the using and consuming public;

7 (2) Provide the availability of adequate, economical and
8 reliable utility services throughout the state;

9 (3) Encourage the well-planned development of utility
10 resources in a manner consistent with state needs and in ways

11 consistent with the productive use of the state's energy
12 resources, such as coal;

13 (4) Ensure that rates and charges for utility services are just,
14 reasonable, applied without unjust discrimination or preference,
15 applied in a manner consistent with the purposes and policies set
16 forth in article two-a of this chapter and based primarily on the
17 costs of providing these services;

18 (5) Encourage energy conservation and the effective and
19 efficient management of regulated utility enterprises; and

20 (6) Encourage removal of artificial barriers to rail carrier
21 service, stimulate competition, stimulate the free flow of goods
22 and passengers throughout the state and promote the expansion
23 of the tourism industry, thereby improving the economic
24 condition of the state.

25 (b) The Legislature creates the Public Service Commission
26 to exercise the legislative powers delegated to it. The Public
27 Service Commission is charged with the responsibility for
28 appraising and balancing the interests of current and future
29 utility service customers, the general interests of the state's
30 economy and the interests of the utilities subject to its
31 jurisdiction in its deliberations and decisions.

32 (c) The Legislature directs the Public Service Commission
33 to identify, explore and consider the potential benefits or risks
34 associated with emerging and state-of-the-art concepts in utility
35 management, rate design and conservation. The commission may
36 conduct inquiries and hold hearings regarding such concepts in
37 order to provide utilities subject to its jurisdiction and other
38 interested persons the opportunity to comment and shall report
39 to the Governor and the Legislature regarding its findings and
40 policies to each of these areas not later than the first day of the
41 regular session of the Legislature in the year 1985, and every two
42 years thereafter.

43 (d) It is legislative policy to ensure that the Legislature and
44 the general public become better informed regarding the
45 regulation of public utilities in this state and the conduct of the
46 business of the Public Service Commission. To aid in the
47 achievement of this policy, the Public Service Commission
48 annually shall present to the Joint Committee on Government
49 and Finance, created by article three, chapter four of this code,
50 or a subcommittee designated by the joint committee, a
51 management summary report which describes in a concise
52 manner:

53 (1) The major activities of the commission for the year
54 especially as such activities relate to the implementation of the
55 provisions of this chapter;

56 (2) Important policy decisions reached and initiatives
57 undertaken during the year;

58 (3) The current balance of supply and demand for natural gas
59 and electric utility services in the state and forecast of the
60 probable balance for the next ten years; and

61 (4) Other information considered by the commission to be
62 important including recommendations for statutory reform and
63 the reasons for such recommendations.

64 (e) In addition to any other studies and reports required to be
65 conducted and made by the Public Service Commission pursuant
66 to any other provision of this section, the commission shall study
67 and initially report to the Legislature no later than the first day
68 of the regular session of the Legislature in the year 1980 upon:

69 (1) The extent to which natural gas wells or wells heretofore
70 supplying gas utilities in this state have been capped off or shut
71 in; the number of such wells; their probable extent of future
72 production and the reasons given and any justification for
73 capping off or shutting in such wells; the reasons, if any, why

74 persons engaged or heretofore engaged in the development of
75 gas wells in this state or the Appalachian areas have been
76 discouraged from drilling, developing or selling the production
77 of such wells; and whether there are fixed policies by any utility
78 or group of utilities to avoid the purchase of natural gas
79 produced in the Appalachian region of the United States
80 generally and in West Virginia specifically.

81 (2) The extent of the export and import of natural gas utility
82 supplies in West Virginia.

83 (3) The cumulative effect of the practices mentioned in
84 subdivisions (1) and (2) of this subsection upon rates theretofore
85 and hereafter charged gas utility customers in West Virginia. In
86 carrying out the provisions of this section the commission shall
87 have jurisdiction over such persons, whether public utilities or
88 not, as may be in the opinion of the commission necessary to the
89 exercise of its mandate and may compel attendance before it,
90 take testimony under oath and compel the production of papers
91 or other documents. Upon reasonable request by the commission,
92 all other state agencies shall cooperate with the commission in
93 carrying out the provisions and requirements of this subsection.

94 (f) No later than the first day of the regular session of the
95 Legislature in the year 1980, the Public Service Commission
96 shall submit to the Legislature a plan for internal reorganization
97 which plan shall specifically address the following:

98 (1) A division within the Public Service Commission which
99 shall include the office of the commissioners, the hearing
100 examiners and such support staff as may be necessary to carry
101 out the functions of decisionmaking and general supervision of
102 the commission, which functions shall not include advocacy in
103 cases before the commission;

104 (2) The creation of a division which shall act as an advocate
105 for the position of and in the interest of all customers;

106 (3) The means and procedures by which the division to be
107 created pursuant to the provisions of subdivision (2) of this
108 subsection shall protect the interests of each class of customers
109 and the means by which the commission will assure that such
110 division will be financially and departmentally independent of
111 the division created by subdivision (1) of this subsection;

112 (4) The creation of a division within the Public Service
113 Commission which shall assume the duties and responsibilities
114 now charged to the commissioners with regard to motor carriers
115 which division shall exist separately from those divisions set out
116 in subdivisions (1) and (2) of this subsection and which shall
117 relieve the commissioners of all except minimal administrative
118 responsibilities as to motor carriers and which plan shall provide
119 for a hearing procedure to relieve the commissioners from
120 hearing motor carrier cases;

121 (5) Which members of the staff of the Public Service
122 Commission shall be exempted from the salary schedules or pay
123 plan adopted by the Civil Service Commission and identify such
124 staff members by job classification or designation, together with
125 the salary or salary ranges for each such job classification or
126 designation;

127 (6) The manner in which the commission will strengthen its
128 knowledge and independent capacity to analyze key conditions
129 and trends in the industries it regulates extending from general
130 industry analysis and supply-demand forecasting to continuing
131 and more thorough scrutiny of the capacity planning,
132 construction management, operating performance and financial
133 condition of the major companies within these industries.

134 Such plan shall be based on the concept that each of the
135 divisions mentioned in subdivisions (1), (2) and (4) of this
136 subsection shall exist independently of the others and the plan
137 shall discourage ex parte communications between them by such

138 means as the commission shall direct, including, but not limited
139 to, separate clerical and professional staffing for each division.
140 Further, the Public Service Commission is directed to
141 incorporate within the said plan to the fullest extent possible the
142 recommendations presented to the subcommittee on the Public
143 Service Commission of the Joint Committee on Government and
144 Finance in a final report dated February, 1979, and entitled A
145 Plan for Regulatory Reform and Management Improvement.

146 The commission shall, before January 5, 1980, adopt said
147 plan by order, which order shall promulgate the same as a rule
148 of the commission to be effective upon the date specified in said
149 order, which date shall be no later than December 31, 1980.
150 Certified copies of such order and rule shall be filed on the first
151 day of the 1980 regular session of the Legislature, by the
152 chairman of the commission with the clerk of each house of the
153 Legislature, the Governor and the Secretary of State. The
154 chairman of the commission shall also file with the office of the
155 Secretary of State the receipt of the clerk of each house and of
156 the Governor, which receipt shall evidence compliance with this
157 section.

158 Upon the filing of a certified copy of such order and rule, the
159 clerk of each house of the Legislature shall report the same to
160 their respective houses and the presiding officer thereof shall
161 refer the same to appropriate standing committee or committees.

162 Within the limits of funds appropriated therefor, the rule of
163 the Public Service Commission shall be effective upon the date
164 specified in the order of the commission promulgating it unless
165 an alternative plan be adopted by general law or unless the rule
166 is disapproved by a concurrent resolution of the Legislature
167 adopted prior to adjournment sine die of the regular session of
168 the Legislature to be held in the year 1980: *Provided*, That if
169 such rule is approved in part and disapproved in part by a
170 concurrent resolution of the Legislature adopted prior to such

171 adjournment, such rule shall be effective to the extent and only
172 to the extent that the same is approved by such concurrent
173 resolution.

174 The rules promulgated and made effective pursuant to this
175 section shall be effective notwithstanding any other provisions
176 of this code for the promulgation of rules or regulations.

177 (g) The Public Service Commission is hereby directed to
178 cooperate with the Joint Committee on Government and Finance
179 of the Legislature in its review, examination and study of the
180 administrative operations and enforcement record of the Railroad
181 Safety Division of the Public Service Commission and any
182 similar studies.

183 (h) (1) The Legislature hereby finds that rates for natural gas
184 charged to customers of all classes have risen dramatically in
185 recent years to the extent that such increases have adversely
186 affected all customer classes. The Legislature further finds that
187 it must take action necessary to mitigate the adverse
188 consequences of these dramatic rate increases.

189 (2) The Legislature further finds that the practices of natural
190 gas utilities in purchasing high-priced gas supplies, in purchasing
191 gas supplies from out-of-state sources when West Virginia
192 possesses abundant natural gas, and in securing supplies, directly
193 or indirectly, by contractual agreements including take-or-pay
194 provisions, indefinite price escalators or most-favored nation
195 clauses have contributed to the dramatic increase in natural gas
196 prices. It is therefore the policy of the Legislature to discourage
197 such purchasing practices in order to protect all customer
198 classes.

199 (3) The Legislature further finds that it is in the best interests
200 of the citizens of West Virginia to encourage the transportation
201 of natural gas in intrastate commerce by interstate or intrastate

202 pipelines or by local distribution companies in order to provide
203 competition in the natural gas industry and in order to provide
204 natural gas to consumers at the lowest possible price.

205 (i) The Legislature further finds that transactions between
206 utilities and affiliates are a contributing factor to the increase in
207 natural gas and electricity prices and tend to confuse
208 consideration of a proper rate of return calculation. The
209 Legislature therefore finds that it is imperative that the Public
210 Service Commission have the opportunity to properly study the
211 issue of proper rate of return for lengthy periods of time and to
212 limit the return of a utility to a proper level when compared to
213 return or profit that affiliates earn on transactions with sister
214 utilities.

215 (j) The Legislature further finds that water and sewer utilities
216 that are political subdivisions of the state providing separate or
217 combined services and having at least four thousand five
218 hundred customers and annual gross revenues of \$3 million or
219 more are most fairly and effectively regulated by the local
220 governing body with respect to rates, borrowing and capital
221 projects. Therefore, notwithstanding any contrary provisions of
222 this section, the jurisdiction of the Public Service Commission
223 over water and sewer utilities that are political subdivisions of
224 the state is limited to that granted specifically in this code.

225 (k) The Legislature further finds that an adequate cash
226 working capital fund is essential to allow water and sewer
227 utilities that are political subdivisions of the state to deliver
228 continuous and compliant service. Therefore, these utilities shall
229 maintain a working capital reserve in an amount of no less than
230 one eighth of actual annual operation and maintenance expense.
231 This reserve shall be separate and distinct from and in addition
232 to any repair and replacement fund that may be required by bond
233 covenants.

§24-1-1b. Supplemental rule for reorganization.

1 The Public Service Commission shall, by general order,
2 create a division within its staff which shall, upon written request
3 of the governing body of a political subdivision that operates a
4 water, sewer and/or stormwater utility, provide legal,
5 operational, engineering, financial, ratemaking and accounting
6 advice and assistance to water, sewer and/or stormwater utilities
7 that are political subdivisions of the state and may perform or
8 participate in the studies required under section one-b, article
9 thirteen-a, chapter sixteen of this code.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from the
2 context, the words “public utility”, when used in this chapter,
3 shall mean and include any person or persons, or association of
4 persons, however associated, whether incorporated or not,
5 including municipalities, engaged in any business, whether
6 herein enumerated or not, which is, or shall hereafter be held to
7 be, a public service. Whenever in this chapter the words
8 “commission” or “Public Service Commission” occur, such word
9 or words shall, unless a different intent clearly appears from the
10 context, be taken to mean the Public Service Commission of
11 West Virginia. Whenever used in this chapter, “customer” shall
12 mean and include any person, firm, corporation, municipality,
13 public service district or any other entity who purchases a
14 product or services of any utility and shall include any such
15 person, firm, corporation, municipality, public service district or
16 any other entity who purchases such services or product for
17 resale. Whenever in this chapter the words “governing body”
18 occur, such word or words shall, unless a different intent clearly
19 appears from the context, be taken to mean the municipal body
20 charged with the authority and responsibility of enacting
21 ordinances of the municipality, as defined in section two, article
22 one, chapter eight of this code, or a public service board of a

23 public service district, as defined in section three, article
24 thirteen-a, chapter sixteen of this code.

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 shall extend to all
2 public utilities in this state and shall include any utility engaged
3 in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;
8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline; sleeping
10 car or parlor car services; transmission of messages by
11 telephone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service to
13 the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems: *Provided*, That if a
17 public utility other than a political subdivision intends to provide
18 sewer service by an innovative, alternative method, as defined by
19 the federal Environmental Protection Agency, the innovative,
20 alternative method is a public utility function and subject to the
21 jurisdiction of the Public Service Commission regardless of the
22 number of customers served by the innovative, alternative
23 method; any public service district created under the provisions
24 of article thirteen-a, chapter sixteen of this code; toll bridges,
25 wharves, ferries; solid waste facilities; and any other public

* **NOTE:** This section was also amended by S. B. 576 (Chapter 197),
which passed prior to this act.

26 service: *Provided, however,* That natural gas producers who
27 provide natural gas service to not more than twenty-five
28 residential customers are exempt from the jurisdiction of the
29 commission with regard to the provisions of such residential
30 service: *Provided further,* That upon request of any of the
31 customers of such natural gas producers, the commission may,
32 upon good cause being shown, exercise such authority as the
33 commission may deem appropriate over the operation, rates and
34 charges of such producer and for such length of time as the
35 commission may consider to be proper.

36 (b) The jurisdiction of the commission over political
37 subdivisions of this state providing separate or combined
38 services and having at least four thousand five hundred
39 customers and annual combined gross revenues of \$3 million or
40 more that are political subdivisions of the state is limited to:

41 (1) General supervision of public utilities, as granted and
42 described in section five of this article;

43 (2) Regulation of measurements, practices, acts or services,
44 as granted and described in section seven of this article;

45 (3) Regulation of a system of accounts to be kept by a public
46 utility that is a political subdivision of the state, as granted and
47 described in section eight of this article;

48 (4) Submission of information to the commission regarding
49 rates, tolls, charges or practices, as granted and described in
50 section nine of this article;

51 (5) Authority to subpoena witnesses, take testimony and
52 administer oaths to any witness in any proceeding before or
53 conducted by the commission, as granted and described in
54 section ten of this article; and

55 (6) Investigation and resolution of disputes involving
56 political subdivisions of the state regarding inter-utility

57 agreements, rates, fees and charges, service areas and contested
58 utility combinations.

59 (7) Customers of water and sewer utilities operated by a
60 political subdivision of the state and customers of stormwater
61 utilities operated by a public service district may bring formal or
62 informal complaints regarding the commission's exercise of the
63 powers enumerated in this section and the commission shall
64 resolve these complaints.

65 (8) In the event that a political subdivision has a deficiency
66 in either its bond revenue or bond reserve accounts, or is
67 otherwise in breach of a bond covenant, the bond holder may
68 petition the Public Service Commission for such redress as will
69 bring the accounts to current status or otherwise resolve the
70 breached covenant, and the commission shall have jurisdiction
71 to fully resolve the alleged deficiency or breach.

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

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

78 (2) Said area can be provided with utility service by a utility
79 which operates in a state adjoining West Virginia;

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

82 (4) The number of customers to be served is not substantial.
83 The rates the out-of-state utility charges West Virginia
84 customers shall be the same as the rate the utility is duly
85 authorized to charge in the adjoining jurisdiction. The
86 commission, in the case of any such utility, may revoke its
87 waiver of jurisdiction for good cause.

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

90 (1) An owner or operator of an electric generating facility
91 located or to be located in this state that has been designated as
92 an exempt wholesale generator under applicable federal law, or
93 will be so designated prior to commercial operation of the
94 facility, and for which such facility the owner or operator holds
95 a certificate of public convenience and necessity issued by the
96 commission on or before July 1, 2003, shall be subject to
97 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this
98 article as if the certificate of public convenience and necessity
99 for such facility were a siting certificate issued under said
100 section and shall not otherwise be subject to the jurisdiction of
101 the commission or to the provisions of this chapter with respect
102 to such facility except for the making or constructing of a
103 material modification thereof as provided in subdivision (5) of
104 this subsection.

105 (2) Any person, corporation or other entity that intends to
106 construct or construct and operate an electric generating facility
107 to be located in this state that has been designated as an exempt
108 wholesale generator under applicable federal law, or will be so
109 designated prior to commercial operation of the facility, and for
110 which facility the owner or operator does not hold a certificate
111 of public convenience and necessity issued by the commission
112 on or before July 1, 2003, shall, prior to commencement of
113 construction of the facility, obtain a siting certificate from the
114 commission pursuant to the provisions of section eleven-c of this
115 article in lieu of a certificate of public convenience and necessity
116 pursuant to the provisions of section eleven of this article. An
117 owner or operator of an electric generating facility as is
118 described in this subdivision for which a siting certificate has
119 been issued by the commission shall be subject to subsections
120 (e), (f), (g), (h), (i) and (j), section eleven-c of this article and
121 shall not otherwise be subject to the jurisdiction of the

122 commission or to the provisions of this chapter with respect to
123 such facility except for the making or constructing of a material
124 modification thereof as provided in subdivision (5) of this
125 subsection.

126 (3) An owner or operator of an electric generating facility
127 located in this state that had not been designated as an exempt
128 wholesale generator under applicable federal law prior to
129 commercial operation of the facility that generates electric
130 energy solely for sale at retail outside this state or solely for sale
131 at wholesale in accordance with any applicable federal law that
132 preempts state law or solely for both such sales at retail and such
133 sales at wholesale and that had been constructed and had
134 engaged in commercial operation on or before July 1, 2003, shall
135 not be subject to the jurisdiction of the commission or to the
136 provisions of this chapter with respect to such facility, regardless
137 of whether such facility subsequent to its construction has been
138 or will be designated as an exempt wholesale generator under
139 applicable federal law: *Provided*, That such owner or operator
140 shall be subject to subdivision (5) of this subsection if a material
141 modification of such facility is made or constructed.

142 (4) Any person, corporation or other entity that intends to
143 construct or construct and operate an electric generating facility
144 to be located in this state that has not been or will not be
145 designated as an exempt wholesale generator under applicable
146 federal law prior to commercial operation of the facility that will
147 generate electric energy solely for sale at retail outside this state
148 or solely for sale at wholesale in accordance with any applicable
149 federal law that preempts state law or solely for both such sales
150 at retail and such sales at wholesale and that had not been
151 constructed and had not been engaged in commercial operation
152 on or before July 1, 2003, shall, prior to commencement of
153 construction of the facility, obtain a siting certificate from the
154 commission pursuant to the provisions of section eleven-c of this
155 article in lieu of a certificate of public convenience and necessity

156 pursuant to the provisions of section eleven of this article. An
157 owner or operator of an electric generating facility as is
158 described in this subdivision for which a siting certificate has
159 been issued by the commission shall be subject to subsections
160 (e), (f), (g), (h), (i) and (j), section eleven-c of this article and
161 shall not otherwise be subject to the jurisdiction of the
162 commission or to the provisions of this chapter with respect to
163 such facility except for the making or constructing of a material
164 modification thereof as provided in subdivision (5) of this
165 subsection.

166 (5) An owner or operator of an electric generating facility
167 described in this subsection shall, before making or constructing
168 a material modification of the facility that is not within the terms
169 of any certificate of public convenience and necessity or siting
170 certificate previously issued for the facility or an earlier material
171 modification thereof, obtain a siting certificate for the
172 modification from the commission pursuant to the provisions of
173 section eleven-c of this article in lieu of a certificate of public
174 convenience and necessity for the modification pursuant to the
175 provisions of section eleven of this article and, except for the
176 provisions of section eleven-c of this article, shall not otherwise
177 be subject to the jurisdiction of the commission or to the
178 provisions of this chapter with respect to such modification.

179 (6) The commission shall consider an application for a
180 certificate of public convenience and necessity filed pursuant to
181 section eleven of this article to construct an electric generating
182 facility described in this subsection or to make or construct a
183 material modification of such electric generating facility as an
184 application for a siting certificate pursuant to section eleven-c of
185 this article if the application for the certificate of public
186 convenience and necessity was filed with the commission prior
187 to July 1, 2003, and if the commission has not issued a final
188 order thereon as of that date.

189 (7) The limitations on the jurisdiction of the commission
190 over, and on the applicability of the provisions of this chapter to,
191 the owner or operator of an electric generating facility as
192 imposed by and described in this subsection shall not be deemed
193 to affect or limit the commission's jurisdiction over contracts or
194 arrangements between the owner or operator of such facility and
195 any affiliated public utility subject to the provisions of this
196 chapter.

§24-2-2. General power of commission to regulate public utilities.

1 (a) The commission is hereby given power to investigate all
2 rates, methods and practices of public utilities subject to the
3 provisions of this chapter; to require them to conform to the laws
4 of this state and to all rules, regulations and orders of the
5 commission not contrary to law; and to require copies of all
6 reports, rates, classifications, schedules and timetables in effect
7 and used by the public utility or other person to be filed with the
8 commission, and all other information desired by the
9 commission relating to the investigation and requirements,
10 including inventories of all property in such form and detail as
11 the commission may prescribe. The commission may compel
12 obedience to its lawful orders by mandamus or injunction or
13 other proper proceedings in the name of the state in any circuit
14 court having jurisdiction of the parties or of the subject matter,
15 or the Supreme Court of Appeals directly, and the proceedings
16 shall have priority over all pending cases. The commission may
17 change any intrastate rate, charge or toll which is unjust or
18 unreasonable or any interstate charge with respect to matters of
19 a purely local nature which have not been regulated by or
20 pursuant to an act of Congress and may prescribe a rate, charge
21 or toll that is just and reasonable, and change or prohibit any
22 practice, device or method of service in order to prevent undue
23 discrimination or favoritism between persons and between
24 localities and between commodities for a like and
25 contemporaneous service. But in no case shall the rate, toll or

26 charge be more than the service is reasonably worth, considering
27 the cost of the service. Every order entered by the commission
28 shall continue in force until the expiration of the time, if any,
29 named by the commission in the order, or until revoked or
30 modified by the commission, unless the order is suspended,
31 modified or revoked by order or decree of a court of competent
32 jurisdiction: *Provided*, That in the case of utilities used by
33 emergency shelter providers, the commission shall prescribe
34 such rates, charges or tolls that are the lowest available.
35 “Emergency shelter provider” means any nonprofit entity which
36 provides temporary emergency housing and services to the
37 homeless or to victims of domestic violence or other abuse.

38 (b) Notwithstanding any other provision of this code to the
39 contrary, rates are not discriminatory if, when considering the
40 debt costs associated with a future water or sewer project which
41 would not benefit existing customers, the commission
42 establishes rates which ensure that the future customers to be
43 served by the new project are solely responsible for the debt
44 costs associated with the project.

45 (c) Notwithstanding any other provision of this code to the
46 contrary, the jurisdiction of the commission over water and/or
47 sewer utilities that are political subdivisions of the state
48 providing a separate or combined services and having at least
49 four thousand five hundred customers and annual combined
50 gross revenues of \$3 million or more shall be limited to those
51 powers enumerated in subsection (b), section one of this article.

§24-2-3. General power of commission with respect to rates.

1 (a) The commission shall have power to enforce, originate,
2 establish, change and promulgate tariffs, rates, joint rates, tolls
3 and schedules for all public utilities except for water and/or
4 sewer utilities that are political subdivisions of this state
5 providing a separate or combined services and having at least

6 four thousand five hundred customers and annual combined
7 gross revenues of \$3 million or more: *Provided*, That the
8 commission may exercise such rate authority over municipally
9 owned electric or natural gas utilities or a municipally owned
10 water and/or sewer utility having less than four thousand five
11 hundred customers and \$3 million dollars annual combined gross
12 revenues, only under the circumstances and limitations set forth
13 in section four-b of this article. And whenever the commission
14 shall, after hearing, find any existing rates, tolls, tariffs, joint
15 rates or schedules enacted or maintained by a utility regulated
16 under the provisions of this section to be unjust, unreasonable,
17 insufficient or unjustly discriminatory or otherwise in violation
18 of any of the provisions of this chapter, the commission shall by
19 an order fix reasonable rates, joint rates, tariffs, tolls or
20 schedules to be followed in the future in lieu of those found to be
21 unjust, unreasonable, insufficient or unjustly discriminatory or
22 otherwise in violation of any provisions of law, and the said
23 commission, in fixing the rate of any railroad company, may fix
24 a fair, reasonable and just rate to be charged on any branch line
25 thereof, independent of the rate charged on the main line of such
26 railroad.

27 (b) In determining just and reasonable rates, the commission
28 may audit and investigate management practices and policies, or
29 have performed an audit and investigation of such practices and
30 policies, in order to determine whether the utility is operating
31 with efficiency and is utilizing sound management practices. The
32 commission shall adopt rules and regulations setting forth the
33 scope, frequency and application of such audits and
34 investigations to the various utilities subject to its jurisdiction.
35 The commission may include the cost of conducting the
36 management audit in the cost of service of the utility.

37 (c) In determining just and reasonable rates, the commission
38 shall investigate and review transactions between utilities and
39 affiliates. The commission shall limit the total return of the

40 utility to a level which, when considered with the level of profit
41 or return the affiliate earns on transactions with the utility, is just
42 and reasonable.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 (a) After June 30, 1981, no public utility subject to this
2 chapter, except for water and/or sewer utilities that are political
3 subdivisions of the state providing separate or combined services
4 and having at least four thousand five hundred customers and
5 annual gross revenue of \$3 million or more from its separate or
6 combined services, shall change, suspend or annul any rate, joint
7 rate, charge, rental or classification except after thirty days'
8 notice to the commission and the public, which notice shall
9 plainly state the changes proposed to be made in the schedule
10 then in force and the time when the changed rates or charges
11 shall go into effect; but the commission may enter an order
12 suspending the proposed rate as hereinafter provided. The
13 proposed changes shall be shown by printing new schedules, or
14 shall be plainly indicated upon the schedules in force at the time,
15 and kept open to public inspection: *Provided*, That the
16 commission may, in its discretion, and for good cause shown,
17 allow changes upon less time than the notice herein specified, or
18 may modify the requirements of this section in respect to
19 publishing, posting and filing of tariffs, either by particular
20 instructions or by general order.

21 (b) Whenever there shall be filed with the commission any
22 schedule stating a change in the rates or charges, or joint rates or
23 charges, or stating a new individual or joint rate or charge or
24 joint classification or any new individual or joint regulation or
25 practice affecting any rate or charge, the commission may, either
26 upon complaint or upon its own initiative without complaint,
27 enter upon a hearing concerning the propriety of such rate,
28 charge, classification, regulation or practice; and, if the
29 commission so orders, it may proceed without answer or other

30 form of pleading by the interested parties, but upon reasonable
31 notice, and, pending such hearing and the decisions thereon, the
32 commission, upon filing with such schedule and delivering to the
33 public utility affected thereby a statement in writing of its
34 reasons for such suspension, may suspend the operation of such
35 schedule and defer the use of such rate, charge, classification,
36 regulation or practice, but not for a longer period than two
37 hundred seventy days beyond the time when such rate, charge,
38 classification, regulation or practice would otherwise go into
39 effect; and after full hearing, whether completed before or after
40 the rate, charge, classification, regulation or practice goes into
41 effect, the commission may make such order in reference to such
42 rate, charge, classification, regulation or practice as would be
43 proper in a proceeding initiated after the rate, charge,
44 classification, regulation or practice had become effective:
45 *Provided*, That in the case of a public utility having two
46 thousand five hundred customers or less and which is not a
47 political subdivision and which is not principally owned by any
48 other public utility corporation or public utility holding
49 corporation, the commission may suspend the operation of such
50 schedule and defer the use of such rate, charge, classification,
51 regulation or practice, but not for a longer period than one
52 hundred twenty days beyond the time when such rate, charge,
53 classification, regulation or practice would otherwise go into
54 effect; and in the case of a public utility having more than two
55 thousand five hundred customers, but not more than five
56 thousand customers, and which is not a political subdivision and
57 which is not principally owned by any other public utility
58 corporation or public utility holding corporation, the commission
59 may suspend the operation of such schedule and defer the use of
60 such rate, charge, classification, regulation or practice, but not
61 for a longer period than one hundred fifty days beyond the time
62 when such rate, charge, classification, regulation or practice
63 would otherwise go into effect; and in the case of a public utility
64 having more than five thousand customers, but not more than

65 seven thousand five hundred customers, and which is not a
66 political subdivision and which is not principally owned by any
67 other public utility corporation or public utility holding
68 corporation, the commission may suspend the operation of such
69 schedule and defer the use of such rate, charge, classification,
70 regulation or practice, but not for a longer period than one
71 hundred eighty days beyond the time when such rate, charge,
72 classification, regulation or practice would otherwise go into
73 effect; and after full hearing, whether completed before or after
74 the rate, charge, classification, regulation or practice goes into
75 effect, the commission may make such order in reference to such
76 rate, charge, classification, regulation or practice as would be
77 proper in a proceeding initiated after the rate, charge,
78 classification, regulation or practice had become effective:
79 *Provided, however,* That, in the case of rates established or
80 proposed that increase by less than twenty-five percent of the
81 gross revenue of the regulated public service district, there shall
82 be no suspension period in the case of rates established by a
83 public service district pursuant to section nine, article thirteen-a,
84 chapter sixteen of this code and the proposed rates of public
85 service districts shall go into effect upon the date of filing with
86 the commission, subject to refund modification at the conclusion
87 of the commission proceeding. In the case of rates established or
88 proposed that increase by more than twenty-five percent of the
89 gross revenue of the public service district, the district may
90 apply for, and the commission may grant, a waiver of the
91 suspension period and allow rates to be effective upon the date
92 of filing with the commission. The public service district shall
93 provide notice by Class 1 legal advertisement in a newspaper of
94 general circulation in its service territory of the percentage
95 increase in rates at least fourteen days prior to the effective date
96 of the increased rates. Any refund determined to be determined
97 to be due and owing as a result of any difference between any
98 final rates approved by the commission and the rates placed into
99 effect subject to refund shall be refunded by the public service

100 district as a credit against each customer's account for a period
101 of up to six months after entry of the commission's final order.
102 Any remaining balance which is not fully credited by credit
103 within six months after entry of the commission's final order
104 shall be directly refunded to the customer by check: *Provided*
105 *further*, That if any such hearing and decision thereon is not
106 concluded within the periods of suspension, as above stated,
107 such rate, charge, classification, regulation or practice shall go
108 into effect at the end of such period not subject to refund: *And*
109 *provided further*, That if any such rate, charge, classification,
110 regulation or practice goes into effect because of the failure of
111 the commission to reach a decision, the same shall not preclude
112 the commission from rendering a decision with respect thereto
113 which would disapprove, reduce or modify any such proposed
114 rate, charge, classification, regulation or practice, in whole or in
115 part, but any such disapproval, reduction or modification shall
116 not be deemed to require a refund to the customers of such utility
117 as to any rate, charge, classification, regulation or practice so
118 disapproved, reduced or modified. The fact of any rate, charge,
119 classification, regulation or practice going into effect by reason
120 of the commission's failure to act thereon shall not affect the
121 commission's power and authority to subsequently act with
122 respect to any such application or change in any rate, charge,
123 classification, regulation or practice. Any rate, charge,
124 classification, regulation or practice which shall be approved,
125 disapproved, modified or changed, in whole or in part, by
126 decision of the commission shall remain in effect as so approved,
127 disapproved, modified or changed during the period or pendency
128 of any subsequent hearing thereon or appeal therefrom. Orders
129 of the commission affecting rates, charges, classifications,
130 regulations or practices which have gone into effect
131 automatically at the end of the of the suspension period are
132 prospective in effect.

133 (c) At any hearing involving a rate sought to be increased or
134 involving the change of any rate, charge, classification,

135 regulation or practice, the burden of proof to show the justness
136 and reasonableness of the increased rate or proposed increased
137 rate, or the proposed change of rate, charge, classification,
138 regulation or practice shall be upon the public utility making
139 application for such change. The commission shall, whenever
140 practicable and within budgetary constraints, conduct one or
141 more public hearings within the area served by the public utility
142 making application for such increase or change, for the purpose
143 of obtaining comments and evidence on the matter from local
144 ratepayers.

145 (d) Each public utility subject to the provisions of this
146 section shall be required to establish, in a written report which
147 shall be incorporated into each general rate case application, that
148 it has thoroughly investigated and considered the emerging and
149 state-of-the-art concepts in the utility management, rate design
150 and conservation as reported by the commission under
151 subsection (c), section one, article one of this chapter as
152 alternatives to, or in mitigation of, any rate increase. The utility
153 report shall contain as to each concept considered the reasons for
154 adoption or rejection of each. When in any case pending before
155 the commission all evidence shall have been taken and the
156 hearing completed, the commission shall render a decision in
157 such case. The failure of the commission to render a decision
158 with respect to any such proposed change in any such rate,
159 charge, classification, regulation or practice within the various
160 time periods specified in this section after the application
161 therefor shall constitute neglect of duty on the part of the
162 commission and each member thereof.

163 (e) Where more than twenty members of the public are
164 affected by a proposed change in rates, it shall be a sufficient
165 notice to the public within the meaning of this section if such
166 notice is published as a Class II legal advertisement in
167 compliance with the provisions of article three, chapter fifty-nine
168 of this code and the publication area for such publication shall be

169 the community where the majority of the resident members of
170 the public affected by such change reside or, in case of
171 nonresidents, have their principal place of business within this
172 state.

173 (f) The commission may order rates into effect subject to
174 refund, plus interest in the discretion of the commission, in cases
175 in which the commission determines that a temporary or interim
176 rate increase is necessary for the utility to avoid financial
177 distress, or in which the costs upon which these rates are based
178 are subject to modification by the commission or another
179 regulatory commission and to refund to the public utility. In such
180 case the commission may require such public utility to enter into
181 a bond in an amount deemed by the commission to be reasonable
182 and conditioned upon the refund to the persons or parties entitled
183 thereto of the amount of the excess if such rates so put into effect
184 are subsequently determined to be higher than those finally fixed
185 for such utility.

186 (g) No utility regulated under the provisions of this section
187 may make application for a general rate increase while another
188 general rate application is pending before the commission and
189 not finally acted upon, except pursuant to the provisions of
190 subsection (f) of this section. The provisions of this subsection
191 shall not be construed so as to prohibit any such rate application
192 from being made while a previous application which has been
193 finally acted upon by the commission is pending before or upon
194 appeal to the West Virginia Supreme Court of Appeals.

**§24-2-4b. Procedures for changing rates of electric and natural gas
cooperatives, local exchange services of telephone
cooperatives and municipally operated public utilities.**

1 (a) The rates and charges of electric cooperatives, natural gas
2 cooperatives and municipal water and/or sewer utilities that are
3 political subdivisions of the state with at least four thousand five

4 hundred customers and annual combined gross revenue of less
5 than \$3 million dollars, except for municipally operated
6 commercial solid waste facilities as defined in section two,
7 article fifteen, chapter twenty-two of this code, and the rates and
8 charges for local exchange services provided by telephone
9 cooperatives are not subject to the rate approval provisions of
10 section four or four-a of this article, but are subject to the limited
11 rate provisions of this section.

12 (b) All rates and charges set by electric cooperatives, natural
13 gas cooperatives and municipally operated public utilities that
14 are political subdivisions of the state providing water, sewer,
15 electric and natural gas services and all rates and charges for
16 local exchange services set by telephone cooperatives shall be
17 just, reasonable, applied without unjust discrimination between
18 or preference for any customer or class of customer and based
19 primarily on the costs of providing these services. All rates and
20 charges shall be based upon the measured or reasonably
21 estimated cost of service and the equitable sharing of those costs
22 between customers based upon the cost of providing the service
23 received by the customer, including a reasonable plant-in-service
24 depreciation expense. The rates and charges shall be adopted by
25 the electric, natural gas, telephone cooperative or political
26 subdivision's governing board or body and, in the case of the
27 municipally operated public utility, by municipal ordinance to be
28 effective not sooner than forty-five days after adoption. The 45-
29 day waiting period may be waived by public vote of the
30 governing body if that body finds and declares the public utility
31 that is a political subdivision of the state to be in financial
32 distress such that the 45-day waiting period would be detrimental
33 to the ability of the utility to deliver continued and compliant
34 public services: *Provided*, That notice of intent to effect a rate
35 change shall be specified on the monthly billing statement of the
36 customers of the utility for the month next preceding the month
37 in which the rate change is to become effective and the utility
38 governing body shall give its customers and, in the case of a

39 cooperative, its customers, members and stockholders, other
40 reasonable notices as will allow filing of timely objections to the
41 proposed rate change and full participation in municipal rate
42 legislation through the provision of a public forum in which
43 customers may comment upon the proposed rate change prior to
44 an enactment vote. The rates and charges or ordinance shall be
45 filed with the commission, together with any information
46 showing the basis of the rates and charges and other information
47 as the commission considers necessary. Any change in the rates
48 and charges with updated information shall be filed with the
49 commission. If a petition, as set out in subdivision (1), (2) or (3),
50 subsection (c) of this section, is received and the electric
51 cooperative, natural gas cooperative or telephone cooperative or
52 municipality has failed to file with the commission the rates and
53 charges with information showing the basis of rates and charges
54 and other information as the commission considers necessary,
55 the suspension period limitation of one hundred twenty days and
56 the one hundred-day period limitation for issuance of an order by
57 a hearing examiner, as contained in subsections (d) and (e) of
58 this section, is tolled until the necessary information is filed. The
59 electric cooperative, natural gas cooperative, telephone
60 cooperative or municipality shall set the date when any new rate
61 or charge is to go into effect.

62 (c) The commission shall review and approve or modify the
63 rates and charges of electric cooperatives, natural gas
64 cooperatives, telephone cooperatives, or municipal electric or
65 natural gas utilities and municipally owned water and/or sewer
66 utilities that are political subdivisions of the state and having less
67 than four thousand five hundred customers and \$3 million
68 dollars of annual combined gross revenues upon the filing of a
69 petition within thirty days of the adoption of the ordinance or
70 resolution changing the rates or charges by:

71 (1) Any customer aggrieved by the changed rates or charges
72 who presents to the commission a petition signed by not less

73 than twenty-five percent of the customers served by the
74 municipally operated electric or natural gas public utility or
75 municipally owned water and/or sewer utility having less than
76 four thousand five hundred customers and \$3 million dollars
77 annual combined gross revenues or twenty-five percent of the
78 membership of the electric, natural gas or telephone cooperative
79 residing within the state;

80 (2) Any customer who is served by a municipally owned
81 electric or natural gas public utility and who resides outside the
82 corporate limits and who is affected by the change in the rates or
83 charges and who presents to the commission a petition alleging
84 discrimination between customers within and without the
85 municipal boundaries. The petition shall be accompanied by
86 evidence of discrimination; or

87 (3) Any customer or group of customers of the municipally
88 owned electric or natural gas public utility who is affected by the
89 change in rates who reside within the municipal boundaries and
90 who present a petition to the commission alleging discrimination
91 between a customer or group of customers and other customers
92 of the municipal utility. The petition shall be accompanied by
93 evidence of discrimination.

94 (d) (1) The filing of a petition with the commission signed
95 by not less than twenty-five percent of the customers served by
96 the municipally owned electric or natural gas public utility or a
97 municipally owned water and/or sewer utility having less than
98 four thousand five hundred customers or \$3 million dollars
99 annual combined gross revenues or twenty-five percent of the
100 membership of the electric, natural gas or telephone cooperative
101 residing within the state under subsection (c) of this section shall
102 suspend the adoption of the rate change contained in the
103 ordinance or resolution for a period of one hundred twenty days
104 from the date the rates or charges would otherwise go into effect
105 or until an order is issued as provided herein.

106 (2) Upon sufficient showing of discrimination by customers
107 outside the municipal boundaries or a customer or a group of
108 customers within the municipal boundaries under a petition filed
109 under subdivision (2) or (3), subsection (c) of this section, the
110 commission shall suspend the adoption of the rate change
111 contained in the ordinance for a period of one hundred twenty
112 days from the date the rates or charges would otherwise go into
113 effect or until an order is issued as provided herein. A municipal
114 rate ordinance enacted pursuant to the provisions of this section
115 and municipal charter or state code that establishes or proposes
116 a rate increase that results in an increase of less than twenty-five
117 percent of the gross revenue of the utility shall be presumed
118 valid and rates shall be allowed to go into effect, subject to
119 refund, upon the date stated in that ordinance. In the case of rates
120 established or proposed that increase by more than twenty-five
121 percent of the gross revenue of the municipally operated public
122 utility, the utility may apply for, and the commission may grant,
123 a waiver of the suspension period and allow rates to be effective
124 upon enactment.

125 (e) The commission shall forthwith appoint a hearing
126 examiner from its staff to review the grievances raised by the
127 petitioners. The hearing examiner shall conduct a public hearing
128 and shall, within one hundred days from the date the rates or
129 charges would otherwise go into effect, unless otherwise tolled
130 as provided in subsection (b) of this section, issue an order
131 approving, disapproving or modifying, in whole or in part, the
132 rates or charges imposed by the electric, natural gas or telephone
133 cooperative or by the municipally operated public utility
134 pursuant to this section.

135 (f) Upon receipt of a petition for review of the rates under
136 the provisions of subsection (c) of this section, the commission
137 may exercise the power granted to it under the provisions of
138 section three of this article, consistent with the applicable rate
139 provisions of section twenty, article ten, chapter eight of this

140 code, section four, article nineteen of said chapter and section
141 sixteen, article thirteen, chapter sixteen of this code. The
142 commission may determine the method by which the rates are
143 reviewed and may grant and conduct a de novo hearing on the
144 matter if the customer, electric, natural gas or telephone
145 cooperative or municipality requests a hearing.

146 (g) The commission may, upon petition by an electric,
147 natural gas or telephone cooperative or municipal electric or
148 natural gas public utility or a municipally owned water and/or
149 sewer utility having less than four thousand five hundred
150 customers and \$3 million dollars annual combined gross
151 revenues, allow an interim or emergency rate to take effect,
152 subject to refund or future modification, if it is determined that
153 the interim or emergency rate is necessary to protect the
154 municipality from financial hardship attributable to the purchase
155 of the utility commodity sold, or the commission determines that
156 a temporary or interim rate increase is necessary for the utility to
157 avoid financial distress. In such cases, the commission shall
158 waive the 45-day waiting period provided for in subsection (b)
159 of this section and the one hundred twenty-day suspension
160 period provided for in subsection (d) of this section.

161 (h) The commission shall, upon written request of the
162 governing body of a political subdivision, provide technical
163 assistance to the governing body in its deliberations regarding a
164 proposed rate increase.

165 (i) Notwithstanding any other provision, the commission has
166 no authority or responsibility with regard to the regulation of
167 rates, income, services or contracts by municipally operated
168 public utilities for services which are transmitted and sold
169 outside of the State of West Virginia.

170 (j) Notwithstanding any other provision of this code to the
171 contrary, the jurisdiction of the commission over water and/or

172 sewer utilities that are political subdivisions of the state and
173 having at least four thousand five hundred customers and annual
174 gross combined revenues of \$3 million or more shall be limited
175 to those powers enumerated in subsection (b), section one of this
176 article.

**§24-2-7. Unreasonable, etc., regulations, practices and services;
receivership; procedures respecting receivership;
appointment and compensation of receiver;
liquidation.**

1 (a) Whenever, under the provisions of this chapter, the
2 commission shall find any regulations, measurements, practices,
3 acts or service to be unjust, unreasonable, insufficient or unjustly
4 discriminatory, or otherwise in violation of any provisions of this
5 chapter, or shall find that any service is inadequate, or that any
6 service which is demanded cannot be reasonably obtained, the
7 commission shall determine and declare, and by order fix
8 reasonable measurement, regulations, acts, practices or services,
9 to be furnished, imposed, observed and followed in the state in
10 lieu of those found to be unjust, unreasonable, insufficient, or
11 unjustly discriminatory, inadequate or otherwise in violation of
12 this chapter, and shall make such other order respecting the same
13 as shall be just and reasonable.

14 (b) If the Public Service Commission shall determine that
15 any utility is unable or unwilling to adequately serve its
16 customers or has been actually or effectively abandoned by its
17 owners, or that its management is grossly and willfully
18 inefficient, irresponsible or unresponsive to the needs of its
19 customers, the commission may petition to the circuit court of
20 any county wherein the utility does business for an order
21 attaching the assets of the utility and placing such utility under
22 the sole control and responsibility of a receiver. If the court
23 determines that the petition is proper in all respects and finds,
24 after a hearing thereon, that the allegations contained in the

25 petition are true, it shall grant the same and shall order that the
26 utility be placed in receivership. The court, in its discretion and
27 in consideration of the recommendation of the commission, shall
28 appoint a receiver who shall be a responsible individual,
29 partnership or corporation knowledgeable in public utility affairs
30 and who shall maintain control and responsibility for the running
31 and management of the affairs of the utility. In so doing, the
32 receiver shall operate the utility so as to preserve the assets of
33 the utility and to serve the best interests of its customers. The
34 receiver shall be compensated from the assets of said utility in an
35 amount to be determined by the court.

36 (c) Control of and responsibility for said utility shall remain
37 in the receiver until the same can, in the best interest of the
38 customers, be returned to the owners, transferred to other owners
39 or assumed by another utility or public service corporation:
40 *Provided*, That if the court after hearing, determines that control
41 of and responsibility for the affairs of the utility should not, in
42 the best interests of its customers, be returned to the legal owners
43 thereof, the receiver shall proceed to liquidate the assets of the
44 utility in the manner provided by law.

45 (d) The laws generally applicable to receivership shall
46 govern receiverships created pursuant to this section.

**§24-2-11. Requirements for certificate of public convenience and
necessity.**

1 (a) A public utility, person or corporation other than a
2 political subdivision of the state providing water, sewer and/or
3 stormwater services and having at least four thousand five
4 hundred customers and annual gross combined revenues of \$3
5 million dollars or more may not begin the construction of any
6 plant, equipment, property or facility for furnishing to the public
7 any of the services enumerated in section one, article two of this
8 chapter, nor apply for, nor obtain any franchise, license or permit

9 from any municipality or other governmental agency, except
10 ordinary extensions of existing systems in the usual course of
11 business, unless and until it shall obtain from the Public Service
12 Commission a certificate of public convenience and necessity
13 authorizing such construction franchise, license or permit.

14 (b) Upon the filing of any application for the certificate, and
15 after hearing, the commission may, in its discretion, issue or
16 refuse to issue, or issue in part and refuse in part, the certificate
17 of convenience and necessity: *Provided*, That the commission,
18 after it gives proper notice and if no substantial protest is
19 received within thirty days after the notice is given, may waive
20 formal hearing on the application. Notice shall be given by
21 publication which shall state that a formal hearing may be
22 waived in the absence of substantial protest, made within thirty
23 days, to the application. The notice shall be published as a Class
24 I legal advertisement in compliance with the provisions of article
25 three, chapter fifty-nine of this code. The publication area shall
26 be the proposed area of operation.

27 (c) Any public utility, person or corporation subject to the
28 provisions of this section other than a political subdivision of the
29 state providing water and/or sewer services having at least four
30 thousand five hundred customers and combined annual gross
31 revenue of \$3 million dollars or more shall give the commission
32 at least thirty days' notice of the filing of any application for a
33 certificate of public convenience and necessity under this
34 section: *Provided*, That the commission may modify or waive
35 the thirty-day notice requirement and shall waive the thirty-day
36 notice requirement for projects approved by the Infrastructure
37 and Jobs Development Council.

38 (d) The commission shall render its final decision on any
39 application filed under the provisions of this section or section
40 eleven-a of this article within two hundred seventy days of the
41 filing of the application and within ninety days after final

42 submission of any such application for decision following a
43 hearing: *Provided*, That if the application is for authority to
44 construct a water and sewer project and the projected total cost
45 is less than \$10 million, the commission shall render its final
46 decision within two hundred twenty-five days of the filing of the
47 application.

48 (e) The commission shall render its final decision on any
49 application filed under the provisions of this section that has
50 received the approval of the Infrastructure and Jobs
51 Development Council pursuant to article fifteen-a, chapter thirty-
52 one of this code within one hundred eighty days after filing of
53 the application: *Provided*, That if a substantial protest is received
54 within thirty days after the notice is provided pursuant to
55 subsection (b) of this section, the commission shall render its
56 final decision within two hundred seventy days or two hundred
57 twenty-five days of the filing of the application, whichever is
58 applicable as determined in subsection (d) of this section.

59 (f) If the projected total cost of a project which is the subject
60 of an application filed pursuant to this section or section eleven-a
61 of this article is greater than \$50 million, the commission shall
62 render its final decision on any such application filed under the
63 provisions of this section or section eleven-a of this article
64 within four hundred days of the filing of the application and
65 within ninety days after final submission of any such application
66 for decision after a hearing.

67 (g) If a decision is not rendered within the time frames
68 established in this section, the commission shall issue a
69 certificate of convenience and necessity as applied for in the
70 application.

71 (h) The commission shall prescribe rules as it may deem
72 proper for the enforcement of the provisions of this section; and,
73 in establishing that public convenience and necessity do exist,
74 the burden of proof shall be upon the applicant.

75 (i) Pursuant to the requirements of this section, the
76 commission may issue a certificate of public convenience and
77 necessity to any intrastate pipeline, interstate pipeline or local
78 distribution company for the transportation in intrastate
79 commerce of natural gas used by any person for one or more
80 uses, as defined by rule, by the commission in the case of:

81 (1) Natural gas sold by a producer, pipeline or other seller to
82 the person; or

83 (2) Natural gas produced by the person.

84 (j) A public utility, including a public service district, which
85 has received a certificate of public convenience and necessity
86 after July 8, 2005, from the commission and has been approved
87 by the Infrastructure and Jobs Development Council is not
88 required to, and cannot be compelled to, reopen the proceeding
89 if the cost of the project changes but the change does not affect
90 the rates established for the project.

91 (k) Any public utility, person or corporation proposing any
92 electric power project that requires a certificate under this
93 section is not required to obtain such certificate before applying
94 for or obtaining any franchise, license or permit from any
95 municipality or other governmental agency.

96 (l) Water, sewer and/or stormwater utilities that are political
97 subdivisions of the state and having at least four thousand five
98 hundred customers and combined gross revenues of \$3 million
99 dollars or more desiring to pursue construction projects that are
100 not in the ordinary course of business shall provide notice to
101 both current customers and those citizens who will be affected
102 by the proposed construction as follows:

103 (1) Adequate prior public notice of the contemplated
104 construction by causing a notice of intent to pursue a project that
105 is not in the ordinary course of business to be specified on the

106 monthly billing statement of the customers of the utility for the
107 month next preceding the month in which the contemplated
108 construction is to be before the governing body on first reading.

109 (2) Adequate prior public notice of the contemplated
110 construction by causing to be published as a Class I legal
111 advertisement of the proposed action, in compliance with the
112 provisions of article three, chapter fifty-nine of the code. The
113 publication area for publication shall be all territory served by
114 the district. If the political subdivision provides service in more
115 than one county, publication shall be made in a newspaper of
116 general circulation in each county that the political subdivision
117 provides service.

118 (3) The public notice of the proposed construction shall state
119 the scope of the proposed construction, the current rates, fees
120 and charges, the proposed changes to said rates, fees and
121 charges; the date, time and place of both a public hearing on the
122 proposal and the proposed final vote on adoption; and the place
123 or places within the political subdivision where the proposed
124 construction and the rates, fees and charges may be inspected by
125 the public. A reasonable number of copies of the proposal shall
126 be kept at the place or places and be made available for public
127 inspection. The notice shall also advise that interested parties
128 may appear at the public hearing before the political subdivision
129 and be heard with respect to the proposed construction and the
130 proposed rates, fees and charges.

131 (4) The proposed construction and the proposed rates, fees
132 and charges shall be read at two meetings of the governing body
133 with at least two weeks intervening between each meeting. The
134 public hearing may be conducted with or following the second
135 reading.

136 (5) Enactment of the proposed construction and the proposed
137 rates, fees and charges shall follow an affirmative vote of the

138 governing body and shall be effective no sooner than forty-five
139 days following the action of the governing body. If the political
140 subdivision proposes rates that will go into effect prior than the
141 completion of construction of the proposed project, the 45-day
142 waiting period may be waived by public vote of the governing
143 body only if the political subdivision finds and declares the
144 political subdivision to be in financial distress such that the 45-
145 day waiting period would be detrimental to the ability of the
146 political subdivision to deliver continued and compliant public
147 services: *Provided*, That in no event shall the rate become
148 effective prior to the date that the county commission has
149 entered an order approving the action of the public service
150 district board.

151 (6) Rates, fees and charges approved by an affirmative vote
152 of the public services district board shall be forwarded in writing
153 to the county commission appointing the approving board. The
154 county commission shall, within forty-five days of receipt of the
155 proposed rates, fees and charges, take action to approve or reject
156 the proposed rates, fees and charges. After forty-five days, and
157 absent action by the county commission, the proposed rates, fees
158 and charges shall be effective with no further action by the board
159 or county commission. In any event this 45-day period may be
160 extended by official action of both the board proposing the rates,
161 fees and charges and the appointing county commission.

162 (7) The county commission shall provide notice to the public
163 by a Class I legal advertisement of the proposed action, in
164 compliance with the provisions of article three, chapter fifty-nine
165 of this code, of the meeting where it shall consider the proposed
166 increases in rates, fees and charges no later than one week prior
167 to the meeting date.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC
UTILITIES SUBJECT TO REGULATIONS
OF COMMISSION.**

§24-3-5. Schedule of rates to be filed with commission.

1 Every public utility shall file with the commission, and keep
2 open to public inspection, schedules showing all the rates,
3 charges and tolls for service to be rendered by it or by other
4 persons, firms or corporations in connection with it: *Provided*,
5 That the reports and tariffs filed by interstate carriers with the
6 Public Service Commission may be copies of its reports and
7 tariffs filed with the Interstate Commerce Commission; but
8 nothing herein shall preclude the Public Service Commission
9 from requiring interstate carriers to furnish information bearing
10 upon any complaint or question pending before said Public
11 Service Commission and with which it has a right to deal.

CHAPTER 197

**(S. B. 576 - By Senators Blair, Walters, Williams,
Leonhardt, Facemire, Maynard, Yost, Snyder, Ferns,
Miller, Gaunch, Mullins, Palumbo and Boso)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to internet protocol-enabled service and voice over internet protocol-enabled service; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice over internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 shall extend to all
2 public utilities in this state and shall include any utility engaged
3 in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;
8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline; sleeping
10 car or parlor car services; transmission of messages by
11 telephone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service to
13 the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity, by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems: *Provided*, That if a
17 public utility intends to provide sewer service by an innovative,
18 alternative method, as defined by the federal Environmental
19 Protection Agency, the innovative, alternative method is a public
20 utility function and subject to the jurisdiction of the Public
21 Service Commission regardless of the number of customers
22 served by the innovative, alternative method; any public service
23 district created under the provisions of article thirteen-a, chapter
24 sixteen of this code; toll bridges, wharves, ferries; solid waste
25 facilities; and any other public service: *Provided, however*, That
26 natural gas producers who provide natural gas service to not
27 more than twenty-five residential customers are exempt from the

* **NOTE:** This section was also amended by S. B. 234 (Chapter 196),
which passed subsequent to this act.

28 jurisdiction of the commission with regard to the provisions of
29 such residential service: *Provided further*, That upon request of
30 any of the customers of such natural gas producers, the
31 commission may, upon good cause being shown, exercise such
32 authority as the commission may deem appropriate over the
33 operation, rates and charges of such producer and for such length
34 of time as the commission may consider to be proper: *And*
35 *provided further*, That the jurisdiction the commission may
36 exercise over the rates and charges of municipally operated
37 public utilities is limited to that authority granted the
38 commission in section four-b of this article: *And provided*
39 *further*, That the decision-making authority granted to the
40 commission in sections four and four-a of this article shall, in
41 respect to an application filed by a public service district, be
42 delegated to a single hearing examiner appointed from the
43 commission staff, which hearing examiner shall be authorized to
44 carry out all decision-making duties assigned to the commission
45 by said sections, and to issue orders having the full force and
46 effect of orders of the commission.

47 (b) The commission may, upon application, waive its
48 jurisdiction and allow a utility operating in an adjoining state to
49 provide service in West Virginia when:

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

53 (2) Said area can be provided with utility service by a utility
54 which operates in a state adjoining West Virginia;

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

57 (4) The number of customers to be served is not substantial.
58 The rates the out-of-state utility charges West Virginia

59 customers shall be the same as the rate the utility is duly
60 authorized to charge in the adjoining jurisdiction. The
61 commission, in the case of any such utility, may revoke its
62 waiver of jurisdiction for good cause.

63 (c) Any other provisions of this chapter to the contrary
64 notwithstanding:

65 (1) An owner or operator of an electric generating facility
66 located or to be located in this state that has been designated as
67 an exempt wholesale generator under applicable federal law, or
68 will be so designated prior to commercial operation of the
69 facility, and for which such facility the owner or operator holds
70 a certificate of public convenience and necessity issued by the
71 commission on or before July 1, 2003, shall be subject to
72 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this
73 article as if the certificate of public convenience and necessity
74 for such facility were a siting certificate issued under said
75 section and shall not otherwise be subject to the jurisdiction of
76 the commission or to the provisions of this chapter with respect
77 to such facility except for the making or constructing of a
78 material modification thereof as provided in subdivision (5) of
79 this subsection.

80 (2) Any person, corporation or other entity that intends to
81 construct or construct and operate an electric generating facility
82 to be located in this state that has been designated as an exempt
83 wholesale generator under applicable federal law, or will be so
84 designated prior to commercial operation of the facility, and for
85 which facility the owner or operator does not hold a certificate
86 of public convenience and necessity issued by the commission
87 on or before July 1, 2003, shall, prior to commencement of
88 construction of the facility, obtain a siting certificate from the
89 commission pursuant to the provisions of section eleven-c of this
90 article in lieu of a certificate of public convenience and necessity
91 pursuant to the provisions of section eleven of this article. An

92 owner or operator of an electric generating facility as is
93 described in this subdivision for which a siting certificate has
94 been issued by the commission shall be subject to subsections
95 (e), (f), (g), (h), (i) and (j), section eleven-c of this article and
96 shall not otherwise be subject to the jurisdiction of the
97 commission or to the provisions of this chapter with respect to
98 such facility except for the making or constructing of a material
99 modification thereof as provided in subdivision (5) of this
100 subsection.

101 (3) An owner or operator of an electric generating facility
102 located in this state that had not been designated as an exempt
103 wholesale generator under applicable federal law prior to
104 commercial operation of the facility, that generates electric
105 energy solely for sale at retail outside this state or solely for sale
106 at wholesale in accordance with any applicable federal law that
107 preempts state law or solely for both such sales at retail and such
108 sales at wholesale, and that had been constructed and had
109 engaged in commercial operation on or before July 1, 2003, shall
110 not be subject to the jurisdiction of the commission or to the
111 provisions of this chapter with respect to such facility, regardless
112 of whether such facility subsequent to its construction has been
113 or will be designated as an exempt wholesale generator under
114 applicable federal law: *Provided*, That such owner or operator
115 shall be subject to subdivision (5) of this subsection if a material
116 modification of such facility is made or constructed.

117 (4) Any person, corporation or other entity that intends to
118 construct or construct and operate an electric generating facility
119 to be located in this state that has not been or will not be
120 designated as an exempt wholesale generator under applicable
121 federal law prior to commercial operation of the facility, that
122 will generate electric energy solely for sale at retail outside this
123 state or solely for sale at wholesale in accordance with any
124 applicable federal law that preempts state law or solely for both
125 such sales at retail and such sales at wholesale and that had not

126 been constructed and had not been engaged in commercial
127 operation on or before July 1, 2003, shall, prior to
128 commencement of construction of the facility, obtain a siting
129 certificate from the commission pursuant to the provisions of
130 section eleven-c of this article in lieu of a certificate of public
131 convenience and necessity pursuant to the provisions of section
132 eleven of this article. An owner or operator of an electric
133 generating facility as is described in this subdivision for which
134 a siting certificate has been issued by the commission shall be
135 subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-
136 c of this article and shall not otherwise be subject to the
137 jurisdiction of the commission or to the provisions of this
138 chapter with respect to such facility except for the making or
139 constructing of a material modification thereof as provided in
140 subdivision (5) of this subsection.

141 (5) An owner or operator of an electric generating facility
142 described in this subsection shall, before making or constructing
143 a material modification of the facility that is not within the terms
144 of any certificate of public convenience and necessity or siting
145 certificate previously issued for the facility or an earlier material
146 modification thereof, obtain a siting certificate for the
147 modification from the commission pursuant to the provisions of
148 section eleven-c of this article in lieu of a certificate of public
149 convenience and necessity for the modification pursuant to the
150 provisions of section eleven of this article and, except for the
151 provisions of section eleven-c of this article, shall not otherwise
152 be subject to the jurisdiction of the commission or to the
153 provisions of this chapter with respect to such modification.

154 (6) The commission shall consider an application for a
155 certificate of public convenience and necessity filed pursuant to
156 section eleven of this article to construct an electric generating
157 facility described in this subsection or to make or construct a
158 material modification of such electric generating facility as an
159 application for a siting certificate pursuant to section eleven-c of

160 this article if the application for the certificate of public
161 convenience and necessity was filed with the commission prior
162 to July 1, 2003, and if the commission has not issued a final
163 order thereon as of that date.

164 (7) The limitations on the jurisdiction of the commission
165 over, and on the applicability of the provisions of this chapter to,
166 the owner or operator of an electric generating facility as
167 imposed by, and described in this subsection, shall not be
168 deemed to affect or limit the commission's jurisdiction over
169 contracts or arrangements between the owner or operator of such
170 facility and any affiliated public utility subject to the provisions
171 of this chapter.

172 (d) The commission shall not have jurisdiction of internet
173 protocol-enabled service or voice over internet protocol-enabled
174 service. As used in this subsection:

175 (1) "Internet protocol-enabled service" means any service,
176 capability, functionality or application provided using internet
177 protocol, or any successor protocol, that enables an end user to
178 send or receive a communication in internet protocol format, or
179 any successor format, regardless of whether the communication
180 is voice, data or video.

181 (2) "Voice over internet protocol service" means any service
182 that:

183 (i) Enables real-time two-way voice communications that
184 originate or terminate from the user's location using internet
185 protocol or a successor protocol; and

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

187 (3) The term "voice over internet protocol service" shall
188 include any service that permits users to receive calls that
189 originate on the public-switched telephone network and to
190 terminate calls on the public-switched telephone network.

191 (e) Notwithstanding any other provisions of this article, the
192 commission shall not have jurisdiction to review or approve any
193 transaction involving a telephone company otherwise subject to
194 sections twelve and twelve-a, article two, chapter twenty-four of
195 this code if all entities involved in the transaction are under
196 common ownership.

CHAPTER 198

(Com. Sub. for S. B. 390 - By Senator Trump)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1k, relating to additional duties of the Public Service Commission; authorizing commission to approve expedited cost recovery of natural gas utility infrastructure projects deemed just and reasonable and in the public interest; making findings; establishing application and hearing process; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-1k, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.

§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.

1 (a) The Legislature hereby finds that:

2 (1) West Virginia is rich in energy resources, which provide
3 many advantages to the state, its economy and its citizens;

4 (2) West Virginia is experiencing significant growth in the
5 natural gas industry with the development of the Marcellus and
6 Utica shale;

7 (3) West Virginia's abundant natural gas reserves have
8 created, and will continue to create, many benefits to the state
9 and its citizens;

10 (4) Growth in the natural gas industry and its accompanying
11 benefits require West Virginia to be proactive and increase the
12 focus on the natural gas infrastructure in this state in order for
13 those benefits to flow to the state and its citizens, including those
14 citizens in areas unserved or underserved by natural gas utilities;

15 (5) A comprehensive program of replacing, upgrading and
16 expanding infrastructure by natural gas utilities at reasonable
17 cost to ratepayers will benefit the customers of the natural gas
18 utilities, the public in West Virginia and the economy of the
19 state, as a whole;

20 (6) A natural gas utility infrastructure program will create
21 jobs, provide for continued and enhanced safety and reliability
22 of aging natural gas infrastructure, provide for more economic
23 natural gas utility service, and provide natural gas utility service
24 to new customers in areas of the state that are unserved or
25 underserved; and

26 (7) Natural gas utility infrastructure programs involve the
27 investment of capital and the incurrence of associated
28 incremental costs. Accordingly, in order for the natural gas
29 utility undertaking those infrastructure programs to attract the
30 necessary capital, the natural gas utility should be permitted to
31 recover the incremental rate of return, related income taxes,
32 depreciation and property taxes associated with the infrastructure

33 programs commencing with the implementation of an
34 infrastructure program approved by the commission without
35 waiting for a full base rate tariff filing as more fully described in
36 subsection (f) of this section.

37 (b) Natural gas utilities may file with the commission an
38 application for a multi-year comprehensive plan for
39 infrastructure replacements, upgrades and extensions. Subject to
40 commission review and approval, a plan may be amended and
41 updated by the natural gas utility as circumstances warrant. The
42 recovery of costs in support of the plans shall be allowed in the
43 manner set forth in this section if the proposed plans have been
44 found to be prudent and useful.

45 (c) The application is in lieu of a proceeding pursuant to
46 section eleven of this article and shall contain the following:

47 (1) A description of the infrastructure program, in such detail
48 as the commission prescribes, and the projected annual amount
49 (in approximate line sizes and feet), general location, type, and
50 projected installation timing of the facilities that the applicant
51 proposes to replace, construct and/or improve;

52 (2) The projected net cost, on an annual basis, of the
53 replacement, construction or improvements;

54 (3) The projected starting date for the infrastructure
55 program;

56 (4) The projected numbers of potential new customers, if
57 any, that may be served by the infrastructure program and the
58 projected annual load of the customers;

59 (5) The projected cost of debt for the infrastructure program
60 funding and the projected capital structure for infrastructure
61 program funding;

62 (6) Testimony, exhibits or other evidence that demonstrates
63 the need for the replacement, construction or improvement of
64 facilities in order to provide and maintain adequate, efficient,
65 safe, reliable and reasonable natural gas service;

66 (7) A proposed cost recovery mechanism consistent with this
67 section; and

68 (8) Other information the applicant considers relevant or the
69 commission requires.

70 (d) Upon filing of the application, the applicant shall
71 publish, in the form the commission directs, which form shall
72 include, but not be limited to, the anticipated rates and, if any,
73 rate increase under the proposal, by average percentage and
74 dollar amount for customers within a class of service, as a Class
75 I legal advertisement in compliance with the provisions of article
76 three, chapter fifty-nine of this code, the publication area to be
77 each county in which service is provided by the natural gas
78 utility, a notice of the filing of the application and that the
79 commission shall hold a hearing on the application within ninety
80 days of the notice; unless no opposition to the rate change is
81 received by the Public Service Commission within one week of
82 the proposed hearing date, in which case the hearing can be
83 waived, and issue a final order within one hundred fifty days of
84 the application filing date. However, if the proposed
85 infrastructure program includes a request for extension of
86 infrastructure into an unserved area and another natural gas
87 utility files to extend service to the same area, the commission
88 may move that extension request of each natural gas utility into
89 separate proceedings to be considered concurrently and extend
90 the time period for issuing a final order on that portion of the
91 proposed programs beyond the one hundred fifty days.

92 (e) Upon notice and hearing, if required by the commission,
93 the commission shall approve the infrastructure program and

94 allow expedited recovery of costs related to the expenditures as
95 provided in subsection (f) of this section if the commission finds
96 that the expenditures and the associated rate requirements are
97 just, reasonable, not contrary to the public interest and will allow
98 for the provision and maintenance of adequate, efficient, safe,
99 reliable and reasonably priced natural gas service.

100 (f) Upon commission approval, natural gas utilities will be
101 authorized to implement the infrastructure programs and to
102 recover related incremental costs, net of contributions to
103 recovery of return and depreciation and property tax expenses
104 directly attributable to the infrastructure program provided by
105 new customers served by the infrastructure program investments,
106 if any, as provided in the following:

107 (1) An allowance for return shall be calculated by applying
108 a rate of return to the average planned net incremental increase
109 to rate base attributable to the infrastructure program for the
110 coming year, considering the projected amount and timing of
111 expenditures under the infrastructure program plus any
112 expenditures in previous years of the infrastructure program. The
113 rate of return shall be determined by utilizing the rate of return
114 on equity authorized by the commission in the natural gas
115 utility's most recent rate case proceeding or in the case of a
116 settled rate case, a rate of return on equity as determined by the
117 commission, and the projected cost of the natural gas utility's
118 debt during the period of the infrastructure program to determine
119 the weighted cost of capital based upon the natural gas utility's
120 capital structure.

121 (2) Income taxes applicable to the return allowed on the
122 infrastructure program shall be calculated for inclusion in rates.

123 (3) Incremental depreciation and property tax expenses
124 directly attributable to the infrastructure program shall be
125 estimated for the upcoming year.

126 (4) Following commission approval of its infrastructure
127 program, a natural gas utility shall place into effect rates that
128 include an increment that recovers the allowance for return,
129 related income taxes, depreciation and property tax expenses
130 associated with the natural gas utility's estimated infrastructure
131 program investments for the upcoming year, net of contributions
132 to recovery of those incremental costs provided by new
133 customers served by the infrastructure program investments, if
134 any, ("incremental cost recovery increment"). In each year
135 subsequent to the order approving the infrastructure program and
136 an incremental cost recovery increment, the natural gas utility
137 shall file a petition with the commission setting forth a new
138 proposed incremental cost recovery increment based on
139 investments to be made in the subsequent year, plus any
140 under-recovery or minus any over-recovery of actual incremental
141 costs attributable to the infrastructure program investments, for
142 the preceding year.

143 (g) The natural gas utility may make any accounting accruals
144 necessary to establish a regulatory asset or liability through
145 which actual incremental costs incurred and costs recovered
146 through the rate mechanism are tracked.

147 (h) Natural gas utilities may defer incremental operation and
148 maintenance expenditures attributable to regulatory and
149 compliance-related requirements introduced after the natural gas
150 utility's last rate case proceeding and not included in the natural
151 gas utility's current base rates. In a future rate case, the
152 commission may allow recovery of the deferred costs amortized
153 over a reasonable period of time to be determined by the
154 commission provided the commission finds that the costs were
155 reasonable and prudently incurred and were not reflected in rates
156 in prior rate cases.

CHAPTER 199

**(H. B. 2632 - By Delegate(s) Westfall, Pasdon,
Hamrick, Ambler, Cooper, Upson, Statler, Kurcaba, Duke,
Rohrbach and Espinosa)**

[Passed March 11, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-3-3 of said code; to amend and reenact §18-2E-7 of said code; and to amend and reenact §18-9A-10 of said code, all relating to purchasing guidelines; exempting the West Virginia State Police Forensics Laboratory and the West Virginia Office of Laboratory Services from state purchasing guidelines; exempting procurement of instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services for use in and in support of public schools; exempting procurement of these items from division of purchasing requirements; removing outdated language and updating name of state technology plan; requiring the State Board of Education to define “equitable distribution”; requiring certain technology tools to adhere to state contract prices; adding personalized learning as potential student use for technology; providing for technology system specialists; and removing expired transitional funding language and references to the twenty-first century.

Be it enacted by the Legislature of West Virginia:

That §5A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5A-3-3 of said code be amended and reenacted; that §18-2E-7 of said code be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**ARTICLE 3. PURCHASING DIVISION.****§5A-3-1. Division created; purpose; director; applicability of article; continuation.**

1 (a) The Purchasing Division within the Department of
2 Administration is continued. The underlying purposes and
3 policies of the Purchasing Division are:

4 (1) To establish centralized offices to provide purchasing
5 and travel services to the various state agencies;

6 (2) To simplify, clarify and modernize the law governing
7 procurement by this state;

8 (3) To permit the continued development of procurement
9 policies and practices;

10 (4) To make as consistent as possible the procurement rules
11 and practices among the various spending units;

12 (5) To provide for increased public confidence in the
13 procedures followed in public procurement;

14 (6) To ensure the fair and equitable treatment of all persons
15 who deal with the procurement system of this state;

16 (7) To provide increased economy in procurement activities
17 and to maximize to the fullest extent practicable the purchasing
18 value of public funds;

19 (8) To foster effective broad-based competition within the
20 free enterprise system;

21 (9) To provide safeguards for the maintenance of a
22 procurement system of quality and integrity; and

23 (10) To obtain in a cost-effective and responsive manner the
24 commodities and services required by spending units in order for
25 those spending units to better serve this state's businesses and
26 residents.

27 (b) The Director of the Purchasing Division shall, at the time
28 of appointment:

29 (1) Be a graduate of an accredited college or university; and

30 (2) Have spent a minimum of ten of the fifteen years
31 immediately preceding his or her appointment employed in an
32 executive capacity in purchasing for any unit of government or
33 for any business, commercial or industrial enterprise.

34 (c) The provisions of this article apply to all of the spending
35 units of state government, except as otherwise provided by this
36 article or by law.

37 (d) The provisions of this article do not apply to the judicial
38 branch, the West Virginia State Police Forensics Laboratory, the
39 West Virginia Office of Laboratory Services, the legislative
40 branch, to purchases of stock made by the Alcohol Beverage
41 Control Commissioner and to purchases of textbooks,
42 instructional materials, digital content resources, instructional
43 technology, hardware, software, telecommunications and
44 technical services by the State Board of Education for use in and
45 in support of the public schools.

46 (e) The provisions of this article apply to every expenditure
47 of public funds by a spending unit for commodities and services
48 irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the
2 secretary, shall be the executive officer of the Purchasing
3 Division and shall have the power and duty to:

- 4 (1) Direct the activities and employees of the Purchasing
5 Division;
- 6 (2) Ensure that the purchase of or contract for commodities
7 and services shall be based, whenever possible, on competitive
8 bid;
- 9 (3) Purchase or contract for, in the name of the state, the
10 commodities, services and printing required by the spending
11 units of the state government;
- 12 (4) Apply and enforce standard specifications established in
13 accordance with section five of this article as hereinafter
14 provided;
- 15 (5) Transfer to or between spending units or sell
16 commodities that are surplus, obsolete or unused as hereinafter
17 provided;
- 18 (6) Have charge of central storerooms for the supply of
19 spending units, as the director deems advisable;
- 20 (7) Establish and maintain a laboratory for the testing of
21 commodities and make use of existing facilities in state
22 institutions for that purpose as hereinafter provided, as the
23 director deems advisable;
- 24 (8) Suspend the right and privilege of a vendor to bid on
25 state purchases when the director has evidence that such vendor
26 has violated any of the provisions of the purchasing law or the
27 rules and regulations of the director;
- 28 (9) Examine the provisions and terms of every contract
29 entered into for and on behalf of the State of West Virginia that
30 impose any obligation upon the state to pay any sums of money
31 for commodities or services and approve each such contract as
32 to such provisions and terms; and the duty of examination and

33 approval herein set forth does not supersede the responsibility
34 and duty of the Attorney General to approve such contracts as to
35 form: *Provided*, That the provisions of this subdivision do not
36 apply in any respect whatever to construction or repair contracts
37 entered into by the Division of Highways of the Department of
38 Transportation: *Provided, however*, That the provisions of this
39 subdivision do not apply in any respect whatever to contracts
40 entered into by the University of West Virginia Board of
41 Trustees or by the Board of Directors of the State College
42 System, except to the extent that such boards request the
43 facilities and services of the director under the provisions of this
44 subdivision: *Provided further*, That the provisions of this
45 subdivision do not apply to the West Virginia State Police
46 Forensic Laboratory and the West Virginia Office of Laboratory
47 Services;

48 (10) Assure that the specifications and descriptions in all
49 solicitations are prepared so as to provide all potential
50 suppliers-vendors who can meet the requirements of the state an
51 opportunity to bid and to assure that the specifications and
52 descriptions do not favor a particular brand or vendor. If the
53 director determines that any such specifications or descriptions
54 as written favor a particular brand or vendor or if it is decided,
55 either before or after the bids are opened, that a commodity or
56 service having different specifications or quality or in different
57 quantity can be bought, the director may rewrite the solicitation
58 and the matter shall be rebid; and

59 (11) Issue a notice to cease and desist to a spending unit
60 when the director has credible evidence that a spending unit has
61 violated competitive bidding or other requirements established
62 by this article and the rules promulgated hereunder. Failure to
63 abide by such notice may result in penalties set forth in section
64 seventeen of this article.

CHAPTER 18. EDUCATION.**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.****§18-2E-7. Providing for instruction and learning in all public schools.**

1 (a) The Legislature finds that:

2 (1) The knowledge and skills children need to succeed are
3 changing dramatically and that West Virginia students must
4 develop proficiency in the subject matter content, technology
5 tools and learning skills to succeed and prosper in life, in school
6 and on the job;

7 (2) Students must be equipped to live in a multitasking,
8 multifaceted, technology-driven world;

9 (3) The provision technologies and software resources in
10 grades prekindergarten through twelve is necessary to meet the
11 goal that high school graduates will be prepared fully for college,
12 other post-secondary education or gainful employment;

13 (4) This goal reflects a fundamental belief that the youth of
14 the state exit the system equipped with the skills, competencies
15 and attributes necessary to succeed, to continue learning
16 throughout their lifetimes and to attain self-sufficiency;

17 (5) To promote learning, teachers must be competent in
18 content and learning skills and must be equipped to fully
19 integrate technology to transform instructional practice and to
20 support skills acquisition;

21 (6) For students to learn technology skills, students and
22 teachers must have equitable access to high quality, technology
23 tools and resources;

24 (7) When aligned with standards and curriculum,
25 technology-based assessments can be a powerful tool for
26 teachers; and

27 (8) Teachers must understand how to use technology to
28 create classroom assessments for accurate, timely measurements
29 of student proficiency in attainment of academic content.

30 (b) The state board shall ensure that the resources to be used
31 to provide technology services to students in grades
32 prekindergarten through twelve are included in a West Virginia
33 Strategic Technology Learning Plan to be developed by the
34 Department of Education as an integral component of the county
35 electronic strategic improvement plan required in section five of
36 this article. The provision of technologies and services to
37 students and teachers shall be based on a county technology plan
38 developed by a team that includes school building-level
39 professional educators and is aligned with the goals and
40 objectives of the West Virginia Strategic Technology Learning
41 Plan. This plan shall be an integral component of the county
42 electronic strategic improvement plan as required in section five
43 of this article. Funds shall be allocated equitably to county
44 school systems following peer review of the plans that includes
45 providing necessary technical assistance prior to submission and
46 allows timely review and approval by the West Virginia
47 Department of Education. Equitable allocation shall be defined
48 by the state board and may include per school-site equity for
49 technologies requiring a site license or other per school
50 application. Technology tools purchased from appropriations for
51 this section shall adhere to state contract prices: *Provided*, That
52 contingent upon approval of the county technology plan,
53 counties that identify, within that plan, specific software or
54 peripheral equipment not listed on the state contract, but
55 necessary to support implementation, may request the West
56 Virginia Department of Education to secure state purchasing
57 prices for those identified items. Total expenditure to purchase

58 these additional items may not exceed ten percent of the annual
59 county allocation. To the extent practicable, the technology shall
60 be used:

61 (1) To maximize student access to learning tools and
62 resources at all times including during regular school hours,
63 before and after school or class, in the evenings, on weekends
64 and holidays and for public education, noninstructional days and
65 during vacations; and

66 (2) For student use for homework, remedial work,
67 personalized learning, independent learning, career planning and
68 adult basic education.

69 (c) The implementation of this section should provide a
70 technology infrastructure capable of supporting multiple
71 technology-based learning strategies designed to enable students
72 to achieve at higher academic levels. The technology
73 infrastructure should facilitate student development by
74 addressing the following areas:

75 (1) Mastery of rigorous core academic subjects in grades
76 prekindergarten through eight by providing software, other
77 technology resources or both aligned with state standards in
78 reading, mathematics, writing, science, social studies and
79 learning tools;

80 (2) Mastery of rigorous core academic subjects in grades
81 nine through twelve by providing appropriate technology tools
82 aligned with state standards for learning skills and technology
83 tools;

84 (3) Attainment of skill outcomes for all students in the use
85 of technology tools and learning skills;

86 (4) Proficiency in new, emerging content;

87 (5) Participation in relevant, contextual instruction that uses
88 dynamic, real-world contexts that are engaging and meaningful
89 for students, making learning relevant to life outside of school
90 and bridging the gap between how students live and how they
91 learn in school;

92 (6) Ability to use digital and emerging technologies to
93 manage information, communicate effectively, think critically,
94 solve problems, work productively as an individual and
95 collaboratively as part of a team and demonstrate personal
96 accountability and other self-directional skills;

97 (7) Providing students with information on post-secondary
98 educational opportunities, financial aid and the skills and
99 credentials required in various occupations that will help them
100 better prepare for a successful transition following high school;

101 (8) Providing greater access to advanced and other curricular
102 offerings than could be provided efficiently through traditional
103 on-site delivery formats, including increasing student access to
104 quality distance learning curricula and online distance education
105 tools;

106 (9) Providing resources for teachers in differentiated
107 instructional strategies, technology integration, sample lesson
108 plans, curriculum resources and online staff development that
109 enhance student achievement; and

110 (10) Providing resources to support basic skills acquisition
111 and improvement at the above mastery and distinguished levels.

112 (d) Developed with input from appropriate stakeholder
113 groups, the West Virginia Strategic Technology Learning Plan
114 shall be an integral component of the electronic strategic county
115 improvement plan as required in section five of this article. The
116 West Virginia Strategic Technology Learning Plan shall be

117 comprehensive and shall address, but not necessarily be limited
118 to, the following provisions:

119 (1) Allocation of adequate resources to provide students with
120 equitable access to technology tools, including instructional
121 offerings and appropriate curriculum, assessment and technology
122 integration resources aligned to both the content and rigor of
123 state content standards as well as to learning skills and
124 technology tools;

125 (2) Providing students and staff with equitable access to a
126 technology infrastructure that supports the acquisition of skills
127 in the use of technology, including the ability to access
128 information, solve problems, communicate clearly, make
129 informed decisions, acquire new knowledge, construct products,
130 reports and systems and access online assessment systems;

131 (3) Inclusion of various technologies that enable and
132 enhance the attainment of the skills outcomes for all students;

133 (4) Collaboration with various partners, including parents,
134 community organization, higher education, schools of education
135 in colleges and universities, employers and content providers;

136 (5) Seeking of applicable federal government funds,
137 philanthropic funds, other partnership funds or any combination
138 of those types of funds to augment state appropriations and
139 encouraging the pursuit of funding through grants, gifts,
140 donations or any other sources for uses related to education
141 technology;

142 (6) Sufficient bandwidth to support teaching and learning
143 and to provide satisfactorily for instructional management needs;

144 (7) Protection of the integrity and security of the network, as
145 well as student and administrative workstations;

146 (8) Flexibility to adjust the plan based on developing
147 technology, federal and state requirements and changing local
148 school and county needs;

149 (9) Incorporation of findings based upon validation from
150 research-based evaluation findings from previous West
151 Virginia-based evaluation projects;

152 (10) Continuing study of emerging technologies for
153 application in a learning environment and inclusion in the
154 technology plan, as appropriate;

155 (11) An evaluation component to determine the effectiveness
156 of the program and make recommendations for ongoing
157 implementation;

158 (12) A program of embedded, sustained professional
159 development for teachers that is strategically developed to
160 support a thorough and efficient education for all students and
161 that aligns with state standards for technology, integrates
162 technology skills into educational practice and supports the
163 implementation of software, technology and assessment
164 resources in the classroom;

165 (13) Providing for uniformity in technological hardware and
166 software standards and procedures;

167 (14) The strategy for ensuring that the capabilities and
168 capacities of the technology infrastructure is adequate for
169 acceptable performance of the technology being implemented in
170 the public schools;

171 (15) Providing for a comprehensive, statewide uniform,
172 integrated education management and information system for
173 data collection and reporting to the Department of Education and
174 the public;

175 (16) Providing for an effective model for the distance
176 delivery, virtual delivery or both types of delivery of instruction
177 in subjects where there exists low student enrollment or a
178 shortage of certified teachers or where the delivery method
179 substantially improves the quality of an instructional program
180 such as the West Virginia Virtual School;

181 (17) Providing a strategy to implement, support and maintain
182 technology in the public schools;

183 (18) Providing a strategy to provide ongoing support and
184 assistance to teachers in integrating technology into instruction
185 such as with technology integration specialists and technology
186 system specialists;

187 (19) A method of allowing public education to take
188 advantage of appropriate bulk purchasing abilities and to
189 purchase from competitively bid contracts initiated through the
190 southern regional education board educational technology
191 cooperative and the America TelEdCommunications Alliance;

192 (20) Compliance with United States Department of
193 Education regulations and Federal Communications Commission
194 requirements for federal E-rate discounts; and

195 (21) Other provisions as considered appropriate, necessary
196 or both to align with applicable guidelines, policies, rules,
197 regulations and requirements of the West Virginia Legislature,
198 the Board of Education and the Department of Education.

199 (e) Any state code and budget references to the Basic
200 Skills/Computer Education Program and the SUCCESS Initiative
201 will be understood to refer to the statewide technology initiative
202 referenced in this section, commonly referred to as the 21st
203 Century Tools for 21st Century Schools Technology Initiative.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) The total allowance to improve instructional programs
2 shall be the sum of the following:

3 (1) For instructional improvement, in accordance with
4 county and school electronic strategic improvement plans
5 required by section five, article two-e of this chapter, an amount
6 equal to ten percent of the increase in the local share amount for
7 the next school year above any required allocation pursuant to
8 section six-b of this article shall be added to the amount of the
9 appropriation for this purpose for the immediately preceding
10 school year. The sum of these amounts shall be distributed to the
11 counties as follows:

12 (A) One hundred fifty thousand dollars shall be allocated to
13 each county; and

14 (B) Distribution to the counties of the remainder of these
15 funds shall be made proportional to the average of each county's
16 average daily attendance for the preceding year and the county's
17 second month net enrollment.

18 Moneys allocated by provision of this subdivision shall be
19 used to improve instructional programs according to the county
20 and school strategic improvement plans required by section five,
21 article two-e of this chapter and approved by the state board:
22 *Provided*, That notwithstanding any other provision of this code
23 to the contrary, moneys allocated by provision of this section
24 also may be used in the implementation and maintenance of the
25 uniform integrated regional computer information system.

26 Up to twenty-five percent of this allocation may be used to
27 employ professional educators and service personnel in counties

28 after all applicable provisions of sections four and five of this
29 article have been fully utilized.

30 Prior to the use of any funds from this subdivision for
31 personnel costs, the county board must receive authorization
32 from the state superintendent. The state superintendent shall
33 require the county board to demonstrate: (1) The need for the
34 allocation; (2) efficiency and fiscal responsibility in staffing; (3)
35 sharing of services with adjoining counties and the regional
36 educational service agency for that county in the use of the total
37 local district board budget; and (4) employment of technology
38 integration specialists to meet the needs for implementation of
39 the West Virginia Strategic Technology Learning Plan. County
40 boards shall make application for the use of funds for personnel
41 for the next fiscal year by May 1 of each year. On or before June
42 1, the state superintendent shall review all applications and
43 notify applying county boards of the approval or disapproval of
44 the use of funds for personnel during the fiscal year appropriate.
45 The state superintendent shall require the county board to
46 demonstrate the need for an allocation for personnel based upon
47 the county's inability to meet the requirements of state law or
48 state board policy.

49 The provisions relating to the use of any funds from this
50 subdivision for personnel costs are subject to the following: (1)
51 The funds available for personnel under this subsection may not
52 be used to increase the total number of professional
53 noninstructional personnel in the central office beyond four; and
54 (2) For the school year beginning July 1, 2013, and thereafter,
55 any funds available to a county for use for personnel under this
56 subsection above the amount available for the 2012-2013 school
57 year, only may be used for technology systems specialists until
58 the state superintendent determines that the county has sufficient
59 technology systems specialists to serve the needs of the county.

60 The plan shall be made available for distribution to the
61 public at the office of each affected county board; plus

62 (2) For the purposes of improving instructional technology,
63 an amount equal to twenty percent of the increase in the local
64 share amount for the next school year above any required
65 allocation pursuant to section six-b of this article shall be added
66 to the amount of the appropriation for this purpose for the
67 immediately preceding school year. The sum of these amounts
68 shall be distributed to the counties as follows:

69 (A) Thirty thousand dollars shall be allocated to each county;
70 and

71 (B) Distribution to the counties of the remainder of these
72 funds shall be made proportional to the average of each county's
73 average daily attendance for the preceding year and the county's
74 second month net enrollment.

75 Effective July 1, 2014, moneys allocated by provision of this
76 subdivision shall be used to improve instructional technology
77 programs according to the county and school strategic
78 improvement plans; plus

79 (3) One percent of the state average per pupil state aid
80 multiplied by the number of students enrolled in dual credit,
81 advanced placement and international baccalaureate courses, as
82 defined by the state board, distributed to the counties
83 proportionate to enrollment in these courses in each county; plus

84 (4) An amount not less than the amount required to meet
85 debt service requirements on any revenue bonds issued prior to
86 January 1, 1994, and the debt service requirements on any
87 revenue bonds issued for the purpose of refunding revenue bonds
88 issued prior to January 1, 1994, shall be paid into the School
89 Building Capital Improvements Fund created by section six,
90 article nine-d of this chapter and shall be used solely for the
91 purposes of that article. The School Building Capital
92 Improvements Fund shall not be utilized to meet the debt
93 services requirement on any revenue bonds or revenue refunding

94 bonds for which moneys contained within the School Building
95 Debt Service Fund have been pledged for repayment pursuant to
96 that section.

97 (b) When the school improvement bonds secured by funds
98 from the School Building Capital Improvements Fund mature,
99 the state Board of Education shall annually deposit an amount
100 equal to \$24,000,000 from the funds allocated in this section into
101 the School Construction Fund created pursuant to the provisions
102 of section six, article nine-d of this chapter to continue funding
103 school facility construction and improvements.

104 (c) Any project funded by the School Building Authority
105 shall be in accordance with a comprehensive educational facility
106 plan which must be approved by the state board and the School
107 Building Authority.

CHAPTER 200

(S. B. 412 - By Senator Blair)

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

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §30-40-20 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Commission; licenses issued by commission; establishing time limitations on filing complaints of unprofessional conduct against a licensee; and tolling the time limits during criminal investigations and prosecutions.

Be it enacted by the Legislature of West Virginia:

That §30-40-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**§30-40-20. Complaints; investigation.**

1 (a) The commission may upon its own motion and shall
2 upon the filing of a complaint setting forth a cause of action
3 under this article, or the rules promulgated thereunder, ascertain
4 the facts and if warranted hold a hearing for the suspension or
5 revocation of a license, or the imposition of sanctions against a
6 licensee: *Provided*, That no disciplinary action may be brought
7 against a licensee upon any complaint that is filed more than two
8 years after the acts or omissions alleged in the complaint or,
9 where the licensee is alleged to have engaged in fraud, deceit or
10 misrepresentation, more than two years after the date at which
11 the complainant discovered, or through reasonable diligence
12 should have discovered, the alleged unprofessional conduct.
13 Time limits for the filing of a complaint shall be tolled during
14 any period in which material evidence necessary for the
15 commission's evaluation or use is unavailable to the commission
16 due to an ongoing criminal investigation or prosecution.

17 (b) All complaints must be submitted in writing and must
18 fully describe the acts or omissions constituting the alleged
19 unprofessional conduct.

20 (c) Upon initiation or receipt of the complaint, the
21 commission shall provide a copy of the complaint to the licensee
22 for his or her response to the allegations contained in the
23 complaint. The accused party shall file an answer within twenty
24 days of the date of service. Failure of the licensee to file a timely
25 response may be considered an admission of the allegations in
26 the complaint: *Provided*, That nothing contained herein shall
27 prohibit the accused party from obtaining an extension of time
28 to file a response, if the commission, its executive director or
29 other authorized representative permits the extension.

30 (d) The commission may cause an investigation to be made
31 into the facts and circumstances giving rise to the complaint and
32 any person licensed by the commission has an affirmative duty
33 to assist the commission, or its authorized representative, in the
34 conduct of its investigation.

35 (e) After receiving the licensee's response and reviewing any
36 information obtained through investigation, the commission
37 shall determine if probable cause exists that the licensee has
38 violated any provision of this article or the rules.

39 (f) If a determination that probable cause exists for
40 disciplinary action, the commission may hold a hearing in
41 compliance with section twenty-one of this article or may
42 dispose of the matter informally through a consent agreement or
43 otherwise.

CHAPTER 201

**(S. B. 454 - By Senators Prezioso, Beach,
D. Hall, Kessler, Leonhardt, Plymale, Walters, Woelfel,
Facemire and Stollings)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §47-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all relating to trademark counterfeiting and forfeiture; defining terms; creating crime of misdemeanor trademark counterfeiting; creating crime of felony trademark counterfeiting; providing penalties; and providing for seizure, forfeiture and disposal of property used or obtained in furtherance of violations.

Be it enacted by the Legislature of West Virginia:

That §47-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all to read as follows:

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.

1 As used in this article:

2 (1) The term “trademark” means any word, name, symbol or
3 device or any combination thereof used by a person to identify
4 and distinguish the goods of such person, including a unique
5 product, from those manufactured and sold by others, and to
6 indicate the source of the goods, even if that source is unknown.

7 (2) The term “service mark” means any word, name, symbol
8 or device or any combination thereof used by a person to identify
9 and distinguish the services of one person, including a unique
10 service, from the services of others, and to indicate the source of
11 the services, even if that source is unknown. Titles, character
12 names used by a person, and other distinctive features of radio
13 or television programs may be registered as service marks
14 notwithstanding that they, or the programs, may advertise the
15 goods of the sponsor.

16 (3) The term “mark” includes any trademark or service
17 mark, entitled to registration under this article whether registered
18 or not.

19 (4) The term “trade name” means any name used by a person
20 to identify a business or vocation of such person.

21 (5) The term “person” and any other word or term used to
22 designate the applicant or other party entitled to a benefit or

23 privilege or rendered liable under the provisions of this article
24 includes a juristic person as well as a natural person. The term
25 “juristic person” includes a firm, partnership, corporation, union,
26 association or other organization capable of suing and being sued
27 in a court of law.

28 (6) The term “applicant” embraces the person filing an
29 application for registration of a mark under this article, and the
30 legal representatives, successors or assigns of such person.

31 (7) The term “registrant” as used herein embraces the person
32 to whom the registration of a mark under this article is issued,
33 and the legal representatives, successors or assigns of such
34 person.

35 (8) The term “use” means the bona fide use of a mark in the
36 ordinary course of trade, and not made merely to reserve a right
37 in a mark. For the purposes of this article, a mark shall be
38 deemed to be in use: (A) On goods when it is placed in any
39 manner on the goods or other containers or the displays
40 associated therewith or on the tags or labels affixed thereto, or if
41 the nature of the goods makes such placement impracticable,
42 then on documents associated with the goods or their sale, and
43 the goods are sold or transported in commerce in this state; and
44 (B) on services when it is used or displayed in the sale or
45 advertising of services and the services are rendered in this state.

46 (9) A mark shall be deemed to be “abandoned” when either
47 of the following occurs:

48 (A) When its use has been discontinued with intent not to
49 resume such use. Intent not to resume may be inferred from
50 circumstances. Nonuse for two consecutive years shall constitute
51 prima facie evidence of abandonment.

52 (B) When any course of conduct of the owner, including acts
53 of omission as well as commission, causes the mark to lose its
54 significance as a mark.

55 (10) The term “secretary” means the Secretary of State or the
56 designee of the secretary charged with the administration of this
57 article.

58 (11) The term “dilution” means the lessening of the capacity
59 of registrant’s mark to identify and distinguish goods or services,
60 regardless of the presence or absence of: (A) Competition
61 between the parties; or (B) likelihood of confusion, mistake or
62 deception.

63 (12) “Retail value” means:

64 (A) For items that bear a counterfeit mark and are
65 components of a finished product, the regular selling price of the
66 finished product in which the component would be utilized.

67 (B) For items that bear a counterfeit mark other than items
68 described in paragraph (A) of this subdivision and for services
69 that are identified by a counterfeit mark, the regular selling price
70 of the item or service.

§47-2-14a. Trademark counterfeiting.

1 (a) A person commits trademark counterfeiting if the person
2 knowingly and with the intent to sell or distribute and without
3 the consent of the registrant or owner uses, displays, advertises,
4 distributes, offers for sale, sells or possesses any item that bears
5 a counterfeit of a mark or any service that is identified by a
6 counterfeit of a mark registered under this chapter, registered
7 under 15 U. S. C. §1052, or under the common law with
8 knowledge that the mark is counterfeit.

9 (b) For purposes of this section, a mark is counterfeit if:

10 (1) It is a mark that is identical to or substantially
11 indistinguishable from a registered or common law mark; and

12 (2) It is used on or in connection with the same type of goods
13 or services for which the genuine mark is registered or otherwise
14 used.

§47-2-14b. Misdemeanor trademark counterfeiting; penalty.

1 (a) A person commits the crime of misdemeanor trademark
2 counterfeiting if the person commits trademark counterfeiting as
3 described in section fourteen-a of this article and the total retail
4 value of all of the items bearing the counterfeit mark or services
5 that are identified by the counterfeit mark is less than \$1,000.

6 (b) The penalty for misdemeanor trademark counterfeiting
7 is:

8 (1) For a first violation, confinement in jail for not more than
9 one year, or a fine not exceeding \$2,000, or both a fine and
10 confinement; and

11 (2) For each subsequent violation, confinement in jail for not
12 more than one year, or a fine not exceeding \$5,000, or both a
13 fine and confinement.

14 (3) If the person convicted under this section is a firm,
15 partnership, corporation, union, association or other organization
16 capable of suing and being sued in a court of law, the maximum
17 fine that may be imposed is \$10,000.

§47-2-14c. Felony trademark counterfeiting; penalty.

1 (a) A person commits the crime of felony trademark
2 counterfeiting if the person commits trademark counterfeiting as
3 described in section fourteen-a of this article and the total retail
4 value of all of the items bearing the counterfeit mark or services
5 that are identified by the counterfeit mark is \$1,000 or greater.

6 (b) The penalty for felony trademark counterfeiting is:

7 (1) Confinement in a state correctional facility for no less
8 than one year nor more than five years or a fine not exceeding
9 \$10,000, or both a fine and confinement.

10 (2) If the person convicted under this section is a firm,
11 partnership, corporation, union, association or other organization
12 capable of suing and being sued in a court of law, the maximum
13 fine that may be imposed is \$20,000.

§47-2-14d. Seizure, forfeiture and disposal.

1 (a) The following are subject to seizure and forfeiture in the
2 same manner as the items referenced in section seven hundred
3 three, article seven, chapter sixty-a of this code:

4 (1) All raw materials and equipment that are used, or
5 intended for use, in providing, manufacturing and delivering
6 items bearing a counterfeit mark or services identified by a
7 counterfeit mark;

8 (2) All conveyances, including aircraft, vehicles or vessels,
9 which are used, or are intended for use, to transport items
10 bearing a counterfeit mark, except that:

11 (A) A conveyance used by any person as a common carrier
12 in the transaction of business as a common carrier shall not be
13 forfeited under this section unless it appears that the person
14 owning the conveyance is a consenting party or privy to a
15 violation of this article;

16 (B) A conveyance shall not be forfeited under the provisions
17 of this article if the person owning the conveyance establishes
18 that he or she neither knew, nor had reason to know, that the
19 conveyance was being employed or was likely to be employed
20 in a violation of this article; and

21 (C) A bona fide security interest or other valid lien in any
22 conveyance shall not be forfeited under the provisions of this
23 article, unless the state proves by a preponderance of the

24 evidence that the holder of the security interest or lien either
25 knew, or had reason to know, that the conveyance was being
26 used or was likely to be used in a violation of this article;

27 (3) All books, records, computers and data that are used or
28 intended for use in the production, manufacture, sale or delivery
29 of items bearing a counterfeit mark or services identified by a
30 counterfeit mark; and

31 (4) All moneys, negotiable instruments, balances in deposit
32 or other accounts, securities or other things of value furnished or
33 intended to be furnished by any person in the course of activity
34 constituting a violation of sections fourteen-b, fourteen-c and
35 fourteen-d of this article.

36 (b) Items bearing a counterfeit mark are subject to seizure
37 and disposition as provided in section seven, article one-a,
38 chapter sixty-two of this code. However, if the registrant or
39 owner so requests, the agency holding the seized items shall
40 release the seized items to the registrant or owner or make such
41 other disposition as the registrant or owner directs. If the
42 registrant or owner does not direct disposition of the seized
43 items, the agency shall destroy the items.

CHAPTER 202

(H. B. 2663 - By Delegate(s) Ashley and Frich)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-10G-5a, relating to creating the Rehabilitation Services Vending Program Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-10G-5a, to read as follows:

ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION.

§18-10G-5a. Rehabilitation Services Vending Program Fund created.

1 There is created in the State Treasury a special revenue fund
2 to be known as the “Rehabilitation Services Vending Program
3 Fund.” The fund shall operate as a special revenue fund whereby
4 all deposits and payments thereto do not expire to the General
5 Revenue Fund, but shall remain in the fund and be available for
6 expenditure in succeeding fiscal years. This fund consists of
7 moneys deposited in the fund pursuant to the provisions of
8 section five of this article. Money from this fund shall be
9 expended by the Director of the Division of Rehabilitation
10 Services pursuant to the provisions of section five of this article.

CHAPTER 203

**(H. B. 2914 - By Delegate(s) Hartman, Sponaugle,
Campbell and Perry)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended; and to amend said code

by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

Be it enacted by the Legislature of West Virginia:

That §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §7-25-7a and §7-25-27, all to read as follows:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.

1 (a) Before the adoption of an order creating a resort area
2 district, the governing body shall cause notice to be given to the
3 owners of real property located within the proposed resort area
4 district that the order will be considered for adoption at a public
5 meeting of the governing body at a date, time and place named
6 in the notice and that all persons at that meeting, or any
7 adjournment of the meeting, shall be given an opportunity to
8 protest or be heard concerning the adoption or rejection of the
9 order. At or after the meeting the governing body may amend,
10 revise or otherwise modify the information in the petition for
11 formation or expansion of a resort area district as it may consider
12 appropriate after taking into account any comments received at
13 the meeting.

14 (b) A resort area district may not be created by a governing
 15 body if, at the public meeting required by this section, written
 16 protest is filed by at least twenty-five percent of the owners of
 17 real property proposed to be included within the district. In the
 18 event of a protest, the petition for the creation of the resort area
 19 district may not be resubmitted to the governing body for a
 20 period of at least one year from the date of the original
 21 submission.

22 (c) At least sixty days prior to the date of the meeting the
 23 notice required by this section shall, using reasonable efforts, be
 24 mailed to each owner of real property to be included in the
 25 proposed resort area district as provided in subsection (g) of this
 26 section, posted in multiple, conspicuous public locations within
 27 the proposed district and published as a Class II legal
 28 advertisement in compliance with the provisions of article three,
 29 chapter fifty-nine of this code and the publication area for the
 30 publication shall be the county in which the proposed resort area
 31 district is located. The notice shall be in the form of, or
 32 substantially in the form of, the following notice:

33 “NOTICE TO ALL PERSONS OWNING PROPERTY
 34 LOCATED WITHIN (here describe the
 35 boundaries of the proposed resort area district) IN THE
 36 COUNTY OF (name of county):

37 A petition has been presented to the county commission of
 38 the County of (name of county) requesting
 39 establishment of a resort area district and authorization of a
 40 resort service fee under article twenty-five, chapter seven of the
 41 code of West Virginia, 1931, as amended, to
 42 (describe potential projects and/or services to be provided) in the
 43 county of (name of county) as the county
 44 commission may deem proper. A copy of the petition is available
 45 in the office of the clerk of the county commission of the County
 46 of (name of county) for review by the public
 47 during regular office hours.

48 The petition to create a resort area district will be considered
 49 by the county commission at a public meeting to be held on the
 50 day of,, at ... m. at
 51 Any owner of real property
 52 whose property may be affected by the creation of the
 53 above-described resort area district, and any owner of real
 54 property whose property is not located within said resort area
 55 district but wishes his or her property to be included, will be
 56 given an opportunity, under oath, to protest or be heard at said
 57 meeting or any adjournment thereof:

58 (name of clerk)

59 (d) An affidavit of publication of the notice made by
 60 newspaper publisher, or a person authorized to do so on behalf
 61 of the publisher, and a copy of the notice shall be made part of
 62 the minutes of the governing body and spread on its records of
 63 the meeting described in the notice. The service of the notice
 64 upon all persons owning any interest in any real property located
 65 within the proposed resort area district shall conclusively be
 66 determined to have been given upon completion of mailing as
 67 provided in subsection (g) of this section and the newspaper
 68 publication.

69 (e) The petitioners shall bear the expense of publication of
 70 the notice, the meeting and the mailing of the proposed order, as
 71 requested by subsection (f) of this section.

72 (f) After the public meeting and before the governing body
 73 may adopt an order creating a resort area district, the governing
 74 body shall, using reasonable efforts, mail a true copy of the
 75 proposed order creating the resort area district to the owners of
 76 real property in the proposed district as provided in subsection
 77 (g) of this section and shall post copies of the proposed order in
 78 multiple, conspicuous public locations within the proposed
 79 district. Unless waived in writing, any petitioning owner of real

80 property has thirty days from mailing of the proposed order in
81 which to withdraw his or her signature from the petition in
82 writing prior to the vote of the governing body on the order. If
83 any signatures on the petition are withdrawn, the governing body
84 may adopt the proposed order only upon certification by the
85 petitioners that the petition otherwise continues to meet the
86 requirements of this article. If all petitioning owners of real
87 property waive the right to withdraw their signatures from the
88 petition, then the governing body may immediately adopt the
89 order.

90 (g) For purposes of the mailing of each notice to owners of
91 real property required by this section, reasonable efforts shall be
92 made to mail the notice to all owners of real property proposed
93 to be included within the resort area district using the real
94 property tax records and land books of the county in which the
95 proposed district is located and any lists maintained by a resort
96 operator or homeowners association within the proposed district.
97 The notice shall be also mailed to each president of a
98 homeowners association, if any, located within a proposed
99 district which has registered with a resort operator to receive the
100 information. Immaterial defects in the mailing of the notices
101 shall not affect the validity of the notices: *Provided*, That in the
102 case of any resort area district to be voted upon after the
103 effective date of this amendment adopted during the 2015
104 regular session of the Legislature, any notice shall be mailed to
105 the property owner's primary place of abode by certified mail,
106 return receipt requested.

§7-25-7a. Voluntary dissolution resort area district.

1 (a) The owners of twenty-five percent or more of the real
2 property in a resort area district may petition the board to
3 dissolve that resort area district.

4 (b) Within sixty days of the submission of a petition for the
5 dissolution of a resort area district, the board shall verify the

6 total number of eligible petitioners to determine whether the
7 required percentage of petitioners has been obtained. If the board
8 determines that the petition has met the requirements of
9 subsection (a) of this section, the board shall set a date for a
10 special election on the question of continuing or dissolving the
11 resort area district. The board shall, using reasonable efforts,
12 cause a notice to be mailed by certified mail, return receipt
13 requested, to each owner of real property located within the
14 resort area district's of a special election to determine
15 continuance or dissolution of the resort area district: *Provided*,
16 That any notice shall be mailed to the property owner's primary
17 place of abode by certified mail, return receipt requested.

18 The date set by the board for the special election required by
19 this section may be no less than sixty nor more than ninety days
20 from the date the board mails the notice, in the form described
21 in subsection (c) of this section, to the owners of real property
22 located within the district. The board shall make a copy of the
23 petition available for inspection by interested persons before the
24 special election. If the board determines that the petition has not
25 met the requirements of subsection (a) of this section, the
26 petition shall be returned to the petitioners with a statement of
27 the reason why the petition was rejected.

28 (c) The notice mailed to real property owners regarding the
29 special election to determine the continuance or dissolution of
30 the resort area district shall contain the following:

31 (1) The purpose, location, date and time for the special
32 election;

33 (2) A proxy, in the form described in subsection (d) of this
34 section, which may be used by owners of any class of property
35 to grant proxies to any person to cast the owner's ballot at the
36 special election as if the owner were present in person. The
37 proxy may be mailed or transmitted electronically to the
38 individual being granted the proxy; and

39 (3) A copy of a ballot described in subsection (e) of this
40 section. The ballot may be used to vote for continuance or
41 dissolution of the resort area district at the special election.

42 (d) The proxy form required to be included with the notice
43 of special election mailed to real property owners, as provided
44 in subsection (c) of this section, shall contain the following
45 information:

46 (1) That the proxy is for the special election to consider the
47 continuance or dissolution of the resort area district as covered
48 by the notice required by subsection (b) of this section;

49 (2) The name of the owner having the voting right for a
50 parcel of real property;

51 (3) The location of the real property;

52 (4) The name of the individual being given the proxy to vote
53 for the owner unable to attend the special election;

54 (5) The date and signature of real property owner authorizing
55 the proxy; and

56 (6) A statement that the named individual being extended the
57 voting proxy is restricted to placing a vote for the named owner
58 as indicated by the owner's check mark in one of the following
59 two voting choices:

60 // For Continuance of the _____ (name of district) resort
61 area district.

62 // For Dissolution of the _____ (name of district) resort
63 area district.

64 (e) At the special election, the board shall submit the
65 question of continuing or dissolving the resort area district to
66 owners of qualified real property within the resort area district.
67 For purposes of this section, the term "qualified real property"

68 includes the following classes of real property: Unimproved/
69 developable; commercial business; resort operator; and
70 residential improved. Each owner of qualified real property is
71 entitled to one undivided vote in the special election for each
72 parcel of qualified real property owned. The special election
73 ballots shall have written or printed on them the following:

74 // For Continuance of the _____ (name of district) resort
75 area district.

76 // For Dissolution of the _____ (name of district) resort
77 area district.

78 If a simple majority of the votes is cast for dissolution, then
79 the board shall request that the governing body dissolve the
80 resort area district. Following the receipt of a request, the resort
81 area district shall be dissolved by the governing body by
82 operation of law. However, all debts or other obligations
83 outstanding against the resort area district must be settled in full
84 prior to the dissolution. If a simple majority of the votes is cast
85 for continuance, the resort area district shall continue in
86 existence until dissolved at some later date under this section.
87 However, another election may not be held within two years of
88 the last election.

89 (f) An election under this section shall be held, and
90 conducted and the result determined, certified, returned and
91 canvassed in the same manner and by the same persons as an
92 election for resort area district board members pursuant to
93 section eleven of this article.

**§7-25-11. Election procedure for initial members of resort area
board; subsequent elections; elections and procedures
to fill board vacancies.**

1 (a) Within ninety days of the adoption of the order creating
2 the resort area district, a public meeting shall be held at which

3 elections for the initial members of the board shall be held. the
4 meeting shall be held at a location within the district not less
5 than twenty days after the publication of the notice required by
6 subsection (b) of this section.

7 (b) Prior to the meeting required by this section, the
8 petitioners for the creation of the resort area district shall, using
9 reasonable efforts, cause notice of the initial election meeting to
10 be given to all owners of real property, including owners of
11 commercial business property, located within the district. the
12 notice shall be mailed to each owner of real property included in
13 the resort area district as provided in subsection (h) of this
14 section, posted in multiple, conspicuous public locations within
15 the district and published at least thirty days prior to the date of
16 the meeting as a Class II legal advertisement in compliance with
17 the provisions of article three, chapter fifty-nine of this code and
18 the publication area for the publication is the resort area district.
19 The notice shall provide, at a minimum, the following
20 information:

21 (1) The purpose of the meeting;

22 (2) Descriptions of the board positions;

23 (3) A statement that only owners of real property, including
24 owners of commercial business property, located within the
25 district are eligible to make nominations for board positions or
26 vote in the election;

27 (4) The location of the meeting;

28 (5) Electronic and physical addresses where nominations for
29 board positions will be received by petitioners for the creation of
30 the resort area district; and

31 (6) The date and time of the meeting.

32 (c) Nominations shall be made for each board position by
33 persons eligible to vote for each board position. Nominations

34 may be made at the meeting required by this section, by mail or
35 by electronic means. Nominations made by mail or by electronic
36 means must be received by the petitioners prior to the meeting
37 to be valid. Persons nominated for board positions shall meet the
38 criteria provided for each board position as set forth in
39 subsection (b), section ten of this article. Nominations shall be
40 made for each board position in the following manner:

41 (1) Only owners of residential, improved real property
42 located within the resort area district may nominate persons for
43 the three board positions provided for owners of or
44 representatives of owners of residential, improved real property
45 located within the resort area district;

46 (2) Only representatives of the resort operator or resort
47 operators may nominate persons for the two board positions
48 provided for representatives of the resort operator or resort
49 operators located within the resort area district;

50 (3) Only owners of commercial business property located
51 within the resort area district may nominate persons for the
52 board position provided for an owner of or a representative of
53 owners of commercial business property located within the
54 resort area district; and

55 (4) Only owners of unimproved, developable real property
56 located within the resort area district may nominate persons for
57 the board position provided for an owner of or a representative
58 of owners of unimproved, developable real property located
59 within the resort area district.

60 (d) Following board member nominations, a vote shall be
61 taken by written ballot for board members to be elected, but
62 owners of any class of property may grant proxies to any person
63 to cast the owner's ballot as if the owner were present in person.
64 Voting shall occur in the following manner:

65 (1) Only owners of residential, improved real property
66 located within the resort area district may vote for the three
67 board positions provided for owners of or representatives of
68 owners of residential, improved real property located within the
69 resort area district. Each owner is entitled to one vote per unit or
70 parcel of residential, improved real property he or she owns;

71 (2) Only a representative of each resort operator may vote
72 for the two board positions provided for representatives of the
73 resort operator or resort operators located within the resort area
74 district;

75 (3) Only owners of commercial business property located
76 within the resort area district may vote for the board position
77 provided for an owner of or a representative of owners of
78 commercial business property located within the resort area
79 district. Each owner is entitled to one vote per unit of
80 commercial business property he or she owns; and

81 (4) Only owners of unimproved, developable real property
82 located within the resort area may vote for the board position
83 provided for an owner of or a representative of owners of
84 unimproved, developable real property located within the resort
85 area district. Each owner is entitled to one vote per parcel of
86 unimproved, developable real property that he or she owns.

87 (e) For purposes of voting in the initial election and in all
88 subsequent elections for board members:

89 (1) The owners of each parcel or unit of real property are
90 entitled one vote, irrespective of the number of owners of the
91 parcel or unity;

92 (2) Fractional voting shall not be permitted; and

93 (3) The vote pertaining to a parcel or unit shall be cast in
94 accordance with the direction of the person or persons holding

95 the majority interest in the parcel or unit, and in the event there
96 is no majority, the vote shall be forfeited.

97 (f) Each board member shall be elected by a plurality of the
98 votes cast for such board position.

99 (g) The petitioners for the creation of the resort area district
100 shall be responsible for the costs of the initial election and
101 meeting required by this section.

102 (h) For purposes of the mailing of notice to owners of real
103 property required by this section, reasonable efforts shall be
104 made to mail such notice to all owners of real property included
105 within such resort area district using the real property tax records
106 and land books of the county in which such district is located and
107 any lists maintained by a resort operator or homeowners
108 association within such district. Such notice shall be also mailed
109 to each president of a homeowners association, if any, located
110 within a district which has registered with a resort operator to
111 receive such information. Immaterial defects in the mailing of
112 such notices shall not affect the validity of such notice.

**§7-25-15. Authorization to implement assessments for projects;
procedures for implementing assessments; by-laws to
provide additional procedures for implementation of
assessments; notice to property owners before
implementation of assessments for projects; voting
on assessments; affidavit of publication.**

1 (a) An assessment for a project within a resort area district
2 shall be authorized by the adoption of a resolution by the board.
3 The aggregate limit of assessments that may be levied against a
4 parcel of real property within the district is five percent of the
5 appraised value of the real property, including improvements, as
6 shown in the property tax records and land books of the county
7 in which the property is located. A resolution authorizing an

8 assessment shall only be adopted after following the procedures
9 set forth in this section.

10 (b) The bylaws of a district shall provide the procedures not
11 addressed in this section for the implementation of an
12 assessment to pay the costs of a project: *Provided*, That the
13 procedures must be consistent with constitutional standards and
14 all other laws and rules of this state.

15 (c) Fifty-one percent or more of the owners of real property
16 to be benefitted by a project may petition the board to implement
17 an assessment to pay the costs of the project. A board may on its
18 own initiative propose an assessment to pay the costs of a project
19 upon approval by six sevenths of the board.

20 (d) Upon following the procedures provided in this section
21 and a resort area district's bylaws for the implementation of an
22 assessment to pay the costs of a project, the board may, after
23 giving notice to all real property owners, holding a public
24 meeting and a vote on the project if required by this section,
25 adopt a resolution authorizing the assessment to pay the costs of
26 a project upon approval by six sevenths of the board.

27 (e) Before the adoption of a resolution authorizing an
28 assessment to pay the costs of a project, the board shall cause
29 notice to be given to the owners of real property located within
30 the resort area district that the resolution will be considered for
31 adoption at a public meeting of the board at a date, time and
32 place named in the notice and that all persons at that meeting, or
33 any adjournment thereof, shall be given an opportunity to protest
34 or be heard concerning the adoption or rejection of the
35 resolution. If, as provided in subsection (f) of this section, a
36 favorable vote of the property owners is required before the
37 board authorizes the assessment, the notice of meeting shall also
38 contain information required to enable the owners of real
39 property within the district that will be subject to the assessment
40 to vote on the assessment by mail or electronic means.

41 (f) An assessment may not be authorized by the board if at
42 the public meeting required by this section written protest is filed
43 by at least twenty-five percent of the owners of the real property
44 within the district to be benefitted by the proposed project and
45 subject to the assessment. However, before an assessment
46 proposed by the board on its own initiative as provided in
47 subsection (c) of this section is authorized by the board, the
48 proposal must also receive the favorable vote of a majority of the
49 votes cast at the meeting for the proposal by the owners of real
50 property in the district that will be subject to the assessment.
51 Voting at the meeting shall be in person or by proxy at the
52 meeting or by mailed ballot or electronic means received prior
53 to the meeting. The voting rules set forth in subsection (e),
54 section eleven of this article apply to all voting on assessments.
55 In the event of such protest, the proposed assessment in the same
56 form may not be reconsidered by a board for a period of at least
57 one year from the date of the public meeting.

58 (g) At least thirty days prior to the date of the public
59 meeting, the notice required by this section shall, using
60 reasonable efforts, be mailed to the owners of real property to be
61 assessed for a proposed project as provided in subsection (k) of
62 this section, posted in multiple, conspicuous public locations
63 within the district and published as a Class II legal advertisement
64 in compliance with the provisions of article three, chapter
65 fifty-nine of this code. The publication area for the publication
66 is the resort area district.

67 (h) An affidavit of publication of the notice made by
68 newspaper publisher, or a person authorized to do so on behalf
69 of the publisher, and a copy of the notice shall be made part of
70 the minutes of the board and spread on its records of the meeting
71 described in the notice. The service of the notice upon all
72 persons owning any interest in any real property located within
73 the resort area district shall conclusively be determined to have
74 been given upon completion of mailing as provided in subsection
75 (k) of this section and the newspaper publication.

76 (i) After the public meeting and before the board may adopt
77 a resolution authorizing implementation of assessments, the
78 board shall, using reasonable efforts, mail a true copy of the
79 proposed resolution authorizing implementation of an
80 assessment to the owners of real property in the resort area
81 district as provided in subsection (k) of this section.

82 (j) A board shall make available to the owners of real
83 property within the district a list of all owners of real property
84 within the district for the purposes of enabling the owners of real
85 property to solicit support for a petition proposing or a protest
86 against an assessment.

87 (k) For purposes of the mailing of each notice to owners of
88 real property required by this section, reasonable efforts shall be
89 made to mail the notice to all owners of real property required to
90 receive notice under this section using the real property tax
91 records and land books of the county in which the district is
92 located and any lists maintained by a resort operator or
93 homeowners association within the district. The notice shall be
94 also mailed to each president of a homeowners association, if
95 any, located within a district which has registered with a resort
96 operator to receive the information. Immaterial defects in the
97 mailing of the notices shall not affect the validity of the notices.

§7-25-27. Effect of the 2015 amendments.

1 It is the intent of the Legislature that the amendments to this
2 article passed during the 2015 regular session of the Legislature
3 does not cause any petition for the creation of a resort area
4 district that is currently before the governing body of the county
5 in which the proposed resort area district is located to be voided
6 and that those petitions may be modified to meet the current
7 requirements of this article, put to a public meeting, and
8 incorporated into the petition.

CHAPTER 204

(Com. Sub. for S. B. 529 - By Senators Gaunch and Carmichael)

[Amended and again passed March 18, 2015; as a result of objections of the Governor;
in effect from passage.]

[Approved by the Governor on April 3, 2015.]

AN ACT to amend and reenact §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-10-21a; to amend and reenact §5-13-2 of said code; to amend and reenact §5-16-13 of said code; to amend and reenact §15-2A-21 of said code; to amend and reenact §18-7A-17, §18-7A-23 and §18-7A-25 of said code; to amend said code by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and to amend and reenact §18-7D-6, all relating generally to benefits and costs for certain members of the West Virginia Public Employees Retirement System, State Police Retirement System and Teachers Retirement System; calculating final average salary and service credit for certain public employees; authorizing purchase of military service for certain members of the West Virginia Public Employees Retirement System and Teachers Retirement System; providing military service credit for certain members of the West Virginia Public Employees Retirement System; increasing contribution rate and years of contributing service required for certain public employees to qualify for certain annuities; providing for determination of years of service; providing that accrued annual and sick leave of certain employees participating in the West Virginia Public Employees Retirement System, the State Police Retirement System and the Teachers Retirement System may not be applied for retirement service credit; for a limited time permitting certain members of the Teachers Retirement System who transferred from

the Teachers' Defined Contribution System to buy, with interest, their full service credit in the Teachers Retirement System; and revising the reciprocal retirement provisions for certain members of the teachers and the public employees system.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10-21a; that §5-13-2 of said code be amended and reenacted; that §5-16-13 of said code be amended and reenacted; that §15-2A-21 of said code be amended and reenacted; that §18-7A-17, §18-7A-23, §18-7A-25 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and that §18-7D-6 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES,
PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the
2 context, the following words and phrases as used in this article
3 have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts deducted from the compensations of a member and
6 credited to his or her individual account in the members' deposit
7 fund, together with regular interest on the contributions;

8 (2) “Accumulated net benefit” means the aggregate amount
9 of all benefits paid to or on behalf of a retired member;

10 (3) “Actuarial equivalent” means a benefit of equal value
11 computed upon the basis of a mortality table and regular interest
12 adopted by the board of trustees from time to time: *Provided*,
13 That when used in the context of compliance with the federal
14 maximum benefit requirements of Section 415 of the Internal
15 Revenue Code, actuarial equivalent shall be computed using the
16 mortality tables and interest rates required to comply with those
17 requirements;

18 (4) “Annuity” means an annual amount payable by the
19 retirement system throughout the life of a person. All annuities
20 shall be paid in equal monthly installments, rounding to the
21 upper cent for any fraction of a cent;

22 (5) “Annuity reserve” means the present value of all
23 payments to be made to a retirant or beneficiary of a retirant on
24 account of any annuity, computed upon the basis of mortality
25 and other tables of experience, and regular interest, adopted by
26 the board of trustees from time to time;

27 (6) “Beneficiary” means any person, except a retirant, who
28 is entitled to, or will be entitled to, an annuity or other benefit
29 payable by the retirement system;

30 (7) “Board of Trustees” or “board” means the Board of
31 Trustees of the West Virginia Consolidated Public Retirement
32 System;

33 (8) “Compensation” means the remuneration paid a member
34 by a participating public employer for personal services rendered
35 by the member to the participating public employer. In the event
36 a member’s remuneration is not all paid in money, his or her
37 participating public employer shall fix the value of the portion
38 of the remuneration which is not paid in money. Any lump sum

39 or other payments paid to members that do not constitute regular
40 salary or wage payments are not considered compensation for
41 the purpose of withholding contributions for the system or for
42 the purpose of calculating a member's final average salary.
43 These payments include, but are not limited to, attendance or
44 performance bonuses, one-time flat fee or lump sum payments,
45 payments paid as a result of excess budget, or employee
46 recognition payments. The board shall have final power to
47 decide whether the payments shall be considered compensation
48 for purposes of this article;

49 (9) "Contributing service" means service rendered by a
50 member within this state and for which the member made
51 contributions to a public retirement system account of this state,
52 to the extent credited him or her as provided by this article;

53 (10) "Credited service" means the sum of a member's prior
54 service credit, military service credit, workers' compensation
55 service credit and contributing service credit standing to his or
56 her credit as provided in this article;

57 (11) "Employee" means any person who serves regularly as
58 an officer or employee, full time, on a salary basis, whose tenure
59 is not restricted as to temporary or provisional appointment, in
60 the service of, and whose compensation is payable, in whole or
61 in part, by any political subdivision, or an officer or employee
62 whose compensation is calculated on a daily basis and paid
63 monthly or on completion of assignment, including technicians
64 and other personnel employed by the West Virginia National
65 Guard whose compensation, in whole or in part, is paid by the
66 federal government: *Provided*, That an employee of the
67 Legislature whose term of employment is otherwise classified as
68 temporary and who is employed to perform services required by
69 the Legislature for its regular sessions or during the interim
70 between regular sessions and who has been or is employed
71 during regular sessions or during the interim between regular

72 sessions in seven or more consecutive calendar years, as certified
73 by the clerk of the house in which the employee served, is an
74 employee, any provision to the contrary in this article
75 notwithstanding, and is entitled to credited service in accordance
76 with provisions of section fourteen of this article: *Provided,*
77 *however,* That members of the legislative body of any political
78 subdivision and judges of the state Court of Claims are
79 employees receiving one year of service credit for each one-year
80 term served and prorated service credit for any partial term
81 served, anything contained in this article to the contrary
82 notwithstanding. In any case of doubt as to who is an employee
83 within the meaning of this article, the board of trustees shall
84 decide the question;

85 (12) “Employer error” means an omission, misrepresentation
86 or violation of relevant provisions of the West Virginia Code or
87 of the West Virginia Code of State Regulations or the relevant
88 provisions of both the West Virginia Code and of the West
89 Virginia Code of State Regulations by the participating public
90 employer that has resulted in an underpayment or overpayment
91 of contributions required. A deliberate act contrary to the
92 provisions of this section by a participating public employer does
93 not constitute employer error;

94 (13) “Final average salary” means either of the following:
95 *Provided,* That salaries for determining benefits during any
96 determination period may not exceed the maximum
97 compensation allowed as adjusted for cost of living in
98 accordance with section seven, article ten-d of this chapter and
99 Section 401 (a) (17) of the Internal Revenue Code: *Provided,*
100 *however,* That the provisions of section twenty-two-h of this
101 article are not applicable to the amendments made to this
102 subdivision during the 2011 regular session of the Legislature;

103 (A) The average of the highest annual compensation
104 received by a member, including a member of the Legislature

105 who participates in the retirement system in the year 1971 or
106 thereafter, during any period of three consecutive years of
107 credited service contained within the member's fifteen years of
108 credited service immediately preceding the date his or her
109 employment with a participating public employer last
110 terminated: *Provided*, That for persons who were first hired on
111 or after July 1, 2015, any period of five consecutive years of
112 contributing service contained within the member's fifteen years
113 of credited service immediately preceding the date his or her
114 employment with a participating public employer last
115 terminated; or

116 (B) If the member has less than five years of credited
117 service, the average of the annual rate of compensation received
118 by the member during his or her total years of credited service;
119 and in determining the annual compensation, under either
120 paragraph (A) or (B) of this subdivision, of a member of the
121 Legislature who participates in the retirement system as a
122 member of the Legislature in the year 1971, or in any year
123 thereafter, his or her actual legislative compensation (the total of
124 all compensation paid under sections two, three, four and five,
125 article two-a, chapter four of this code), in the year 1971, or in
126 any year thereafter, plus any other compensation he or she
127 receives in any year from any other participating public
128 employer including the State of West Virginia, without any
129 multiple in excess of one times his or her actual legislative
130 compensation and other compensation, shall be used: *Provided*,
131 That final average salary for any former member of the
132 Legislature or for any member of the Legislature in the year
133 1971 who, in either event, was a member of the Legislature on
134 November 30, 1968, or November 30, 1969, or November 30,
135 1970, or on November 30 in any one or more of those three years
136 and who participated in the retirement system as a member of the
137 Legislature in any one or more of those years means: (i) Either,
138 notwithstanding the provisions of this subdivision preceding this
139 proviso, \$1,500 multiplied by eight, plus the highest other

140 compensation the former member or member received in any
141 one of the three years from any other participating public
142 employer including the State of West Virginia; or (ii) final
143 average salary determined in accordance with paragraph (A) or
144 (B) of this subdivision, whichever computation produces the
145 higher final average salary, and in determining the annual
146 compensation under subparagraph (ii) of this paragraph, the
147 legislative compensation of the former member shall be
148 computed on the basis of \$1,500 multiplied by eight, and the
149 legislative compensation of the member shall be computed on
150 the basis set forth in the provisions of this subdivision
151 immediately preceding this paragraph or on the basis of \$1,500
152 multiplied by eight, whichever computation as to the member
153 produces the higher annual compensation;

154 (14) "Internal Revenue Code" means the Internal Revenue
155 Code of 1986, as amended, codified at Title 26 of the United
156 States Code;

157 (15) "Limited credited service" means service by employees
158 of the West Virginia Educational Broadcasting Authority, in the
159 employment of West Virginia University, during a period when
160 the employee made contributions to another retirement system,
161 as required by West Virginia University, and did not make
162 contributions to the Public Employees Retirement System:
163 *Provided*, That while limited credited service can be used for the
164 formula set forth in subsection (e), section twenty-one of this
165 article, it may not be used to increase benefits calculated under
166 section twenty-two of this article;

167 (16) "Member" means any person who has accumulated
168 contributions standing to his or her credit in the members'
169 deposit fund;

170 (17) "Participating public employer" means the State of
171 West Virginia, any board, commission, department, institution

172 or spending unit and includes any agency created by rule of the
173 Supreme Court of Appeals having full-time employees, which
174 for the purposes of this article is considered a department of state
175 government; and any political subdivision in the state which has
176 elected to cover its employees, as defined in this article, under
177 the West Virginia Public Employees Retirement System;

178 (18) “Plan year” means the same as referenced in section
179 forty-two of this article;

180 (19) “Political subdivision” means the State of West
181 Virginia, a county, city or town in the state; a school corporation
182 or corporate unit; any separate corporation or instrumentality
183 established by one or more counties, cities or towns, as permitted
184 by law; any corporation or instrumentality supported in most part
185 by counties, cities or towns; and any public corporation charged
186 by law with the performance of a governmental function and
187 whose jurisdiction is coextensive with one or more counties,
188 cities or towns: *Provided*, That any mental health agency
189 participating in the Public Employees Retirement System before
190 July 1, 1997, is considered a political subdivision solely for the
191 purpose of permitting those employees who are members of the
192 Public Employees Retirement System to remain members and
193 continue to participate in the retirement system at their option
194 after July 1, 1997: *Provided, however*, That the Regional
195 Community Policing Institute which participated in the Public
196 Employees Retirement System before July 1, 2000, is considered
197 a political subdivision solely for the purpose of permitting those
198 employees who are members of the Public Employees
199 Retirement System to remain members and continue to
200 participate in the Public Employees Retirement System after July
201 1, 2000;

202 (20) “Prior service” means service rendered prior to July 1,
203 1961, to the extent credited a member as provided in this article;

204 (21) “Regular interest” means the rate or rates of interest per
205 annum, compounded annually, as the board of trustees adopts
206 from time to time;

207 (22) “Required beginning date” means April 1 of the
208 calendar year following the later of: (A) The calendar year in
209 which the member attains age seventy and one-half years of age;
210 or (B) the calendar year in which a member who has attained the
211 age seventy and one-half years of age and who ceases providing
212 service covered under this system to a participating employer;

213 (23) “Retirant” means any member who commences an
214 annuity payable by the retirement system;

215 (24) “Retirement” means a member’s withdrawal from the
216 employ of a participating public employer and the
217 commencement of an annuity by the retirement system;

218 (25) “Retirement system” or “system” means the West
219 Virginia Public Employees Retirement System created and
220 established by this article;

221 (26) “Retroactive service” means: (1) Service between July
222 1, 1961, and the date an employer decides to become a
223 participating member of the Public Employees Retirement
224 System; (2) service prior to July 1, 1961, for which the employee
225 is not entitled to prior service at no cost in accordance with 162
226 CSR 5.13; and (3) service of any member of a legislative body
227 or employees of the state Legislature whose term of employment
228 is otherwise classified as temporary for which the employee is
229 eligible, but for which the employee did not elect to participate
230 at that time;

231 (27) “Service” means personal service rendered to a
232 participating public employer by an employee of a participating
233 public employer; and

234 (28) "State" means the State of West Virginia.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon rules adopted by the board of trustees and
4 based upon the following:

5 (1) In no event may less than ten days of service rendered by
6 a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the state Legislature
8 whose term of employment is otherwise classified as temporary
9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim between
11 regular sessions and who have been or are so employed during
12 regular sessions or during the interim between regular sessions
13 in seven consecutive calendar years, service credit of one month
14 shall be awarded for each ten days employed in the interim
15 between regular sessions, which interim days shall be
16 cumulatively calculated so that any ten days, regardless of
17 calendar month or year, shall be calculated toward any award of
18 one month of service credit;

19 (2) Except for hourly employees, and those persons who first
20 become members of the retirement system on or after July 1,
21 2015, ten or more months of service credit earned in any
22 calendar year shall be credited as a year of service: *Provided*,
23 That no more than one year of service may be credited to any
24 member for all service rendered by him or her in any calendar
25 year and no days may be carried over by a member from one
26 calendar year to another calendar year where the member has
27 received a full-year credit for that year; and

28 (3) Service may be credited to a member who was employed
29 by a political subdivision if his or her employment occurred

30 within a period of thirty years immediately preceding the date
31 the political subdivision became a participating public employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the Clerk of the House of
34 Delegates and the Clerk of the State Senate or to any former and
35 present member of the State Teachers Retirement System who
36 have been contributing members for more than three years, for
37 service previously credited by the State Teachers Retirement
38 System and shall require the transfer of the member's
39 contributions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to the
41 member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 State Auditor, may receive prior service credit for time served in
46 that capacity.

47 (d) Active members who previously worked in
48 Comprehensive Employment and Training Act (CETA) may
49 receive service credit for time served in that capacity: *Provided*,
50 That in order to receive service credit under the provisions of
51 this subsection the following conditions must be met: (1) The
52 member must have moved from temporary employment with the
53 participating employer to permanent full-time employment with
54 the participating employer within one hundred twenty days
55 following the termination of the member's CETA employment;
56 (2) the board must receive evidence that establishes to a
57 reasonable degree of certainty as determined by the board that
58 the member previously worked in CETA; and (3) the member
59 shall pay to the board an amount equal to the employer and
60 employee contribution plus interest at the amount set by the
61 board for the amount of service credit sought pursuant to this
62 subsection: *Provided, however*, That the maximum service credit

63 that may be obtained under the provisions of this subsection is
64 two years: *Provided further*, That a member must apply and pay
65 for the service credit allowed under this subsection and provide
66 all necessary documentation by March 31, 2003: *And provided*
67 *further*, That the board shall exercise due diligence to notify
68 affected employees of the provisions of this subsection.

69 (e) (1) Employees of the state Legislature whose terms of
70 employment are otherwise classified as temporary and who are
71 employed to perform services required by the Legislature for its
72 regular sessions or during the interim time between regular
73 sessions shall receive service credit for the time served in that
74 capacity in accordance with the following: For purposes of this
75 section, the term “regular session” means day one through day
76 sixty of a sixty-day legislative session or day one through day
77 thirty of a thirty-day legislative session. Employees of the state
78 Legislature whose term of employment is otherwise classified as
79 temporary and who are employed to perform services required
80 by the Legislature for its regular sessions or during the interim
81 time between regular sessions and who have been or are
82 employed during regular sessions or during the interim time
83 between regular sessions in seven consecutive calendar years, as
84 certified by the clerk of the house in which the employee served,
85 shall receive service credit of six months for all regular sessions
86 served, as certified by the clerk of the house in which the
87 employee served, or shall receive service credit of three months
88 for each regular thirty-day session served prior to 1971:
89 *Provided*, That employees of the state Legislature whose term of
90 employment is otherwise classified as temporary and who are
91 employed to perform services required by the Legislature for its
92 regular sessions and who have been or are employed during the
93 regular sessions in thirteen consecutive calendar years as either
94 temporary employees or full-time employees or a combination
95 thereof, as certified by the clerk of the house in which the
96 employee served, shall receive a service credit of twelve months
97 for each regular session served, as certified by the clerk of the

98 house in which the employee served: *Provided, however,* That
99 the amendments made to this subsection during the 2002 regular
100 session of the Legislature only apply to employees of the
101 Legislature who are employed by the Legislature as either
102 temporary employees or full-time employees as of January 1,
103 2002, or who become employed by the Legislature as temporary
104 or full-time employees for the first time after January 1, 2002.
105 Employees of the State Legislature whose terms of employment
106 are otherwise classified as temporary and who are employed to
107 perform services required by the Legislature during the interim
108 time between regular sessions shall receive service credit of one
109 month for each ten days served during the interim between
110 regular sessions, which interim days shall be cumulatively
111 calculated so that any ten days, regardless of calendar month or
112 year, shall be calculated toward any award of one month of
113 service credit: *Provided further,* That no more than one year of
114 service may be credited to any temporary legislative employee
115 for all service rendered by that employee in any calendar year
116 and no days may be carried over by a temporary legislative
117 employee from one calendar year to another calendar year where
118 the member has received a full year credit for that year. Service
119 credit awarded for legislative employment pursuant to this
120 section shall be used for the purpose of calculating that
121 member's retirement annuity, pursuant to section twenty-two of
122 this article, and determining eligibility as it relates to credited
123 service, notwithstanding any other provision of this section.
124 Certification of employment for a complete legislative session
125 and for interim days shall be determined by the clerk of the
126 house in which the employee served, based upon employment
127 records. Service of fifty-five days of a regular session constitutes
128 an absolute presumption of service for a complete legislative
129 session and service of twenty-seven days of a thirty-day regular
130 session occurring prior to 1971 constitutes an absolute
131 presumption of service for a complete legislative session. Once
132 a legislative employee has been employed during regular

133 sessions for seven consecutive years or has become a full-time
134 employee of the Legislature, that employee shall receive the
135 service credit provided in this section for all regular and interim
136 sessions and interim days worked by that employee, as certified
137 by the clerk of the house in which the employee served,
138 regardless of when the session or interim legislative employment
139 occurred: *And provided further*, That regular session legislative
140 employment for seven consecutive years may be served in either
141 or both houses of the Legislature.

142 (2) For purposes of this section, employees of the Joint
143 Committee on Government and Finance are entitled to the same
144 benefits as employees of the House of Delegates or the Senate:
145 *Provided*, That for joint committee employees whose terms of
146 employment are otherwise classified as temporary, employment
147 in preparation for regular sessions, certified by the legislative
148 manager as required by the Legislature for its regular sessions,
149 shall be considered the same as employment during regular
150 sessions to meet service credit requirements for sessions served.

151 (f) Any employee may purchase retroactive service credit for
152 periods of employment in which contributions were not deducted
153 from the employee's pay. In the purchase of service credit for
154 employment prior to 1989 in any department, including the
155 Legislature, which operated from the General Revenue Fund and
156 which was not expressly excluded from budget appropriations in
157 which blanket appropriations were made for the state's share of
158 public employees' retirement coverage in the years prior to
159 1989, the employee shall pay the employee's share. Other
160 employees shall pay the state's share and the employee's share
161 to purchase retroactive service credit. Where an employee
162 purchases service credit for employment which occurred after
163 1988, that employee shall pay for the employee's share and the
164 employer shall pay its share for the purchase of retroactive
165 service credit: *Provided*, That no legislative employee and no
166 current or former member of the Legislature may be required to

167 pay any interest or penalty upon the purchase of retroactive
168 service credit in accordance with the provisions of this section
169 where the employee was not eligible to become a member during
170 the years for which he or she is purchasing retroactive credit or
171 had the employee attempted to contribute to the system during
172 the years for which he or she is purchasing retroactive service
173 credit and such contributions would have been refused by the
174 board: *Provided, however,* That a legislative employee
175 purchasing retroactive credit under this section does so within
176 twenty-four months of becoming a member of the system or no
177 later than December 31, 2008, whichever occurs last: *Provided*
178 *further,* That once a legislative employee becomes a member of
179 the retirement system, he or she may purchase retroactive service
180 credit for any time he or she was employed by the Legislature
181 and did not receive service credit. Any service credit purchased
182 shall be credited as six months for each sixty-day session
183 worked, three months for each thirty-day session worked or
184 twelve months for each sixty-day session for legislative
185 employees who have been employed during regular sessions in
186 thirteen consecutive calendar years, as certified by the clerk of
187 the house in which the employee served, and credit for interim
188 employment as provided in this subsection: *And provided*
189 *further,* That this legislative service credit shall also be used for
190 months of service in order to meet the sixty-month requirement
191 for the payments of a temporary legislative employee member's
192 retirement annuity: *And provided further,* That no legislative
193 employee may be required to pay for any service credit beyond
194 the actual time he or she worked regardless of the service credit
195 which is credited to him or her pursuant to this section: *And*
196 *provided further,* That any legislative employee may request a
197 recalculation of his or her credited service to comply with the
198 provisions of this section at any time.

199 (g) (1) Notwithstanding any provision to the contrary, the
200 seven consecutive calendar years requirement and the thirteen
201 consecutive calendar years requirement and the service credit

202 requirements set forth in this section shall be applied
203 retroactively to all periods of legislative employment prior to the
204 passage of this section, including any periods of legislative
205 employment occurring before the seven consecutive and thirteen
206 consecutive calendar years referenced in this section: *Provided*,
207 That the employee has not retired prior to the effective date of
208 the amendments made to this section in the 2002 regular session
209 of the Legislature.

210 (2) The requirement of seven consecutive years and the
211 requirement of thirteen consecutive years apply retroactively to
212 all legislative employment prior to the effective date of the 2006
213 amendments to this section.

214 (h) The board of trustees shall grant service credit to any
215 former or present member of the State Police Death, Disability
216 and Retirement Fund who has been a contributing member of
217 this system for more than three years for service previously
218 credited by the State Police Death, Disability and Retirement
219 Fund if the member transfers all of his or her contributions to the
220 State Police Death, Disability and Retirement Fund to the system
221 created in this article, including repayment of any amounts
222 withdrawn any time from the State Police Death, Disability and
223 Retirement Fund by the member seeking the transfer allowed in
224 this subsection: *Provided*, That there shall be added by the
225 member to the amounts transferred or repaid under this
226 subsection an amount which shall be sufficient to equal the
227 contributions he or she would have made had the member been
228 under the Public Employees Retirement System during the
229 period of his or her membership in the State Police Death,
230 Disability and Retirement Fund, excluding contributions on
231 lump sum payment for annual leave, plus interest at a rate
232 determined by the board.

233 (i) The provisions of section twenty-two-h of this article are
234 not applicable to the amendments made to this section during the
235 2006 regular session.

§5-10-15. Military service credit; qualified military service.

1 (a) (1) The Legislature recognizes the men and women of
2 this state who have served in the armed forces of the United
3 States during times of war, conflict and danger. It is the intent of
4 this subsection to confer military service credit upon persons
5 who are eligible at any time for public employees retirement
6 benefits for any time served in active duty in the armed forces of
7 the United States, regardless of whether the person was a public
8 employee at the time of entering the military service.

9 (2) In addition to any benefit provided by federal law, any
10 member of the retirement system who has previously served in
11 or enters the active service of the armed forces of the United
12 States, including active duty in the National Guard performed
13 pursuant to Title 10 or Title 32 of the United States Code, shall
14 receive credited service for the time spent in the armed forces of
15 the United States, not to exceed five years, if the member:

16 (A) Has been honorably discharged from the armed forces;
17 and

18 (B) Substantiates by appropriate documentation or evidence
19 his or her active military service.

20 If a member of the retirement system enters the active
21 service of the armed forces of the United States, the member's
22 contributions to the retirement system are suspended during the
23 period of the active service and until the member's return to the
24 employ of a participating public employer, and any credit
25 balance remaining in the member's deposit fund shall
26 accumulate regular interest: *Provided*, That notwithstanding any
27 provision in this article to the contrary, if an employee of a
28 participating political subdivision serving on active duty in the
29 military has accumulated credited service prior to the last entry
30 into military service, in an amount that, added to the time in

31 active military service while an employee equals nine or more
32 years, and the member is unable to resume employment with a
33 participating employer upon completion of duty due to death
34 during or as a result of active service, all time spent in active
35 military service, up to and including a total of five years, is
36 considered to be credited service and death benefits are vested in
37 the member: *Provided, however,* That the active service during
38 the time the member is an employee must be as a result of an
39 order or call to duty, and not as a result of volunteering for
40 assignment or volunteering to extend the time in service beyond
41 the time required by order or call.

42 (b) Subsection (a) of this section does not apply to any
43 member who first becomes an employee of a participating public
44 employer on or after July 1, 2015. This subsection does not
45 apply to any member who first became an employee of a
46 participating public employer before July 1, 2015.

47 (1) A member who first becomes an employee of a
48 participating public employer on or after July 1, 2015, may
49 purchase up to sixty months of military service credit for time
50 served in active military duty prior to first becoming an
51 employee of a participating public employer if all of the
52 following conditions are met:

53 (A) The member has completed at least twelve consecutive
54 months of contributory service upon first becoming an employee
55 of a participating public employer;

56 (B) The active military duty occurs prior to the date on
57 which the member first becomes an employee of a participating
58 public employer; and

59 (C) The employee pays to the retirement system the actuarial
60 reserve purchase amount within forty-eight months after the date
61 on which employer and employee contributions are first received

62 by the retirement system for the member and while he or she
63 continues to be in the employ of a participating public employer
64 and contributing to the retirement system: *Provided*, That any
65 employee who ceases employment with a participating public
66 employer before completing the required actuarial reserve
67 purchase amount in full shall not be eligible to purchase the
68 military service.

69 (2) Notwithstanding paragraph (A), subdivision (1) of this
70 subsection, a member who first becomes an employee of a
71 participating public employer on or after July 1, 2015, but who
72 does not remain employed and contributing to the retirement
73 system for at least twelve consecutive months after his or her
74 initial employment, shall be considered to have met the
75 requirement of paragraph (A), subdivision (1) of this subsection
76 the first time he or she becomes an employee of a participating
77 public employer and completes at least twelve consecutive
78 months of contributing service. Such a member shall be
79 considered to have met the requirement of paragraph (C),
80 subdivision (1) of this subsection if he or she pays to the
81 retirement system the actuarial reserve purchase amount within
82 forty-eight months after the date on which employer and
83 employee contributions are first received by the retirement
84 system for the member the first time he or she becomes an
85 employee of a participating public employer and completes at
86 least twelve consecutive months of contributing service, and
87 while he or she continues to be in the employ of a participating
88 public employer and contributing to the retirement system.

89 (3) Notwithstanding paragraph (A), subdivision (1) of this
90 subsection, a member who first becomes an employee of a
91 participating public employer on or after July 1, 2015, as an
92 elected official, shall be considered to have met the requirement
93 of paragraph (A), subdivision (1) of this subsection after
94 remaining employed for the first twelve consecutive months of
95 his or her term and first becoming an employee, regardless of

96 whether a salary is paid to the employee for each such month.
97 An elected official who does not elect to begin participating in
98 the retirement system upon first becoming an employee of a
99 participating public employer as an elected official is not eligible
100 to purchase military service credit pursuant to subdivision (1) of
101 this subsection.

102 (4) A member who first becomes an employee of a
103 participating public employer on or after July 1, 2015, may
104 purchase military service credit for active military duty
105 performed on or after the date he or she first becomes an
106 employee of a participating public employer only if all of the
107 following conditions are met: *Provided*, That the maximum
108 military service credit such member may purchase shall take into
109 account any military service credit purchased for active military
110 duty pursuant to subdivision (1) of this subsection in addition to
111 any military service credit purchased pursuant to this
112 subdivision:

113 (A) The member was an employee of a participating public
114 employer, terminated employment and experienced a break in
115 contributing service in the retirement system of one or more
116 months, performed active military service while not an employee
117 of the participating public employer and not contributing to the
118 retirement system, then again becomes an employee of a
119 participating public employer and completes at least twelve
120 consecutive months of contributory service;

121 (B) The member does not qualify for military service credit
122 for such active military duty pursuant to subsection (d) of this
123 section; and

124 (C) The member pays to the retirement system the actuarial
125 reserve lump sum purchase amount within forty-eight months
126 after the date on which employer and employee contributions are
127 first received by the retirement system for the member after he

128 or she again becomes an employee of a participating public
129 employer immediately following the period of active military
130 duty and break in service and completes at least twelve
131 consecutive months of contributory service and while he or she
132 continues to be in the employ of a participating public employer
133 and contributing to the retirement system.

134 (5) Notwithstanding paragraph (A), subdivision (4) of this
135 subsection, a member who otherwise meets the requirements of
136 said paragraph, but who does not remain employed and
137 contributing to the retirement system for at least twelve
138 consecutive months when he or she first becomes an employee
139 of a participating public employer after the period of active
140 military duty and break in service, shall be considered to have
141 met the requirement of paragraph (A), subdivision (4) of this
142 subsection the first time he or she again becomes an employee
143 of a participating public employer and completes at least twelve
144 consecutive months of contributing service. Such a member shall
145 be considered to have met the requirement of paragraph (C),
146 subdivision (4) of this subsection if he or she pays to the
147 retirement system the actuarial reserve lump sum purchase
148 amount within forty-eight months after the date on which
149 employer and employee contributions are first received by the
150 retirement system for the member for the first time he or she
151 again becomes an employee of a participating public employer
152 and completes at least twelve consecutive months of contributing
153 service, and while he or she continues to be in the employ of a
154 participating public employer and contributing to the retirement
155 system.

156 (6) Notwithstanding paragraph (A), subdivision (4) of this
157 subsection, a member who becomes an employee of a
158 participating public employer after such a period of active
159 military duty and break in service as an elected official shall be
160 considered to have met the requirement of paragraph (A),
161 subdivision (4) of this subsection after remaining employed for

162 the first twelve consecutive months of his or her term after again
163 becoming an employee, regardless of whether a salary is paid to
164 the employee for each such month. Such an individual must elect
165 to begin participating in the retirement system immediately upon
166 again becoming an employee of a participating public employer
167 after the period of active military duty and break in service.

168 (7) For purposes of this subsection, the following definitions
169 apply:

170 (A) "Active military duty" means full-time active duty in the
171 armed forces of the United States for a period of thirty or more
172 consecutive calendar days. Active military duty does not include
173 inactive duty of any kind.

174 (B) "Actuarial reserve purchase amount" means the purchase
175 annuity rate multiplied by the purchase accrued benefit,
176 calculated as of the calculation month, plus annual interest
177 accruing at seven and one-half percent from the calculation
178 month through the purchase month, compounded monthly:
179 *Provided*, That if the employee elects to pay the full purchase
180 amount on an installment or partial payment basis, the actuarial
181 reserve purchase amount will include the lump sum payment
182 plus additional interest accruing at seven and one-half percent
183 until the purchase amount is paid in full.

184 (C) "Armed forces of the United States" means the Army,
185 Navy, Air Force, Marine Corps and Coast Guard, the reserve
186 components thereof, and the National Guard of the United States
187 or the National Guard of a state or territory when members of the
188 same are on full-time active duty pursuant to Title 10 or Title 32
189 of the United States Code.

190 (D) "Calculation month" means the month immediately
191 following the month in which the member completes the twelve
192 consecutive months of contributory service with a participating
193 public employer required by this subsection, as applicable.

194 (E) “Purchase accrued benefit” means two percent times the
195 purchase military service times the purchase average monthly
196 salary.

197 (F) “Purchase age” means the age of the employee in years
198 and completed months as of the first day of the calculation
199 month.

200 (G) “Purchase annuity rate” means the actuarial lump sum
201 annuity factor calculated as of the calculation month based on
202 the following actuarial assumptions: Interest rate of seven and
203 one-half percent; mortality of the 1971 group annuity mortality
204 table, fifty percent blended male and female rates, applied on a
205 unisex basis to all members; if purchase age is under age sixty-
206 two, a deferred annuity factor with payments commencing at age
207 sixty-two; and if purchase age is sixty-two or over, an immediate
208 annuity factor with payments starting at the purchase age.

209 (H) “Purchase average monthly salary” means the average
210 monthly salary of the member during the months two through
211 twelve of the twelve consecutive month period required by this
212 subsection of this section, as applicable.

213 (I) “Purchase military service” means the amount of military
214 service being purchased by the employee in months up to the
215 sixty-month maximum, calculated in accordance with
216 subdivision (9) of this subsection.

217 (J) “Purchase month” means the month in which the
218 employee deposits the actuarial reserve lump sum purchase
219 amount in full payment of the service credit being purchased or
220 makes the final payment of the actuarial reserve purchase
221 amount into the plan trust fund in full payment of the service
222 credit being purchased.

223 (8) A member may purchase military service credit for a
224 period of active military duty pursuant to this subsection only if

225 the member received an honorable discharge for such period.
226 Anything other than an honorable discharge, including, but not
227 limited to, a general or under honorable conditions discharge, an
228 entry-level separation discharge, an other than honorable
229 conditions discharge or a dishonorable discharge, shall
230 disqualify the member from receiving military service credit for
231 the period of service.

232 (9) To calculate the amount of military service credit a
233 member may purchase, the board shall add the total number of
234 days in each period of a member's active military duty eligible
235 to be purchased, divide the total by thirty, and round up or down
236 to the nearest integer (fractions of 0.5 shall be rounded up), in
237 order to yield the total number of months of military service
238 credit a member may purchase, subject to the sixty-month
239 maximum. A member may purchase all or part of the maximum
240 amount of military service credit he or she is eligible for in
241 one-month increments.

242 (10) To receive credit, a member must submit a request to
243 purchase military service credit to the board, on such form or in
244 such other manner as shall be required by the board, within the
245 twelve consecutive month period required by this subsection, as
246 applicable. The board shall then calculate the actuarial reserve
247 lump sum purchase amount, which amount must be paid by the
248 member within the 48-month period required by this subsection,
249 as applicable. A member purchasing military service credit
250 pursuant to this subsection must do so in a single, lump sum
251 payment: *Provided*, That the board may accept partial,
252 installment or other similar payments if the employee executes
253 a contract with the board specifying the amount of military
254 service to be purchased and the payments required: *Provided*,
255 *however*, That any failure to pay the contract amount in
256 accordance with this section shall be treated as an overpayment
257 or excess contribution subject to section forty-four of this article
258 and no military service shall be credited.

259 (11) The board shall require a member requesting military
260 service credit to provide official documentation establishing that
261 the requirements set forth in this subsection have been met.

262 (12) Military service credit purchased pursuant to this
263 subsection may not be considered contributing service credit or
264 contributory service for purposes of this article.

265 (13) If a member who has purchased military service credit
266 pursuant to this subsection is eligible for and requests a
267 withdrawal of accumulated contributions pursuant to the
268 provisions of this article, he or she shall also receive a refund of
269 the actuarial reserve purchase amount he or she paid to the
270 retirement system to purchase military service credit, together
271 with regular interest on such amount.

272 (c) No period of military service may be used to obtain
273 credit in more than one retirement system administered by the
274 board and once used in any system, a period of military service
275 may not be used again in any other system.

276 (d) Notwithstanding the preceding provisions of this section,
277 contributions, benefits and service credit with respect to
278 qualified military service shall be provided in accordance with
279 Section 414(u) of the Internal Revenue Code and the federal
280 Uniformed Services Employment and Reemployment Rights Act
281 (USERRA), and regulations promulgated thereunder, as the
282 same may be amended from time to time. For purposes of this
283 section, "qualified military service" has the same meaning as in
284 Section 414(u) of the Internal Revenue Code.

285 (e) In any case of doubt as to the period of service to be
286 credited a member under the provisions of this section, the board
287 has final power to determine the period. Notwithstanding the
288 provisions of section three-a of this article, the provisions of this
289 section are not subject to liberal construction. The board is

290 authorized to determine all questions and make all decisions
291 relating to this section and, pursuant to the authority granted to
292 the board in section one, article ten-d of this chapter, may
293 propose rules to administer this section for legislative approval
294 in accordance with the provisions of article three, chapter
295 twenty-nine-a of this code.

§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

1 (a) Any member accruing annual leave or sick leave days
2 may, after June 27, 1988, elect to use the days at the time of
3 retirement to acquire additional credited service in this
4 retirement system. Except as provided in subsection (b) of this
5 section, the accrued days shall be applied on the basis of two
6 workdays credit granted for each one day of such accrued annual
7 or sick leave days, with each month of retirement service credit
8 to equal twenty workdays and with any remainder of ten
9 workdays or more to constitute a full month of additional credit
10 and any remainder of less than ten workdays to be dropped and
11 not used, notwithstanding any provisions of the code to the
12 contrary, including section twelve, article sixteen of this chapter.
13 Such credited service shall be allowed and not deemed to
14 controvert the requirement of no more than twelve months
15 credited service in any year's period.

16 (b) For those persons who first become members of the
17 retirement system on or after July 1, 2015, accrued annual or
18 sick days may not be applied to acquire additional credited
19 service.

§5-10-20. Voluntary retirement.

1 (a) Except as provided in subsection (b) of this section, any
2 member who has attained or attains age sixty years and has five
3 or more years of credited service in force, at least one year of

4 which he or she was a contributing member of the retirement
5 system, may retire upon his or her written application filed with
6 the board of trustees setting forth at what time, not less than
7 thirty days nor more than ninety days subsequent to the
8 execution and filing thereof the member desires to be retired:
9 *Provided*, That on and after June 1, 1986, any person who
10 becomes a new member of this retirement system shall, in
11 qualifying for retirement hereunder, have five or more years of
12 service, all of which years shall be actual, contributory ones.
13 Upon retirement, the member shall receive an annuity provided
14 for in section twenty-two of this article.

15 (b) Any person who first becomes a member of the
16 retirement system on or after July 1, 2015, may retire upon
17 written application as provided in subsection (a) of this section
18 upon attaining the age of sixty-two with ten or more years of
19 service, all of which must be actual, contributing years.

§5-10-21. Deferred retirement and early retirement.

1 (a) Except as provided in section twenty-one-a of this article,
2 any member who first becomes a member of the retirement
3 system before July 1, 2015, and who has five or more years of
4 credited service in force, of which at least three years are
5 contributing service, and who leaves the employ of a
6 participating public employer prior to his or her attaining age
7 sixty years for any reason except his or her disability retirement
8 or death, is entitled to an annuity computed according to section
9 twenty-two of this article, as that section was in force as of the
10 date of his or her separation from the employ of a participating
11 public employer: *Provided*, That he or she does not withdraw his
12 or her accumulated contributions from the members' deposit
13 fund: *Provided, however*, That on and after July 1, 2002, any
14 person who becomes a new member of this retirement system
15 shall, in qualifying for retirement under this section, have five or
16 more years of service, all of which years shall be actual,

17 contributory ones. His or her annuity shall begin the first day of
18 the calendar month next following the month in which his or her
19 application for same is filed with the board of trustees on or after
20 his or her attaining age sixty-two years.

21 (b) Any member who qualifies for deferred retirement
22 benefits in accordance with subsection (a) of this section and has
23 ten or more years of credited service in force and who has
24 attained age fifty-five as of the date of his or her separation,
25 may, prior to the effective date of his or her retirement, but not
26 thereafter, elect to receive the actuarial equivalent of his or her
27 deferred retirement annuity as a reduced annuity commencing on
28 the first day of any calendar month between his or her date of
29 separation and his or her attainment of age sixty-two years and
30 payable throughout his or her life.

31 (c) Any member who qualifies for deferred retirement
32 benefits in accordance with subsection (a) of this section and has
33 twenty or more years of credited service in force may elect to
34 receive the actuarial equivalent of his or her deferred retirement
35 annuity as a reduced annuity commencing on the first day of any
36 calendar month between his or her fifty-fifth birthday and his or
37 her attainment of age sixty-two years and payable throughout his
38 or her life.

39 (d) Notwithstanding any of the other provisions of this
40 section or of this article, except sections twenty-seven-a and
41 twenty-seven-b of this article, and pursuant to rules promulgated
42 by the board, and except for a person who first becomes a
43 member of the retirement system on or after July 1, 2015, any
44 member who has thirty or more years of credited service in
45 force, at least three of which are contributing service, and who
46 elects to take early retirement, which for the purposes of this
47 subsection means retirement prior to age sixty, whether an active
48 employee or a separated employee at the time of application, is
49 entitled to the full computation of annuity according to section

50 twenty-two of this article, as that section was in force as of the
51 date of retirement application, but with the reduced actuarial
52 equivalent of the annuity the member would have received if his
53 or her benefit had commenced at age sixty when he or she would
54 have been entitled to full computation of benefit without any
55 reduction.

56 (e) Notwithstanding any of the other provisions of this
57 section or of this article, except sections twenty-seven-a and
58 twenty-seven-b of this article, and except for a person who first
59 becomes a member of the retirement system on or after July 1,
60 2015, any member of the retirement system may retire with full
61 pension rights, without reduction of benefits, if he or she is at
62 least fifty-five years of age and the sum of his or her age plus
63 years of contributing service and limited credited service, as
64 defined in section two of this article, equals or exceeds eighty:
65 *Provided*, That on and after July 1, 2011, any person who
66 becomes a new member of this retirement system shall, in
67 qualifying for retirement under this subsection, have five or
68 more years of service, all of which years shall be actual,
69 contributory ones. The member's annuity shall begin the first
70 day of the calendar month immediately following the calendar
71 month in which his or her application for the annuity is filed
72 with the board.

§5-10-21a. Deferred retirement and early retirement for new members as of July 1, 2015.

1 (a) Any person who first becomes a member of the
2 retirement system on or after July 1, 2015, who has ten or more
3 years of contributing service and who leaves the employ of a
4 participating public employer prior to attaining age sixty-two
5 years for any reason except his or her disability or death, is
6 entitled to an annuity computed according to section twenty-two
7 of this article, as that section was in force as of the date of his or
8 her separation from the employ of a participating public

9 employer: *Provided*, That he or she does not withdraw his or her
10 accumulated contributions from the members' deposit fund:
11 *Provided, however*, That his or her annuity shall begin the first
12 day of the calendar month next following the month in which his
13 or her application for same is filed with the board of trustees on
14 or after his or her attaining age sixty-four years.

15 (b) Any member who qualifies for deferred retirement
16 benefits in accordance with subsection (a) of this section and has
17 twenty or more years of contributing service in force is entitled
18 to an annuity computed as in subsection (a) of this section:
19 *Provided*, That his or her annuity shall begin the first day of the
20 calendar month next following the month in which his or her
21 application for same is filed with the board of trustees on or after
22 his or her attaining age sixty-three.

23 (c) Notwithstanding any of the other provisions of this
24 section or of this article, except sections twenty-seven-a and
25 twenty-seven-b of this article, and pursuant to rules promulgated
26 by the board, any member who first becomes a member of the
27 retirement system on or after July 1, 2015, has ten or more years
28 of contributing service in force, is currently employed by a
29 participating public employer and who elects to take early
30 retirement, which for the purposes of this subsection means
31 retirement following attainment of age sixty but prior to
32 attaining age sixty-two, is entitled to the full computation of
33 annuity according to section twenty-two of this article but with
34 the reduced actuarial equivalent of the annuity the member
35 would have received if his or her benefit had commenced at age
36 sixty-two when he or she would have been entitled to full
37 computation of benefit without any reduction: *Provided*, That his
38 or her annuity shall begin the first day of the calendar month
39 next following the month in which his or her application for
40 same is filed with the board of trustees on or after his or her
41 attaining age sixty.

42 (d) Any member who first becomes a member of the
43 retirement system on or after July 1, 2015, and has twenty or
44 more years of contributing service in force, is currently
45 employed by a participating public employer and who elects to
46 take early retirement, which for the purposes of this subsection
47 means retirement following attainment of age fifty-seven but
48 prior to attaining age sixty-two, is entitled to the full
49 computation of annuity according to section twenty-two of this
50 article but with the reduced actuarial equivalent of the annuity
51 the member would have received if his or her benefit had
52 commenced at age sixty-two when he or she would have been
53 entitled to full computation of benefit without any reduction:
54 *Provided*, That his or her annuity shall begin the first day of the
55 calendar month next following the month in which his or her
56 application for same is filed with the board of trustees on or after
57 his or her attaining age fifty-seven.

58 (e) Any member who first becomes a member of the
59 retirement system on or after July 1, 2015, and has thirty or more
60 years of contributing service in force, and who elects to take
61 early retirement, which for the purposes of this subsection means
62 retirement following attainment of age fifty-five but prior to
63 attaining age sixty-two, is entitled to the full computation of
64 annuity according to section twenty-two of this article but with
65 the reduced actuarial equivalent of the annuity the member
66 would have received if his or her benefit had commenced at age
67 sixty-two when he or she would have been entitled to full
68 computation of benefit without any reduction: *Provided*, That his
69 or her annuity shall begin the first day of the calendar month
70 next following the month in which his or her application for
71 same is filed with the board of trustees on or after his or her
72 attaining age fifty-five.

**§5-10-29. Members' deposit fund; members' contributions;
forfeitures.**

1 (a) The members' deposit fund is hereby created. It shall be
2 the fund in which shall be accumulated, at regular interest, the

3 contributions deducted from the compensation of members, and
4 from which refunds of accumulated contributions shall be paid
5 and transfers made as provided in this section.

6 (b) The contributions of a member to the retirement system
7 (including any member of the Legislature, except as otherwise
8 provided in subsection (g) of this section) shall be a sum of not
9 less than three and five-tenths percent of his or her annual
10 compensation but not more than four and five-tenths percent of
11 his or her annual compensation, as determined by the board of
12 trustees: *Provided*, That for persons who first become members
13 of the retirement system on or after July 1, 2015, the
14 contributions to the system shall be six percent of his or her
15 annual compensation beginning July 1, 2015. The said
16 contributions shall be made notwithstanding that the minimum
17 salary or wages provided by law for any member shall be
18 thereby changed. Each member shall be deemed to consent and
19 agree to the deductions made and provided for herein. Payment
20 of a member's compensation less said deductions shall be a full
21 and complete discharge and acquittance of all claims and
22 demands whatsoever for services rendered by him or her to a
23 participating public employer, except as to benefits provided by
24 this article.

25 (c) The officer or officers responsible for making up the
26 payrolls for payroll units of the state government and for each of
27 the other participating public employers shall cause the
28 contributions, provided in subsection (b) of this section, to be
29 deducted from the compensations of each member in the employ
30 of the participating public employer, on each and every payroll,
31 for each and every payroll period, from the date the member
32 enters the retirement system to the date his or her membership
33 terminates. When deducted, each of said amounts shall be paid
34 by the participating public employer to the retirement system;
35 said payments to be made in such manner and form, and in such
36 frequency, and shall be accompanied by such supporting data, as

37 the board of trustees shall from time to time prescribe. When
38 paid to the retirement system, each of said amounts shall be
39 credited to the members' deposit fund account of the member
40 from whose compensations said contributions were deducted.

41 (d) In addition to the contributions deducted from the
42 compensations of a member, as heretofore provided, a member
43 shall deposit in the members' deposit fund, by a single
44 contribution or by an increased rate of contribution as approved
45 by the board of trustees, the amounts he or she may have
46 withdrawn therefrom and not repaid thereto, together with
47 regular interest from the date of withdrawal to the date of
48 repayment. In no case shall a member be given credit for service
49 rendered prior to the date he or she withdrew his or her
50 contributions or accumulated contributions, as the case may be,
51 until he or she returns to the members' deposit fund all amounts
52 due the said fund by him or her.

53 (e) Upon the retirement of a member, or if a survivor annuity
54 becomes payable on account of his or her death, in either event
55 his or her accumulated contributions standing to his or her credit
56 in the members' deposit fund shall be transferred to the
57 retirement reserve fund.

58 (f) In the event an employee's membership in the retirement
59 system terminates and no annuity becomes or will become
60 payable on his or her account, any accumulated contributions
61 standing to his or her credit in the members' deposit fund,
62 unclaimed by the said employee, or his or her legal
63 representative, within three years from and after the date his or
64 her membership terminated, shall be transferred to the income
65 fund.

66 (g) Any member of the Legislature who is a member of the
67 retirement system and with respect to whom the term "final
68 average salary" includes a multiple of eight, pursuant to the

69 provisions of subdivision (13), section two of this article, shall
70 contribute to the retirement system on the basis of his or her
71 legislative compensation the sum of \$540 each year he or she
72 participates in the retirement system as a member of the
73 Legislature.

74 (h) Notwithstanding any other provisions of this article,
75 forfeitures under the system shall not be applied to increase the
76 benefits any member would otherwise receive under the system.

ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT.

§5-13-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 shall have the following meanings:

4 (a) "Accumulated contributions" means the sum of the
5 amounts deducted from the compensation of a member and
6 credited to his or her individual account in a state system,
7 together with interest, if any, credited thereto.

8 (b) "Annuity" means the annuity payable by a state system.

9 (c) "Member" means a member of either the West Virginia
10 Public Employees Retirement System or the State Teachers
11 Retirement System. The term "member" does not include any
12 person who has retired under either state system.

13 (d) "Public final average salary" means a member's final
14 average salary computed according to the law governing the
15 public system. In computing his or her public final average
16 salary, the compensation, if any, received by the member for
17 services rendered in positions covered by the teacher system
18 shall be used in the same manner as if the compensation were

19 received for services covered by the public system: *Provided*,
20 That for persons who first became members of the retirement
21 system on or after July 1, 2015, no compensation for services
22 rendered in positions covered by the teacher system may be used
23 to compute his or her public system final average salary.

24 (e) “Public system” means the West Virginia Public
25 Employees Retirement System established in article ten of this
26 chapter.

27 (f) “Reciprocal service credit” for a member of the public
28 system who subsequently becomes a member of the teacher
29 system, or vice versa, means the sum of his or her credited
30 service in force acquired as a member of the public system and
31 his or her credited service in force acquired as a member of the
32 teacher system: *Provided*, That persons who first became
33 members of the public system or teacher system on or after July
34 1, 2015, must be employed and contributed for ten years or more
35 in each system to receive reciprocal service credit.

36 (g) “State system” means the West Virginia Public
37 Employees Retirement System and the State Teachers
38 Retirement System.

39 (h) “Teacher final average salary” means a member’s final
40 average salary computed according to the law governing the
41 teacher system. In computing his or her teacher final average
42 salary, the compensation, if any, received by the member for
43 services rendered in positions covered by the public system shall
44 be used in the same manner as if the compensation were received
45 for services covered by the teacher system: *Provided*, That for
46 persons who first became members of the retirement system on
47 or after July 1, 2015, no compensation for services rendered in
48 positions covered by the public system may be used to compute
49 his or her teacher system final average salary.

50 (i) “Teacher system” means the State Teachers Retirement
51 System established in article seven-a, chapter eighteen of this
52 code.

53 (j) The masculine gender includes the feminine, and words
54 of the singular number with respect to persons include the plural
55 number, and vice versa.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) *Cost-sharing*. — The director shall provide under any
2 contract or contracts entered into under the provisions of this
3 article that the costs of any group hospital and surgical
4 insurance, group major medical insurance, group prescription
5 drug insurance, group life and accidental death insurance benefit
6 plan or plans shall be paid by the employer and employee.

7 (b) *Spouse and dependent coverage*. — Each employee is
8 entitled to have his or her spouse and dependents included in any
9 group hospital and surgical insurance, group major medical
10 insurance or group prescription drug insurance coverage to
11 which the employee is entitled to participate: *Provided*, That the
12 spouse and dependent coverage is limited to excess or secondary
13 coverage for each spouse and dependent who has primary
14 coverage from any other source. For purposes of this section, the
15 term “primary coverage” means individual or group hospital and

16 surgical insurance coverage or individual or group major
17 medical insurance coverage or group prescription drug coverage
18 in which the spouse or dependent is the named insured or
19 certificate holder. For the purposes of this section, “dependent”
20 includes an eligible employee’s unmarried child or stepchild
21 under the age of twenty-five if that child or stepchild meets the
22 definition of a “qualifying child” or a “qualifying relative” in
23 Section 152 of the Internal Revenue Code. The director may
24 require proof regarding spouse and dependent primary coverage
25 and shall adopt rules governing the nature, discontinuance and
26 resumption of any employee’s coverage for his or her spouse and
27 dependents.

28 (c) *Continuation after termination.* — If an employee
29 participating in the plan is terminated from employment
30 involuntarily or in reduction of work force, the employee’s
31 insurance coverage provided under this article shall continue for
32 a period of three months at no additional cost to the employee
33 and the employer shall continue to contribute the employer’s
34 share of plan premiums for the coverage. An employee
35 discharged for misconduct shall not be eligible for extended
36 benefits under this section. Coverage may be extended up to the
37 maximum period of three months, while administrative remedies
38 contesting the charge of misconduct are pursued. If the discharge
39 for misconduct be upheld, the full cost of the extended coverage
40 shall be reimbursed by the employee. If the employee is again
41 employed or recalled to active employment within twelve
42 months of his or her prior termination, he or she shall not be
43 considered a new enrollee and may not be required to again
44 contribute his or her share of the premium cost, if he or she had
45 already fully contributed such share during the prior period of
46 employment.

47 (d) *Conversion of accrued annual and sick leave for*
48 *extended insurance coverage upon retirement for employees who*
49 *elected to participate in the plan before July, 1988.* — Except as

50 otherwise provided in subsection (g) of this section, when an
51 employee participating in the plan, who elected to participate in
52 the plan before July 1, 1988, is compelled or required by law to
53 retire before reaching the age of sixty-five, or when a
54 participating employee voluntarily retires as provided by law,
55 that employee's accrued annual leave and sick leave, if any, shall
56 be credited toward an extension of the insurance coverage
57 provided by this article, according to the following formulae:
58 The insurance coverage for a retired employee shall continue one
59 additional month for every two days of annual leave or sick
60 leave, or both, which the employee had accrued as of the
61 effective date of his or her retirement. For a retired employee,
62 his or her spouse and dependents, the insurance coverage shall
63 continue one additional month for every three days of annual
64 leave or sick leave, or both, which the employee had accrued as
65 of the effective date of his or her retirement.

66 (e) *Conversion of accrued annual and sick leave for*
67 *extended insurance coverage upon retirement for employees who*
68 *elected to participate in the plan after June, 1988. —*
69 Notwithstanding subsection (d) of this section, and except as
70 otherwise provided in subsections (g) and (l) of this section,
71 when an employee participating in the plan who elected to
72 participate in the plan on and after July 1, 1988, is compelled or
73 required by law to retire before reaching the age of sixty-five, or
74 when the participating employee voluntarily retires as provided
75 by law, that employee's annual leave or sick leave, if any, shall
76 be credited toward one half of the premium cost of the insurance
77 provided by this article, for periods and scope of coverage
78 determined according to the following formulae: (1) One
79 additional month of single retiree coverage for every two days of
80 annual leave or sick leave, or both, which the employee had
81 accrued as of the effective date of his or her retirement; or (2)
82 one additional month of coverage for a retiree, his or her spouse
83 and dependents for every three days of annual leave or sick
84 leave, or both, which the employee had accrued as of the

85 effective date of his or her retirement. The remaining premium
86 cost shall be borne by the retired employee if he or she elects the
87 coverage. For purposes of this subsection, an employee who has
88 been a participant under spouse or dependent coverage and who
89 reenters the plan within twelve months after termination of his
90 or her prior coverage shall be considered to have elected to
91 participate in the plan as of the date of commencement of the
92 prior coverage. For purposes of this subsection, an employee
93 shall not be considered a new employee after returning from
94 extended authorized leave on or after July 1, 1988.

95 (f) *Increased retirement benefits for retired employees with*
96 *accrued annual and sick leave.* — In the alternative to the
97 extension of insurance coverage through premium payment
98 provided in subsections (d) and (e) of this section, the accrued
99 annual leave and sick leave of an employee participating in the
100 plan may be applied, on the basis of two days' retirement service
101 credit for each one day of accrued annual and sick leave, toward
102 an increase in the employee's retirement benefits with those days
103 constituting additional credited service in computation of the
104 benefits under any state retirement system: *Provided*, That for a
105 person who first becomes a member of the Teachers Retirement
106 System as provided in article seven-a, chapter eighteen of this
107 code on or after July 1, 2015, accrued annual and sick leave of
108 an employee participating in the plan may not be applied for
109 retirement service credit. However, the additional credited
110 service shall not be used in meeting initial eligibility for
111 retirement criteria, but only as additional service credited in
112 excess thereof.

113 (g) *Conversion of accrued annual and sick leave for*
114 *extended insurance coverage upon retirement for certain higher*
115 *education employees.* — Except as otherwise provided in
116 subsection (l) of this section, when an employee, who is a higher
117 education full-time faculty member employed on an annual
118 contract basis other than for twelve months, is compelled or

119 required by law to retire before reaching the age of sixty-five, or
120 when such a participating employee voluntarily retires as
121 provided by law, that employee's insurance coverage, as
122 provided by this article, shall be extended according to the
123 following formulae: The insurance coverage for a retired higher
124 education full-time faculty member, formerly employed on an
125 annual contract basis other than for twelve months, shall
126 continue beyond the effective date of his or her retirement one
127 additional year for each three and one-third years of teaching
128 service, as determined by uniform guidelines established by the
129 University of West Virginia Board of Trustees and the board of
130 directors of the state college system, for individual coverage, or
131 one additional year for each five years of teaching service for
132 family coverage.

133 (h) Any employee who retired prior to April 21, 1972, and
134 who also otherwise meets the conditions of the "retired
135 employee" definition in section two of this article, shall be
136 eligible for insurance coverage under the same terms and
137 provisions of this article. The retired employee's premium
138 contribution for any such coverage shall be established by the
139 finance board.

140 (i) *Retiree participation.* — All retirees under the provisions
141 of this article, including those defined in section two of this
142 article; those retiring prior to April 21, 1972; and those hereafter
143 retiring are eligible to obtain health insurance coverage. The
144 retired employee's premium contribution for the coverage shall
145 be established by the finance board.

146 (j) *Surviving spouse and dependent participation.* — A
147 surviving spouse and dependents of a deceased employee, who
148 was either an active or retired employee participating in the plan
149 just prior to his or her death, are entitled to be included in any
150 comprehensive group health insurance coverage provided under
151 this article to which the deceased employee was entitled, and the

152 spouse and dependents shall bear the premium cost of the
153 insurance coverage. The finance board shall establish the
154 premium cost of the coverage.

155 (k) *Elected officials.* — In construing the provisions of this
156 section or any other provisions of this code, the Legislature
157 declares that it is not now nor has it ever been the Legislature's
158 intent that elected public officials be provided any sick leave,
159 annual leave or personal leave, and the enactment of this section
160 is based upon the fact and assumption that no statutory or
161 inherent authority exists extending sick leave, annual leave or
162 personal leave to elected public officials and the very nature of
163 those positions preclude the arising or accumulation of any
164 leave, so as to be thereafter usable as premium paying credits for
165 which the officials may claim extended insurance benefits.

166 (l) *Participation of certain former employees.* — An
167 employee, eligible for coverage under the provisions of this
168 article who has twenty years of service with any agency or entity
169 participating in the public employees insurance program or who
170 has been covered by the public employees insurance program for
171 twenty years may, upon leaving employment with a participating
172 agency or entity, continue to be covered by the program if the
173 employee pays one hundred five percent of the cost of retiree
174 coverage: *Provided,* That the employee shall elect to continue
175 coverage under this subsection within two years of the date the
176 employment with a participating agency or entity is terminated.

177 (m) *Prohibition on conversion of accrued annual and sick*
178 *leave for extended coverage upon retirement for new employees*
179 *who elect to participate in the plan after June, 2001.* — Any
180 employee hired on or after July 1, 2001, who elects to participate
181 in the plan may not apply accrued annual or sick leave toward
182 the cost of premiums for extended insurance coverage upon his
183 or her retirement. This prohibition does not apply to the
184 conversion of accrued annual or sick leave for increased

185 retirement benefits, as authorized by this section: *Provided*, That
186 any person who has participated in the plan prior to July 1, 2001,
187 is not a new employee for purposes of this subsection if he or she
188 becomes reemployed with an employer participating in the plan
189 within two years following his or her separation from
190 employment and he or she elects to participate in the plan upon
191 his or her reemployment.

192 (n) *Prohibition on conversion of accrued years of teaching*
193 *service for extended coverage upon retirement for new*
194 *employees who elect to participate in the plan July, 2009.* —
195 Any employee hired on or after July 1, 2009, who elects to
196 participate in the plan may not apply accrued years of teaching
197 service toward the cost of premiums for extended insurance
198 coverage upon his or her retirement.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-21. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

1 Any member accruing annual leave or sick leave days may,
2 after April 9, 2005, elect to use the days at the time of retirement
3 to acquire additional credited service in this retirement system.
4 The days shall be applied on the basis of two workdays' credit
5 granted for each one day of accrued annual or sick leave days,
6 with each month of retirement service credit to equal twenty
7 workdays and with any remainder of ten workdays or more to
8 constitute a full month of additional credit and any remainder of
9 less than ten workdays to be dropped and not used,
10 notwithstanding any provisions of the code to the contrary:
11 *Provided*, That for a person who first becomes a member of the
12 retirement system on or after July 1, 2015, accrued annual and

13 sick leave days may not be applied to acquire additional credited
14 service. The credited service shall be allowed and not considered
15 to controvert the requirement of no more than twelve months'
16 credited service in any year's period.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers' service.

1 (a) Under rules adopted by the retirement board, each
2 teacher and nonteaching member shall file a detailed statement
3 of his or her length of service as a teacher or nonteacher for
4 which he or she claims credit. The retirement board shall
5 determine what part of a year is the equivalent of a year of
6 service. In computing the service, however, it shall credit no
7 period of more than a month's duration during which a member
8 was absent without pay, nor shall it credit for more than one year
9 of service performed in any calendar year.

10 (b) For service as a teacher in the employment of the federal
11 government, or a state or territory of the United States, or a
12 governmental subdivision of that state or territory, the retirement
13 board shall grant credit to the member: *Provided*, That the
14 member shall pay to the system twelve percent of that member's
15 gross salary earned during the first full year of current
16 employment whether a member of the Teachers Retirement
17 System or the Teachers' Defined Contribution Retirement
18 System, times the number of years for which credit is granted,
19 plus interest at a rate to be determined by the retirement board.
20 The interest shall be deposited in the reserve fund and service
21 credit granted at the time of retirement shall not exceed the
22 lesser of ten years or fifty percent of the member's total service
23 as a teacher in West Virginia. Any purchase of out-of-state
24 service, as provided in this article, shall not be used to establish

25 eligibility for a retirement allowance and the retirement board
26 shall grant credit for the purchased service as additional service
27 only: *Provided, however*, That a purchase of out-of-state service
28 is prohibited if the service is used to obtain a retirement benefit
29 from another retirement system: *Provided further*, That salaries
30 paid to members for service prior to entrance into the retirement
31 system shall not be used to compute the average final salary of
32 the member under the retirement system.

33 (c) No members shall be considered absent from service
34 while serving as a member or employee of the Legislature of the
35 State of West Virginia during any duly constituted session of
36 that body or while serving as an elected member of a county
37 commission during any duly constituted session of that body.

38 (d) No member shall be considered absent from service as a
39 teacher or nonteacher while serving as an officer with a
40 statewide professional teaching association, or who has served
41 in that capacity, and no retirant, who served in that capacity
42 while a member, shall be considered to have been absent from
43 service as a teacher by reason of that service: *Provided*, That the
44 period of service credit granted for that service shall not exceed
45 ten years: *Provided, however*, That a member or retirant who is
46 serving or has served as an officer of a statewide professional
47 teaching association shall make deposits to the Teachers
48 Retirement System, for the time of any absence, in an amount
49 double the amount which he or she would have contributed in his
50 or her regular assignment for a like period of time.

51 (e) The Teachers Retirement System shall grant service
52 credit to any former or present member of the West Virginia
53 Public Employees Retirement System who has been a
54 contributing member of the Teachers Retirement System for
55 more than three years, for service previously credited by the
56 Public Employees Retirement System upon his or her written
57 request and: (1) Shall require the transfer of the member's Public

58 Employees Retirement System accumulated contributions to the
59 Teachers Retirement System; or (2) shall require a repayment of
60 the amount withdrawn from the Public Employees Retirement
61 System, plus interest at a rate to be determined by the retirement
62 board, compounded annually from the date of withdrawal to the
63 date of payment, any time prior to the member's effective
64 retirement date: *Provided*, That there shall be added by the
65 member to the amounts transferred or repaid under this
66 subsection an amount which shall be sufficient to equal the
67 contributions he or she would have made had the member been
68 under the Teachers Retirement System during the period of his
69 or her membership in the Public Employees Retirement System,
70 plus interest at a rate determined by the retirement board,
71 compounded annually from the date the additional contribution
72 would have been made had the member been under the Teachers
73 Retirement System to the date of payment. All interest paid or
74 transferred shall be deposited in the reserve fund.

75 (f) For service as a teacher in an elementary or secondary
76 parochial school, located within this state and fully accredited by
77 the West Virginia Department of Education, the retirement board
78 shall grant credit to the member: *Provided*, That the member
79 shall pay to the system twelve percent of that member's gross
80 salary earned during the first full year of current employment
81 whether a member of the Teachers Retirement System or the
82 Teachers' Defined Contribution Retirement System, times the
83 number of years for which credit is granted, plus interest at a rate
84 to be determined by the retirement board. The interest shall be
85 deposited in the reserve fund and service granted at the time of
86 retirement shall not exceed the lesser of ten years or fifty percent
87 of the member's total service as a teacher in the West Virginia
88 public school system. Any purchase of parochial school service,
89 as provided in this section, may not be used to establish
90 eligibility for a retirement allowance and retirement board shall
91 grant credit for the purchase as additional service only:
92 *Provided, however*, That a purchase of parochial school service

93 is prohibited if the service is used to obtain a retirement benefit
94 from another retirement system.

95 (g) Active members who previously worked in
96 Comprehensive Employment and Training Act (CETA) may
97 receive service credit for time served in that capacity: *Provided,*
98 That in order to receive service credit under the provisions of
99 this subsection the following conditions must be met: (1) The
100 member must have moved from temporary employment with the
101 participating employer to permanent full-time employment with
102 the participating employer within one hundred twenty days
103 following the termination of the member's CETA employment;
104 (2) the retirement board must receive evidence that establishes
105 to a reasonable degree of certainty as determined by the
106 retirement board that the member previously worked in CETA;
107 and (3) the member shall pay to the retirement board an amount
108 equal to the employer and employee contribution plus interest at
109 the amount set by the retirement board for the amount of service
110 credit sought pursuant to this subsection: *Provided, however,*
111 That the maximum service credit that may be obtained under the
112 provisions of this subsection is two years: *Provided further,* That
113 a member must apply and pay for the service credit allowed
114 under this subsection and provide all necessary documentation
115 by March 31, 2003: *And provided further,* That the retirement
116 board shall exercise due diligence to notify affected employees
117 of the provisions of this subsection.

118 (h) If a member is not eligible for prior service credit or
119 pension as provided in this article, then his or her prior service
120 shall not be considered a part of his or her total service.

121 (i) A member who withdrew from membership may regain
122 his or her former membership rights as specified in section
123 thirteen of this article only in case he or she has served two years
124 since his or her last withdrawal.

125 (j) Subject to the provisions of subsections (a) through (k),
126 inclusive, of this section, the retirement board shall verify as
127 soon as practicable the statements of service submitted. The
128 retirement board shall issue prior service certificates to all
129 persons eligible for the certificates under the provisions of this
130 article. The certificates shall state the length of the prior service
131 credit, but in no case shall the prior service credit exceed forty
132 years.

133 (k) Notwithstanding any provision of this article to the
134 contrary, when a member is or has been elected to serve as a
135 member of the Legislature, and the proper discharge of his or her
136 duties of public office require that member to be absent from his
137 or her teaching or administrative duties, the time served in
138 discharge of his or her duties of the legislative office are credited
139 as time served for purposes of computing service credit:
140 *Provided*, That the retirement board may not require any
141 additional contributions from that member in order for the
142 retirement board to credit him or her with the contributing
143 service credit earned while discharging official legislative duties:
144 *Provided, however*, That nothing in this section may be
145 construed to relieve the employer from making the employer
146 contribution at the member's regular salary rate or rate of pay
147 from that employer on the contributing service credit earned
148 while the member is discharging his or her official legislative
149 duties. These employer payments shall commence as of June
150 1,2000: *Provided further*, That any member to which the
151 provisions of this subsection apply may elect to pay to the
152 retirement board an amount equal to what his or her contribution
153 would have been for those periods of time he or she was serving
154 in the Legislature. The periods of time upon which the member
155 paid his or her contribution shall then be included for purposes
156 of determining his or her final average salary as well as for
157 determining years of service: *And provided further*, That a
158 member using the provisions of this subsection is not required to
159 pay interest on any contributions he or she may decide to make.

160 (l) The Teachers Retirement System shall grant service
161 credit to any former member of the State Police Death, Disability
162 and Retirement System who has been a contributing member for
163 more than three years for service previously credited by the State
164 Police Death, Disability and Retirement System; and: (1) Shall
165 require the transfer of the member's contributions to the
166 Teachers Retirement System; or (2) shall require a repayment of
167 the amount withdrawn any time prior to the member's
168 retirement: *Provided*, That the member shall add to the amounts
169 transferred or repaid under this paragraph an amount which is
170 sufficient to equal the contributions he or she would have made
171 had the member been under the Teachers Retirement System
172 during the period of his or her membership in the State Police
173 Death, Disability and Retirement System plus interest at a rate
174 to be determined by the retirement board compounded annually
175 from the date of withdrawal to the date of payment. The interest
176 paid shall be deposited in the reserve fund.

§18-7A-17a. Qualified military service.

1 (a) Except as provided in subsection (b) of this section, for
2 the purpose of this article, the retirement board shall grant prior
3 service credit to members of the retirement system who were
4 honorably discharged from active duty service in any of the
5 armed forces of the United States in any period of national
6 emergency within which a federal Selective Service Act was in
7 effect. For purposes of this section, "armed forces" includes
8 Women's Army Corps, women's appointed volunteers for
9 emergency service, Army Nurse Corps, SPARS, Women's
10 Reserve and other similar units officially part of the military
11 service of the United States. The military service is considered
12 equivalent to public school teaching, and the salary equivalent
13 for each year of that service is the actual salary of the member as
14 a teacher for his or her first year of teaching after discharge from
15 military service. Prior service credit for military service shall not
16 exceed ten years for any one member, nor shall it exceed

17 twenty-five percent of total service at the time of retirement.
18 Notwithstanding the preceding provisions of this subsection,
19 contributions, benefits and service credit with respect to
20 qualified military service shall be provided in accordance with
21 Section 414(u) of the Internal Revenue Code. For purposes of
22 this section, “qualified military service” has the same meaning
23 as in Section 414(u) of the Internal Revenue Code. The
24 retirement board is authorized to determine all questions and
25 make all decisions relating to this section and, pursuant to the
26 authority granted to the retirement board in section one, article
27 ten-d, chapter five of this code, may promulgate rules relating to
28 contributions, benefits and service credit to comply with Section
29 414(u) of the Internal Revenue Code. No military service credit
30 may be used in more than one retirement system administered by
31 the Consolidated Public Retirement Board.

32 (b) Subsection (a) of this section does not apply to any
33 member who first becomes an employee of a participating public
34 employer on or after July 1, 2015. This subsection applies to any
35 member who first became an employee of a participating public
36 employer on or after July 1, 2015, and also applies to any
37 member who became an employee of a participating public
38 employer before July 1, 2015, and is unable to meet the
39 requirements of subsection (a) of this section.

40 (1) Any member may purchase up to sixty months of
41 military service credit for time served in active military duty
42 prior to first becoming an employee of a participating public
43 employer if all of the following conditions are met:

44 (A) The member has completed a complete fiscal year of
45 contributory service;

46 (B) The active military duty occurs prior to the date on
47 which the member first becomes an employee of a participating
48 public employer; and

49 (C) The employee pays to the retirement system the actuarial
50 reserve purchase amount within forty-eight months after the date
51 on which employer and employee contributions are first received
52 by the retirement system for the member and while he or she
53 continues to be in the employ of a participating public employer
54 and contributing to the retirement system, or within forty-eight
55 months of July 1, 2015, whichever is later: *Provided*, That any
56 employee who ceases employment with a participating public
57 employer before completing the required actuarial reserve
58 purchase amount in full shall not be eligible to purchase the
59 military service.

60 (2) Notwithstanding paragraph (A), subdivision (1) of this
61 subsection, a member who first becomes an employee of a
62 participating public employer on or after July 1, 2015, but who
63 does not remain employed and contributing to the retirement
64 system for at least a complete fiscal year after his or her initial
65 employment, shall be considered to have met the requirement of
66 said paragraph the first time he or she becomes an employee of
67 a participating public employer and completes at least a
68 complete fiscal year of contributing service. Such a member
69 shall be considered to have met the requirement of paragraph (C)
70 of said subdivision if he or she pays to the retirement system the
71 actuarial reserve purchase amount within forty-eight months
72 after the date on which employer and employee contributions are
73 first received by the retirement system for the member the first
74 time he or she becomes an employee of a participating public
75 employer and completes at least a complete fiscal year of
76 contributing service, and while he or she continues to be in the
77 employ of a participating public employer and contributing to
78 the retirement system.

79 (3) A member who first becomes an employee of a
80 participating public employer on or after July 1, 2015, may
81 purchase military service credit for active military duty
82 performed on or after the date he or she first becomes an

83 employee of a participating public employer only if all of the
84 following conditions are met: *Provided*, That the maximum
85 military service credit such member may purchase shall take into
86 account any military service credit purchased for active military
87 duty pursuant to subdivision (1) of this subsection in addition to
88 any military service credit purchased pursuant to this
89 subdivision:

90 (A) The member was an employee of a participating public
91 employer, terminated employment and experienced a break in
92 contributing service in the retirement system of one or more
93 months, performed active military service while not an employee
94 of the participating public employer and not contributing to the
95 retirement system, then again becomes an employee of a
96 participating public employer and completes at least a complete
97 fiscal year of contributory service;

98 (B) The member does not qualify for military service credit
99 for such active military duty pursuant to subsection (d) of this
100 section; and

101 (C) The member pays to the retirement system the actuarial
102 reserve purchase amount within forty-eight months after the date
103 on which employer and employee contributions are first received
104 by the retirement system for the member after he or she again
105 becomes an employee of a participating public employer
106 immediately following the period of active military duty and
107 break in service and completes at least a complete fiscal year of
108 contributory service, and while he or she continues to be in the
109 employ of a participating public employer and contributing to
110 the retirement system.

111 (4) Notwithstanding paragraph (A), subdivision (3) of this
112 subsection, a member who otherwise meets the requirements of
113 said paragraph, but who does not remain employed and
114 contributing to the retirement system for at least a complete

115 fiscal year when he or she first becomes an employee of a
116 participating public employer after the period of active military
117 duty and break in service, shall be considered to have met the
118 requirement of said paragraph the first time he or she again
119 becomes an employee of a participating public employer and
120 completes at least a complete fiscal year of contributing service.
121 Such a member shall be considered to have met the requirement
122 of paragraph (C) of said subdivision if he or she pays to the
123 retirement system the actuarial reserve purchase amount within
124 forty-eight months after the date on which employer and
125 employee contributions are first received by the retirement
126 system for the member for the first time he or she again becomes
127 an employee of a participating public employer and completes
128 at least a complete fiscal year of contributing service, and while
129 he or she continues to be in the employ of a participating public
130 employer and contributing to the retirement system.

131 (5) For purposes of this subsection, the following definitions
132 shall apply:

133 (A) “Active military duty” means full-time active duty in the
134 armed forces of the United States for a period of thirty or more
135 consecutive calendar days. Active military duty does not include
136 inactive duty of any kind.

137 (B) “Actuarial reserve purchase amount” means the purchase
138 annuity rate multiplied by the purchase accrued benefit,
139 calculated as of the calculation month, plus annual interest
140 accruing at seven and one-half percent from the calculation
141 month through the purchase month, compounded monthly.

142 (C) “Armed forces of the United States” means the Army,
143 Navy, Air Force, Marine Corps, and Coast Guard, the reserve
144 components thereof, and the National Guard of the United States
145 or the National Guard of a state or territory when members of the

146 same are on full-time active duty pursuant to Title 10 or Title 32
147 of the United States Code.

148 (D) "Calculation month" means the month immediately
149 following the month in which the member completes a complete
150 fiscal year of contributory service with a participating public
151 employer required by subdivision (1), (2), (3) or (4) of this
152 subsection, as applicable.

153 (E) "Purchase accrued benefit" means two percent times the
154 purchase military service times the purchase average monthly
155 salary.

156 (F) "Purchase age" means the age of the employee in years
157 and completed months as of the first day of the calculation
158 month.

159 (G) "Purchase annuity rate" means the actuarial lump sum
160 annuity factor calculated as of the calculation month based on
161 the following actuarial assumptions: Interest rate of seven and
162 one-half percent; mortality of the 1971 group annuity mortality
163 table, fifty percent blended male and female rates, applied on a
164 unisex basis to all members; if purchase age is under age sixty-
165 two, a deferred annuity factor with payments commencing at age
166 sixty-two; and if purchase age is sixty-two or over, an immediate
167 annuity factor with payments starting at the purchase age.

168 (H) "Purchase average monthly salary" means the average
169 monthly salary of the member during the number of months of
170 the member's contract during the fiscal year of contributory
171 service required by subdivisions (1), (2), (3) and (4) of this
172 subsection, as applicable. For any member who first became an
173 employee of a participating public employer before July 1, 2015,
174 the purchase average monthly salary means the average monthly
175 salary of the member during the number of months of the

176 member's contract during his or her complete fiscal year of
177 contributory service on or after July 1, 2015.

178 (I) "Purchase military service" means the amount of military
179 service being purchased by the employee in months up to the
180 sixty-month maximum, calculated in accordance with
181 subdivision (7) of this subsection.

182 (J) "Purchase month" means the month in which the
183 employee deposits the actuarial reserve lump sum purchase
184 amount into the plan trust fund in full payment of the service
185 credit being purchased or makes the final payment of the
186 actuarial reserve purchase amount into the plan trust fund in full
187 payment of the service credit being purchased.

188 (6) A member may purchase military service credit for a
189 period of active military duty pursuant to this subsection only if
190 the member received an honorable discharge for the period.
191 Anything other than an honorable discharge, including, but not
192 limited to, a general or under honorable conditions discharge, an
193 entry-level separation discharge, an other than honorable
194 conditions discharge or a dishonorable discharge, shall
195 disqualify the member from receiving military service credit for
196 the period of service. The board shall require a member
197 requesting military service credit to provide official
198 documentation establishing that the requirements set forth in this
199 subsection have been met.

200 (7) To calculate the amount of military service credit a
201 member may purchase, the board shall add the total number of
202 days in each period of a member's active military duty eligible
203 to be purchased, divide the total by thirty, and round up or down
204 to the nearest integer (fractions of 0.5 shall be rounded up), in
205 order to yield the total number of months of military service
206 credit a member may purchase, subject to the sixty-month
207 maximum. A member may purchase all or part of the maximum

208 amount of military service credit he or she is eligible for in
209 one-month increments.

210 (8) To receive credit, a member must submit a request to
211 purchase military service credit to the board, on such form or in
212 such other manner as shall be required by the board, within the
213 complete fiscal year period required by subdivision (1), (2), (3)
214 or (4) of this subsection, as applicable. The board shall then
215 calculate the actuarial reserve lump sum purchase amount, which
216 amount must be paid by the member within the 48-month period
217 required by said subdivisions, as applicable. A member
218 purchasing military service credit pursuant to this subsection
219 must do so in a single, lump sum payment: *Provided*, That the
220 board may accept partial, installment or other similar payments
221 if the employee executes a contract with the board specifying the
222 amount of military service to be purchased and the payments
223 required: *Provided, however*, That any failure to pay the contract
224 amount in accordance with this section shall be treated as an
225 overpayment or excess contribution subject to section forty-four
226 of this article and no military service shall be credited.

227 (9) The board shall require a member requesting military
228 service credit to provide official documentation establishing that
229 the requirements set forth in this subsection have been met.

230 (10) Military service credit purchased pursuant to this
231 subsection shall not be considered contributing service credit or
232 contributory service for purposes of this article.

233 (11) If a member who has purchased military service credit
234 pursuant to this subsection is eligible for and requests a
235 withdrawal of accumulated contributions pursuant to the
236 provisions of this article, he or she shall also receive a refund of
237 the actuarial reserve purchase amount he or she paid to the
238 retirement system to purchase military service credit, together
239 with regular interest on such amount.

240 (c) No period of military service shall be used to obtain
241 credit in more than one retirement system administered by the
242 board and once used in any system, a period of military service
243 may not be used again in any other system.

244 (d) Notwithstanding the preceding provisions of this section,
245 contributions, benefits and service credit with respect to
246 qualified military service shall be provided in accordance with
247 Section 414(u) of the Internal Revenue Code and the federal
248 Uniformed Services Employment and Reemployment Rights Act
249 (USERRA), and regulations promulgated thereunder, as the
250 same may be amended from time to time. For purposes of this
251 section, "qualified military service" has the same meaning as in
252 Section 414(u) of the Internal Revenue Code.

253 (e) In any case of doubt as to the period of service to be
254 credited a member under the provisions of this section, the board
255 has final power to determine the period. The board is authorized
256 to determine all questions and make all decisions relating to this
257 section and, pursuant to the authority granted to the board in
258 section one, article ten-d of this chapter, may propose rules to
259 administer this section for legislative approval in accordance
260 with the provisions of article three, chapter twenty-nine-a of this
261 code.

§18-7A-23. Withdrawal and death benefits.

1 (a) Benefits upon withdrawal from service prior to
2 retirement under the provisions of this article shall be as follows:

3 (1) A contributor who withdraws from service for any cause
4 other than death, disability or retirement shall, upon application,
5 be paid his or her accumulated contributions up to the end of the
6 fiscal year preceding the year in which application is made, after
7 offset of any outstanding loan balance, plus accrued loan
8 interest, pursuant to section thirty-four of this article, but in no

9 event shall interest be paid beyond the end of five years
10 following the year in which the last contribution was made:
11 *Provided*, That the contributor, at the time of application, is then
12 no longer under contract, verbal or otherwise, to serve as a
13 teacher; or

14 (2) Except as provided in section twenty-five-b of this
15 article, if the inactive member has completed twenty years of
16 total service, he or she may elect to receive at age sixty an
17 annuity which shall be computed as provided in this article:
18 *Provided*, That if the inactive member has completed at least
19 five, but fewer than twenty, years of total service in this state, he
20 or she may elect to receive at age sixty-two an annuity which
21 shall be computed as provided in this article. The inactive
22 member must notify the retirement board in writing concerning
23 the election. If the inactive member has completed fewer than
24 five years of service in this state, he or she shall be subject to the
25 provisions as outlined in subdivision (1) of this subsection.

26 (b) Benefits upon the death of a contributor prior to
27 retirement under the provisions of this article shall be paid as
28 follows:

29 (1) If the contributor was at least fifty years old and if his or
30 her total service as a teacher or nonteaching member was at least
31 twenty-five years at the time of his or her death, then the
32 surviving spouse of the deceased, provided the spouse is
33 designated as the sole primary refund beneficiary, is eligible for
34 an annuity computed as though the deceased were actually a
35 retirant at the time of death and had selected a survivorship
36 option which pays the spouse the same monthly amount which
37 would have been received by the deceased; or

38 (2) If the facts do not permit payment under subdivision (1)
39 of this subsection, then the following sum shall be paid to the
40 refund beneficiary of the contributor: (A) The contributor's

41 accumulated contributions up to the plan year of his or her death
42 plus an amount equal to his or her member contributions:
43 Provided, That the latter sum shall emanate from the Employer's
44 Accumulation Fund; and (B) the refund beneficiary of any
45 individual who became a member of the retirement system as a
46 result of the voluntary transfer contemplated in article seven-d
47 of this chapter shall also be paid the member contributions plus
48 the vested portion of employer contributions made on his or her
49 behalf to the Teachers' Defined Contribution Retirement
50 System, plus any earnings thereon, as of June 30, 2008, as stated
51 by the retirement board.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Except for a person who first becomes a member of the
2 retirement system on or after July 1, 2015, any actively
3 contributing member who has attained the age of sixty years or
4 any member who has thirty-five years of total service as a
5 teacher or nonteaching member in West Virginia, regardless of
6 age, is eligible for an annuity. No new entrant nor present
7 member is eligible for an annuity, however, if either has less
8 than five years of service to his or her credit: *Provided*, That on
9 and after July 1, 2013, any person who becomes a new member
10 of this retirement system shall, in qualifying for retirement under
11 this section, have five or more years of contributory service, all
12 of which shall be actual, contributory ones.

13 (b) Except for a person who first becomes a member of the
14 retirement system on or after July 1, 2015, any member who has
15 attained the age of fifty-five years and who has served thirty
16 years as a teacher or nonteaching member in West Virginia is
17 eligible for an annuity.

18 (c) Except for a person who first becomes a member of the
19 retirement system on or after July 1, 2015, any member who has
20 served at least thirty but less than thirty-five years as a teacher

21 or nonteaching member in West Virginia and is less than
22 fifty-five years of age is eligible for an annuity, but the annuity
23 shall be the reduced actuarial equivalent of the annuity the
24 member would have received if the member were age fifty-five
25 at the time the annuity was applied for.

26 (d) The request for any annuity shall be made by the member
27 in writing to the retirement board, but in case of retirement for
28 disability, the written request may be made by either the member
29 or the employer.

30 (e) A member is eligible for annuity for disability if he or
31 she satisfies the conditions in either subdivision (1) or (2) of this
32 subsection and meets the conditions of subdivision (3) of this
33 subsection as follows:

34 (1) His or her service as a teacher or nonteaching member in
35 West Virginia must total at least ten years and service as a
36 teacher or nonteaching member must have been terminated
37 because of disability, which disability must have caused absence
38 from service for at least six months before his or her application
39 for disability annuity is approved.

40 (2) His or her service as a teacher or nonteaching member in
41 West Virginia must total at least five years and service as a
42 teacher or nonteaching member must have been terminated
43 because of disability, which disability must have caused absence
44 from service for at least six months before his or her application
45 for disability annuity is approved and the disability is a direct
46 and total result of an act of student violence directed toward the
47 member.

48 (3) An examination by a physician or physicians selected by
49 the retirement board must show that the member is at the time
50 mentally or physically incapacitated for service as a teacher or
51 nonteaching member, that for that service the disability is total

52 and likely to be permanent and that he or she should be retired
53 in consequence of the disability.

54 (f) Continuance of the disability of the retirant shall be
55 established by medical examination, as prescribed in subdivision
56 (3), subsection (e) of this section, annually for five years after
57 retirement, and thereafter at such times required by the
58 retirement board. Effective July 1,1998, a member who has
59 retired because of a disability may select an option of payment
60 under the provisions of section twenty-eight of this article:
61 *Provided*, That any option selected under the provisions of
62 section twenty-eight of this article shall be in all respects the
63 actuarial equivalent of the straight life annuity benefit the
64 disability retirant receives or would receive if the options under
65 said section were not available and that no beneficiary or
66 beneficiaries of the disability retirant may receive a greater
67 benefit, nor receive any benefit for a greater length of time, than
68 the beneficiary or beneficiaries would have received had the
69 disability retirant not made any election of the options available
70 under said section. In determining the actuarial equivalence, the
71 retirement board shall take into account the life expectancies of
72 the member and the beneficiary: *Provided, however*, That the life
73 expectancies may at the discretion of the retirement board be
74 established by an underwriting medical director of a competent
75 insurance company offering annuities. Payment of the disability
76 annuity provided in this article shall cease immediately if the
77 retirement board finds that the disability of the retirant no longer
78 exists, or if the retirant refuses to submit to medical examination
79 as required by this section.

**§18-7A-25b. Withdrawal and eligibility for retirement allowance
for a person who first becomes a member of the
retirement system on or after July 1, 2015.**

1 (a) A person who first becomes a member of the retirement
2 system on or after July 1, 2015, who has ten or more years of

3 contributing service, and attains or has attained the age of
4 sixty-two years, may retire upon his or her written application
5 filed with the board of trustees setting forth the date on which
6 the member desires to be retired. Upon retirement, the member
7 shall receive an annuity provided in section twenty-six of this
8 article.

9 (b) Any person who first becomes a member of the
10 retirement system on or after July 1, 2015, who has ten or more
11 years of contributing service and who leaves the employ of a
12 participating public employer prior to attaining age sixty-two
13 years for any reason except his or her disability or death, is
14 entitled to an annuity computed according to section twenty-two
15 of this article: *Provided*, That he or she does not withdraw his or
16 her accumulated contributions from the members' deposit fund.
17 His or her annuity shall begin the first day of the calendar month
18 next following the month in which his or her application for
19 same is filed with the board of trustees on or after his or her
20 attaining age sixty-four years.

21 (c) Any member who qualifies for deferred retirement
22 benefits in accordance with subsections (a) and (b) of this
23 section and has twenty or more years of contributing service in
24 force is entitled to an annuity computed as in subsection (a) of
25 this section: *Provided*, That he or she does not withdraw his or
26 her accumulated contributions from the members' deposit fund:
27 *Provided, however*, That his or her annuity shall begin the first
28 day of the calendar month next following the month in which his
29 or her application for same is filed with the board of trustees on
30 or after his or her attaining age sixty-three.

31 (d) Notwithstanding any of the other provisions of this
32 section or of this article, except sections twenty-eight-a and
33 twenty-eight-b of this article, and pursuant to rules promulgated
34 by the board, any member who first becomes a member of the
35 retirement system on or after July 1, 2015, and has ten or more

36 years of contributing service in force, is currently employed by
37 a participating public employer and who elects to take early
38 retirement, which for the purposes of this subsection means
39 retirement following attainment of age sixty but prior to
40 attaining age sixty-two, is entitled to the full computation of
41 annuity according to section twenty-two of this article but with
42 the reduced actuarial equivalent of the annuity the member
43 would have received if his or her benefit had commenced at age
44 sixty-two when he or she would have been entitled to full
45 computation of benefit without any reduction: *Provided*, That his
46 or her annuity shall begin the first day of the calendar month
47 next following the month in which his or her application for
48 same is filed with the board of trustees on or after his or her
49 attaining age sixty.

50 (e) Any member who first becomes a member of the
51 retirement system on or after July 1, 2015, and has twenty or
52 more years of contributing service in force, is currently
53 employed by a participating public employer and who elects to
54 take early retirement, which for the purposes of this subsection
55 means retirement following attainment of age fifty-seven but
56 prior to attaining age sixty-two, is entitled to the full
57 computation of annuity according to section twenty-two of this
58 article but with the reduced actuarial equivalent of the annuity
59 the member would have received if his or her benefit had
60 commenced at age sixty-two when he or she would have been
61 entitled to full computation of benefit without any reduction:
62 *Provided*, That his or her annuity shall begin the first day of the
63 calendar month next following the month in which his or her
64 application for same is filed with the board of trustees on or after
65 his or her attaining age fifty-seven.

66 (f) Any member who first becomes a member of the
67 retirement system on or after July 1, 2015, and has thirty or more
68 years of contributing service in force, is currently employed by
69 a participating public employer and who elects to take early

70 retirement, which for the purposes of this subsection means
71 retirement following attainment of age fifty-five but prior to
72 attaining age sixty-two, is entitled to the full computation of
73 annuity according to section twenty-two of this article but with
74 the reduced actuarial equivalent of the annuity the member
75 would have received if his or her benefit had commenced at age
76 sixty-two when he or she would have been entitled to full
77 computation of benefit without any reduction: *Provided*, That his
78 or her annuity shall begin the first day of the calendar month
79 next following the month in which his or her application for
80 same is filed with the board of trustees on or after his or her
81 attaining age fifty-five.

**ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS'
DEFINED CONTRIBUTION RETIREMENT
SYSTEM TO STATE TEACHERS
RETIREMENT SYSTEM.**

**§18-7D-6. Service credit in State Teachers Retirement System
following transfer; conversion of assets; adjustments.**

1 (a) Any member who has affirmatively elected to transfer to
2 the State Teachers Retirement System within the period provided
3 in section seven of this article whose assets have been
4 transferred from the Teachers' Defined Contribution Retirement
5 System to the State Teachers Retirement System pursuant to the
6 provisions of this article and who has not made any withdrawals
7 or cash-outs from his or her assets is, depending upon the
8 percentage of actively contributing members affirmatively
9 electing to transfer, entitled to service credit in the State
10 Teachers Retirement System in accordance with the provisions
11 of subsection (c) of this section.

12 (b) Any member who has made withdrawals or cash-outs
13 will receive service credit based upon the amounts transferred.
14 The board shall make the appropriate adjustment to the service
15 credit the member will receive.

16 (c) More than seventy-five percent of actively contributing
17 members of the Teachers' Defined Contribution Retirement
18 System affirmatively elected to transfer to the State Teachers
19 Retirement System within the period provided in section seven
20 of this article. Therefore, any member of the Teachers' Defined
21 Contribution Retirement System who decides to transfer to the
22 State Teachers Retirement System calculates his or her service
23 credit in the State Teachers Retirement System as follows:

24 (1) For any member affirmatively electing to transfer, the
25 member's State Teachers Retirement System credit shall be
26 seventy-five percent of the member's Teachers' Defined
27 Contribution Retirement System service credit, less any service
28 previously withdrawn by the member or due to a qualified
29 domestic relations order and not repaid;

30 (2) To receive full credit in the State Teachers Retirement
31 System for service in the Teachers' Defined Contribution
32 Retirement System for which assets are transferred, members
33 who affirmatively elected to transfer and who provided to the
34 board a signed verification of cost for service credit purchase
35 form by the effective date of the amendments to this section
36 enacted in the 2009 regular legislative session shall pay into the
37 State Teachers Retirement System a one and one-half percent
38 contribution by no later than July 1, 2015, or no later than ninety
39 days after the postmarked date on a final and definitive
40 contribution calculation from the board, whichever is later. This
41 contribution shall be calculated as one and one-half percent of
42 the member's estimated total earnings for which assets are
43 transferred, plus interest of four percent per annum accumulated
44 from the date of the member's initial participation in the
45 Teachers' Defined Contribution Retirement System through June
46 30, 2009, and interest of seven and one-half percent per annum
47 accumulated from July 1, 2009, through July 1, 2015: *Provided,*
48 That any member who transferred and provided to the board a
49 signed verification of cost for service credit purchase form by

50 June 30, 2009, but was unable to complete the purchase of the
51 one and one-half percent contribution, or any member who did
52 not request a verification of cost letter but attempted to purchase
53 the one and one-half percent contribution and was denied in
54 writing by the board on or before December 31, 2009, may
55 request the board on or before April 15, 2015, to recalculate the
56 contribution for 2015. To receive full credit, the member shall
57 pay into the State Teachers Retirement System the recalculated
58 purchase amount by July 1, 2015, or no later than sixty days after
59 the postmarked date on a contribution recalculation from the
60 board, whichever is later. The recalculated contribution shall
61 include the interest loss at the actuarial rate of seven and one-
62 half percent. The board's executive director may correct clerical
63 errors.

64 (A) For a member contributing to the Teachers' Defined
65 Contribution Retirement System at any time during the 2008
66 fiscal year and commencing membership in the State Teachers
67 Retirement System on July 1, 2008, or August 1, 2008, as the
68 case may be:

69 (i) The estimated total earnings shall be calculated based on
70 the member's salary and the member's age nearest birthday on
71 June 30, 2008;

72 (ii) This calculation shall apply both an annual backward
73 salary scale from that date for prior years' salaries and a forward
74 salary scale for the salary for the 2008 fiscal year.

75 (B) The calculations in paragraph (A) of this subdivision are
76 based upon the salary scale assumption applied in the West
77 Virginia Teachers Retirement System actuarial valuation as of
78 July 1, 2007, prepared for the Consolidated Public Retirement
79 Board. This salary scale shall be applied regardless of breaks in
80 service.

81 (d) All service previously transferred from the State
82 Teachers Retirement System to the Teachers' Defined

83 Contribution Retirement System is considered Teachers'
84 Defined Contribution Retirement System service for the
85 purposes of this article.

86 (e) Notwithstanding any provision of this code to the
87 contrary, the retirement of a member who becomes eligible to
88 retire after the member's assets are transferred to the State
89 Teachers Retirement System pursuant to the provisions of this
90 article may not commence before September 1, 2008: *Provided*,
91 That the Consolidated Public Retirement Board may not retire
92 any member who is eligible to retire during the calendar year
93 2008 unless the member has provided a written notice to his or
94 her county board of education by July 1, 2008, of his or her
95 intent to retire.

96 (f) The provisions of section twenty-eight-e, article seven-a
97 of this chapter do not apply to the amendments to this section
98 enacted during the 2009 regular legislative session or the 2015
99 regular legislative session.

CHAPTER 205

**(Com. Sub. for H. B. 2505 - By Delegate(s) Canterbury, Pethtel,
Folk, Walters, Hamilton, Marcum, Kurcaba and Hicks)**

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §15-2A-3 of said code; to amend and reenact §16-5V-6 of said code; and to amend and reenact §18-7A-13 of said code, all relating to retirement system participation; clarifying that police

officers and firefighters hired after a certain date are members of the West Virginia Municipal Police and Firefighters Retirement System; clarifying that members first employed in covered employment in the West Virginia Deputy Sheriffs Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the Consolidated Public Retirement Board in which the member has the earliest date of hire; and specifying that members of the Public Employees Retirement System, the State Police Retirement System and the Teachers' Retirement System who are employed in an additional job that requires membership in the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the concurrent employment provisions of said system and participate in only one system administered by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-5 of said code be amended and reenacted; that §8-22A-6 of said code be amended and reenacted; that §15-2A-3 of said code be amended and reenacted; that §16-5V-6 of said code be amended and reenacted; and that §18-7A-13 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RE-
TIREMENT ACT.**

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public employer
6 and who continue in the employ of the participating public
7 employer on and after that date shall become members of the
8 retirement system; and all persons who become employees of a
9 participating public employer on or after that date shall
10 thereupon become members of the system; except as provided in
11 subdivisions (b), (c) and (d) of this section.

12 (b) The membership of the Public Employees Retirement
13 System shall not include any person who is an active
14 contributing member of, or who has been retired by, any of the
15 state Teachers retirement systems, the Judges Retirement
16 System, any Retirement System of the West Virginia State
17 Police, the Deputy Sheriff Retirement System or any municipal
18 retirement system for either, or both, police or firefighter; and
19 the Bureau of Employment Programs, by the Commissioner of
20 the Bureau, may elect whether its employees will accept
21 coverage under this article or be covered under the authorization
22 of a separate enactment: *Provided*, That the exclusions of
23 membership do not apply to any member of the State
24 Legislature, the Clerk of the House of Delegates, the Clerk of the
25 State Senate or to any member of the legislative body of any
26 political subdivision provided he or she once becomes a
27 contributing member of the retirement system: *Provided*,
28 *however*, That any retired member of the State Police Death,
29 Disability and Retirement Fund, the West Virginia State Police
30 Retirement System, the Deputy Sheriff Retirement System and
31 any retired member of any municipal retirement system for
32 either, or both, police or firefighter may on and after the

33 effective date of this section become a member of the retirement
34 system as provided in this article, without receiving credit for
35 prior service as a municipal police officer or firefighter or as a
36 member of the State Police Death, Disability and Retirement
37 Fund, the West Virginia State Police Retirement System or the
38 Deputy Sheriff Retirement System: *Provided further*, That any
39 retired member of the State Police Death, Disability and
40 Retirement Fund, the West Virginia State Police Retirement
41 System, the Deputy Sheriff Retirement System and any retired
42 member of any municipal retirement system for either, or both,
43 police or firefighters, who begins participation in the retirement
44 system established in this article on or after July 1, 2005, may
45 not receive a combined retirement benefit in excess of one
46 hundred five percent of the member's highest annual salary
47 earned while either a member of the retirement system
48 established in this article or while a member of the other
49 retirement system or systems from which he or she previously
50 retired when adding the retirement benefit from the retirement
51 system created in this article to the retirement benefit received
52 by that member from the other retirement system or systems set
53 forth herein from which he or she previously retired: *And*
54 *provided further*, That the membership of the retirement system
55 does not include any person who becomes employed by the
56 Pretera Center for Mental Health Services, Valley
57 Comprehensive Mental Health Center, Westbrook Health
58 Services or Eastern Panhandle Mental Health Center on or after
59 July 1, 1997, *And provided further*, That membership of the
60 retirement system does not include any person who becomes a
61 member of the federal Railroad Retirement Act on or after July
62 1, 2000.

63 (c) Any member of the State Legislature, the Clerk of the
64 House of Delegates, the Clerk of the State Senate and any
65 employee of the State Legislature whose employment is
66 otherwise classified as temporary and who is employed to
67 perform services required by the Legislature for its regular

68 sessions or during the interim between regular sessions and who
69 has been or is employed during regular sessions or during the
70 interim between sessions in seven consecutive calendar years, as
71 certified by the Clerk of the House in which the employee
72 served, or any member of the legislative body of any other
73 political subdivision shall become a member of the retirement
74 system provided he or she notifies the retirement system in
75 writing of his or her intention to be a member of the system and
76 files a membership enrollment form as prescribed by the Board
77 of Trustees, and each person, upon filing his or her written notice
78 to participate in the retirement system, shall by that act authorize
79 the Clerk of the House of Delegates or the Clerk of the State
80 Senate or such person or legislative agency as the legislative
81 body of any other political subdivision shall designate to deduct
82 the member's contribution, as provided in subsection (b), section
83 twenty-nine of this article, and after the deductions have been
84 made from the member's compensation, the deductions shall be
85 forwarded to the retirement system.

86 (d) Any employee, as defined in section two of this article,
87 who has concurrent employment in an additional job or jobs
88 which would require the employee to be a member of the West
89 Virginia Deputy Sheriff Retirement System, the West Virginia
90 Municipal Police Officers and Firefighters Retirement System or
91 the West Virginia Emergency Medical Services Retirement
92 System shall abide by the concurrent employment statutory
93 provisions of said retirement system and shall participate in only
94 one retirement system administered by the board.

95 (e) If question arises regarding the membership status of any
96 employee, the Board of Trustees has the final power to decide
97 the question.

98 (f) Any individual who is a leased employee is not eligible
99 to participate in the system. For the purposes of this article, the
100 term "leased employee" means any individual who performs

101 services as an independent contractor or pursuant to an
102 agreement with an employee leasing organization or other
103 similar organization. If a question arises regarding the status of
104 an individual as a leased employee, the board has final authority
105 to decide the question.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in covered
2 employment after the effective date of this article shall be a
3 member of this retirement system and does not qualify for
4 membership in any other retirement system administered by the
5 board, so long as he or she remains employed in covered
6 employment: *Provided*, That any deputy sheriff who has
7 concurrent employment in an additional job or jobs which would
8 require the deputy sheriff to be a member of the West Virginia
9 Municipal Police Officers and Firefighters Retirement System or
10 the West Virginia Emergency Medical Services Retirement
11 System shall participate in only one retirement system
12 administered by the board, and the retirement system applicable
13 to the concurrent employment for which the employee has the
14 earliest date of hire shall prevail. The membership of any person
15 in the plan ceases: (1) Upon the withdrawal of accumulated
16 contributions after the cessation of service; (2) upon retirement;
17 (3) at death; or (4) upon the date, if any, when after the cessation
18 of service, the outstanding balance of any loan obtained by the
19 member pursuant to section twenty-three of the article, plus
20 accrued interest, equals or exceeds the accumulated
21 contributions of the member.

22 (b) Any deputy sheriff employed in covered employment on
23 the effective date of this article shall within six months of that

24 effective date notify in writing both the county commission in
25 the county in which he or she is employed and the board, of his
26 or her desire to become a member of the plan: *Provided*, That
27 this time period is extended to January 30, 1999, in accordance
28 with the decision of the Supreme Court of Appeals in *West*
29 *Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et*
30 *al*, No. 25212: *Provided, however*, That any deputy sheriff
31 employed in covered employment on the effective date of this
32 article has an additional time period consisting of the ten-day
33 period following the day after which the amended provisions of
34 this section become law to notify in writing both the county
35 commission in the county in which he or she is employed and the
36 board of his or her desire to become a member of the plan. Any
37 deputy sheriff who elects to become a member of the plan ceases
38 to be a member or have any credit for covered employment in
39 any other retirement system administered by the board and shall
40 continue to be ineligible for membership in any other retirement
41 system administered by the board so long as the deputy sheriff
42 remains employed in covered employment in this plan: *Provided*
43 *further*, That any deputy sheriff who elects during the time
44 period from July 1, 1998 to January 30, 1999 or who so elects
45 during the ten-day time period occurring immediately following
46 the day after the day the amendments made during the 1999
47 legislative session become law, to transfer from the Public
48 Employees Retirement System to the plan created in this article
49 shall contribute to the plan created in this article at the rate set
50 forth in section seven of this article retroactive to July 1, 1998.
51 Any deputy sheriff who does not affirmatively elect to become
52 a member of the plan continues to be eligible for any other
53 retirement system as is from time to time offered to other county
54 employees but is ineligible for this plan regardless of any
55 subsequent termination of employment and rehire.

56 (c) Any deputy sheriff employed in covered employment on
57 the effective date of this article who has timely elected to
58 transfer into this plan as provided in subsection (b) of this

59 section shall be given credited service at the time of transfer for
60 all credited service then standing to the deputy sheriff's service
61 credit in the Public Employees Retirement System regardless of
62 whether the credited service (as that term is defined in section
63 two, article ten, chapter five of this code) was earned as a deputy
64 sheriff. All the credited service standing to the transferring
65 deputy sheriff's credit in the Public Employees Retirement Fund
66 System at the time of transfer into this plan shall be transferred
67 into the plan created by this article, and the transferring deputy
68 sheriff shall be given the same credit for the purposes of this
69 article for all service transferred from the Public Employees
70 Retirement System as that transferring deputy sheriff would have
71 received from the Public Employees Retirement System as if the
72 transfer had not occurred. In connection with each transferring
73 deputy sheriff receiving credit for prior employment as provided
74 in this subsection, a transfer from the Public Employees
75 Retirement System to this plan shall be made pursuant to the
76 procedures described in section eight of this article: *Provided,*
77 That a member of this plan who has elected to transfer from the
78 Public Employees Retirement System into this plan pursuant to
79 subsection (b) of this section may not, after having transferred
80 into and become an active member of this plan, reinstate to his
81 or her credit in this plan any service credit relating to periods of
82 nondeputy sheriff service which were withdrawn from the Public
83 Employees Retirement System prior to his or her elective
84 transfer into this plan.

85 (d) Any deputy sheriff who was employed as a deputy sheriff
86 prior to the effective date of this article, but was not employed
87 as a deputy sheriff on the effective date of this article, shall
88 become a member upon rehire as a deputy sheriff. For purposes
89 of this subsection, the member's years of service and credited
90 service in the Public Employees Retirement System prior to the
91 effective date of this article shall not be counted for any purposes
92 under this plan unless: (1) The deputy sheriff has not received
93 the return of his or her accumulated contributions in the Public

94 Employees Retirement System pursuant to section thirty, article
95 ten, chapter five of this code; or (2) the accumulated
96 contributions returned to the member from the Public Employees
97 Retirement System have been repaid pursuant to section thirteen
98 of this article. If the conditions of subdivision (1) or (2) of this
99 subsection are met, all years of the deputy sheriff's covered
100 employment shall be counted as years of service for the purposes
101 of this article.

102 (e) Once made, the election provided in this section is
103 irrevocable. All deputy sheriffs first employed after the effective
104 date and deputy sheriffs electing to become members as
105 described in this section shall be members as a condition of
106 employment and shall make the contributions required by
107 section seven of this article.

108 (f) Notwithstanding any other provisions of this article, any
109 individual who is a leased employee is not eligible to participate
110 in the plan. For purposes of this plan, a "leased employee"
111 means any individual who performs services as an independent
112 contractor or pursuant to an agreement with an employee leasing
113 organization or similar organization. If a question arises
114 regarding the status of an individual as a leased employee, the
115 board has final power to decide the question.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

***§8-22A-6. Members.**

1 (a) A police officer or firefighter hired in covered
2 employment after the effective date of this article by a

* **NOTE:** This section was also amended by H. B. 2507 (Chapter 211),
which passed subsequent to this act.

3 municipality or municipal subdivision which has established and
4 maintained a policemen's pension and relief fund or a firemen's
5 pension and relief fund pursuant to section sixteen, article
6 twenty-two of this chapter and which is a participating employer,
7 shall be a member of this retirement plan: *Provided*, That any
8 police officer or firefighter who has concurrent employment in
9 an additional job or jobs which would require the police officer
10 or firefighter to be a member of the West Virginia Deputy
11 Sheriff Retirement System or the West Virginia Emergency
12 Medical Services Retirement System shall participate in only
13 one retirement system administered by the board, and the
14 retirement system applicable to the concurrent employment for
15 which the employee has the earliest date of hire shall prevail.

16 (b) Except as provided in section thirty-two of this article, a
17 police officer or firefighter who is a member of the Municipal
18 Police Officers and Firefighters Retirement System may not
19 have credit for covered employment in any other retirement
20 system applied as service credit in the Municipal Police Officers
21 and Firefighters Retirement System.

22 (c) Notwithstanding any other provisions of this article, any
23 individual who is a leased employee is not eligible to participate
24 in the plan. For purposes of this plan, a "leased employee"
25 means any individual who performs services as an independent
26 contractor or pursuant to an agreement with an employee leasing
27 organization or similar organization. If a question arises
28 regarding the status of an individual as a leased employee, the
29 board has final power to decide the question.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

1 (a) The West Virginia State Police Retirement System is
2 continued. It is contemplated that substantially all of the
3 members of the retirement system shall be qualified public
4 safety employees as defined in section two of this article. Any
5 West Virginia state trooper employed by the agency on or after
6 the effective date of this article shall be a member of this
7 retirement system and may not qualify for membership in any
8 other retirement system administered by the board so long as he
9 or she remains employed by the State Police: *Provided*, That any
10 state trooper who has concurrent employment in an additional
11 job or jobs which would require the state trooper to be a member
12 of the West Virginia Deputy Sheriff Retirement System, the
13 West Virginia Municipal Police Officers and Firefighters
14 Retirement System or the West Virginia Emergency Medical
15 Services Retirement System shall abide by the statutory
16 provisions of said retirement system related to concurrent
17 employment and participate in only one retirement system
18 administered by the board.

19 (b) Any individual who is a leased employee shall not be
20 eligible to participate in the system. For purposes of this system,
21 a “leased employee” means any individual who performs
22 services as an independent contractor or pursuant to an
23 agreement with an employee leasing organization or other
24 similar organization. If a question arises regarding the status of
25 an individual as a leased employee, the board has final power to
26 decide the question.

27 (c) The board created pursuant to article ten-d, chapter five
28 of this code shall administer the retirement system. The board
29 may sue and be sued, contract and be contracted with and

30 conduct all the business of the system in the name of the West
31 Virginia State Police Retirement System.

32 (d) This fund is intended to meet the federal qualification
33 requirements of Section 401(a) and related sections of the
34 Internal Revenue Code as applicable to governmental plans.
35 Notwithstanding any other provision of state law, the board shall
36 administer the retirement system to fulfill this intent for the
37 exclusive benefit of the employees, members, retirants and their
38 beneficiaries. Any provision of this article referencing or relating
39 to these federal qualification requirements shall be effective as
40 of the date required by federal law. The board may promulgate
41 rules and amend or repeal conflicting rules in accordance with
42 the authority granted to the board pursuant to section one, article
43 ten-d, chapter five of this code to assure compliance with this
44 section.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-6. Members.

1 (a) Any emergency medical services officer first employed
2 by a county or political subdivision in covered employment after
3 the effective date of this article shall be a member of this
4 retirement plan as a condition of employment and upon
5 membership does not qualify for membership in any other
6 retirement system administered by the board, so long as he or
7 she remains employed in covered employment: *Provided*, That
8 any emergency medical services officer who has concurrent
9 employment in an additional job or jobs which would require the
10 emergency medical services officer to be a member of the West
11 Virginia Deputy Sheriff Retirement System or the West Virginia
12 Municipal Police Officers and Firefighters Retirement System

13 shall participate in only one retirement system administered by
14 the board, and the retirement system applicable to the concurrent
15 employment for which the employee has the earliest date of hire
16 shall prevail.

17 (b) Any emergency medical services officer employed in
18 covered employment by an employer which is currently a
19 participating public employer of the Public Employees
20 Retirement System shall notify in writing both the county
21 commission in the county or officials in the political subdivision
22 in which he or she is employed and the board of his or her desire
23 to become a member of the plan by December 31, 2007. Any
24 emergency medical services officer who elects to become a
25 member of the plan ceases to be a member or have any credit for
26 covered employment in any other retirement system
27 administered by the board and shall continue to be ineligible for
28 membership in any other retirement system administered by the
29 board so long as the emergency medical services officer remains
30 employed in covered employment by an employer which is
31 currently a participating public employer of this plan: *Provided,*
32 That any emergency medical services officer who does not
33 affirmatively elect to become a member of the plan continues to
34 be eligible for any other retirement system as is, from time to
35 time, offered to other county employees but is ineligible for this
36 plan regardless of any subsequent termination of employment
37 and rehire.

38 (c) Any emergency medical services officer who was
39 employed as an emergency medical services officer prior to the
40 effective date, but was not employed on the effective date of this
41 article, shall become a member upon rehire as an emergency
42 medical services officer. For purposes of this section, the
43 member's years of service and credited service prior to the
44 effective date shall not be counted for any purposes under this
45 plan unless the emergency medical services officer has not
46 received the return of his or her accumulated contributions in the

47 Public Employees Retirement System pursuant to section thirty,
48 article ten, chapter five of this code. The member may request in
49 writing to have his or her accumulated contributions and
50 employer contributions from covered employment in the Public
51 Employees Retirement System transferred to the plan. If the
52 conditions of this subsection are met, all years of the emergency
53 medical services officer's covered employment shall be counted
54 as years of service for the purposes of this article.

55 (d) Any emergency medical services officer employed in
56 covered employment on the effective date of this article who has
57 timely elected to transfer into this plan as provided in subsection
58 (b) of this section shall be given credited service at the time of
59 transfer for all credited service then standing to the emergency
60 medical services officer's service credit in the Public Employees
61 Retirement System regardless of whether the credited service (as
62 that term is defined in section two, article ten, chapter five of this
63 code) was earned as an emergency medical services officer. All
64 credited service standing to the transferring emergency medical
65 services officer's credit in the Public Employees Retirement
66 System at the time of transfer into this plan shall be transferred
67 into the plan created by this article and the transferring
68 emergency medical services officer shall be given the same
69 credit for the purposes of this article for all service transferred
70 from the Public Employees Retirement System as that
71 transferring emergency medical services officer would have
72 received from the Public Employees Retirement System as if the
73 transfer had not occurred. In connection with each transferring
74 emergency medical services officer receiving credit for prior
75 employment as provided in this subsection, a transfer from the
76 Public Employees Retirement System to this plan shall be made
77 pursuant to the procedures described in this article: *Provided,*
78 That any member of this plan who has elected to transfer from
79 the Public Employees Retirement System into this plan pursuant
80 to subsection (b) of this section may not, after having transferred
81 into and becoming an active member of this plan, reinstate to his

82 or her credit in this plan any service credit relating to periods in
83 which the member was not in covered employment as an
84 emergency medical services officer and which service was
85 withdrawn from the Public Employees Retirement System prior
86 to his or her elective transfer into this plan.

87 (e) Once made, the election made under this section is
88 irrevocable. All emergency medical services officers employed
89 by an employer which is a participating public employer of the
90 Public Employees Retirement System after the effective date and
91 emergency medical services officers electing to become
92 members as described in this section shall be members as a
93 condition of employment and shall make the contributions
94 required by this article.

95 (f) Notwithstanding any other provisions of this article, any
96 individual who is a leased employee is not eligible to participate
97 in the plan. For purposes of this plan, a “leased employee”
98 means any individual who performs services as an independent
99 contractor or pursuant to an agreement with an employee leasing
100 organization or similar organization. If a question arises
101 regarding the status of an individual as a leased employee, the
102 board has final power to decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of the
2 following:

3 (a) New entrants, whose membership in the system is
4 compulsory upon employment as teachers and nonteachers:
5 *Provided*, That any teaching member or nonteaching member, as

6 defined in section three of this article, who has concurrent
7 employment in an additional job or jobs which would require the
8 teaching member or nonteaching member to be a member of the
9 West Virginia Deputy Sheriff Retirement System, the West
10 Virginia Municipal Police Officers and Firefighters Retirement
11 System or the West Virginia Emergency Medical Services
12 Retirement System shall abide by the concurrent employment
13 statutory provisions of said retirement system and shall
14 participate in only one retirement system administered by the
15 retirement board.

16 (b) The membership of the retirement system shall not
17 include any person who is an active member of or who has been
18 retired by the West Virginia Public Employees Retirement
19 System, the judge's retirement system, or the retirement system
20 of the West Virginia State Police or the supplemental retirement
21 system as provided in section four-a, article twenty-three of this
22 chapter. The membership of any person in the retirement system
23 ceases: (1) Upon the withdrawal of accumulated contributions
24 after the cessation of service; (2) upon effective retirement date;
25 (3) at death; or (4) upon the date, if any, when after the cessation
26 of service, the outstanding balance of any loan obtained by the
27 member pursuant to section thirty-four of this article or section
28 five, article seven-d of this chapter, plus accrued interest, equals
29 or exceeds the member's accumulated contributions.

30 (c) Any former member of the retirement system who has
31 withdrawn accumulated contributions but subsequently reenters
32 the retirement system may repay to the retirement fund the
33 amount withdrawn, plus interest at a rate set by the board,
34 compounded annually from the date of withdrawal to the date of
35 repayment: *Provided*, That no repayment may be made until the
36 former member has completed two years of contributory service
37 after reentry; and the member shall be accorded all the rights to
38 prior service and experience as were held at the time of

39 withdrawal of the accumulated contributions: *Provided*,
40 *however*, That no withdrawn service may be reinstated that has
41 been transferred to another retirement system from which the
42 member is currently or will in the future draw benefits based on
43 the same service. The interest paid shall be deposited in the
44 reserve fund.

45 (d) No member is eligible for prior service credit unless he
46 or she is eligible for prior service pension, as prescribed by
47 section twenty-two of this article; however, a new entrant who
48 becomes a present teacher as provided in this subdivision shall
49 be considered eligible for prior service pension upon retirement.

50 (e) Any individual who is a leased employee is not eligible
51 to participate in the system. For purposes of this system, a
52 “leased employee” means any individual who performs services
53 as an independent contractor or pursuant to an agreement with an
54 employee leasing organization or other similar organization. If
55 a question arises regarding the status of an individual as a leased
56 employee, the board has final power to decide the question.

CHAPTER 206

(S. B. 298 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §5-10-28 of the Code of West Virginia, 1931, as amended, relating to the Public Employees Retirement System; and clarifying that members deposit fund, employers accumulation fund, retirement reserve fund, income fund and expense fund all refer to the Public Employees Retirement Fund.

Be it enacted by the Legislature of West Virginia:

That §5-10-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-28. Unified accounting; funds.

1 For financing and accounting purposes, the West Virginia
2 Public Employees Retirement System shall consist of only one
3 division, including, in combination, the participating state
4 employees and participating public employees who are not state
5 employees. Unified accounting of the retirement system
6 transactions shall be maintained for all the assets of the system.
7 The retirement system funds shall be: (1) The members deposit
8 fund; (2) the employers accumulation fund; (3) the retirement
9 reserve fund; (4) the income fund; and (5) the expense fund. All
10 references in this code to the members deposit fund, the
11 employers accumulation fund, the retirement reserve fund, the
12 income fund and the expense fund mean the Public Employees
13 Retirement Fund. Nothing contained in this section or any prior
14 provision of law shall be interpreted to mean that any assets of
15 the system, regardless of their origin or date of receipt, are to be
16 in any manner segregated or insulated for the purposes of either
17 paying benefits due or determining or establishing accounting or
18 actuarial methodologies or functions utilized by the retirement
19 system. The amendments to this section adopted during the third
20 extraordinary session of the 1990 legislative session shall not be
21 construed to limit the powers of the board relating to
22 contributions to or benefits of the Public Employees Retirement
23 System and any and all powers residing in the board previously
24 administering the Public Employees Retirement System shall be
25 preserved.

CHAPTER 207

**(Com. Sub. for S. B. 342 - By Senators Gaunch,
Trump and Plymale)**

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

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8 of said code; to amend said code by adding thereto a new section, designated §8-22A-8a; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to correction of errors under the West Virginia Public Employees Retirement System, West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System, West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, Teachers' Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, West Virginia State Police Retirement System and the Judges' Retirement System; and clarifying scope, application and requirements for error correction by Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-7a of said code be amended and reenacted; that §8-22A-8 of said code be amended and reenacted; that

said code be amended by adding thereto a new section, designated §8-22A-8a; that said code be amended by adding thereto a new section, designated §15-2-54; that said code be amended by adding thereto a new section, designated §15-2A-23; that §16-5V-8a of said code be amended and reenacted; that §18-7A-14c of said code be amended and reenacted; that §18-7B-21 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-9-18, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR. SECRETARY OF STATE
AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RE-
TIREMENT ACT.**

§5-10-44. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether an individual, entity or board was at fault for the error
4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the retirement system: Any error
8 resulting in an underpayment to the retirement system may be
9 corrected by the member or retirant remitting the required
10 employee contribution or underpayment and the participating
11 public employer remitting the required employer contribution or
12 underpayment. Interest shall accumulate in accordance with the
13 legislative rule 162 CSR 7 concerning retirement board refund,
14 reinstatement, retroactive service, loan and correction of error
15 interest factors and any accumulating interest owed on the
16 employee and employer contributions or underpayments

17 resulting from an employer error shall be the responsibility of
18 the participating public employer. The participating public
19 employer may remit total payment and the employee reimburse
20 the participating public employer through payroll deduction over
21 a period equivalent to the time period during which the employer
22 error occurred. If the correction of an error involving an
23 underpayment to the retirement system will result in the
24 retirement system paying a retirant an additional amount, this
25 additional payment shall be made only after the board receives
26 full payment of all required employee and employer
27 contributions or underpayments, including interest.

28 (c) Overpayments to the retirement system by an employer:
29 When mistaken or excess employer contributions or other
30 employer overpayments have been made to the retirement
31 system, the board shall credit the employer with an amount equal
32 to the overpayment, to be offset against the employer's future
33 liability for employer contributions to the system. If the
34 employer has no future liability for employer contributions to the
35 retirement system, the board shall refund the erroneous
36 contributions directly to the employer. Earnings or interest shall
37 not be returned, offset or credited to the employer under any of
38 the means used by the board for returning employer
39 overpayments to the retirement system.

40 (d) Overpayments to the retirement system by an employee:
41 When mistaken or excess employee contributions or
42 overpayments have been made to the retirement system, the
43 board shall have sole authority for determining the means of
44 return, offset or credit to or for the benefit of the individual
45 making the mistaken or excess employee contribution of the
46 amounts, and may use any means authorized or permitted under
47 the provisions of section 401(a), *et seq.* of the Internal Revenue
48 Code and guidance issued thereunder applicable to governmental
49 plans. Alternatively, in its full and complete discretion, the board
50 may require the participating public employer employing the

51 individual to pay the individual the amounts as wages, with the
52 board crediting the participating public employer with a
53 corresponding amount to offset against its future contributions
54 to the plan. If the employer has no future liability for employer
55 contributions to the retirement system, the board shall refund
56 said amount directly to the employer: *Provided*, That the wages
57 paid to the individual shall not be considered compensation for
58 any purposes of this article. Earnings or interest shall not be
59 returned, offset or credited under any of the means used by the
60 board for returning employee overpayments.

61 (e) Overpayments from the retirement system: If any error
62 results in any member, retirant, beneficiary, entity or other
63 individual receiving from the system more than he would have
64 been entitled to receive had the error not occurred, the board
65 shall correct the error in a timely manner. If correction of the
66 error occurs after annuity payments to a retirant or beneficiary
67 have commenced, the board shall prospectively adjust the
68 payment of the benefit to the correct amount. In addition, the
69 member, retirant, beneficiary, entity or other person who
70 received the overpayment from the retirement system shall repay
71 the amount of any overpayment to the retirement system in any
72 manner permitted by the board. Interest shall not accumulate on
73 any corrective payment made to the retirement system pursuant
74 to this subsection.

75 (f) Underpayments from the retirement system: If any error
76 results in any member, retirant, beneficiary, entity or other
77 individual receiving from the retirement system less than he
78 would have been entitled to receive had the error not occurred,
79 the board shall correct the error in a timely manner. If correction
80 of the error occurs after annuity payments to a retirant or
81 beneficiary have commenced, the board shall prospectively
82 adjust the payment of the benefit to the correct amount. In
83 addition, the board shall pay the amount of such underpayment
84 to the member, retirant, beneficiary or other individual in a lump

85 sum. Interest shall not be paid on any corrective payment made
86 by the retirement system pursuant to this subsection.

87 (g) Eligibility errors: If the board finds that an individual,
88 employer, or both individual and employer currently or formerly
89 participating in the retirement system is not eligible to
90 participate, the board shall notify the individual and his or her
91 employer of the determination and terminate participation in the
92 retirement system. Any erroneous payments to the retirement
93 system shall be returned to the employer and individual in
94 accordance with the methods described in subsections (c) and (d)
95 of this section and any erroneous payments from the retirement
96 system to such individual shall be returned to the retirement
97 system in accordance with the methods described in subsection
98 (e) of this section. Any erroneous service credited to the
99 individual shall be removed. If the board determines that an
100 individual or employer, or both, has not been participating in the
101 retirement system, but was eligible to and required to be
102 participating in the retirement system, the board shall as soon as
103 practicable notify the individual and his or her employer of the
104 determination and the individual and his or her employer shall
105 prospectively commence participation in the retirement system
106 as soon as practicable. Service credit for service prior to the date
107 on which the individual prospectively commences participation
108 in the retirement system shall be granted only if the board
109 receives the required employer and employee contributions for
110 such service, in accordance with subsection (b) of this section,
111 including interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7a. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of errors, the board shall
2 correct errors in the retirement plan in a timely manner whether

3 the individual, entity or board was at fault for the error with the
4 intent of placing the affected individual, entity and board in the
5 position each would have been in had the error not occurred.

6 (b) Underpayments to the plan: Any error resulting in an
7 underpayment to the plan may be corrected by the member or
8 retirant remitting the required employee contribution or
9 underpayment and the participating public employer remitting
10 the required employer contribution or underpayment. Interest
11 shall accumulate in accordance with the legislative rule 162 CSR
12 7 concerning retirement board refund, reinstatement, retroactive
13 service, loan and correction of error interest factors and any
14 accumulating interest owed on the employee and employer
15 contributions or underpayments resulting from an employer error
16 shall be the responsibility of the participating public employer.
17 The participating public employer may remit total payment and
18 the employee reimburse the participating public employer
19 through payroll deduction over a period equivalent to the time
20 period during which the employer error occurred. If the
21 correction of an error involving an underpayment to the plan will
22 result in the plan paying a retirant an additional amount, this
23 additional payment shall be made only after the board receives
24 full payment of all required employee and employer
25 contributions or underpayments, including interest.

26 (c) Overpayments to the plan by an employer: When
27 mistaken or excess employer contributions or other employer
28 overpayments have been made to the plan, the board shall credit
29 the employer with an amount equal to the overpayment, to be
30 offset against the employer's future liability for employer
31 contributions to the plan. If the employer has no future liability
32 for employer contributions to the retirement system, the board
33 shall refund the erroneous contributions directly to the employer.
34 Earnings or interest shall not be returned, offset or credited to the
35 employer under any of the means used by the board for returning
36 employer overpayments made to the plan.

37 (d) Overpayments to the plan by an employee: When
38 mistaken or excess employee contributions or overpayments
39 have been made to the retirement system, the board shall have
40 sole authority for determining the means of return, offset or
41 credit to or for the benefit of the individual making the mistaken
42 or excess employee contribution of the amounts, and may use
43 any means authorized or permitted under the provisions of
44 section 401(a), *et seq.* of the Internal Revenue Code and
45 guidance issued thereunder applicable to governmental plans.
46 Alternatively, in its full and complete discretion, the board may
47 require the participating public employer employing the
48 individual to pay the individual the amounts as wages, with the
49 board crediting the participating public employer with a
50 corresponding amount to offset against its future contributions
51 to the plan. If the employer has no future liability for employer
52 contributions to the plan, the board shall refund said amount
53 directly to the employer: *Provided*, That the wages paid to the
54 individual shall not be considered compensation for any
55 purposes of this article. Earnings or interest shall not be returned,
56 offset, or credited under any of the means used by the board for
57 returning employee overpayments.

58 (e) Overpayments from the plan: If any error results in any
59 member, retirant, beneficiary, entity or other individual receiving
60 from the system more than he would have been entitled to
61 receive had the error not occurred the board shall correct the
62 error in a timely manner. If correction of the error occurs after
63 annuity payments to a retirant or beneficiary have commenced,
64 the board shall prospectively adjust the payment of the benefit to
65 the correct amount. In addition, the member, retirant,
66 beneficiary, entity or other person who received the overpayment
67 from the plan shall repay the amount of any overpayment to the
68 plan in any manner permitted by the board. Interest shall not
69 accumulate on any corrective payment made to the plan pursuant
70 to this subsection.

71 (f) Underpayments from the plan: If any error results in any
72 member, retirant, beneficiary, entity or other individual receiving
73 from the plan less than he would have been entitled to receive
74 had the error not occurred, the board, upon learning of the error,
75 shall correct the error in a timely manner. If correction of the
76 error occurs after annuity payments to a retirant or beneficiary
77 have commenced, the board shall prospectively adjust the
78 payment of the benefit to the correct amount. In addition, the
79 board shall pay the amount of such underpayment to the
80 member, retirant, beneficiary or other individual in a lump sum.
81 Interest shall not be paid on any corrective payment made by the
82 plan pursuant to this subsection.

83 (g) Eligibility errors: If the board finds that an individual,
84 employer, or both individual and employer formerly or currently
85 participating in the plan is not eligible to participate, the board
86 shall notify the individual and his or her employer of the
87 determination, and terminate participation in the plan. Any
88 erroneous payments to the retirement system shall be returned to
89 the employer and individual in accordance with the methods
90 described in subsections (c) and (d) of this section and any
91 erroneous payments from the plan to such individual shall be
92 returned to the plan in accordance with the methods described in
93 subsection (e) of this section. Any erroneous service credited to
94 the individual shall be removed. If the board determines that an
95 individual or employer, or both, has not been participating in the
96 plan, but was eligible to and required to be participating in the
97 plan, the board shall as soon as practicable notify the individual
98 and his or her employer of the determination, and the individual
99 and his or her employer shall prospectively commence
100 participation in the plan as soon as practicable. Service credit for
101 service prior to the date on which the individual prospectively
102 commences participation in the plan shall be granted only if the
103 board receives the required employer and employee
104 contributions for such service, in accordance with subsection (b)
105 of this section, including interest.

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.****§8-22A-8. Members' contributions; employer contributions.**

1 (a)(1) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to eight
3 and one-half percent, or ten and one-half percent, if applicable,
4 of his or her monthly salary. An additional amount shall be paid
5 to the fund by the municipality or municipal subdivision in
6 which the member is employed in covered employment in an
7 amount determined by the board: *Provided*, That in no year may
8 the total of the employer contributions provided in this section,
9 to be paid by the municipality or municipal subdivision, exceed
10 ten and one-half percent of the total payroll for the members in
11 the employ of the municipality or municipal subdivision. Any
12 active member who has concurrent employment in an additional
13 job or jobs and the additional employment requires the police
14 officer or firefighter to be a member of another retirement
15 system which is administered by the Consolidated Public
16 Retirement Board pursuant to article ten-d, chapter five of this
17 code shall contribute to the fund the sum of eight and one-half
18 percent, or ten and one-half percent, if applicable, of his or her
19 monthly salary earned as a municipal police officer or firefighter
20 as well as the sum of eight and one-half percent, or ten and
21 one-half percent, if applicable, of his or her monthly salary
22 earned from any additional employment which additional
23 employment requires the police officer or firefighter to be a
24 member of another retirement system which is administered by
25 the Consolidated Public Retirement Board pursuant to article
26 ten-d, chapter five of this code. An additional amount as
27 determined by the board, not to exceed ten and one-half percent

28 of the monthly salary of each member, shall be paid to the fund
29 by the concurrent employer by which the member is employed.

30 (2) The board may, on the recommendation of the board's
31 actuary, increase the employees' contribution rate from eight and
32 one-half percent to ten and one-half percent should the plan not
33 be seventy percent funded by July 1, 2014. The board shall
34 decrease the contribution rate to eight and one-half percent on
35 July 1 following the acceptance by the board of an actuarial
36 valuation determining that the plan is seventy-five percent
37 funded. If the plan funding level at a later actuarial valuation
38 date falls below seventy percent, the employee rate of
39 contribution shall be increased to ten and one-half percent of
40 salary until the seventy-five percent level of funding is achieved.
41 The board shall change the employee contribution rate on July
42 1 following the board's acceptance of the actuarial valuation. At
43 no time may the rate of employee contribution exceed the rate of
44 employer contribution.

45 (b) All required deposits shall be remitted to the board no
46 later than fifteen days following the end of the calendar month
47 for which the deposits are required. If the board on the
48 recommendation of the board actuary finds that the benefits
49 provided by this article can be actuarially funded with a lesser
50 contribution, then the board shall reduce the required member
51 and employer contributions proportionally. Any municipality or
52 municipal subdivision which fails to make any payment due the
53 Municipal Police Officers and Firefighters Retirement Fund by
54 the fifteenth day following the end of each calendar month in
55 which contributions are due may be required to pay the actuarial
56 rate of interest lost on the total amount owed for each day the
57 payment is delinquent. Accrual of the loss of earnings owed by
58 the delinquent municipality or municipal subdivision
59 commences after the fifteenth day following the end of the
60 calendar month in which contributions are due and continues

61 until receipt of the delinquent amount. Interest compounds daily
62 and the minimum surcharge is \$50.

§8-22A-8a. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of errors, the board shall
2 correct errors in the plan in a timely manner whether the
3 individual, entity or board was at fault for the error with the
4 intent of placing the affected individual, entity and retirement
5 board in the position each would have been in had the error not
6 occurred.

7 (b) Underpayments to the plan: Any error resulting in an
8 underpayment to the plan may be corrected by the member or
9 retirant remitting the required employee contribution or
10 underpayment and the employer remitting the required employer
11 contribution or underpayment. Interest shall accumulate in
12 accordance with the legislative rule 162 CSR 7 concerning
13 retirement board refund, reinstatement, retroactive service, loan
14 and correction of error interest factors, and any accumulating
15 interest owed on the employee and employer contributions or
16 underpayments resulting from an employer error shall be the
17 responsibility of the employer. The employer may remit total
18 payment and the employee reimburse the employer through
19 payroll deduction over a period equivalent to the time period
20 during which the employer error occurred. If the correction of an
21 error involving an underpayment to the plan will result in the
22 plan correcting an erroneous underpayment from the plan, the
23 correction of the underpayment from the plan shall be made only
24 after the board receives full payment of all required employee
25 and employer contributions or underpayments, including
26 interest.

27 (c) Overpayments to the plan by the employer: When
28 mistaken or excess employer contributions, including any
29 overpayments have been made to the retirement system by the

30 employer, the board shall credit the employer with an amount
31 equal to the overpayment, to be offset against the employer's
32 future liability for employer contributions to the system. If the
33 employer has no future liability for employer contributions to the
34 plan, the board shall refund the erroneous contributions directly
35 to the employer. Earnings or interest shall not be returned, offset
36 or credited to the employer under any of the means used by the
37 board for returning employer overpayments to the plan.

38 (d) Overpayments to the plan by an employee: When
39 mistaken or excess employee contributions or overpayments
40 have been made to the plan, the board shall have sole authority
41 for determining the means of return, offset or credit to or for the
42 benefit of the individual making the mistaken or excess
43 employee contribution of the amounts, and may use any means
44 authorized or permitted under the provisions of section 401(a),
45 *et seq.* of the Internal Revenue Code and guidance issued
46 thereunder applicable to governmental plans. Alternatively, in its
47 full and complete discretion, the board may require the employer
48 employing the individual to pay the individual the amounts as
49 wages, with the board crediting the employer with a
50 corresponding amount to offset against its future contributions
51 to the plan. If the employer has no future liability for employer
52 contributions to the plan, the board shall refund said amount
53 directly to the employer: *Provided*, That the wages paid to the
54 individual shall not be considered compensation for any
55 purposes of this article. Earnings or interest shall not be returned,
56 offset, or credited under any of the means used by the board for
57 returning employee overpayments.

58 (e) Overpayments from the plan: If any error results in any
59 member, retirant, beneficiary, entity or other individual receiving
60 from the plan more than he would have been entitled to receive
61 had the error not occurred the board after learning of the error
62 shall correct the error in a timely manner. If correction of the
63 error occurs after annuity payments to a retirant or beneficiary

64 have commenced, the board shall prospectively adjust the
65 payment of the benefit to the correct amount. In addition, the
66 member, retirant, beneficiary, entity or other person who
67 received the overpayment from the plan shall repay the amount
68 of any overpayment to the retirement system in any manner
69 permitted by the board. Interest shall not accumulate on any
70 corrective payment made to the plan pursuant to this subsection.

71 (f) Underpayments from the plan: If any error results in any
72 member, retirant, beneficiary, entity or other individual receiving
73 from the plan less than he would have been entitled to receive
74 had the error not occurred, the board, upon learning of the error,
75 shall correct the error in a timely manner. If correction of the
76 error occurs after annuity payments to a retirant or beneficiary
77 have commenced, the board shall prospectively adjust the
78 payment of the benefit to the correct amount. In addition, the
79 board shall pay the amount of such underpayment to the
80 member, retirant, beneficiary or other individual in a lump sum.
81 Interest shall not be paid on any corrective payment made by the
82 retirement system pursuant to this subsection.

83 (g) Eligibility errors: If the board finds that an individual,
84 employer, or both individual and employer formerly or currently
85 participating in the plan is not eligible to participate, the board
86 shall notify the individual and his or her employer of the
87 determination, and terminate participation in the plan. Any
88 erroneous payments to the plan shall be returned to the employer
89 and individual in accordance with the methods described in
90 subsections (c) and (d) of this section, and any erroneous
91 payments from the plan to such individual shall be returned to
92 the plan in accordance with the methods described in subsection
93 (e) of this section. Any erroneous service credited to the
94 individual shall be removed. If the board determines that an
95 individual or employer, or both, has not been participating in the
96 retirement plan, but was eligible to and required to be
97 participating in the plan, the board shall as soon as practicable

98 notify the individual and his or her employer of the
99 determination, and the individual and his or her employer shall
100 prospectively commence participation in the plan as soon as
101 practicable. Service credit for service prior to the date on which
102 the individual prospectively commences participation in the plan
103 shall be granted only if the board receives the required employer
104 and employee contributions for such service, in accordance with
105 subsection (b) of this section, including interest.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-54. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the system in a timely manner whether the
3 individual, entity or board was at fault for the error with the
4 intent of placing the affected individual, entity and retirement
5 board in the position each would have been in had the error not
6 occurred.

7 (b) Underpayments to the system: Any error resulting in an
8 underpayment to the system may be corrected by the member or
9 retirant remitting the required employee contribution or
10 underpayment and the employer remitting the required employer
11 contribution or underpayment. Interest shall accumulate in
12 accordance with the legislative rule 162 CSR 7 concerning
13 retirement board refund, reinstatement, retroactive service, loan
14 and correction of error interest factors and any accumulating
15 interest owed on the employee and employer contributions or
16 underpayments resulting from an employer error is the
17 responsibility of the employer. The employer may remit total
18 payment and the employee reimburse the employer through
19 payroll deduction over a period equivalent to the time period
20 during which the employer error occurred. If the correction of an

21 error involving an underpayment to the system will result in the
22 system correcting an erroneous underpayment from the system,
23 the correction of the underpayment from the system shall be
24 made only after the board receives full payment of all required
25 employee and employer contributions or underpayments,
26 including interest.

27 (c) Overpayments to the system by an employer: When
28 mistaken or excess employer contributions, including any
29 overpayments have been made to the system by the employer,
30 the board shall credit the employer with an amount equal to the
31 overpayment, to be offset against the employer's future liability
32 for employer contributions to the system. If the employer has no
33 future liability for employer contributions to the retirement
34 system, the board shall refund the erroneous contributions
35 directly to the employer. Earnings or interest shall not be
36 returned, offset or credited to the employer under any of the
37 means used by the board for returning employer overpayments
38 to the retirement system.

39 (d) Overpayments to the system by an employee: When
40 mistaken or excess employee contributions or overpayments
41 have been made to the system, the board shall have sole
42 authority for determining the means of return, offset or credit to
43 or for the benefit of the individual making the mistaken or excess
44 employee contribution of the amounts, and may use any means
45 authorized or permitted under the provisions of section 401(a),
46 *et seq.* of the Internal Revenue Code and guidance issued
47 thereunder applicable to governmental plans. Alternatively, in its
48 full and complete discretion, the board may require the employer
49 employing the individual to pay the individual the amounts as
50 wages, with the board crediting the employer with a
51 corresponding amount to offset against its future contributions
52 to the plan. If the employer has no future liability for employer
53 contributions to the system, the board shall refund said amount
54 directly to the employer: *Provided*, That the wages paid to the

55 individual shall not be considered compensation for any
56 purposes of this article. Earnings or interest shall not be returned,
57 offset, or credited under any of the means used by the board for
58 returning employee overpayments.

59 (e) Overpayments from the system: If any error results in
60 any member, retirant, beneficiary, entity or other individual
61 receiving from the system more than he would have been
62 entitled to receive had the error not occurred the board, upon
63 learning of the error, shall correct the error in a timely manner.
64 If correction of the error occurs after annuity payments to a
65 retirant or beneficiary have commenced, the board shall
66 prospectively adjust the payment of the benefit to the correct
67 amount. In addition, the member, retirant, beneficiary, entity or
68 other person who received the overpayment from the system
69 shall repay the amount of any overpayment to the system in any
70 manner permitted by the board. Interest shall not accumulate on
71 any corrective payment made to the system pursuant to this
72 subsection.

73 (f) Underpayments from the system: If any error results in
74 any member, retirant, beneficiary, entity or other individual
75 receiving from the retirement system less than he would have
76 been entitled to receive had the error not occurred, the board,
77 upon learning of the error, shall correct the error in a timely
78 manner. If correction of the error occurs after annuity payments
79 to a retirant or beneficiary have commenced, the board shall
80 prospectively adjust the payment of the benefit to the correct
81 amount. In addition, the board shall pay the amount of such
82 underpayment to the member, retirant, beneficiary or other
83 individual in a lump sum. Interest shall not be paid on any
84 corrective payment made by the system pursuant to this
85 subsection.

86 (g) Eligibility errors: If the board finds that an individual,
87 employer, or both individual and employer currently or formerly

88 participating in the retirement system is not eligible to
89 participate, the board shall notify the individual and his or her
90 employer of the determination, and terminate participation in the
91 system. Any erroneous payments to the system shall be returned
92 to the employer and individual in accordance with the methods
93 described in subsections (c) and (d) of this section and any
94 erroneous payments from the system to such individual shall be
95 returned to the system in accordance with the methods described
96 in subsection (e) of this section. Any erroneous service credited
97 to the individual shall be removed. If the board determines that
98 an individual or employer, or both, has not been participating in
99 the system, but was eligible to and required to be participating in
100 the system, the board shall as soon as practicable notify the
101 individual and his or her employer of the determination, and the
102 individual and his or her employer shall prospectively
103 commence participation in the system as soon as practicable.
104 Service credit for service prior to the date on which the
105 individual prospectively commences participation in the system
106 shall be granted only if the board receives the required employer
107 and employee contributions for such service, in accordance with
108 subsection (b) in this section, including interest.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-23. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether the individual, entity or board was at fault for the error
4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the system: Any error resulting in an
8 underpayment to the system, may be corrected by the member or

9 retirant remitting the required employee contribution or
10 underpayment and the employer remitting the required employer
11 contribution or underpayment. Interest shall accumulate in
12 accordance with the legislative rule 162 CSR 7 concerning
13 retirement board refund, reinstatement, retroactive service, loan
14 and correction of error interest factors and any accumulating
15 interest owed on the employee and employer contributions or
16 underpayments resulting from an employer error shall be the
17 responsibility of the employer. The employer may remit total
18 payment and the employee reimburse the employer through
19 payroll deduction over a period equivalent to the time period
20 during which the employer error occurred. If the correction of an
21 error involving an underpayment to the system will result in the
22 system correcting an erroneous underpayment from the system,
23 the correction of the underpayment from the system shall be
24 made only after the board receives full payment of all required
25 employee and employer contributions or underpayments,
26 including interest.

27 (c) Overpayments to the system by an employer: When
28 mistaken or excess employer contributions or other
29 overpayments have been made to the system by an employer, the
30 board shall credit the employer with an amount equal to the
31 overpayment, to be offset against the employer's future liability
32 for employer contributions to the system. If the employer has no
33 future liability for employer contributions to the retirement
34 system, the board shall refund the erroneous contributions
35 directly to the employer. Earnings or interest shall not be
36 returned, offset or credited to the employer under any of the
37 means used by the board for returning employer overpayments
38 to the retirement system.

39 (d) Overpayments to the system by an employee: When
40 mistaken or excess employee contributions or overpayments
41 have been made to the system, the board shall have sole
42 authority for determining the means of return, offset or credit to

43 or for the benefit of the individual making the mistaken or excess
44 employee contribution of the amounts, and may use any means
45 authorized or permitted under the provisions of section 401(a),
46 *et seq.* of the Internal Revenue Code and guidance issued
47 thereunder applicable to governmental plans. Alternatively, in its
48 full and complete discretion, the board may require the employer
49 employing the individual to pay the individual the amounts as
50 wages, with the board crediting the employer with a
51 corresponding amount to offset against its future contributions
52 to the plan. If the employer has no future liability for employer
53 contributions to the retirement system, the board shall refund
54 said amount directly to the employer: *Provided*, That the wages
55 paid to the individual shall not be considered compensation for
56 any purposes of this article. Earnings or interest shall not be
57 returned, offset, or credited under any of the means used by the
58 board for returning employee overpayments.

59 (e) Overpayments from the system: If any error results in
60 any member, retirant, beneficiary, entity or other individual
61 receiving from the system more than he would have been
62 entitled to receive had the error not occurred the board, upon
63 learning of the error, shall correct the error in a timely manner.
64 If correction of the error occurs after annuity payments to a
65 retirant or beneficiary have commenced, the board shall
66 prospectively adjust the payment of the benefit to the correct
67 amount. In addition, the member, retirant, beneficiary, entity or
68 other person who received the overpayment from the system
69 shall repay the amount of any overpayment to the system in any
70 manner permitted by the board. Interest shall not accumulate on
71 any corrective payment made to the system pursuant to this
72 subsection.

73 (f) Underpayments from the system: If any error results in
74 any member, retirant, beneficiary, entity or other individual
75 receiving from the system less than he would have been entitled
76 to receive had the error not occurred, the board shall correct the

77 error in a timely manner. If correction of the error occurs after
78 annuity payments to a retirant or beneficiary have commenced,
79 the board shall prospectively adjust the payment of the benefit to
80 the correct amount. In addition, the board shall pay the amount
81 of such underpayment to the member, retirant, beneficiary or
82 other individual in a lump sum. Interest shall not be paid on any
83 corrective payment made by the system pursuant to this
84 subsection.

85 (g) Eligibility errors: If the board finds that an individual,
86 employer, or both individual and employer currently or formerly
87 participating in the system is not eligible to participate, the board
88 shall notify the individual and his or her employer of the
89 determination, and terminate participation in the system. Any
90 erroneous payments to the system shall be returned to the
91 employer and individual in accordance with the methods
92 described in subsections (c) and (d) of this section and any
93 erroneous payments from the system to such individual shall be
94 returned to the system in accordance with the methods described
95 in subsection (e) of this section. Any erroneous service credited
96 to the individual shall be removed. If the board determines that
97 an individual or employer, or both, has not been participating in
98 the system, but was eligible to and required to be participating in
99 the system, the board shall as soon as practicable notify the
100 individual and his or her employer of the determination, and the
101 individual and his or her employer shall prospectively
102 commence participation in the system as soon as practicable.
103 Service credit for service prior to the date on which the
104 individual prospectively commences participation in the system
105 shall be granted only if the board receives the required employer
106 and employee contributions for such service, in accordance with
107 subsection (b) in this section, including interest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-8a. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether the individual, entity or board was at fault for the error
4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the plan: Any error resulting in an
8 underpayment to the retirement plan , may be corrected by the
9 member or retirant remitting the required employee contribution
10 or underpayment and the participating public employer remitting
11 the required employer contribution or underpayment. Interest
12 shall accumulate in accordance with the legislative rule 162 CSR
13 7 concerning retirement board refund, reinstatement, retroactive
14 service, loan and correction of error interest factors and any
15 accumulating interest owed on the employee and employer
16 contributions or underpayments resulting from an employer error
17 shall be the responsibility of the participating public employer.
18 The participating public employer may remit total payment and
19 the employee reimburse the participating public employer
20 through payroll deduction over a period equivalent to the time
21 period during which the employer error occurred. If the
22 correction of an error involving an underpayment to the
23 retirement system will result in the plan paying the retirant an
24 additional amount, this additional payment shall be made only
25 after the board receives full payment of all required employee
26 and employer contributions or underpayments, including
27 interest.

28 (c) Overpayments to the plan by an employer: When
29 mistaken or excess employer contributions or other employer
30 overpayments have been made to the plan, the board shall credit
31 the employer with an amount equal to the overpayment, to be
32 offset against the employer's future liability for employer

33 contributions to the plan. If the employer has no future liability
34 for employer contributions to the plan, the board shall refund the
35 erroneous contributions directly to the employer. Earnings or
36 interest shall not be returned, offset or credited to the employer
37 under any of the means used by the board for returning employer
38 overpayments to the retirement system.

39 (d) Overpayments to the plan by an employee: When
40 mistaken or excess employee contributions or overpayments
41 have been made to the plan, the board shall have sole authority
42 for determining the means of return, offset or credit to or for the
43 benefit of the individual making the mistaken or excess
44 employee contribution of the amounts, and may use any means
45 authorized or permitted under the provisions of section 401(a),
46 *et seq.* of the Internal Revenue Code and guidance issued
47 thereunder applicable to governmental plans. Alternatively, in its
48 full and complete discretion, the board may require the
49 participating public employer employing the individual to pay
50 the individual the amounts as wages, with the board crediting the
51 participating public employer with a corresponding amount to
52 offset against its future contributions to the plan. If the employer
53 has no future liability for employer contributions to the plan, the
54 board shall refund said amount directly to the employer:
55 *Provided,* That the wages paid to the individual shall not be
56 considered compensation for any purposes of this article.
57 Earnings or interest shall not be returned, offset, or credited
58 under any of the means used by the board for returning employee
59 overpayments.

60 (e) Overpayments from the plan: If any error results in any
61 member, retirant, beneficiary, entity or other individual receiving
62 from the system more than he would have been entitled to
63 receive had the error not occurred the board upon learning of the
64 error shall correct the error in a timely manner. If correction of
65 the error occurs after annuity payments to a retirant or
66 beneficiary have commenced, the board shall prospectively

67 adjust the payment of the benefit to the correct amount. In
68 addition, the member, retirant, beneficiary, entity or other person
69 who received the overpayment from the plan shall repay the
70 amount of any overpayment to the plan in any manner permitted
71 by the board. Interest shall not accumulate on any corrective
72 payment made to the plan pursuant to this subsection.

73 (f) Underpayments from the retirement system: If any error
74 results in any member, retirant, beneficiary, entity or other
75 individual receiving from the plan less than he would have been
76 entitled to receive had the error not occurred, the board, upon
77 learning of the error, shall correct the error in a timely manner.
78 If correction of the error occurs after annuity payments to a
79 retirant or beneficiary have commenced, the board shall
80 prospectively adjust the payment of the benefit to the correct
81 amount. In addition, the board shall pay the amount of such
82 underpayment to the member, retirant, beneficiary or other
83 individual in a lump sum. Interest shall not be paid on any
84 corrective payment made by the plan pursuant to this subsection.

85 (g) Eligibility errors: If the board finds that an individual,
86 employer, or both individual and employer, participating in the
87 plan is not eligible to participate, the board shall notify the
88 individual and his or her employer of the determination and
89 terminate participation in the plan. Any erroneous payments to
90 the plan shall be returned to the employer and individual in
91 accordance with the methods described in subsections (c) and (d)
92 of this section and any erroneous payments from the plan to such
93 individual shall be returned to the plan in accordance with the
94 methods described in subsection (e) of this section. Any
95 erroneous service credited to the individual shall be removed. If
96 the board determines that an individual or employer, or both, has
97 not been participating in the plan, but was eligible to and
98 required to be participating in the plan, the board shall as soon
99 as practicable notify the individual and his or her employer of
100 the determination, and the individual and his or her employer

101 shall prospectively commence participation in the plan as soon
102 as practicable. Service credit for service prior to the date on
103 which the individual prospectively commences participation in
104 the plan shall be granted only if the board receives the required
105 employer and employee contributions for such service, in
106 accordance with subsection (b) of this section, including interest.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14c. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether the individual, entity or board was at fault for the error
4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the retirement system: Any error
8 resulting in an underpayment to the retirement system, may be
9 corrected by the member or retirant remitting the required
10 employee contribution or underpayment and the participating
11 public employer remitting the required employer contribution or
12 underpayment. Interest shall accumulate in accordance with the
13 legislative rule 162 CSR 7 concerning retirement board refund,
14 reinstatement, retroactive service, loan and correction of error
15 interest factors and any accumulating interest owed on the
16 employee and employer contributions or underpayments
17 resulting from an employer error shall be the responsibility of
18 the participating public employer. The participating public
19 employer may remit total payment and the employee reimburse
20 the participating public employer through payroll deduction over
21 a period equivalent to the time period during which the employer
22 error occurred. If the correction of an error involving an

23 underpayment to the retirement system will result in the plan
24 paying the retirant an additional amount, this additional payment
25 shall be made only after the board receives full payment of all
26 required employee and employer contributions or
27 underpayments, including interest.

28 (c) Overpayments to the retirement system by an employer:
29 When mistaken or excess employer contributions or other
30 employer overpayments have been made to the retirement
31 system, the board shall credit the employer with an amount equal
32 to the erroneous overpayment, to be offset against the
33 employer's future liability for employer contributions to the
34 retirement system. If the employer has no future liability for
35 employer contributions to the retirement system, the retirement
36 board shall refund the erroneous contributions directly to the
37 employer. Earnings or interest shall not be returned, offset or
38 credited to the employer under any of the means used by the
39 retirement board for returning employer overpayments to the
40 retirement system.

41 (d) Overpayments to the retirement system by an employee:
42 When mistaken or excess employee contributions or
43 overpayments, have been made to the retirement system, the
44 board shall have sole authority for determining the means of
45 return, offset or credit to or for the benefit of the individual
46 making the mistaken or excess employee contribution of the
47 amounts and may use any means authorized or permitted under
48 the provisions of section 401(a), *et seq.* of the Internal Revenue
49 Code and guidance issued thereunder applicable to governmental
50 plans. Alternatively, in its full and complete discretion, the board
51 may require the employer employing the individual to pay the
52 individual the amounts as wages, with the retirement board
53 crediting the participating public employer with a corresponding
54 amount to offset against its future contributions to the plan. If the
55 employer has no future liability for employer contributions to the
56 retirement system, the retirement board shall refund said amount

57 directly to the employer: *Provided*, That the wages paid to the
58 individual shall not be considered compensation for any
59 purposes of this article. Earnings or interest shall not be returned,
60 offset, or credited under any of the means used by the retirement
61 board for returning member overpayments.

62 (e) Overpayments from the retirement system: If any error
63 results in any member, retirant, beneficiary, entity or other
64 individual receiving from the system more than he would have
65 been entitled to receive had the error not occurred the board ,
66 upon learning of the error, shall correct the error in a timely
67 manner. If correction of the error occurs after annuity payments
68 to a retirant or beneficiary have commenced, the board shall
69 prospectively adjust the payment of the benefit to the correct
70 amount. In addition, the member, retirant, beneficiary, entity or
71 other person who received the overpayment from the retirement
72 system shall repay the amount of any overpayment to the
73 retirement system in any manner permitted by the board. Interest
74 shall not accumulate on any corrective payment made to the
75 retirement system pursuant to this subsection.

76 (f) Underpayments from the retirement system: If any error
77 results in any member, retirant, beneficiary, entity or other
78 individual receiving from the retirement system less than he
79 would have been entitled to receive had the error not occurred,
80 the board, upon learning of the error, shall correct the error in a
81 timely manner. If correction of the error occurs after annuity
82 payments to a retirant or beneficiary have commenced, the board
83 shall prospectively adjust the payment of the benefit to the
84 correct amount. In addition, the board shall pay the amount of
85 such underpayment to the member, retirant, beneficiary or other
86 individual in a lump sum. Interest shall not be paid on any
87 corrective payment made by the retirement system pursuant to
88 this subsection.

89 (g) Eligibility errors: If the board finds that an individual,
90 employer, or both individual and employer currently or formerly

91 participating in the retirement system is not eligible to
92 participate, the board shall notify the individual and his or her
93 employer of the determination, and terminate participation in the
94 retirement system. Any erroneous payments to the retirement
95 system shall be returned to the employer and individual in
96 accordance with the methods described in subsections (c) and (d)
97 of this section and any erroneous payments from the retirement
98 system to such individual shall be returned to the retirement
99 system in accordance with the methods described in subsection
100 (e) of this section. Any erroneous service credited to the
101 individual shall be removed. If the board determines that an
102 individual or employer, or both, has not been participating in the
103 retirement system, but was eligible to and required to be
104 participating in the retirement system, the board shall as soon as
105 practicable notify the individual and his or her employer of the
106 determination, and the individual and his or her employer shall
107 prospectively commence participation in the retirement system
108 as soon as practicable. Service credit for service prior to the date
109 on which the individual prospectively commences participation
110 in the retirement system shall be granted only if the board
111 receives the required employer and employee contributions for
112 such service, in accordance with subsection (b) of this section,
113 including interest.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-21. Correction of errors; underpayments; overpayments

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether the individual, entity or board was at fault for the error
4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the system: Any error resulting in an
8 underpayment to the system, may be corrected by the member or
9 retirant remitting the required employee contribution or
10 underpayment and the existing employer remitting the required
11 employer contribution or underpayment. Interest shall
12 accumulate in accordance with the legislative rule 162 CSR 7
13 concerning retirement board Refund, Reinstatement, Retroactive
14 Service, Loan and Correction of Error Interest Factors and any
15 accumulating interest owed on the employee and employer
16 contributions or underpayments resulting from an employer error
17 shall be the responsibility of the participating public employer.
18 The participating public employer may remit total payment and
19 the employee reimburse the participating public employer
20 through payroll deduction over a period equivalent to the time
21 period during which the employer error occurred. If the
22 correction of an error involving an underpayment to the system
23 will result in the system paying the retirant an additional amount,
24 this additional payment shall be made only after the board
25 receives full payment of all required employee and employer
26 contributions or underpayments, including interest.

27 (c) Overpayments to the system by an employer: When
28 mistaken or excess employer contributions or other employer
29 overpayments have been made to the system, the board shall
30 credit the employer with an amount computed by the board, to
31 be offset against the employer's future liability for employer
32 contributions to the system. If the employer has no future
33 liability for employer contributions to the retirement system, the
34 board shall refund the erroneous contributions directly to the
35 employer.

36 (d) Overpayments to the retirement system by an employee:
37 When mistaken or excess employee contributions or
38 overpayments, have been made to the retirement system, the
39 board shall have sole authority for determining the means of
40 return, offset or credit to or for the benefit of the individual

41 making the mistaken or excess employee contribution of the
42 amounts, and may use any means authorized or permitted under
43 the provisions of section 401(a), *et seq.* of the Internal Revenue
44 Code and guidance issued thereunder applicable to governmental
45 plans. Alternatively, in its full and complete discretion, the board
46 may require the existing employer employing the individual to
47 pay the individual the amounts as wages, with the board
48 crediting the participating public employer with a corresponding
49 amount to offset against its future contributions to the plan. If the
50 employer has no future liability for employer contributions to the
51 retirement system, the board shall refund said amount directly to
52 the employer: *Provided*, That the wages paid to the individual
53 are not considered compensation for any purposes of this article.

54 (e) Overpayments from the retirement system: If any error
55 results in any member, retirant beneficiary, entity or other
56 individual receiving from the system more than he would have
57 been entitled to receive had the error not occurred the board
58 upon learning of the error shall correct the error in a timely
59 manner. If correction of the error occurs after annuity payments
60 to a retirant or beneficiary have commenced, the board shall
61 prospectively adjust the payment of the benefit to the correct
62 amount. In addition, the member, retirant, beneficiary, entity or
63 other person who received the overpayment from the retirement
64 system shall repay the amount of any overpayment to the
65 retirement system in any manner permitted by the board. Interest
66 shall not accumulate on any corrective payment made to the
67 retirement system pursuant to this subsection.

68 (f) Underpayments from the retirement system: If any error
69 results in any member, retirant, beneficiary, entity or other
70 individual receiving from the retirement system less than he
71 would have been entitled to receive had the error not occurred,
72 the board, upon learning of the error, shall correct the error in a
73 timely manner. If correction of the error occurs after annuity
74 payments to a retirant or beneficiary have commenced, the board

75 shall prospectively adjust the payment of the benefit to the
76 correct amount. In addition, the board shall pay the amount of
77 such underpayment to the member, retirant, beneficiary or other
78 individual in a lump sum. Interest shall not be paid on any
79 corrective payment made by the retirement system pursuant to
80 this subsection.

81 (g) Eligibility errors: If the board finds that an individual,
82 employer, or both individual and employer currently or formerly
83 participating in the retirement system is not eligible to
84 participate, the board shall notify the individual and his or her
85 employer of the determination, and terminate participation in the
86 retirement system. Any erroneous payments to the retirement
87 system shall be returned to the employer and individual in
88 accordance with the methods described in subsections (c) and (d)
89 of this section and any erroneous payments from the retirement
90 system to such individual shall be returned to the retirement
91 system in accordance with the methods described in subsection
92 (e) of this section. Any erroneous service credited to the
93 individual shall be removed. Service credit for service prior to
94 the date on which the individual prospectively commences
95 participation in the retirement system shall be granted only if the
96 board receives the required employer and employee
97 contributions for such service, in accordance with subsection (b)
98 of this section, including interest.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-18. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of any errors, the board shall
2 correct errors in the retirement system in a timely manner
3 whether the individual, entity or board was at fault for the error

4 with the intent of placing the affected individual, entity and
5 retirement board in the position each would have been in had the
6 error not occurred.

7 (b) Underpayments to the system: Any error resulting in an
8 underpayment to the system, may be corrected by the member or
9 retirant remitting the required employee contribution or
10 underpayment and the participating public employer remitting
11 the required employer contribution or underpayment. Interest
12 shall accumulate in accordance with the legislative rule 162 CSR
13 7 concerning retirement board refund, reinstatement, retroactive
14 service, loan and correction of error interest factors and any
15 accumulating interest owed on the employee and employer
16 contributions or underpayments resulting from an employer error
17 shall be the responsibility of the participating public employer.
18 The participating public employer may remit total payment and
19 the employee reimburse the participating public employer
20 through payroll deduction over a period equivalent to the time
21 period during which the employer error occurred. If the
22 correction of an error involving an underpayment to the system
23 will result in the system correcting an erroneous underpayment
24 from the system, the correction of the underpayment from the
25 system shall be made only after the board receives full payment
26 of all required employee and employer contributions or
27 underpayments, including interest.

28 (c) Overpayments to the retirement system by an employer:
29 When mistaken or excess employer contributions, including any
30 overpayments have been made to the retirement system by a
31 participating public employer, the board, upon learning of the
32 error, shall credit the participating public employer with an
33 amount equal to the overpayment, to be offset against the
34 employer's future liability for employer contributions to the
35 system. If the employer has no future liability for employer
36 contributions to the retirement system, the board shall refund the
37 erroneous contributions directly to the employer. Earnings or

38 interest shall not be returned, offset or credited to the employer
39 under any of the means used by the board for returning employer
40 overpayments to the retirement system.

41 (d) Overpayments to the retirement system by an employee:
42 When mistaken or excess employee contributions or
43 overpayments have been made to the retirement system, the
44 board, upon learning of the error, shall have sole authority for
45 determining the means of return, offset or credit to or for the
46 benefit of the individual making the mistaken or excess
47 employee contribution of the amounts, and may use any means
48 authorized or permitted under the provisions of section 401(a),
49 *et seq.* of the Internal Revenue Code and guidance issued
50 thereunder applicable to governmental plans. Alternatively, in its
51 full and complete discretion, the board may require the
52 participating public employer employing the individual to pay
53 the individual the amounts as wages, with the board crediting the
54 participating public employer with a corresponding amount to
55 offset against its future contributions to the plan. If the employer
56 has no future liability for employer contributions to the
57 retirement system, the board shall refund said amount directly to
58 the employer: *Provided*, That the wages paid to the individual
59 shall not be considered compensation for any purposes of this
60 article. Earnings or interest shall not be returned, offset, or
61 credited under any of the means used by the board for returning
62 employee overpayments.

63 (e) Overpayments from the retirement system: If any error
64 results in any member, retirant, beneficiary, entity or other
65 individual receiving from the system more than he would have
66 been entitled to receive had the error not occurred the board,
67 upon learning of the error, shall correct the error in a timely
68 manner. If correction of the error occurs after annuity payments
69 to a retirant or beneficiary have commenced, the board shall
70 prospectively adjust the payment of the benefit to the correct
71 amount. In addition, the member, retirant, beneficiary, entity or

72 other person who received the overpayment from the retirement
73 system shall repay the amount of any overpayment to the
74 retirement system in any manner permitted by the board. Interest
75 shall not accumulate on any corrective payment made to the
76 retirement system pursuant to this subsection.

77 (f) Underpayments from the retirement system: If any error
78 results in any member, retirant, beneficiary, entity or other
79 individual receiving from the retirement system less than he
80 would have been entitled to receive had the error not occurred,
81 the board, upon learning of the error, shall correct the error in a
82 timely manner. If correction of the error occurs after annuity
83 payments to a retirant or beneficiary have commenced, the board
84 shall prospectively adjust the payment of the benefit to the
85 correct amount. In addition, the board shall pay the amount of
86 such underpayment to the member, retirant, beneficiary or other
87 individual in a lump sum. Interest shall not be paid on any
88 corrective payment made by the retirement system pursuant to
89 this subsection.

90 (g) Eligibility errors: If the board finds that an individual,
91 employer, or both individual and employer, participating in the
92 system is not eligible to participate, the board shall notify the
93 individual and his or her employer of the determination, and
94 terminate participation in the system. Any erroneous payments
95 to the system shall be returned to the employer and individual in
96 accordance with the methods described in subsections (c) and (d)
97 of this section and any erroneous payments from the system to
98 such individual shall be returned to the system in accordance
99 with the methods described in subsection (e) of this section. Any
100 erroneous service credited to the individual shall be removed. If
101 the board determines that an individual or employer, or both, has
102 not been participating in the system, but was eligible to and
103 required to be participating in the system, the board shall as soon
104 as practicable notify the individual and his or her employer of

105 the determination, and the individual and his or her employer
106 shall prospectively commence participation in the retirement
107 system as soon as practicable. Service credit for service prior to
108 the date on which the individual prospectively commences
109 participation in the system shall be granted only if the board
110 receives the required employer and employee contributions for
111 such service, in accordance with subsection (b) of this section,
112 including interest.

CHAPTER 208

(S. B. 302 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, all relating to disqualification for public retirement plan benefits when a participant is determined to have rendered less than honorable service; adding the West Virginia Municipal Police Officers and Firefighters Retirement System to definition of “retirement plan”; and specifying that former participants of the West Virginia Teachers Defined Contribution Retirement System who elected to transfer to the West Virginia Teachers Retirement System and whose benefits have been terminated for less than honorable service shall not be refunded any transferred vested employer contributions.

Be it enacted by the Legislature of West Virginia:

That §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**§5-10A-2. Definitions.**

1 As used in this article:

2 (a) “Retirement plan” or “plan” means the Public Employees
3 Retirement Act pursuant to article ten of this chapter; each
4 municipal employees retirement plan pursuant to article
5 twenty-two, chapter eight of this code; each policemen’s and
6 firemen’s pension and relief fund pursuant to article twenty-two,
7 chapter eight of this code; the West Virginia Municipal Police
8 Officers and Firefighters Retirement System pursuant to article
9 twenty-two-a, chapter eight of this code; the West Virginia State
10 Police Death, Disability and Retirement Fund pursuant to article
11 two, chapter fifteen of this code; the West Virginia State Police
12 Retirement System pursuant to article two-a, chapter fifteen of
13 this code; the State Teachers Retirement System pursuant to
14 article seven-a, chapter eighteen of this code; the Teachers’
15 Defined Contribution Retirement System pursuant to article
16 seven-b, chapter eighteen of this code; the Deputy Sheriff
17 Retirement System pursuant to article fourteen-d, chapter seven
18 of this code; the higher education retirement plan and
19 supplemental retirement plans pursuant to section four-a, article
20 twenty-three, chapter eighteen of this code; the Judges’
21 Retirement System pursuant to article nine, chapter fifty-one of
22 this code; the West Virginia Emergency Medical Services
23 Retirement System pursuant to article five-v, chapter sixteen of
24 this code; and any other plan established pursuant to this code
25 for the payment of pension, annuity, disability or other benefits
26 to any person by reason of his or her service as an officer or
27 employee of this state or of any political subdivision, agency or
28 instrumentality thereof, whenever the plan is supported, in whole
29 or in part, by public funds.

30 (b) “Beneficiary” means any person eligible for or receiving
31 benefits on account of the service for a public employer by a
32 participant or former participant in a retirement plan.

33 (c) “Benefits” means pension, annuity, disability or any
34 other benefits granted pursuant to a retirement plan.

35 (d) “Conviction” means a conviction on or after the effective
36 date of this article in any federal or state court of record whether
37 following a plea of guilty, not guilty or nolo contendere and
38 whether or not the person convicted was serving as an officer or
39 employee of a public employer at the time of the conviction.

40 (e) “Former participant” means any person who is no longer
41 eligible to receive any benefit under a retirement plan because
42 full distribution has occurred.

43 (f) “Less than honorable service” means:

44 (1) Impeachment and conviction of a participant or former
45 participant under the provisions of section nine, article four of
46 the Constitution of West Virginia, except for a misdemeanor;

47 (2) Conviction of a participant or former participant of a
48 felony for conduct related to his or her office or employment
49 which he or she committed while holding the office or during the
50 employment; or

51 (3) Conduct of a participant or former participant which
52 constitutes all of the elements of a crime described in either
53 subdivision (1) or (2) of this subsection but for which the
54 participant or former participant was not convicted because: (i)
55 Having been indicted or having been charged in an information
56 for the crime, he or she made a plea bargaining agreement
57 pursuant to which he or she pleaded guilty to or nolo contendere
58 to a lesser crime: *Provided*, That the lesser crime is a felony
59 containing all the elements described in subdivision (1) or (2) of

60 this subsection; or (ii) having been indicted or having been
61 charged in an information for the crime, he or she was granted
62 immunity from prosecution for the crime.

63 (g) "Participant" means any person eligible for or receiving
64 any benefit under a retirement plan on account of his or her
65 service as an officer or employee for a public employer.

66 (h) "Public employer" means the State of West Virginia and
67 any political subdivision, agency or instrumentality thereof for
68 which there is established a retirement plan.

69 (i) "Supervisory board" or "board" means the Consolidated
70 Public Retirement Board; the board of trustees of any municipal
71 retirement fund; the board of trustees of any policemen's or
72 firemen's retirement plan; the governing board of any
73 supplemental retirement plan instituted pursuant to authority
74 granted by the previous provisions of section four-a, article
75 twenty-three, chapter eighteen of this code; and any other board,
76 commission or public body having the duty to supervise and
77 operate any retirement plan.

§5-10A-6. Refund of contributions.

1 The supervisory board shall refund to a participant or
2 beneficiary terminated from benefits by section five of this
3 article the contributions of the participant in the same manner
4 and with the same interest as provided to those participants or
5 beneficiaries otherwise eligible to withdraw the participant's
6 contributions under the retirement plan, less the amount of any
7 benefits which the participant or his or her beneficiaries have
8 previously received: *Provided*, That a member of the Teachers'
9 Defined Contribution Retirement System whose benefits have
10 been terminated pursuant to section five of this article shall be
11 refunded only his or her employee contributions and the earnings
12 on those contributions; and any vested employer contributions

13 shall remain in the Teachers' Defined Contribution Retirement
14 System and be used to offset future employer contributions for
15 each contributing employer: *Provided, however*, That any former
16 member of the Teachers' Defined Contribution Retirement
17 System who affirmatively elected to transfer to the State
18 Teachers' Retirement System pursuant to article seven-d, chapter
19 eighteen of this code and whose benefits have been terminated
20 pursuant to section five of this article shall be refunded only his
21 or her employee contributions and the earnings on those
22 contributions; and any vested employer contributions from the
23 Teachers' Defined Contribution Retirement System shall remain
24 in the State Teachers Retirement System to be used to offset
25 future employer contributions for each contributing employer.

CHAPTER 209

**(S. B. 483 - By Senators Gaunch, D. Hall, Karnes,
Maynard, Plymale, Sypolt and Woelfel)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-22-18 of the Code of West Virginia, 1931, as amended, relating to boards of trustees of certain municipal policemen's pension and relief funds and certain municipal firemen's pension and relief funds.

Be it enacted by the Legislature of West Virginia:

That §8-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

1 (a) The board of trustees of the policemen's pension and
2 relief fund shall consist of the mayor of the municipality and
3 four members of the paid police department, to be chosen as
4 hereinafter in this section specified. The mayor of such
5 municipality shall give notice of an election to be held on the
6 second Monday of the month following the adoption of the
7 ordinance providing for the establishment and maintenance of
8 such fund, which notice shall be served upon each member of the
9 paid police department and which shall notify each member that
10 between the hours of nine in the forenoon and six in the
11 afternoon, on the day designated for such election, an election
12 will be held for such purpose and that each member shall furnish
13 in writing the names of four members of the paid police
14 department voted for; and all votes so cast shall be counted and
15 canvassed by the mayor and the governing body for the first
16 election, and thereafter the votes shall be counted by the then
17 existing members of such board, who after such election shall
18 announce the results, and the four members of the paid police
19 department receiving the highest number of votes shall, with the
20 mayor, constitute "The Board of Trustees of the Policemen's
21 Pension and Relief Fund of (name of municipality)." As to the
22 first election held following the adoption of the ordinance
23 providing for the establishment and maintenance of such fund,
24 the member receiving the highest number of votes shall serve for
25 a period of four years, the member receiving the second highest

26 number of votes shall serve for a period of three years, the
27 member receiving the third highest number of votes shall serve
28 for a period of two years and the member receiving the fourth
29 highest number of votes shall serve for a period of one year.

30 (b) After the first election, the board shall hold a similar
31 election each year to elect one member to succeed, for a term of
32 four years, the retiring member. In the case of a tie vote being
33 received by any two individuals for the office of trustee, such tie
34 vote shall be decided by casting lots, or in any other way which
35 may be agreed upon by the individuals for whom such tie vote
36 was cast. The results of such election shall be entered in the
37 record of the proceedings of the board and the members so
38 elected shall, except as herein above specified with respect to the
39 first election, serve for four years and until their successors are
40 elected and have qualified. The election for such members of the
41 board of trustees shall be held annually upon the second Monday
42 of the same month during which the first election was held. In
43 case of a vacancy by death or resignation among the members so
44 elected, the remaining members of the board shall choose the
45 successor, or successors, until the next annual election at which
46 latter time all vacancies shall be filled: *Provided*, That in the
47 case of an elected member retiring during his or her term, the
48 retired member may continue to serve the remainder of his or her
49 term.

50 (c) The board of trustees of the firemen's pension and relief
51 fund shall consist of the mayor of the municipality and four
52 members of the paid fire department, to be chosen in the same
53 manner and for such terms as is provided above in this section
54 for the election of policemen to the policemen's pension and
55 relief fund board of trustees.

56 (d) The presiding officer of any such board of trustees shall
57 be the mayor of the municipality and the secretary thereof shall
58 be appointed by the board. It shall be the duty of such secretary
59 to keep a full and permanent record of all of the proceedings of

60 the board and said trustees may fix the secretary's compensation
61 for this work, which shall be paid out of the funds of said
62 policemen's pension and relief fund or firemen's pension and
63 relief fund, as the case may be.

64 (e) For all pension and relief funds closed after January 1,
65 2010, pursuant to subsection (e), section twenty of this article
66 and those closed after April 1, 2011, pursuant to subsection (f)
67 of said section, the boards shall continue to elect four trustees
68 until there are no more beneficiaries to be paid from the fund.
69 Trustees are elected in the same manner and for the same terms
70 but may be members of the paid police or fire departments or
71 retirees from the paid police or fire departments.

CHAPTER 210

**(S. B. 481 - By Senators Gaunch, D. Hall, Karnes,
Maynard, Plymale, Sypolt and Woelfel)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, all relating to investment authority of municipal policemen's and firemen's pension and relief funds; authorizing delegation of investment authority; requiring diversification of investments of municipal policemen's and firemen's pension and relief funds; and providing investment requirements.

Be it enacted by the Legislature of West Virginia:

That §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

1 (a) The board of trustees may invest a portion or all of the
2 fund assets in any of the pools, funds and securities managed by
3 the West Virginia Investment Management Board or West
4 Virginia Board of Treasury Investments or as otherwise provided
5 in this section. The board of trustees shall keep as an available
6 sum for the purpose of making regular retirement, disability
7 retirement, death benefit, payments and administrative expenses
8 in an estimated amount not to exceed payments for a period of
9 ninety days in short-term investments. The board of trustees, in
10 acquiring, investing, reinvesting, exchanging, retaining, selling
11 and managing property for the benefit of the fund, shall do so in
12 accordance with the provisions of the Uniform Prudent Investor
13 Act codified as article six-c, chapter forty-four of this code.
14 Within the limitations of the Uniform Prudent Investor Act, the
15 board of trustees is authorized in its sole discretion to invest and
16 reinvest any funds received by it and not invested with the West
17 Virginia Investment Management Board or West Virginia Board
18 of Treasury Investments.

19 (b) The board of trustees of each fund may delegate
20 investment authority to professional investment advisors
21 registered with the Securities and Exchange Commission, in
22 accordance with the Investment Advisors Act of 1940, and

23 registered with the appropriate state regulatory agencies, if
24 applicable, and who manage assets in excess of \$75 million.

25 (c) The board of trustees of each fund shall deliver to the
26 State Treasurer or oversight board on or before March 1, 2010,
27 a copy of the pension and relief fund's investment policy. A
28 board of trustees shall submit to the oversight board any change
29 to the investment policy within thirty days of the board's
30 authorizing the change.

**§8-22-22a. Restrictions on investments; diversification of
investments; disclosure of fees and costs.**

1 (a) Moneys invested as permitted by section twenty-two of
2 this article and not invested with the West Virginia Investment
3 Management Board or the Board of Treasury Investments are
4 subject to the following restrictions and conditions contained in
5 this section:

6 (1) The board of trustees of each fund shall diversify fund
7 investment so as to minimize the risk of large losses unless,
8 under the circumstances, it is clearly prudent not to do so.

9 (2) The board shall hold in equity investments no more than
10 seventy-five percent of the total pension assets managed by the
11 board.

12 (3) The board shall hold in international securities no more
13 than thirty percent of the total pension assets managed by the
14 board.

15 (4) The board may not at the time of purchase hold more
16 than five percent of the assets managed by the board in the
17 equity securities of any single company or association.

18 (5) The board may purchase any security trading on the New
19 York Stock Exchange, the American Stock Exchange and the

20 NASDAQ over-the-counter market for its pension portfolio
21 unless it is otherwise restricted by this section. No more than
22 twenty-five percent of the board's total retirement plan assets
23 may be invested in any one industry.

24 (6) The board shall annually review, establish and modify,
25 if necessary, the board's investment objectives and investment
26 policy so as to provide for the financial security of the trust
27 funds giving consideration to the following:

28 (A) Preservation of capital;

29 (B) Diversification;

30 (C) Risk tolerance;

31 (D) Rate of return;

32 (E) Stability;

33 (F) Turnover;

34 (G) Liquidity; and

35 (H) Reasonable cost of fees.

36 (7) The board is expressly prohibited from investing in any
37 class, style or strategy of alternative investments, including a
38 real estate investment trust, private equity fund such as a venture
39 capital, private real estate or buy-out fund; commodities fund;
40 distressed debt fund; mezzanine debt fund; hedge fund; or fund
41 consisting of any combination of private equity, distressed or
42 mezzanine debt, hedge funds, private real estate, commodities
43 and other types and categories of investment permitted under this
44 article unless the investments satisfy all of the following:

45 (A) A professional third-party fiduciary investment adviser
46 registered with the Securities and Exchange Commission under

47 the Investment Advisors Act of 1940, as amended, recommends
48 the investment;

49 (B) The board or a committee designated by the board
50 approves the investment;

51 (C) The total maximum alternative investment exposure of
52 all strategies in this subdivision may not be more than twenty-
53 five percent of the total pension portfolio at any time;

54 (D) The total maximum alternative investment exposure of
55 a single fund strategy in this subdivision may not be more than
56 ten percent of the total pension portfolio at any time; and

57 (E) The board requires that all of the plan assets be invested
58 in liquid securities that are defined as securities that can be
59 transacted quickly and efficiently for the plan, priced daily and
60 settled within five business days.

61 (8) Notwithstanding the investment limitations set forth in
62 this section, it is recognized that the assets managed by the board
63 may temporarily exceed the investment limitations in this section
64 due to market appreciation, depreciation and rebalancing
65 limitations. Accordingly, the limitations on investments set forth
66 in this section shall not be considered to have been violated if the
67 board rebalances the assets it manages to comply with the
68 limitations set forth in this section at least once every twelve
69 months based on the latest available market information and any
70 other reliable market data that the board considers advisable to
71 take into consideration.

72 (9) The board shall hold in fixed income and cash equivalent
73 investments no less than twenty-five percent and no more than
74 seventy-five percent of total pension assets. No more than five
75 percent may be held in one issuer or twenty-five percent in one
76 industry: *Provided*, That the board may exceed this limitation if
77 the investments are held in United States securities.

78 (10) Fixed income securities shall be of generally high
79 quality and have a quality rating of “B-“ or better by Moody’s,
80 Standard & Poor’s, or other recognized agency, unless held by
81 a registered investment advisor and governed by prospectus. The
82 total fixed income portfolio shall have an average Standard &
83 Poor’s quality rating of at least “A-“. For registered mutual
84 funds, the prospectus of the fund will govern the investment
85 policies of the fund investments.

86 (11) The maximum maturity for any fixed income securities
87 is thirty years. The weighted average portfolio maturity of all
88 fixed income securities may not exceed ten years.

89 (12) The board is authorized in its sole discretion to invest
90 and reinvest any funds received by it in the following fixed
91 income securities:

92 (A) Obligations issued by the U. S. government, its agencies
93 and instrumentalities;

94 (B) Obligations of foreign governments and their
95 subdivisions, agencies and government-sponsored enterprises;

96 (C) Obligations of international agencies or supranational
97 entities;

98 (D) Mortgage-related and other asset-backed securities;

99 (E) Corporate debt securities, including convertible
100 securities and corporate commercial paper;

101 (F) Inflation-index bonds issued by corporations;

102 (G) Bank certificates of deposit, fixed time deposits and
103 bankers acceptances; and

104 (H) Debt securities, issued by states or local governments
105 and their agencies, authorities and other instrumentalities.

106 (13) The board is authorized in its sole discretion to invest
107 and reinvest any funds received by it in the following cash and
108 cash equivalents:

109 (A) Treasury bills;

110 (B) Money market funds;

111 (C) Short-term investment funds;

112 (D) Commercial paper;

113 (E) Bankers' acceptances;

114 (F) Repurchase agreements; and

115 (G) Certificates of deposit.

116 (14) Investments in cash equivalents shall be of the highest
117 quality and , if rated, shall be ranked at least A2/P2 or higher.

118 (b) The board of trustees of each fund shall obtain an
119 independent performance evaluation of the funds at least
120 annually and the evaluation shall consist of comparisons with
121 other funds having similar investment objectives for
122 performance results with appropriate market indices; and

123 (c) Each entity conducting business for each pension fund
124 shall fully disclose all fees and costs of investing conducted on
125 a quarterly basis to the trustees of the fund and to the oversight
126 board in the manner directed by the oversight board. Entities
127 conducting business in mutual funds for and on behalf of each
128 pension fund shall timely file revised prospectus and normal
129 quarterly and annual Securities and Exchange Commission
130 reporting documents with the board of trustees of each pension
131 fund.

CHAPTER 211

**(Com. Sub. for H. B. 2507 - By Delegate(s) Canterbury, Pethel,
Folk, Kurcaba, Walters, Hamilton, Marcum and Hicks)**

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, all relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

That §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

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

3 (a) “Accrued benefit” means on behalf of any member two
4 and six-tenths percent per year of the member’s final average
5 salary for the first twenty years of credited service. Additionally,
6 two percent per year for twenty-one through twenty-five years
7 and one percent per year for twenty-six through thirty years will
8 be credited with a maximum benefit of sixty-seven percent. A
9 member’s accrued benefit may not exceed the limits of Section

10 415 of the Internal Revenue Code and is subject to the provisions
11 of section ten of this article.

12 (b) “Accumulated contributions” means the sum of all
13 retirement contributions deducted from the compensation of a
14 member, or paid on his or her behalf as a result of covered
15 employment, together with regular interest on the deducted
16 amounts.

17 (c) “Active military duty” means full-time duty in the active
18 military service of the United States Army, Navy, Air Force,
19 Coast Guard or Marine Corps. The term does not include
20 regularly required training or other duty performed by a member
21 of a reserve component or National Guard unless the member
22 can substantiate that he or she was called into the full-time active
23 military service of the United States and has received no
24 compensation during the period of that duty from any board or
25 employer other than the Armed Forces.

26 (d) “Actuarial equivalent” means a benefit of equal value
27 computed on the basis of the mortality table and interest rates as
28 set and adopted by the board in accordance with the provisions
29 of this article: *Provided*, That when used in the context of
30 compliance with the federal maximum benefit requirements of
31 Section 415 of the Internal Revenue Code, “actuarial equivalent”
32 shall be computed using the mortality tables and interest rates
33 required to comply with those requirements.

34 (e) “Annual compensation” means the wages paid to the
35 member during covered employment within the meaning of
36 Section 3401(a) of the Internal Revenue Code, but determined
37 without regard to any rules that limit the remuneration included
38 in wages based on the nature or location of employment or
39 services performed during the plan year plus amounts excluded
40 under Section 414(h)(2) of the Internal Revenue Code and less
41 reimbursements or other expense allowances, cash or noncash

42 fringe benefits or both, deferred compensation and welfare
43 benefits. Annual compensation for determining benefits during
44 any determination period may not exceed the maximum
45 compensation allowed as adjusted for cost-of-living in
46 accordance with section seven, article ten-d, chapter five of this
47 code and Section 401(a)(17) of the Internal Revenue Code.

48 (f) “Annual leave service” means accrued annual leave.

49 (g) “Annuity starting date” means the first day of the month
50 for which an annuity is payable after submission of a retirement
51 application or the required beginning date, if earlier. For
52 purposes of this subsection, if retirement income payments
53 commence after the normal retirement age, “retirement” means
54 the first day of the month following or coincident with the latter
55 of the last day the member worked in covered employment or the
56 member’s normal retirement age and after completing proper
57 written application for “retirement” on an application supplied
58 by the board.

59 (h) “Board” means the Consolidated Public Retirement
60 Board.

61 (i) “Covered employment” means either: (1) Employment as
62 a full-time municipal police officer or firefighter and the active
63 performance of the duties required of that employment; or (2)
64 the period of time during which active duties are not performed
65 but disability benefits are received under this article; or (3)
66 concurrent employment by a municipal police officer or
67 firefighter in a job or jobs in addition to his or her employment
68 as a municipal police officer or firefighter in this plan where the
69 secondary employment requires the police officer or firefighter
70 to be a member of another retirement system which is
71 administered by the Consolidated Public Retirement Board
72 pursuant to this code: *Provided*, That the police officer or
73 firefighter contributes to the fund created in this article the

74 amount specified as the member's contribution in section eight
75 of this article.

76 (j) "Credited service" means the sum of a member's years of
77 service, active military duty and disability service.

78 (k) "Dependent child" means either: (1) An unmarried
79 person under age eighteen who is: (A) A natural child of the
80 member; (B) a legally adopted child of the member; (C) a child
81 who at the time of the member's death was living with the
82 member while the member was an adopting parent during any
83 period of probation; or (D) a stepchild of the member residing in
84 the member's household at the time of the member's death; or
85 (2) Any unmarried child under age twenty-three: (A) Who is
86 enrolled as a full-time student in an accredited college or
87 university; (B) who was claimed as a dependent by the member
88 for federal income tax purposes at the time of the member's
89 death; and (C) whose relationship with the member is described
90 in paragraph (A), (B) or (C), subdivision (1) of this subsection.

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

94 (m) "Disability service" means service credit received by a
95 member, expressed in whole years, fractions thereof or both,
96 equal to one half of the whole years, fractions thereof, or both,
97 during which time a member receives disability benefits under
98 this article.

99 (n) "Effective date" means January 1, 2010.

100 (o) "Final average salary" means the average of the highest
101 annual compensation received for covered employment by the
102 member during any five consecutive plan years within the
103 member's last ten years of service while employed, prior to any
104 disability payment. If the member did not have annual

105 compensation for the five full plan years preceding the member's
106 attainment of normal retirement age and during that period the
107 member received disability benefits under this article, then "final
108 average salary" means the average of the monthly compensation
109 which the member was receiving in the plan year prior to the
110 initial disability. "Final average salary" does not include any
111 lump sum payment for unused, accrued leave of any kind or
112 character.

113 (p) "Full-time employment" means permanent employment
114 of an employee by a participating municipality in a position
115 which normally requires twelve months per year service and
116 requires at least one thousand forty hours per year service in that
117 position.

118 (q) "Fund" means the West Virginia Municipal Police
119 Officers and Firefighters Retirement Fund created by this article.

120 (r) "Hour of service" means: (1) Each hour for which a
121 member is paid or entitled to payment for covered employment
122 during which time active duties are performed. These hours shall
123 be credited to the member for the plan year in which the duties
124 are performed; and (2) each hour for which a member is paid or
125 entitled to payment for covered employment during a plan year
126 but where no duties are performed due to vacation, holiday,
127 illness, incapacity including disability, layoff, jury duty, military
128 duty, leave of absence or any combination thereof and without
129 regard to whether the employment relationship has terminated.
130 Hours under this subdivision shall be calculated and credited
131 pursuant to West Virginia Division of Labor rules. A member
132 will not be credited with any hours of service for any period of
133 time he or she is receiving benefits under section seventeen or
134 eighteen of this article; and (3) each hour for which back pay is
135 either awarded or agreed to be paid by the employing
136 municipality, irrespective of mitigation of damages. The same
137 hours of service shall not be credited both under subdivision (1)

138 or (2) of this subsection and under this subdivision. Hours under
139 this paragraph shall be credited to the member for the plan year
140 or years to which the award or agreement pertains, rather than
141 the plan year in which the award, agreement or payment is made.

142 (s) “Member” means, except as provided in section thirty-
143 two of this article, a person hired as a municipal police officer or
144 municipal firefighter, as defined in this section, by a
145 participating municipal employer on or after January 1, 2010. A
146 member shall remain a member until the benefits to which he or
147 she is entitled under this article are paid or forfeited.

148 (t) “Monthly salary” means the W-2 reportable
149 compensation received by a member during the month.

150 (u) “Municipality” has the meaning ascribed to it in this
151 code.

152 (v) (1) “Municipal police officer” means an individual
153 employed as a member of a paid police department by a West
154 Virginia municipality or municipal subdivision which has
155 established and maintains a municipal policemen’s pension and
156 relief fund, and who is not a member of, and not eligible for
157 membership in, a municipal policemen’s pension and relief fund
158 as provided in section sixteen, article twenty-two of this chapter.
159 Paid police department does not mean a department whose
160 employees are paid nominal salaries or wages or are paid only
161 for services actually rendered on an hourly basis.

162 (2) “Municipal firefighter” means an individual employed as
163 a member of a paid fire department by a West Virginia
164 municipality or municipal subdivision which has established and
165 maintains a municipal firemen’s pension and relief fund, and
166 who is not a member of, and not eligible for membership in, a
167 municipal firemen’s pension and relief fund as provided in
168 section sixteen, article twenty-two of this chapter. Paid fire

169 department does not mean a department whose employees are
170 paid nominal salaries or wages or are paid only for services
171 actually rendered on an hourly basis.

172 (w) “Municipal subdivision” means any separate corporation
173 or instrumentality established by one or more municipalities, as
174 permitted by law; and any public corporation charged by law
175 with the performance of a governmental function and whose
176 jurisdiction is coextensive with one or more municipalities.

177 (x) “Normal form” means a monthly annuity which is one
178 twelfth of the amount of the member’s accrued benefit which is
179 payable for the member’s life. If the member dies before the sum
180 of the payments he or she receives equals his or her accumulated
181 contributions on the annuity starting date, the named beneficiary
182 shall receive in one lump sum the difference between the
183 accumulated contributions at the annuity starting date and the
184 total of the retirement income payments made to the member.

185 (y) “Normal retirement age” means the first to occur of the
186 following: (1) Attainment of age fifty years and the completion
187 of twenty or more years of regular contributory service; (2)
188 while still in covered employment, attainment of at least age
189 fifty years and when the sum of current age plus regular
190 contributory service equals or exceeds seventy years; (3) while
191 still in covered employment, attainment of at least age sixty
192 years and completion of ten years of regular contributory
193 service; or (4) Attainment of age sixty-two years and completion
194 of five or more years of regular contributory service.

195 (z) “Plan” means the West Virginia Municipal Police
196 Officers and Firefighters Retirement System established by this
197 article.

198 (aa) “Plan year” means the twelve-month period
199 commencing on January 1 of any designated year and ending the
200 following December 31.

201 (bb) “Qualified public safety employee” means any
202 employee of a participating state or political subdivision who
203 provides police protection, firefighting services or emergency
204 medical services for any area within the jurisdiction of the state
205 or political subdivision, or such other meaning given to the term
206 by Section 72(t)(10)(B) of the Internal Revenue Code or by
207 Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be
208 amended from time to time.

209 (cc) “Regular contributory service” means a member’s
210 credited service excluding active military duty, disability service
211 and accrued annual and sick leave service.

212 (dd) “Regular interest” means the rate or rates of interest per
213 annum, compounded annually, as the board adopts in accordance
214 with the provisions of this article.

215 (ee) “Required beginning date” means April 1 of the
216 calendar year following the later of: (1) The calendar year in
217 which the member attains age seventy and one-half; or (2) the
218 calendar year in which he or she retires or otherwise separates
219 from covered employment.

220 (ff) “Retirement income payments” means the monthly
221 retirement income payments payable under the plan.

222 (gg) “Spouse” means the person to whom the member is
223 legally married on the annuity starting date.

224 (hh) “Surviving spouse” means the person to whom the
225 member was legally married at the time of the member’s death
226 and who survived the member.

227 (ii) “Totally disabled” means a member’s inability to
228 engage in substantial gainful activity by reason of any medically
229 determined physical or mental impairment that can be expected
230 to result in death or that has lasted or can be expected to last for

231 a continuous period of not less than twelve months. For purposes
 232 of this subsection: (1) A member is totally disabled only if his or
 233 her physical or mental impairment or impairments is so severe
 234 that he or she is not only unable to perform his or her previous
 235 work as a police officer or firefighter but also cannot,
 236 considering his or her age, education and work experience,
 237 engage in any other kind of substantial gainful employment
 238 which exists in the state regardless of whether: (A) The work
 239 exists in the immediate area in which the member lives; (B) a
 240 specific job vacancy exists; or (C) the member would be hired if
 241 he or she applied for work. For purposes of this article,
 242 substantial gainful employment is the same definition as used by
 243 the United States Social Security Administration. (2) "Physical
 244 or mental impairment" is an impairment that results from an
 245 anatomical, physiological or psychological abnormality that is
 246 demonstrated by medically accepted clinical and laboratory
 247 diagnostic techniques. The board may require submission of a
 248 member's annual tax return for purposes of monitoring the
 249 earnings limitation.

250 (jj) "Year of service" means a member shall, except in his or
 251 her first and last years of covered employment, be credited with
 252 years of service credit based on the hours of service performed
 253 as covered employment and credited to the member during the
 254 plan year based on the following schedule:

255	Hours of Service Year of Service Credited
256	Less than 500..... 0
257	500 to 999. 1/3
258	1,000 to 1,499. 2/3
259	1,500 or more..... 1

260 During a member's first and last years of covered
 261 employment, the member shall be credited with one twelfth of

262 a year of service for each month during the plan year in which
263 the member is credited with an hour of service for which
264 contributions were received by the fund. A member is not
265 entitled to credit for years of service for any time period during
266 which he or she received disability payments under section
267 seventeen or eighteen of this article.

***§8-22A-6. Members.**

1 (a) A police officer or firefighter hired in covered
2 employment after the effective date of this article by a
3 municipality or municipal subdivision which has established and
4 maintained a policemen's pension and relief fund or a firemen's
5 pension and relief fund pursuant to section sixteen, article
6 twenty-two of this chapter and which is a participating employer,
7 shall be a member of this retirement plan: *Provided*, That any
8 police officer or firefighter who has concurrent employment in
9 an additional job or jobs which would require the police officer
10 or firefighter to be a member of the West Virginia Deputy
11 Sheriff Retirement System or the West Virginia Emergency
12 Medical Services Retirement System shall participate in only
13 one retirement system administered by the board, and the
14 retirement system applicable to the concurrent employment for
15 which the employee has the earliest date of hire shall prevail.

16 (b) Except as provided in section thirty-two of this article, a
17 police officer or firefighter who is a member of the Municipal
18 Police Officers and Firefighters Retirement System may not
19 have credit for covered employment in any other retirement
20 system applied as service credit in the Municipal Police Officers
21 and Firefighters Retirement System.

22 (c) Notwithstanding any other provisions of this article, any
23 individual who is a leased employee is not eligible to participate
24 in the plan. For purposes of this plan, a "leased employee"

* **NOTE:** This section was also amended by H. B. 2505 (Chapter 205),
which passed prior to this act.

25 means any individual who performs services as an independent
 26 contractor or pursuant to an agreement with an employee leasing
 27 organization or similar organization. If a question arises
 28 regarding the status of an individual as a leased employee, the
 29 board has final power to decide the question.

CHAPTER 212

(S. B. 299 - By Senators Gaunch and Trump)

[Passed February 20, 2015; in effect ninety days from passage.]
 [Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §15-2A-9 and §15-2A-10 of the Code of West Virginia, 1931, as amended, all relating to duty-related and nonduty-related disability retirement in the West Virginia State Police Retirement System; and specifying that disability disbursements begin the first day of the month following approval by the Consolidated Public Retirement Board and the member's termination of employment or as ordered by a court of competent jurisdiction.

Be it enacted by the Legislature of West Virginia:

That §15-2A-9 and §15-2A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-9. Awards and benefits for disability — Incurred in performance of duty.

1 (a) Any employee of the agency who has not yet entered
 2 retirement status on the basis of age and service and who

3 becomes partially disabled by injury, illness or disease resulting
4 from any occupational risk or hazard inherent in or peculiar to
5 the services required of employees of the agency or incurred
6 pursuant to or while the employee was engaged in the
7 performance of his or her duties as an employee of the agency
8 shall, if, in the opinion of the board, he or she is, by reason of
9 that cause, unable to perform adequately the duties required of
10 him or her as an employee of the agency, but is able to engage in
11 other gainful employment in a field other than law enforcement,
12 be retired from active service by the board. The retirant
13 thereafter is entitled to receive annually from the fund in equal
14 monthly installments during his or her lifetime, or until the
15 retirant attains the age of fifty-five or until the disability
16 eligibility sooner terminates, one or the other of two amounts,
17 whichever is greater:

18 (1) An amount equal to six tenths of the base salary received
19 in the preceding twelve-month employment period: *Provided*,
20 That if the member had not been employed with the agency for
21 twelve months prior to the disability, the amount of monthly
22 salary shall be annualized for the purpose of determining the
23 benefit; or

24 (2) The sum of \$6,000. The first day of the month following
25 the date in which the retirant attains age fifty-five, the retirant
26 shall receive the benefit provided in section six of this article as
27 it would apply to his or her final average salary based on
28 earnings from the agency through the day immediately preceding
29 his or her disability. The recalculation of benefit upon a retirant
30 attaining age fifty-five shall be considered to be a retirement
31 under the provisions of section six of this article for purposes of
32 determining the amount of annual annuity adjustment and for all
33 other purposes of this article: *Provided*, That a retirant who is
34 partially disabled under this article may not, while in receipt of
35 benefits for partial disability, be employed as a law-enforcement
36 officer: *Provided, however*, That a retirant on a partial disability

37 under this article may serve as an elected sheriff or appointed
38 chief of police in the state without a loss of disability retirement
39 benefits as long as the elected or appointed position is shown, to
40 the satisfaction of the board, to require the performance of
41 administrative duties and functions only, as opposed to the full
42 range of duties of a law-enforcement officer.

43 (b) Any member who has not yet entered retirement status
44 on the basis of age and service and who becomes physically or
45 mentally disabled by injury, illness or disease on a probable
46 permanent basis resulting from any occupational risk or hazard
47 inherent in or peculiar to the services required of employees of
48 the agency or incurred pursuant to or while the employee was or
49 is engaged in the performance of his or her duties as an
50 employee of the agency to the extent that the employee is
51 incapacitated ever to engage in any gainful employment, the
52 employee is entitled to receive annually, and there shall be paid
53 from the fund in equal monthly installments during his or her
54 lifetime or until the disability sooner terminates, an amount
55 equal to the base salary received by the employee in the
56 preceding full twelve-month employment period. Until a
57 member has worked twelve months, the amount of monthly base
58 salary shall be annualized for the purpose of determining the
59 benefit.

60 (c) Disability benefit payments made pursuant to subsection
61 (a) or (b) of this section will begin the first day of the month
62 following board approval and termination of employment or as
63 ordered by a court of competent jurisdiction.

64 (d) The superintendent of the agency may expend moneys
65 from funds appropriated for the agency in payment of medical,
66 surgical, laboratory, x-ray, hospital, ambulance and dental
67 expenses and fees and reasonable costs and expenses incurred in
68 the purchase of artificial limbs and other approved appliances
69 which may be reasonably necessary for any retirant who is

70 temporarily, permanently or totally disabled by injury, illness or
71 disease resulting from any occupational risk or hazard inherent
72 in or peculiar to the service required of employees of the agency
73 or incurred pursuant to or while the employee was or shall be
74 engaged in the performance of duties as an employee of the
75 agency. Whenever the superintendent determines that any
76 disabled retirant is ineligible to receive any of the benefits in this
77 section at public expense, the superintendent shall, at the request
78 of the disabled retirant, refer the matter to the board for hearing
79 and final decision. In no case will the compensation rendered to
80 health care providers for medical and hospital services exceed
81 the then current rate schedule approved by the West Virginia
82 Insurance Commission. Upon termination of employment and
83 receipt of properly executed forms from the agency and the
84 member, the board shall process the member's disability
85 retirement benefit and commence annuity payments as soon as
86 administratively feasible.

§15-2A-10. Same — Due to other causes.

1 (a) If any employee while in active service of the agency
2 becomes partially or totally disabled on a probable permanent
3 basis to the extent that the employee cannot adequately perform
4 the duties required of an employee of the agency from any cause
5 other than those set forth in the preceding section and not due to
6 vicious habits, intemperance or willful misconduct on his or her
7 part, the employee shall be retired by the board. There shall be
8 paid annually to the retirant from the fund in equal monthly
9 installments, commencing on the date the retirant is retired and
10 continuing during the lifetime of the retirant or until the retirant
11 attains the age of fifty-five; while in status of retirement an
12 amount equal to one-half the base salary received by the retirant
13 in the preceding full twelve-month period: *Provided*, That if the
14 retirant had not been employed with the agency for twelve full
15 months prior to the disability, the amount of monthly base salary
16 shall be annualized for the purpose of determining the benefit.

17 (b) The first day of the month following the date in which
18 the retirant attains age fifty-five, the retirant shall receive the
19 benefit provided in section six of this article as it would apply to
20 his or her final average salary based on earnings from the agency
21 through the day immediately preceding his or her disability. The
22 recalculation of benefit upon a retirant attaining age fifty-five
23 shall be considered to be a retirement under the provisions of
24 section six of this article for purposes of determining the amount
25 of annual annuity adjustment and for all other purposes of this
26 article.

27 (c) Disability benefit payments made pursuant to this section
28 will begin the first day of the month following board approval
29 and termination of employment or as ordered by a court of
30 competent jurisdiction: *Provided*, That in no circumstance may
31 the disability payments begin prior to termination of
32 employment in order to avoid an in-service distribution.

CHAPTER 213

**(Com. Sub. for H. B. 2778 - By Delegate(s) Gearheart,
McCuskey, Storch, Hamrick, Espinosa, E. Nelson, Westfall,
Mr. Speaker (Mr. Armstead), O'Neal, Pethtel and Ferro)**

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-17B-1, §17-17B-2, §17-17B-3, §17-17B-4 and §17-17B-5, all relating to transportation funding; authorizing West Virginia Division of Highways to enter into cooperative agreements with United States Secretary of Transportation to establish infrastructure revolving

funds; creating the State Transportation Infrastructure Fund Program; creating State Transportation Infrastructure Fund; and permitting Commissioner of the Division of Highways to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-17B-1, §17-17B-2, §17-17B-3, §17-17B-4 and §17-17B-5, all to read as follows:

ARTICLE 17B. STATE TRANSPORTATION INFRASTRUCTURE FUND PROGRAM.

§17-17B-1 Short title; legislative findings and purpose.

1 (a) This article may be known and cited as the “State
2 Transportation Infrastructure Fund Program.”

3 (b) The Legislature finds and declares that new financing
4 mechanisms will provide greater flexibility and additional funds
5 for needed transportation infrastructure projects in the state. The
6 creation of a financing mechanism, in conformance with the
7 federal State infrastructure bank program, will enable the state,
8 counties and municipalities to use federal and state highway
9 funds to construct transportation projects eligible for assistance
10 under the federal State infrastructure bank program.

§17-17B-2. Definitions.

1 As used in this article, the following words and terms shall
2 have the following meaning:

3 (1) “Capitalized” means depositing funds as initial capital
4 into a State Transportation Infrastructure Fund to establish the
5 infrastructure fund.

6 (2) “Commissioner” means the West Virginia Commissioner
7 of Highways.

8 (3) “Cooperative agreement” means written consent between
9 the state and the United States Department of Transportation
10 Secretary.

11 (4) “Department” means the West Virginia Department of
12 Transportation.

13 (5) “Division” means the Division of Highways, a division
14 within the West Virginia Department of Transportation.

15 (6) “Initial assistance” means the first round of funds that are
16 loaned or used for credit enhancement by the State
17 Transportation Infrastructure Fund for projects eligible for
18 assistance under this section.

19 (7) “Loan” means any form of direct financial assistance
20 from the infrastructure fund that is required to be repaid over a
21 period of time and that is provided to a project sponsor for all or
22 part of the costs of the project.

23 (8) “US DOT Secretary” means the United States
24 Department of Transportation Secretary.

§17-17B-3. Purpose and scope.

1 (a) There is hereby created in the State Treasury the West
2 Virginia State Transportation Infrastructure Fund. The special
3 fund shall be a revolving fund, to be administered by the
4 commissioner and used for the purposes described in this article.
5 The fund consists of certain federal and state highway funds and
6 other funds eligible for deposit under applicable federal law,
7 payments received by the division in connection with the State
8 Transportation Infrastructure Fund, investment earnings on
9 money in state transportation infrastructure fund accounts, and
10 other funds as may be provided by law. Separate accounts may

11 be established within the State Transportation Infrastructure
12 Fund if required for its proper administration. The account shall
13 retain all earnings and interest, and may not be expired into the
14 General Revenue Fund at the end of the fiscal year.

15 (b) The Commissioner of Highways shall use the State
16 Transportation Infrastructure Fund to make loans to
17 municipalities, counties, state agencies and quasi-state
18 government agencies for eligible transportation projects. For
19 purposes of this article, a project is an “eligible transportation
20 project” and is “eligible for assistance” when it complies with
21 the eligibility criteria established in the National Highway
22 System Designation Act of 1995, Public Law 104-59, Section
23 350. Initial assistance provided with respect to a project from
24 federal funds deposited into an infrastructure fund under this
25 article may not be made in the form of a grant.

§17-17B-4. Authority to enter into agreements.

1 The loans shall be made upon such terms as the
2 commissioner shall determine, including secured and unsecured
3 loans, and in connection with the secured and unsecured loans.
4 The commissioner may enter into loan agreements,
5 subordination agreements and other agreements; accept notes
6 and other forms of obligation to evidence the indebtedness, and
7 mortgages, liens, pledges, assignments or other security interest
8 to secure the indebtedness, which may be prior or subordinate to
9 or on a parity with other indebtedness, obligations, mortgages,
10 pledges, assignments, other security interests or liens or
11 encumbrances, and take such actions as are appropriate to
12 protect the security and safeguard against losses, including
13 foreclosure and the funds for other projects.

§17-17B-5. Enforcement of provisions by commissioner; rules.

1 It is the function and duty of the Commissioner of Highways
2 to administer and enforce the provisions of this article, and in the

3 performance of duties hereunder, the commissioner may assign
4 to other employees in the department, such duties as he or she
5 may deem proper. The commissioner may propose rules for
6 legislative approval in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code relating to the
8 implementation and exercise of the authority granted by this
9 article, including rules permitting the State of West Virginia to
10 comply with the provisions of Title 23, Chapter 6 of the United
11 States Code relating to the federal State infrastructure bank
12 program; and for receiving, reviewing, evaluating and selecting
13 projects for which financial assistance will be approved.

CHAPTER 214

(S. B. 89 - By Senators Laird and Miller)

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to compensation for public officials generally; increasing the annual salary of the Executive Director of the West Virginia Prosecuting Attorneys Institute; and clarifying and restoring language accurately stating the compensation range for the Secretary of the Department of Health and Human Resources that was omitted by inadvertent clerical error in previous legislation.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.**§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.**

1 (a) Each of the following appointive state officers named in
2 this subsection shall be appointed by the Governor, by and with
3 the advice and consent of the Senate. Each of the appointive state
4 officers serves at the will and pleasure of the Governor for the
5 term for which the Governor was elected and until the respective
6 state officers' successors have been appointed and qualified.
7 Each of the appointive state officers are subject to the existing
8 qualifications for holding each respective office and each has
9 and is hereby granted all of the powers and authority and shall
10 perform all of the functions and services heretofore vested in and
11 performed by virtue of existing law respecting each office.

12 The annual salary of each named appointive state officer is
13 as follows:

14 Commissioner, Division of Highways, \$92,500;
15 Commissioner, Division of Corrections, \$80,000; Director,
16 Division of Natural Resources, \$75,000; Superintendent, State
17 Police, \$85,000; Commissioner, Division of Banking, \$75,000;
18 Commissioner, Division of Culture and History, \$65,000;
19 Commissioner, Alcohol Beverage Control Commission,
20 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000;
21 Chairman, Health Care Authority, \$80,000; members, Health
22 Care Authority, \$70,000; Director, Human Rights Commission,
23 \$55,000; Commissioner, Division of Labor, \$70,000; prior to
24 July 1, 2011, Director, Division of Veterans Affairs, \$65,000;
25 Chairperson, Board of Parole, \$55,000; members, Board of
26 Parole, \$50,000; members, Employment Security Review Board,
27 \$17,000; and Commissioner, Workforce West Virginia, \$75,000.
28 Secretaries of the departments shall be paid an annual salary as
29 follows: Health and Human Resources, \$95,000: *Provided*, That

30 effective July 1, 2013, the Secretary of the Department of Health
31 and Human Resources shall be paid an annual salary not to
32 exceed \$175,000; Transportation, \$95,000; *Provided, however,*
33 That if the same person is serving as both the Secretary of
34 Transportation and the Commissioner of Highways, he or she
35 shall be paid \$120,000; Revenue, \$95,000; Military Affairs and
36 Public Safety, \$95,000; Administration, \$95,000; Education and
37 the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance,
38 \$95,000; and Environmental Protection, \$95,000; *Provided*
39 *further,* That any officer specified in this subsection whose
40 salary is increased by more than \$5,000 as a result of the
41 amendment and reenactment of this section during the 2011
42 regular session of the Legislature shall be paid the salary
43 increase in increments of \$5,000 per fiscal year beginning July
44 1, 2011, up to the maximum salary provided in this subsection.

45 (b) Each of the state officers named in this subsection shall
46 continue to be appointed in the manner prescribed in this code
47 and shall be paid an annual salary as follows:

48 Director, Board of Risk and Insurance Management,
49 \$80,000; Director, Division of Rehabilitation Services, \$70,000;
50 Director, Division of Personnel, \$70,000; Executive Director,
51 Educational Broadcasting Authority, \$75,000; Secretary, Library
52 Commission, \$72,000; Director, Geological and Economic
53 Survey, \$75,000; Executive Director, Prosecuting Attorneys
54 Institute, \$80,000; Executive Director, Public Defender Services,
55 \$70,000; Commissioner, Bureau of Senior Services, \$75,000;
56 Executive Director, Women's Commission, \$45,000; Director,
57 Hospital Finance Authority, \$35,000; member, Racing
58 Commission, \$12,000; Chairman, Public Service Commission,
59 \$85,000; members, Public Service Commission, \$85,000;
60 Director, Division of Forestry, \$75,000; Director, Division of
61 Juvenile Services, \$80,000; and Executive Director, Regional
62 Jail and Correctional Facility Authority, \$80,000.

63 (c) Each of the following appointive state officers named in
64 this subsection shall be appointed by the Governor, by and with
65 the advice and consent of the Senate. Each of the appointive state
66 officers serves at the will and pleasure of the Governor for the
67 term for which the Governor was elected and until the respective
68 state officers' successors have been appointed and qualified.
69 Each of the appointive state officers are subject to the existing
70 qualifications for holding each respective office and each has
71 and is hereby granted all of the powers and authority and shall
72 perform all of the functions and services heretofore vested in and
73 performed by virtue of existing law respecting each office.

74 The annual salary of each named appointive state officer
75 shall be as follows:

76 Commissioner, State Tax Division, \$92,500; Insurance
77 Commissioner, \$92,500; Director, Lottery Commission,
78 \$92,500; Director, Division of Homeland Security and
79 Emergency Management, \$65,000; and Adjutant General,
80 \$125,000.

81 (d) No increase in the salary of any appointive state officer
82 pursuant to this section may be paid until and unless the
83 appointive state officer has first filed with the State Auditor and
84 the Legislative Auditor a sworn statement, on a form to be
85 prescribed by the Attorney General, certifying that his or her
86 spending unit is in compliance with any general law providing
87 for a salary increase for his or her employees. The Attorney
88 General shall prepare and distribute the form to the affected
89 spending units.

CHAPTER 215

(S. B. 106 - By Senator Carmichael)

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

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §16-13-18 of the Code of West Virginia, 1931, as amended, relating to supervision of works by a sanitary board; and providing that if a professional engineer is under contract for a project, an engineer is not required to serve on the sanitary board.

Be it enacted by the Legislature of West Virginia:

That §16-13-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

1 (a) The governing body shall provide by ordinance the
2 organization of the board, and that the custody, administration,
3 operation and maintenance of such works are under the
4 supervision and control of a sanitary board, created under this
5 section.

6 (b) The sanitary board shall be composed of either the mayor
7 of the municipality, or the city manager thereof, if the
8 municipality has a city manager form of government, and two
9 persons appointed by the governing body: *Provided*, That, in the

10 event of an acquisition or merger of an existing works, the
11 governing body may increase the membership to a maximum of
12 four members in addition to the mayor or city manager of the
13 municipality served by the board.

14 (c) During the construction period, one of the members must
15 be a registered professional engineer, except that if a registered
16 professional engineer is under contract for the project, the
17 membership of the board is not required to include a registered
18 professional engineer. The engineer member of the board need
19 not be a resident of the municipality. After the construction of
20 the plant for which no registered professional engineer is under
21 contract has been completed, the engineer member may be
22 succeeded by a person not an engineer. No officer or employee
23 of the municipality, whether holding a paid or unpaid office, is
24 eligible for appointment to the sanitary board until at least one
25 year after the expiration of the term of his or her public office.
26 The appointees shall originally be appointed for terms of two
27 and three years respectively, and upon the expiration of each
28 term and each succeeding term, an appointment of a successor
29 shall be made in like manner for a term of three years. Vacancies
30 shall be filled for an unexpired term in the same manner as the
31 original appointment. Each member shall give bond, if any, as
32 required by ordinance. The mayor or city manager shall act as
33 chairman of the sanitary board, which shall elect a vice chairman
34 from its members and designate a secretary and treasurer (but the
35 secretary and the treasurer may be one and the same) who need
36 not be a member or members of the sanitary board. The vice
37 chairman, secretary and treasurer shall hold office at the will of
38 the sanitary board.

39 (d) The members of the sanitary board are entitled to receive
40 compensation for their services, either as a salary or as payments
41 for meetings attended, as the governing body determines, and are
42 entitled to payment for their reasonable expenses incurred in the
43 performance of their duties. The governing body shall fix the

44 reasonable compensation of the secretary and treasurer in its
45 discretion, and shall fix the amounts of bond to be given by the
46 treasurer. All compensation, together with the expenses
47 previously referred to in this section, shall be paid solely from
48 funds provided under the authority of this article. The sanitary
49 board may establish bylaws, rules and regulations for its own
50 governance.

CHAPTER 216

**(H. B. 2645 - By Delegate(s) Mr. Speaker (Mr. Armstead)
and Miley)**

[By Request of the Governor's Office]

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18C-4A-1, §18C-4A-2 and §18C-4A-3 of the Code of West Virginia, 1931, as amended, all relating to modifying the Underwood-Smith Teacher Loan Assistance Program; increasing annual award from program; and expanding teacher eligibility for program awards.

Be it enacted by the Legislature of West Virginia:

That §18C-4A-1, §18C-4A-2 and §18C-4A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.

§18C-4A-1. Selection criteria and procedures for loan assistance.

- 1 (a) The Governor shall designate the Higher Education
- 2 Student Financial Aid Advisory Board created by section five,

3 article one of this chapter to select recipients to receive
4 Underwood-Smith Teacher Loan Assistance Awards.

5 (b) To be eligible for a loan award, a teacher shall agree to
6 teach, or shall currently be teaching, a subject area of critical
7 need or in a school or geographic area of the state identified as
8 an area of critical need. The advisory board shall make decisions
9 regarding loan assistance pursuant to section one, article four of
10 this chapter.

11 (c) In accordance with the rule promulgated pursuant to
12 section one, article four of this chapter, the Vice Chancellor for
13 Administration shall develop additional eligibility criteria and
14 procedures for the administration of the loan program.

15 (d) The Vice Chancellor for Administration shall make
16 available program application forms to public and private
17 schools in the state via the website of the commission and the
18 State Department of Education and in other locations convenient
19 to potential applicants.

§18C-4A-2. Loan assistance agreement.

1 (a) Before receiving an award, each eligible teacher shall
2 enter into an agreement with the Vice Chancellor for
3 Administration and shall meet the following criteria:

4 (1) Provide the commission with evidence of compliance
5 with subsection (b), section four, article four of this chapter;

6 (2) Teach in a subject area of critical need or in a school or
7 geographic area of critical need full time under contract with a
8 county board for a period of two school years for each year for
9 which loan assistance is received pursuant to this article. The
10 Vice Chancellor for Administration may grant a partial award to
11 an eligible recipient whose contract term is for less than a full
12 school year pursuant to criteria established by commission rule.

13 (3) Acknowledge that an award is to be paid to the
14 recipient's student loan institution, not directly to the recipient,
15 and only after the commission determines that the recipient has
16 complied with all terms of the agreement; and

17 (4) Repay all or part of an award received pursuant to this
18 article if the award is not paid to the student loan institution or
19 if the recipient does not comply with the other terms of the
20 agreement.

21 (b) Each loan agreement shall disclose fully the terms and
22 conditions under which an award may be granted pursuant to this
23 article and under which repayment may be required. The
24 agreement also is subject to and shall include the terms and
25 conditions established by section five, article four of this
26 chapter.

§18C-4A-3. Amount and duration of loan assistance; limits.

1 (a) Each award recipient is eligible to receive loan assistance
2 of up to \$3,000 annually, subject to limits set forth in subsection
3 (b) of this section:

4 (1) If the recipient has taught for a full school year under
5 contract with a county board in a subject area of critical need or
6 in a school or geographic area of critical need; and

7 (2) If the recipient otherwise has complied with the terms of
8 the agreement and with applicable provisions of this article and
9 article four of this chapter, and any rules promulgated pursuant
10 thereto.

11 (b) The recipient is eligible for renewal of loan assistance
12 only during periods when the recipient is under contract with a
13 county board to teach in a subject area of critical need or in a
14 school or geographic area of critical need and complies with
15 other criteria and conditions established by rule, except that a

16 teacher who is teaching under a contract in a position that no
17 longer meets the definition of critical need under rules
18 established in accordance with section one, article four of this
19 chapter is eligible for renewal of loan assistance until the teacher
20 leaves his or her current position.

21 (c) A recipient may not receive loan assistance pursuant to
22 this article which accumulates in excess of \$15,000.

CHAPTER 217

**(Com. Sub. for H. B. 2702 - By Delegate(s) Pasdon, Perry, Moye,
Hamrick, Campbell, Statler, Rowan and Espinosa)**

[Passed March 9, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-5-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-8, §18A-4-8a and §18A-4-8b of said code, all relating to redefining service personnel class titles of early childhood classroom assistant teacher; protecting certain aides from reduction in force or transfer to create vacancy for less senior early childhood classroom assistant teacher; requiring aide who becomes employed as early childhood classroom assistant teacher to hold certain multiclassification status; and including early childhood assistant classroom assistant teacher in same classification category as aides.

Be it enacted by the Legislature of West Virginia:

That §18-5-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18A-4-8, §18A-4-8a and §18A-4-8b of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.**ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-18. Kindergarten programs.**

1 (a) County boards shall provide kindergarten programs for
2 all children who have attained the age of five prior to September
3 1, of the school year in which the pupil enters the kindergarten
4 program and may, pursuant to the provisions of section forty-
5 four, article five, chapter eighteen of this code, establish
6 kindergarten programs designed for children below the age of
7 five. The programs for children who shall have attained the age
8 of five shall be full-day everyday programs.

9 (b) Persons employed as kindergarten teachers, as
10 distinguished from paraprofessional personnel, shall be required
11 to hold a certificate valid for teaching at the assigned level as
12 prescribed by rules established by the state board. The state
13 board shall establish the minimum requirements for all
14 paraprofessional personnel employed in kindergarten programs
15 established pursuant to the provisions of this section and no such
16 paraprofessional personnel may be employed in any kindergarten
17 program unless he or she meets the minimum requirements.
18 Beginning July 1, 2014, any person previously employed as an
19 aide in a kindergarten program and who is employed in the same
20 capacity on and after that date and any new person employed in
21 that capacity in a kindergarten program on and after that date
22 shall hold the position of aide and either Early Childhood
23 Classroom Assistant Teacher I, Early Childhood Classroom
24 Assistant Teacher II or Early Childhood Classroom Assistant
25 Teacher III. Any person employed as an aide in a kindergarten
26 program that is eligible for full retirement benefits before July 1,
27 2020, may remain employed as an aide in that position and shall
28 be granted an Early Childhood Classroom Assistant Teacher
29 permanent authorization by the state superintendent pursuant to
30 section two-a, article three, chapter eighteen-a of this code.

31 (c) The state board with the advice of the state
32 superintendent shall establish and prescribe guidelines and
33 criteria relating to the establishment, operation and successful
34 completion of kindergarten programs in accordance with the
35 other provisions of this section. Guidelines and criteria so
36 established and prescribed also are intended to serve for the
37 establishment and operation of nonpublic kindergarten programs
38 and shall be used for the evaluation and approval of those
39 programs by the state superintendent, provided application for
40 the evaluation and approval is made in writing by proper
41 authorities in control of the programs. The state superintendent,
42 annually, shall publish a list of nonpublic kindergarten programs,
43 including Montessori kindergartens that have been approved in
44 accordance with the provisions of this section. Montessori
45 kindergartens established and operated in accordance with usual
46 and customary practices for the use of the Montessori method
47 which have teachers who have training or experience, regardless
48 of additional certification, in the use of the Montessori method
49 of instruction for kindergartens shall be considered to be
50 approved.

51 (d) Pursuant to the guidelines and criteria, and only pursuant
52 to the guidelines and criteria, the county boards may establish
53 programs taking kindergarten to the homes of the children
54 involved, using educational television, paraprofessional
55 personnel in addition to and to supplement regularly certified
56 teachers, mobile or permanent classrooms and other means
57 developed to best carry kindergarten to the child in its home and
58 enlist the aid and involvement of its parent or parents in
59 presenting the program to the child; or may develop programs of
60 a more formal kindergarten type, in existing school buildings, or
61 both, as the county board may determine, taking into
62 consideration the cost, the terrain, the existing available
63 facilities, the distances each child may be required to travel, the
64 time each child may be required to be away from home, the
65 child's health, the involvement of parents and other factors as

66 each county board may find pertinent. The determinations by any
67 county board are final and conclusive.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 (a) The purpose of this section is to establish an employment
2 term and class titles for service personnel. The employment term
3 for service personnel may not be less than ten months. A month
4 is defined as twenty employment days. The county board may
5 contract with all or part of these service personnel for a longer
6 term.

7 (b) Service personnel employed on a yearly or twelve-month
8 basis may be employed by calendar months. Whenever there is
9 a change in job assignment during the school year, the minimum
10 pay scale and any county supplement are applicable.

11 (c) Service personnel employed in the same classification for
12 more than the two hundred-day minimum employment term are
13 paid for additional employment at a daily rate of not less than the
14 daily rate paid for the two hundred-day minimum employment
15 term.

16 (d) A service person may not be required to report for work
17 more than five days per week without his or her agreement, and
18 no part of any working day may be accumulated by the employer
19 for future work assignments, unless the employee agrees thereto.

20 (e) If a service person whose regular work week is scheduled
21 from Monday through Friday agrees to perform any work
22 assignments on a Saturday or Sunday, the service person is paid
23 for at least one-half day of work for each day he or she reports
24 for work. If the service person works more than three and one-

25 half hours on any Saturday or Sunday, he or she is paid for at
26 least a full day of work for each day.

27 (f) A custodian, aide, maintenance, office and school lunch
28 service person required to work a daily work schedule that is
29 interrupted is paid additional compensation in accordance with
30 this subsection.

31 (1) A maintenance person means a person who holds a
32 classification title other than in a custodial, aide, school lunch,
33 office or transportation category as provided in section one,
34 article one of this chapter.

35 (2) A service person's schedule is considered to be
36 interrupted if he or she does not work a continuous period in one
37 day. Aides are not regarded as working an interrupted schedule
38 when engaged exclusively in the duties of transporting students;

39 (3) The additional compensation provided in this subsection:

40 (A) Is equal to at least one eighth of a service person's total
41 salary as provided by the state minimum pay scale and any
42 county pay supplement; and

43 (B) Is payable entirely from county board funds.

44 (g) When there is a change in classification or when a
45 service person meets the requirements of an advanced
46 classification, his or her salary shall be made to comply with the
47 requirements of this article and any county salary schedule in
48 excess of the minimum requirements of this article, based upon
49 the service person's advanced classification and allowable years
50 of employment.

51 (h) A service person's contract, as provided in section five,
52 article two of this chapter, shall state the appropriate monthly
53 salary the employee is to be paid, based on the class title as

54 provided in this article and on any county salary schedule in
55 excess of the minimum requirements of this article.

56 (i) The column heads of the state minimum pay scale and
57 class titles, set forth in section eight-a of this article, are defined
58 as follows:

59 (1) "Pay grade" means the monthly salary applicable to class
60 titles of service personnel;

61 (2) "Years of employment" means the number of years
62 which an employee classified as a service person has been
63 employed by a county board in any position prior to or
64 subsequent to the effective date of this section and includes
65 service in the Armed Forces of the United States, if the
66 employee was employed at the time of his or her induction. For
67 the purpose of section eight-a of this article, years of
68 employment is limited to the number of years shown and
69 allowed under the state minimum pay scale as set forth in section
70 eight-a of this article;

71 (3) "Class title" means the name of the position or job held
72 by a service person;

73 (4) "Accountant I" means a person employed to maintain
74 payroll records and reports and perform one or more operations
75 relating to a phase of the total payroll;

76 (5) "Accountant II" means a person employed to maintain
77 accounting records and to be responsible for the accounting
78 process associated with billing, budgets, purchasing and related
79 operations;

80 (6) "Accountant III" means a person employed in the county
81 board office to manage and supervise accounts payable, payroll
82 procedures, or both;

83 (7) “Accounts payable supervisor” means a person employed
84 in the county board office who has primary responsibility for the
85 accounts payable function and who either has completed twelve
86 college hours of accounting courses from an accredited
87 institution of higher education or has at least eight years of
88 experience performing progressively difficult accounting tasks.
89 Responsibilities of this class title may include supervision of
90 other personnel;

91 (8) “Aide I” means a person selected and trained for a
92 teacher-aide classification such as monitor aide, clerical aide,
93 classroom aide or general aide;

94 (9) “Aide II” means a service person referred to in the “Aide
95 I” classification who has completed a training program approved
96 by the state board, or who holds a high school diploma or has
97 received a general educational development certificate. Only a
98 person classified in an Aide II class title may be employed as an
99 aide in any special education program

100 (10) “Aide III” means a service person referred to in the
101 “Aide I” classification who holds a high school diploma or a
102 general educational development certificate; and

103 (A) Has completed six semester hours of college credit at an
104 institution of higher education; or

105 (B) Is employed as an aide in a special education program
106 and has one year’s experience as an aide in special education;

107 (11) “Aide IV” means a service person referred to in the
108 “Aide I” classification who holds a high school diploma or a
109 general educational development certificate; and

110 (A) Has completed eighteen hours of State Board-approved
111 college credit at a regionally accredited institution of higher
112 education, or

113 (B) Has completed fifteen hours of State Board-approved
114 college credit at a regionally accredited institution of higher
115 education; and has successfully completed an in-service training
116 program determined by the state Board to be the equivalent of
117 three hours of college credit;

118 (12) “Audiovisual technician” means a person employed to
119 perform minor maintenance on audiovisual equipment, films,
120 and supplies and who fills requests for equipment;

121 (13) “Auditor” means a person employed to examine and
122 verify accounts of individual schools and to assist schools and
123 school personnel in maintaining complete and accurate records
124 of their accounts;

125 (14) “Autism mentor” means a person who works with
126 autistic students and who meets standards and experience to be
127 determined by the state Board. A person who has held or holds
128 an aide title and becomes employed as an autism mentor shall
129 hold a multiclassification status that includes both aide and
130 autism mentor titles, in accordance with section eight-b of this
131 article;

132 (15) “Braille specialist” means a person employed to provide
133 braille assistance to students. A service person who has held or
134 holds an aide title and becomes employed as a braille specialist
135 shall hold a multiclassification status that includes both aide and
136 braille specialist title, in accordance with section eight-b of this
137 article;

138 (16) “Bus operator” means a person employed to operate
139 school buses and other school transportation vehicles as
140 provided by the state board;

141 (17) “Buyer” means a person employed to review and write
142 specifications, negotiate purchase bids and recommend purchase

143 agreements for materials and services that meet predetermined
144 specifications at the lowest available costs;

145 (18) “Cabinetmaker” means a person employed to construct
146 cabinets, tables, bookcases and other furniture;

147 (19) “Cafeteria manager” means a person employed to direct
148 the operation of a food services program in a school, including
149 assigning duties to employees, approving requisitions for
150 supplies and repairs, keeping inventories, inspecting areas to
151 maintain high standards of sanitation, preparing financial reports
152 and keeping records pertinent to food services of a school;

153 (20) “Carpenter I” means a person classified as a carpenter’s
154 helper;

155 (21) “Carpenter II” means a person classified as a
156 journeyman carpenter;

157 (22) “Chief mechanic” means a person employed to be
158 responsible for directing activities which ensure that student
159 transportation or other county board-owned vehicles are properly
160 and safely maintained;

161 (23) “Clerk I” means a person employed to perform clerical
162 tasks;

163 (24) “Clerk II” means a person employed to perform general
164 clerical tasks, prepare reports and tabulations, and operate office
165 machines;

166 (25) “Computer operator” means a qualified person
167 employed to operate computers;

168 (26) “Cook I” means a person employed as a cook’s helper;

169 (27) “Cook II” means a person employed to interpret menus
170 and to prepare and serve meals in a food service program of a

171 school. This definition includes a service person who has been
172 employed as a “Cook I” for a period of four years;

173 (28) “Cook III” means a person employed to prepare and
174 serve meals, make reports, prepare requisitions for supplies,
175 order equipment and repairs for a food service program of a
176 school system;

177 (29) “Crew leader” means a person employed to organize the
178 work for a crew of maintenance employees to carry out assigned
179 projects;

180 (30) “Custodian I” means a person employed to keep
181 buildings clean and free of refuse;

182 (31) “Custodian II” means a person employed as a watchman
183 or groundsman;

184 (32) “Custodian III” means a person employed to keep
185 buildings clean and free of refuse, to operate the heating or
186 cooling systems and to make minor repairs;

187 (33) “Custodian IV” means a person employed as a head
188 custodian. In addition to providing services as defined in
189 “Custodian III” duties may include supervising other custodian
190 personnel;

191 (34) “Director or coordinator of services” means an
192 employee of a county board who is assigned to direct a
193 department or division.

194 (A) Nothing in this subdivision prohibits a professional
195 person or a professional educator from holding this class title;

196 (B) Professional personnel holding this class title may not be
197 defined or classified as service personnel unless the professional
198 person held a service personnel title under this section prior to
199 holding the class title of “director or coordinator of services;”

200 (C) The director or coordinator of services is classified either
201 as a professional person or a service person for state aid formula
202 funding purposes;

203 (D) Funding for the position of director or coordinator of
204 services is based upon the employment status of the director or
205 coordinator either as a professional person or a service person;
206 and

207 (E) A person employed under the class title “director or
208 coordinator of services” may not be exclusively assigned to
209 perform the duties ascribed to any other class title as defined in
210 this subsection: *Provided*, That nothing in this paragraph
211 prohibits a person in this position from being multiclassified;

212 (35) “Draftsman” means a person employed to plan, design
213 and produce detailed architectural/engineering drawings;

214 (36) “Early Childhood Classroom Assistant Teacher I”
215 means a person who does not possess minimum requirements for
216 the permanent authorization requirements, but is enrolled in and
217 pursuing requirements;

218 (37) “Early Childhood Classroom Assistant Teacher II”
219 means a person who has completed the minimum requirements
220 for a state-awarded certificate for early childhood classroom
221 assistant teachers as determined by the State Board;

222 (38) “Early Childhood Classroom Assistant Teacher III”
223 means a person who has completed permanent authorization
224 requirements, as well as additional requirements comparable to
225 current paraprofessional certificate;

226 (39) “Educational Sign Language Interpreter I” means a
227 person employed to provide communication access across all
228 educational environments to students who are deaf or hard of
229 hearing, and who holds the Initial Paraprofessional Certificate –
230 Educational Interpreter pursuant to state board policy;

231 (40) “Educational Sign Language Interpreter II” means a
232 person employed to provide communication access across all
233 educational environments to students who are deaf or hard of
234 hearing, and who holds the Permanent Paraprofessional
235 Certificate – Educational Interpreter pursuant to state board
236 policy;

237 (41) “Electrician I” means a person employed as an
238 apprentice electrician helper or one who holds an electrician
239 helper license issued by the State Fire Marshal;

240 (42) “Electrician II” means a person employed as an
241 electrician journeyman or one who holds a journeyman
242 electrician license issued by the State Fire Marshal;

243 (43) “Electronic technician I” means a person employed at
244 the apprentice level to repair and maintain electronic equipment;

245 (44) “Electronic technician II” means a person employed at
246 the journeyman level to repair and maintain electronic
247 equipment;

248 (45) “Executive secretary” means a person employed as
249 secretary to the county school superintendent or as a secretary
250 who is assigned to a position characterized by significant
251 administrative duties;

252 (46) “Food services supervisor” means a qualified person
253 who is not a professional person or professional educator as
254 defined in section one, article one of this chapter. The food
255 services supervisor is employed to manage and supervise a
256 county school system’s food service program. The duties include
257 preparing in-service training programs for cooks and food
258 service employees, instructing personnel in the areas of quantity
259 cooking with economy and efficiency and keeping aggregate
260 records and reports;

261 (47) “Foreman” means a skilled person employed to
262 supervise personnel who work in the areas of repair and
263 maintenance of school property and equipment;

264 (48) “General maintenance” means a person employed as a
265 helper to skilled maintenance employees, and to perform minor
266 repairs to equipment and buildings of a county school system;

267 (49) “Glazier” means a person employed to replace glass or
268 other materials in windows and doors and to do minor carpentry
269 tasks;

270 (50) “Graphic artist” means a person employed to prepare
271 graphic illustrations;

272 (51) “Groundsman” means a person employed to perform
273 duties that relate to the appearance, repair and general care of
274 school grounds in a county school system. Additional
275 assignments may include the operation of a small heating plant
276 and routine cleaning duties in buildings;

277 (52) “Handyman” means a person employed to perform
278 routine manual tasks in any operation of the county school
279 system;

280 (53) “Heating and air conditioning mechanic I” means a
281 person employed at the apprentice level to install, repair and
282 maintain heating and air conditioning plants and related
283 electrical equipment;

284 (54) “Heating and air conditioning mechanic II” means a
285 person employed at the journeyman level to install, repair and
286 maintain heating and air conditioning plants and related
287 electrical equipment;

288 (55) “Heavy equipment operator” means a person employed
289 to operate heavy equipment;

290 (56) "Inventory supervisor" means a person employed to
291 supervise or maintain operations in the receipt, storage,
292 inventory and issuance of materials and supplies;

293 (57) "Key punch operator" means a qualified person
294 employed to operate key punch machines or verifying machines;

295 (58) "Licensed practical nurse" means a nurse, licensed by
296 the West Virginia Board of Examiners for Licensed Practical
297 Nurses, employed to work in a public school under the
298 supervision of a school nurse;

299 (59) "Locksmith" means a person employed to repair and
300 maintain locks and safes;

301 (60) "Lubrication man" means a person employed to
302 lubricate and service gasoline or diesel-powered equipment of a
303 county school system;

304 (61) "Machinist" means a person employed to perform
305 machinist tasks which include the ability to operate a lathe,
306 planer, shaper, threading machine and wheel press. A person
307 holding this class title also should have the ability to work from
308 blueprints and drawings;

309 (62) "Mail clerk" means a person employed to receive, sort,
310 dispatch, deliver or otherwise handle letters, parcels and other
311 mail;

312 (63) "Maintenance clerk" means a person employed to
313 maintain and control a stocking facility to keep adequate tools
314 and supplies on hand for daily withdrawal for all school
315 maintenance crafts;

316 (64) "Mason" means a person employed to perform tasks
317 connected with brick and block laying and carpentry tasks
318 related to these activities;

319 (65) "Mechanic" means a person employed to perform
320 skilled duties independently in the maintenance and repair of
321 automobiles, school buses and other mechanical and mobile
322 equipment to use in a county school system;

323 (66) "Mechanic assistant" means a person employed as a
324 mechanic apprentice and helper;

325 (67) "Multiclassification" means a person employed to
326 perform tasks that involve the combination of two or more class
327 titles in this section. In these instances the minimum salary scale
328 is the higher pay grade of the class titles involved;

329 (68) "Office equipment repairman I" means a person
330 employed as an office equipment repairman apprentice or helper;

331 (69) "Office equipment repairman II" means a person
332 responsible for servicing and repairing all office machines and
333 equipment. A person holding this class title is responsible for the
334 purchase of parts necessary for the proper operation of a
335 program of continuous maintenance and repair;

336 (70) "Painter" means a person employed to perform duties
337 painting, finishing and decorating wood, metal and concrete
338 surfaces of buildings, other structures, equipment, machinery
339 and furnishings of a county school system;

340 (71) "Paraprofessional" means a person certified pursuant to
341 section two-a, article three of this chapter to perform duties in a
342 support capacity including, but not limited to, facilitating in the
343 instruction and direct or indirect supervision of students under
344 the direction of a principal, a teacher or another designated
345 professional educator.

346 (A) A person employed on the effective date of this section
347 in the position of an aide may not be subject to a reduction in
348 force or transferred to create a vacancy for the employment of a
349 paraprofessional;

350 (B) A person who has held or holds an aide title and
351 becomes employed as a paraprofessional shall hold a
352 multiclassification status that includes both aide and
353 paraprofessional titles in accordance with section eight-b of this
354 article; and

355 (C) When a service person who holds an aide title becomes
356 certified as a paraprofessional and is required to perform duties
357 that may not be performed by an aide without paraprofessional
358 certification, he or she shall receive the paraprofessional title pay
359 grade;

360 (72) "Payroll supervisor" means a person employed in the
361 county board office who has primary responsibility for the
362 payroll function and who either has completed twelve college
363 hours of accounting from an accredited institution of higher
364 education or has at least eight years of experience performing
365 progressively difficult accounting tasks. Responsibilities of this
366 class title may include supervision of other personnel;

367 (73) "Plumber I" means a person employed as an apprentice
368 plumber and helper;

369 (74) "Plumber II" means a person employed as a journeyman
370 plumber;

371 (75) "Printing operator" means a person employed to operate
372 duplication equipment, and to cut, collate, staple, bind and
373 shelve materials as required;

374 (76) "Printing supervisor" means a person employed to
375 supervise the operation of a print shop;

376 (77) "Programmer" means a person employed to design and
377 prepare programs for computer operation;

378 (78) “Roofing/sheet metal mechanic” means a person
379 employed to install, repair, fabricate and maintain roofs, gutters,
380 flashing and duct work for heating and ventilation;

381 (79) “Sanitation plant operator” means a person employed
382 to operate and maintain a water or sewage treatment plant to
383 ensure the safety of the plant’s effluent for human consumption
384 or environmental protection;

385 (80) “School bus supervisor” means a qualified person:

386 (A) Employed to assist in selecting school bus operators and
387 routing and scheduling school buses, operate a bus when needed,
388 relay instructions to bus operators, plan emergency routing of
389 buses and promote good relationships with parents, students, bus
390 operators and other employees; and

391 (B) Certified to operate a bus or previously certified to
392 operate a bus;

393 (81) “Secretary I” means a person employed to transcribe
394 from notes or mechanical equipment, receive callers, perform
395 clerical tasks, prepare reports and operate office machines;

396 (82) “Secretary II” means a person employed in any
397 elementary, secondary, kindergarten, nursery, special education,
398 vocational, or any other school as a secretary. The duties may
399 include performing general clerical tasks; transcribing from
400 notes; stenotype, mechanical equipment or a sound-producing
401 machine; preparing reports; receiving callers and referring them
402 to proper persons; operating office machines; keeping records
403 and handling routine correspondence. Nothing in this subdivision
404 prevents a service person from holding or being elevated to a
405 higher classification;

406 (83) “Secretary III” means a person assigned to the county
407 board office administrators in charge of various instructional,

408 maintenance, transportation, food services, operations and health
409 departments, federal programs or departments with particular
410 responsibilities in purchasing and financial control or any person
411 who has served for eight years in a position which meets the
412 definition of “Secretary II” or “Secretary III”;

413 (84) “Sign Support Specialist” means a person employed to
414 provide sign supported speech assistance to students who are
415 able to access environments through audition. A person who has
416 held or holds an aide title and becomes employed as a sign
417 support specialist shall hold a multiclassification status that
418 includes both aide and sign support specialist titles, in
419 accordance with section eight-b of this article.

420 (85) “Supervisor of maintenance” means a skilled person
421 who is not a professional person or professional educator as
422 defined in section one, article one of this chapter. The
423 responsibilities include directing the upkeep of buildings and
424 shops, and issuing instructions to subordinates relating to
425 cleaning, repairs and maintenance of all structures and
426 mechanical and electrical equipment of a county board;

427 (86) “Supervisor of transportation” means a qualified person
428 employed to direct school transportation activities properly and
429 safely, and to supervise the maintenance and repair of vehicles,
430 buses and other mechanical and mobile equipment used by the
431 county school system. After July 1, 2010, all persons employed
432 for the first time in a position with this classification title or in
433 a multiclassification position that includes this title shall have
434 five years of experience working in the transportation
435 department of a county board. Experience working in the
436 transportation department consists of serving as a bus operator,
437 bus aide, assistant mechanic, mechanic, chief mechanic or in a
438 clerical position within the transportation department;

439 (87) “Switchboard operator-receptionist” means a person
440 employed to refer incoming calls, to assume contact with the

441 public, to direct and to give instructions as necessary, to operate
442 switchboard equipment and to provide clerical assistance;

443 (88) “Truck driver” means a person employed to operate
444 light or heavy duty gasoline and diesel-powered vehicles;

445 (89) “Warehouse clerk” means a person employed to be
446 responsible for receiving, storing, packing and shipping goods;

447 (90) “Watchman” means a person employed to protect
448 school property against damage or theft. Additional assignments
449 may include operation of a small heating plant and routine
450 cleaning duties;

451 (91) “Welder” means a person employed to provide
452 acetylene or electric welding services for a school system; and

453 (92) “WVEIS data entry and administrative clerk” means a
454 person employed to work under the direction of a school
455 principal to assist the school counselor or counselors in the
456 performance of administrative duties, to perform data entry tasks
457 on the West Virginia Education Information System, and to
458 perform other administrative duties assigned by the principal.

459 (j) Notwithstanding any provision in this code to the
460 contrary, and in addition to the compensation provided for
461 service personnel in section eight-a of this article, each service
462 person is entitled to all service personnel employee rights,
463 privileges and benefits provided under this or any other chapter
464 of this code without regard to the employee’s hours of
465 employment or the methods or sources of compensation.

466 (k) A service person whose years of employment exceeds the
467 number of years shown and provided for under the state
468 minimum pay scale set forth in section eight-a of this article may
469 not be paid less than the amount shown for the maximum years
470 of employment shown and provided for in the classification in
471 which he or she is employed.

472 (l) Each county board shall review each service person's job
473 classification annually and shall reclassify all service persons as
474 required by the job classifications. The state superintendent may
475 withhold state funds appropriated pursuant to this article for
476 salaries for service personnel who are improperly classified by
477 the county boards. Further, the state superintendent shall order
478 a county board to correct immediately any improper
479 classification matter and, with the assistance of the Attorney
480 General, shall take any legal action necessary against any county
481 board to enforce the order.

482 (m) Without his or her written consent, a service person may
483 not be:

484 (1) Reclassified by class title; or

485 (2) Relegated to any condition of employment which would
486 result in a reduction of his or her salary, rate of pay,
487 compensation or benefits earned during the current fiscal year;
488 or for which he or she would qualify by continuing in the same
489 job position and classification held during that fiscal year and
490 subsequent years.

491 (n) Any county board failing to comply with the provisions
492 of this article may be compelled to do so by mandamus and is
493 liable to any party prevailing against the board for court costs
494 and the prevailing party's reasonable attorney fee, as determined
495 and established by the court.

496 (o) Notwithstanding any provision of this code to the
497 contrary, a service person who holds a continuing contract in a
498 specific job classification and who is physically unable to
499 perform the job's duties as confirmed by a physician chosen by
500 the employee, shall be given priority status over any employee
501 not holding a continuing contract in filling other service
502 personnel job vacancies if the service person is qualified as
503 provided in section eight-e of this article.

504 (p) Any person employed in an aide position on the effective
505 date of this section may not be transferred or subject to a
506 reduction in force for the purpose of creating a vacancy for the
507 employment of a licensed practical nurse.

508 (q) Without the written consent of the service person, a
509 county board may not establish the beginning work station for a
510 bus operator or transportation aide at any site other than a county
511 board-owned facility with available parking. The workday of the
512 bus operator or transportation aide commences at the bus at the
513 designated beginning work station and ends when the employee
514 is able to leave the bus at the designated beginning work station,
515 unless he or she agrees otherwise in writing. The application or
516 acceptance of a posted position may not be construed as the
517 written consent referred to in this subsection.

518 (r) Itinerant status means a service person who does not have
519 a fixed work site and may be involuntarily reassigned to another
520 work site. A service person is considered to hold itinerant status
521 if he or she has bid upon a position posted as itinerant or has
522 agreed to accept this status. A county board may establish
523 positions with itinerant status only within the aide and autism
524 mentor classification categories and only when the job duties
525 involve exceptional students. A service person with itinerant
526 status may be assigned to a different work site upon written
527 notice ten days prior to the reassignment without the consent of
528 the employee and without posting the vacancy. A service person
529 with itinerant status may be involuntarily reassigned no more
530 than twice during the school year. At the conclusion of each
531 school year, the county board shall post and fill, pursuant to
532 section eight-b of this article, all positions that have been filled
533 without posting by a service person with itinerant status. A
534 service person who is assigned to a beginning and ending work
535 site and travels at the expense of the county board to other work
536 sites during the daily schedule, is not considered to hold itinerant
537 status.

538 (s) Any service person holding a classification title on June
539 30, 2013, that is removed from the classification schedule
540 pursuant to amendment and reenactment of this section in the
541 year 2013, has his or her employment contract revised as
542 follows:

543 (1) Any service person holding the Braille or Sign Language
544 Specialist classification title has that classification title renamed
545 on his or her employment contract as either Braille Specialist or
546 Sign Support Specialist. This action does not result in a loss or
547 reduction of salary or supplement by any employee. Any
548 seniority earned in the Braille or Sign Language Specialist
549 classification prior to July 1, 2013, continues to be credited as
550 seniority earned in the Braille Specialist or Sign Support
551 Specialist classification;

552 (2) Any service person holding the Paraprofessional
553 classification title and holding the Initial Paraprofessional
554 Certificate – Educational Interpreter has the title Educational
555 Sign Language Interpreter I added to his or her employment
556 contract. This action does not result in a loss or reduction of
557 salary or supplement by any employee. Any seniority earned in
558 the Paraprofessional classification prior to July 1, 2013,
559 continues to be credited as seniority earned in the Educational
560 Sign Language Interpreter I classification; and

561 (3) Any service person holding the Paraprofessional
562 classification title and holding the Permanent Paraprofessional
563 Certificate – Educational Interpreter has the title Educational
564 Sign Language Interpreter II added to his or her employment
565 contract. This action does not result in a loss or reduction of
566 salary or supplement by any employee. Any seniority earned in
567 the Paraprofessional classification prior to July 1, 2013,
568 continues to be credited as seniority earned in the Educational
569 Sign Language Interpreter II classification;

570 (t) Any person employed as an aide in a kindergarten
 571 program who is eligible for full retirement benefits before the
 572 first day of the instructional term in the 2020-2021 school year,
 573 may not be subject to a reduction in force or transferred to create
 574 a vacancy for the employment of a less senior Early Childhood
 575 Classroom Assistant Teacher;

576 (u) A person who has held or holds an aide title and becomes
 577 employed as an Early Childhood Classroom Assistant Teacher
 578 shall hold a multiclassification status that includes aide and/or
 579 paraprofessional titles in accordance with section eight-b of this
 580 article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (a) The minimum monthly pay for each service employee
 2 shall be as follows:

3 (1) Beginning July 1, 2014, and continuing thereafter, the
 4 minimum monthly pay for each service employee whose
 5 employment is for a period of more than three and one-half
 6 hours a day shall be at least the amounts indicated in the State
 7 Minimum Pay Scale Pay Grade and the minimum monthly pay
 8 for each service employee whose employment is for a period of
 9 three and one-half hours or less a day shall be at least one-half
 10 the amount indicated in the State Minimum Pay Scale Pay Grade
 11 set forth in this subdivision.

12 STATE MINIMUM PAY SCALE PAY GRADE

13	Years Exp.	Pay Grade							
		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
14	0	1,660	1,681	1,723	1,776	1,829	1,892	1,924	1,997
15	1	1,692	1,714	1,755	1,808	1,862	1,925	1,956	2,030
16	2	1,725	1,746	1,788	1,841	1,894	1,957	1,989	2,062

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SCHOOL PERSONNEL

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17	3	1,757	1,779	1,821	1,874	1,927	1,990	2,022	2,095
18	4	1,790	1,812	1,853	1,906	1,959	2,023	2,054	2,129
19	5	1,823	1,844	1,886	1,939	1,992	2,055	2,087	2,161
20	6	1,855	1,877	1,920	1,972	2,025	2,088	2,120	2,194
21	7	1,889	1,909	1,952	2,004	2,057	2,121	2,152	2,227
22	8	1,922	1,942	1,985	2,037	2,090	2,153	2,185	2,259
23	9	1,954	1,975	2,018	2,071	2,123	2,186	2,217	2,292
24	10	1,987	2,008	2,050	2,103	2,155	2,220	2,251	2,325
25	11	2,020	2,041	2,083	2,136	2,188	2,252	2,284	2,357
26	12	2,052	2,074	2,115	2,169	2,222	2,285	2,316	2,390
27	13	2,085	2,106	2,148	2,201	2,254	2,317	2,349	2,423
28	14	2,118	2,139	2,181	2,234	2,287	2,350	2,382	2,455
29	15	2,150	2,172	2,213	2,266	2,319	2,383	2,414	2,488
30	16	2,183	2,204	2,246	2,299	2,352	2,415	2,447	2,521
31	17	2,215	2,237	2,280	2,332	2,385	2,448	2,480	2,554
32	18	2,248	2,270	2,312	2,364	2,417	2,481	2,512	2,587
33	19	2,282	2,302	2,345	2,397	2,450	2,513	2,545	2,619
34	20	2,314	2,335	2,378	2,431	2,483	2,546	2,578	2,653
35	21	2,347	2,367	2,410	2,463	2,515	2,579	2,610	2,687
36	22	2,380	2,401	2,443	2,496	2,548	2,612	2,644	2,719
37	23	2,412	2,434	2,476	2,529	2,582	2,646	2,678	2,753
38	24	2,445	2,466	2,508	2,561	2,614	2,680	2,711	2,787
39	25	2,478	2,499	2,541	2,594	2,648	2,712	2,745	2,819
40	26	2,510	2,532	2,573	2,628	2,682	2,746	2,777	2,853
41	27	2,543	2,564	2,606	2,660	2,714	2,778	2,811	2,886
42	28	2,576	2,597	2,640	2,694	2,748	2,812	2,845	2,920
43	29	2,608	2,631	2,673	2,726	2,781	2,846	2,877	2,954

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44	30	2,642	2,663	2,707	2,760	2,814	2,878	2,911	2,987	
45	31	2,675	2,697	2,741	2,794	2,848	2,912	2,945	3,020	
46	32	2,709	2,730	2,773	2,827	2,880	2,946	2,977	3,054	
47	33	2,743	2,763	2,807	2,861	2,914	2,978	3,011	3,087	
48	34	2,775	2,797	2,841	2,895	2,948	3,012	3,045	3,120	
49	35	2,809	2,831	2,873	2,927	2,980	3,046	3,078	3,154	
50	36	2,843	2,864	2,907	2,961	3,015	3,079	3,112	3,186	
51	37	2,875	2,898	2,941	2,995	3,049	3,113	3,145	3,220	
52	38	2,909	2,930	2,973	3,027	3,081	3,146	3,178	3,254	
53	39	2,943	2,964	3,007	3,061	3,115	3,179	3,212	3,286	
54	40	2,975	2,998	3,040	3,094	3,149	3,213	3,245	3,320	

55 (2) Each service employee shall receive the amount
56 prescribed in the Minimum Pay Scale in accordance with the
57 provisions of this subsection according to their class title and pay
58 grade as set forth in this subdivision:

59	CLASS TITLE	PAY GRADE
60	Accountant I.....	D
61	Accountant II.....	E
62	Accountant III.....	F
63	Accounts Payable Supervisor.....	G
64	Aide I.....	A
65	Aide II.....	B
66	Aide III.....	C
67	Aide IV.....	D

68	Audiovisual Technician.....	C
69	Auditor.....	G
70	Autism Mentor.....	F
71	Braille Specialist.	E
72	Bus Operator.	D
73	Buyer.	F
74	Cabinetmaker.....	G
75	Cafeteria Manager.....	D
76	Carpenter I.....	E
77	Carpenter II.	F
78	Chief Mechanic.	G
79	Clerk I.	B
80	Clerk II.....	C
81	Computer Operator.	E
82	Cook I.....	A
83	Cook II.....	B
84	Cook III.	C
85	Crew Leader.....	F
86	Custodian I.....	A
87	Custodian II.	B

88	Custodian III	C
89	Custodian IV.	D
90	Director or Coordinator of Services	H
91	Draftsman.....	D
92	Early Childhood Classroom Assistant Teacher I.....	E
93	Early Childhood Classroom Assistant Teacher II.....	E
94	Early Childhood Classroom Assistant Teacher III	F
95	Educational Sign Language Interpreter I	F
96	Educational Sign Language Interpreter II.....	G
97	Electrician I.....	F
98	Electrician II.	G
99	Electronic Technician I.....	F
100	Electronic Technician II.	G
101	Executive Secretary.....	G
102	Food Services Supervisor.	G
103	Foreman.....	G
104	General Maintenance.....	C
105	Glazier.....	D
106	Graphic Artist.	D
107	Groundsman.....	B

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108	Handyman.	B
109	Heating and Air Conditioning Mechanic I.	E
110	Heating and Air Conditioning Mechanic II.	G
111	Heavy Equipment Operator.	E
112	Inventory Supervisor.	D
113	Key Punch Operator.	B
114	Licensed Practical Nurse.	F
115	Locksmith.	G
116	Lubrication Man.	C
117	Machinist.	F
118	Mail Clerk.	D
119	Maintenance Clerk.	C
120	Mason.	G
121	Mechanic.	F
122	Mechanic Assistant.	E
123	Office Equipment Repairman I.	F
124	Office Equipment Repairman II.	G
125	Painter.	E
126	Paraprofessional.	F
127	Payroll Supervisor.	G

128	Plumber I.	E
129	Plumber II.	G
130	Printing Operator.	B
131	Printing Supervisor.	D
132	Programmer.	H
133	Roofing/Sheet Metal Mechanic.	F
134	Sanitation Plant Operator.	G
135	School Bus Supervisor.	E
136	Secretary I.	D
137	Secretary II.	E
138	Secretary III.	F
139	Sign Support Specialist.	E
140	Supervisor of Maintenance.	H
141	Supervisor of Transportation.	H
142	Switchboard Operator-Receptionist	D
143	Truck Driver	D
144	Warehouse Clerk	C
145	Watchman	B
146	Welder	F
147	WVEIS Data Entry and Administrative Clerk	B

148 (b) An additional \$12 per month is added to the minimum
149 monthly pay of each service person who holds a high school
150 diploma or its equivalent.

151 (c) An additional \$11 per month also is added to the
152 minimum monthly pay of each service person for each of the
153 following:

154 (1) A service person who holds twelve college hours or
155 comparable credit obtained in a trade or vocational school as
156 approved by the state board;

157 (2) A service person who holds twenty-four college hours or
158 comparable credit obtained in a trade or vocational school as
159 approved by the state board;

160 (3) A service person who holds thirty-six college hours or
161 comparable credit obtained in a trade or vocational school as
162 approved by the state board;

163 (4) A service person who holds forty-eight college hours or
164 comparable credit obtained in a trade or vocational school as
165 approved by the state board;

166 (5) A service employee who holds sixty college hours or
167 comparable credit obtained in a trade or vocational school as
168 approved by the state board;

169 (6) A service person who holds seventy-two college hours or
170 comparable credit obtained in a trade or vocational school as
171 approved by the state board;

172 (7) A service person who holds eighty-four college hours or
173 comparable credit obtained in a trade or vocational school as
174 approved by the state board;

175 (8) A service person who holds ninety-six college hours or
176 comparable credit obtained in a trade or vocational school as
177 approved by the state board;

178 (9) A service person who holds one hundred eight college
179 hours or comparable credit obtained in a trade or vocational
180 school as approved by the state board;

181 (10) A service person who holds one hundred twenty college
182 hours or comparable credit obtained in a trade or vocational
183 school as approved by the state board.

184 (d) An additional \$40 per month also is added to the
185 minimum monthly pay of each service person for each of the
186 following:

187 (1) A service person who holds an associate's degree;

188 (2) A service person who holds a bachelor's degree;

189 (3) A service person who holds a master's degree;

190 (4) A service person who holds a doctorate degree.

191 (e) An additional \$11 per month is added to the minimum
192 monthly pay of each service person for each of the following:

193 (1) A service person who holds a bachelor's degree plus
194 fifteen college hours;

195 (2) A service person who holds a master's degree plus
196 fifteen college hours;

197 (3) A service person who holds a master's degree plus thirty
198 college hours;

199 (4) A service person who holds a master's degree plus
200 forty-five college hours; and

201 (5) A service person who holds a master's degree plus sixty
202 college hours.

203 (f) To meet the objective of salary equity among the
204 counties, each service person is paid an equity supplement, as set
205 forth in section five of this article, of \$164 per month, subject to
206 the provisions of that section. These payments: (i) Are in
207 addition to any amounts prescribed in the applicable State
208 Minimum Pay Scale Pay Grade, any specific additional amounts
209 prescribed in this section and article and any county supplement
210 in effect in a county pursuant to section five-b of this article; (ii)
211 are paid in equal monthly installments; and (iii) are considered
212 a part of the state minimum salaries for service personnel.

213 (g) When any part of a school service person's daily shift of
214 work is performed between the hours of six o'clock p. m. and
215 five o'clock a. m. the following day, the employee is paid no less
216 than an additional \$10 per month and one half of the pay is paid
217 with local funds.

218 (h) Any service person required to work on any legal school
219 holiday is paid at a rate one and one-half times the person's
220 usual hourly rate.

221 (i) Any full-time service personnel required to work in
222 excess of their normal working day during any week which
223 contains a school holiday for which they are paid is paid for the
224 additional hours or fraction of the additional hours at a rate of
225 one and one-half times their usual hourly rate and paid entirely
226 from county board funds.

227 (j) A service person may not have his or her daily work
228 schedule changed during the school year without the employee's
229 written consent and the person's required daily work hours may
230 not be changed to prevent the payment of time and one-half
231 wages or the employment of another employee.

232 (k) The minimum hourly rate of pay for extra duty
233 assignments as defined in section eight-b of this article is no less

234 than one seventh of the person's daily total salary for each hour
235 the person is involved in performing the assignment and paid
236 entirely from local funds: *Provided*, That an alternative
237 minimum hourly rate of pay for performing extra duty
238 assignments within a particular category of employment may be
239 used if the alternate hourly rate of pay is approved both by the
240 county board and by the affirmative vote of a two-thirds majority
241 of the regular full-time persons within that classification
242 category of employment within that county: *Provided, however*,
243 That the vote is by secret ballot if requested by a service person
244 within that classification category within that county. The salary
245 for any fraction of an hour the employee is involved in
246 performing the assignment is prorated accordingly. When
247 performing extra duty assignments, persons who are regularly
248 employed on a one-half day salary basis shall receive the same
249 hourly extra duty assignment pay computed as though the person
250 were employed on a full-day salary basis.

251 (l) The minimum pay for any service personnel engaged in
252 the removal of asbestos material or related duties required for
253 asbestos removal is their regular total daily rate of pay and no
254 less than an additional \$3 per hour or no less than \$5 per hour for
255 service personnel supervising asbestos removal responsibilities
256 for each hour these employees are involved in asbestos-related
257 duties. Related duties required for asbestos removal include, but
258 are not limited to, travel, preparation of the work site, removal
259 of asbestos, decontamination of the work site, placing and
260 removal of equipment and removal of structures from the site. If
261 any member of an asbestos crew is engaged in asbestos-related
262 duties outside of the employee's regular employment county, the
263 daily rate of pay is no less than the minimum amount as
264 established in the employee's regular employment county for
265 asbestos removal and an additional \$30 per each day the
266 employee is engaged in asbestos removal and related duties. The
267 additional pay for asbestos removal and related duties shall be
268 payable entirely from county funds. Before service personnel

269 may be used in the removal of asbestos material or related
270 duties, they shall have completed a federal Environmental
271 Protection Act-approved training program and be licensed. The
272 employer shall provide all necessary protective equipment and
273 maintain all records required by the Environmental Protection
274 Act.

275 (m) For the purpose of qualifying for additional pay as
276 provided in section eight, article five of this chapter, an aide is
277 considered to be exercising the authority of a supervisory aide
278 and control over pupils if the aide is required to supervise,
279 control, direct, monitor, escort or render service to a child or
280 children when not under the direct supervision of a certified
281 professional person within the classroom, library, hallway,
282 lunchroom, gymnasium, school building, school grounds or
283 wherever supervision is required. For purposes of this section,
284 “under the direct supervision of a certified professional person”
285 means that certified professional person is present, with and
286 accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting
2 promotions and the filling of any service personnel positions of
3 employment or jobs occurring throughout the school year that
4 are to be performed by service personnel as provided in section
5 eight of this article, on the basis of seniority, qualifications and
6 evaluation of past service.

7 (b) Qualifications means the applicant holds a classification
8 title in his or her category of employment as provided in this
9 section and is given first opportunity for promotion and filling
10 vacancies. Other employees then shall be considered and shall
11 qualify by meeting the definition of the job title that relates to
12 the promotion or vacancy, as defined in section eight of this
13 article. If requested by the employee, the county board shall

14 show valid cause why a service person with the most seniority is
15 not promoted or employed in the position for which he or she
16 applies. Qualified applicants shall be considered in the following
17 order:

18 (1) Regularly employed service personnel who hold a
19 classification title within the classification category of the
20 vacancy;

21 (2) Service personnel who have held a classification title
22 within the classification category of the vacancy whose
23 employment has been discontinued in accordance with this
24 section;

25 (3) Regularly employed service personnel who do not hold
26 a classification title within the classification category of
27 vacancy;

28 (4) Service personnel who have not held a classification title
29 within the classification category of the vacancy and whose
30 employment has been discontinued in accordance with this
31 section;

32 (5) Substitute service personnel who hold a classification
33 title within the classification category of the vacancy;

34 (6) Substitute service personnel who do not hold a
35 classification title within the classification category of the
36 vacancy; and

37 (7) New service personnel.

38 (c) The county board may not prohibit a service person from
39 retaining or continuing his or her employment in any positions
40 or jobs held prior to the effective date of this section and
41 thereafter.

42 (d) A promotion means any change in employment that the
43 service person considers to improve his or her working
44 circumstance within the classification category of employment.

45 (1) A promotion includes a transfer to another classification
46 category or place of employment if the position is not filled by
47 an employee who holds a title within that classification category
48 of employment.

49 (2) Each class title listed in section eight of this article is
50 considered a separate classification category of employment for
51 service personnel, except for those class titles having Roman
52 numeral designations, which are considered a single
53 classification of employment:

54 (A) The cafeteria manager class title is included in the same
55 classification category as cooks;

56 (B) The executive secretary class title is included in the same
57 classification category as secretaries;

58 (C) Paraprofessional, autism mentor, early classroom
59 assistant teacher and braille or sign support specialist class titles
60 are included in the same classification category as aides; and

61 (D) The mechanic assistant and chief mechanic class titles
62 are included in the same classification category as mechanics.

63 (3) The assignment of an aide to a particular position within
64 a school is based on seniority within the aide classification
65 category if the aide is qualified for the position.

66 (4) Assignment of a custodian to work shifts in a school or
67 work site is based on seniority within the custodian classification
68 category.

69 (e) For purposes of determining seniority under this section
70 a service person's seniority begins on the date that he or she
71 enters into the assigned duties.

72 (f) *Extra-duty assignments.* —

73 (1) For the purpose of this section, “extra-duty assignment”
74 means an irregular job that occurs periodically or occasionally
75 such as, but not limited to, field trips, athletic events, proms,
76 banquets and band festival trips.

77 (2) Notwithstanding any other provisions of this chapter to
78 the contrary, decisions affecting service personnel with respect
79 to extra-duty assignments are made in the following manner:

80 (A) A service person with the greatest length of service time
81 in a particular category of employment is given priority in
82 accepting extra duty assignments, followed by other fellow
83 employees on a rotating basis according to the length of their
84 service time until all employees have had an opportunity to
85 perform similar assignments. The cycle then is repeated.

86 (B) An alternative procedure for making extra-duty
87 assignments within a particular classification category of
88 employment may be used if the alternative procedure is
89 approved both by the county board and by an affirmative vote of
90 two-thirds of the employees within that classification category
91 of employment.

92 (g) County boards shall post and date notices of all job
93 vacancies of existing or newly created positions in conspicuous
94 places for all school service personnel to observe for at least five
95 working days.

96 (1) Posting locations include any website maintained by or
97 available for the use of the county board.

98 (2) Notice of a job vacancy shall include the job description,
99 the period of employment, the work site, the starting and ending
100 time of the daily shift, the amount of pay and any benefits and
101 other information that is helpful to prospective applicants to

102 understand the particulars of the job. The notice of a job vacancy
103 in the aide classification categories shall include the program or
104 primary assignment of the position. Job postings for vacancies
105 made pursuant to this section shall be written to ensure that the
106 largest possible pool of qualified applicants may apply. Job
107 postings may not require criteria which are not necessary for the
108 successful performance of the job and may not be written with
109 the intent to favor a specific applicant.

110 (3) After the five-day minimum posting period, all vacancies
111 shall be filled within twenty working days from the posting date
112 notice of any job vacancies of existing or newly created
113 positions.

114 (4) The county board shall notify any person who has
115 applied for a job posted pursuant to this section of the status of
116 his or her application as soon as possible after the county board
117 makes a hiring decision regarding the posted position.

118 (h) All decisions by county boards concerning reduction in
119 work force of service personnel shall be made on the basis of
120 seniority, as provided in this section.

121 (i) The seniority of a service person is determined on the
122 basis of the length of time the employee has been employed by
123 the county board within a particular job classification. For the
124 purpose of establishing seniority for a preferred recall list as
125 provided in this section, a service person who has been
126 employed in one or more classifications retains the seniority
127 accrued in each previous classification.

128 (j) If a county board is required to reduce the number of
129 service personnel within a particular job classification, the
130 following conditions apply:

131 (1) The employee with the least amount of seniority within
132 that classification or grades of classification is properly released

133 and employed in a different grade of that classification if there
134 is a job vacancy;

135 (2) If there is no job vacancy for employment within that
136 classification or grades of classification, the service person is
137 employed in any other job classification which he or she
138 previously held with the county board if there is a vacancy and
139 retains any seniority accrued in the job classification or grade of
140 classification.

141 (k) After a reduction in force or transfer is approved, but
142 prior to August 1, a county board in its sole and exclusive
143 judgment may determine that the reason for any particular
144 reduction in force or transfer no longer exists.

145 (1) If the board makes this determination, it shall rescind the
146 reduction in force or transfer and notify the affected employee in
147 writing of the right to be restored to his or her former position of
148 employment.

149 (2) The affected employee shall notify the county board of
150 his or her intent to return to the former position of employment
151 within five days of being notified or lose the right to be restored
152 to the former position.

153 (3) The county board may not rescind the reduction in force
154 of an employee until all service personnel with more seniority in
155 the classification category on the preferred recall list have been
156 offered the opportunity for recall to regular employment as
157 provided in this section.

158 (4) If there are insufficient vacant positions to permit
159 reemployment of all more senior employees on the preferred
160 recall list within the classification category of the service person
161 who was subject to reduction in force, the position of the
162 released service person shall be posted and filled in accordance
163 with this section.

164 (l) If two or more service persons accumulate identical
165 seniority, the priority is determined by a random selection
166 system established by the employees and approved by the county
167 board.

168 (m) All service personnel whose seniority with the county
169 board is insufficient to allow their retention by the county board
170 during a reduction in work force are placed upon a preferred
171 recall list and shall be recalled to employment by the county
172 board on the basis of seniority.

173 (n) A service person placed upon the preferred recall list
174 shall be recalled to any position openings by the county board
175 within the classification(s) where he or she had previously been
176 employed, to any lateral position for which the service person is
177 qualified or to a lateral area for which a service person has
178 certification and/or licensure.

179 (o) A service person on the preferred recall list does not
180 forfeit the right to recall by the county board if compelling
181 reasons require him or her to refuse an offer of reemployment by
182 the county board.

183 (p) The county board shall notify all service personnel on the
184 preferred recall list of all position openings that exist from time
185 to time. The notice shall be sent by certified mail to the last
186 known address of the service person. Each service person shall
187 notify the county board of any change of address.

188 (q) No position openings may be filled by the county board,
189 whether temporary or permanent, until all service personnel on
190 the preferred recall list have been properly notified of existing
191 vacancies and have been given an opportunity to accept
192 reemployment.

193 (r) A service person released from employment for lack of
194 need as provided in sections six and eight-a, article two of this

195 chapter is accorded preferred recall status on July 1 of the
196 succeeding school year if he or she has not been reemployed as
197 a regular employee.

198 (s) A county board failing to comply with the provisions of
199 this article may be compelled to do so by mandamus and is liable
200 to any party prevailing against the board for court costs and the
201 prevailing party's reasonable attorney fee, as determined and
202 established by the court.

203 (1) A service person denied promotion or employment in
204 violation of this section shall be awarded the job, pay and any
205 applicable benefits retroactively to the date of the violation and
206 shall be paid entirely from local funds.

207 (2) The county board is liable to any party prevailing against
208 the board for any court reporter costs including copies of
209 transcripts.

CHAPTER 218

**(Com. Sub. for H. B. 2139 - By Delegate(s) Perry, Pasdon,
L. Phillips, Hamrick, Rowan, Ambler, Cooper, Espinosa,
Pethtel, Romine and Longstreth)**

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes; requiring days of retirement before instructional term employed as substitute; requiring electronic posting of vacancy;

requiring preemployment submission of information to, and verification of compliance by, state board prior to submission to retirement board; resetting expiration date of provisions; and making other technical improvements.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to any
3 of the following duties:

4 (1) Fill the temporary absence of any teacher or an unexpired
5 school term made vacant by resignation, death, suspension or
6 dismissal;

7 (2) Fill a teaching position of a regular teacher on leave of
8 absence; and

9 (3) Perform the instructional services of any teacher who is
10 authorized by law to be absent from class without loss of pay,
11 providing the absence is approved by the board of education in
12 accordance with the law.

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to the
15 contrary, a substitute teacher who has been assigned as a

16 classroom teacher in the same classroom continuously for more
17 than one half of a grading period and whose assignment remains
18 in effect two weeks prior to the end of the grading period, shall
19 remain in the assignment until the grading period has ended,
20 unless the principal of the school certifies that the regularly
21 employed teacher has communicated with and assisted the
22 substitute with the preparation of lesson plans and monitoring
23 student progress or has been approved to return to work by his
24 or her physician. For the purposes of this section, teacher and
25 substitute teacher, in the singular or plural, mean professional
26 educator as defined in section one, article one of this chapter.

27 (c) (1) The Legislature hereby finds and declares that due to
28 a shortage of qualified substitute teachers, a compelling state
29 interest exists in expanding the use of retired teachers to provide
30 service as substitute teachers in areas of critical need and
31 shortage. The Legislature further finds that diverse
32 circumstances exist among the counties for the expanded use of
33 retired teachers as substitutes. For the purposes of this
34 subsection, “area of critical need and shortage for substitute
35 teachers” means an area of certification and training in which the
36 number of available substitute teachers in the county who hold
37 certification and training in that area and who are not retired is
38 insufficient to meet the projected need for substitute teachers.

39 (2) A person receiving retirement benefits under article
40 seven-a, chapter eighteen of this code or who is entitled to
41 retirement benefits during the fiscal year in which that person
42 retired may accept employment as a critical needs substitute
43 teacher for an unlimited number of days each fiscal year without
44 affecting the monthly retirement benefit to which the retirant is
45 otherwise entitled if the following conditions are satisfied:

46 (A) The county board adopts a policy recommended by the
47 superintendent to address areas of critical need and shortage for
48 substitute teachers;

49 (B) The policy sets forth the areas of critical need and
50 shortage for substitute teachers in the county in accordance with
51 the definition of area of critical need and shortage for substitute
52 teachers set forth in subdivision (1) of this subsection;

53 (C) The policy provides for the employment of retired
54 teachers as critical needs substitute teachers during the school
55 year on an expanded basis in areas of critical need and shortage
56 for substitute teachers as provided in this subsection;

57 (D) The policy provides that a retired teacher may be
58 employed as a substitute teacher in an area of critical need and
59 shortage for substitute teachers on an expanded basis as provided
60 in this subsection only when no other teacher who holds
61 certification and training in the area and who is not retired is
62 available and accepts the substitute assignment;

63 (E) The policy is effective for one school year only and is
64 subject to annual renewal by the county board;

65 (F) The state board approves the policy and the use of retired
66 teachers as substitute teachers on an expanded basis in areas of
67 critical need and shortage for substitute teachers as provided in
68 this subsection; and

69 (G) Prior to employment of a retired teacher as a critical
70 needs substitute teacher beyond the post-retirement employment
71 limitations established by the Consolidated Public Retirement
72 Board, the superintendent of the affected county submits to the
73 state board in a form approved by the Consolidated Public
74 Retirement Board and the state board, an affidavit signed by the
75 superintendent stating the name of the county, the fact that the
76 county has adopted a policy to employ retired teachers as
77 substitutes to address areas of critical need and shortage, the
78 name or names of the person or persons to be employed as a
79 critical needs substitute pursuant to the policy, the critical need

80 and shortage area position filled by each person, the date that the
81 person gave notice to the county board of the person's intent to
82 retire, and the effective date of the person's retirement. Upon
83 verification of compliance with this section and the eligibility of
84 the critical needs substitute teacher for employment beyond the
85 post-retirement limit, the state board shall submit the affidavit to
86 the Consolidated Public Retirement Board.

87 (3) Any person who retires and begins work as a critical
88 needs substitute teacher within the same employment term shall
89 lose those retirement benefits attributed to the annuity reserve,
90 effective from the first day of employment as a retiree substitute
91 in that employment term and ending with the month following
92 the date the retiree ceases to perform service as a substitute.

93 (4) Retired teachers employed to perform expanded
94 substitute service pursuant to this subsection are considered day-
95 to-day, temporary, part-time employees. The substitutes are not
96 eligible for additional pension or other benefits paid to regularly
97 employed employees and may not accrue seniority.

98 (5) A retired teacher is eligible to be employed as a critical
99 needs substitute to fill a vacant position only if the retired
100 teacher's retirement became effective at least twenty days before
101 the beginning of the employment term during which he or she is
102 employed as a substitute;

103 (6) When a retired teacher is employed as a critical needs
104 substitute to fill a vacant position, the county board shall
105 continue to post the vacant position until it is filled with a
106 regularly employed teacher who is fully certified or permitted
107 for the position.

108 (7) When a retired teacher is employed as a critical needs
109 substitute to fill a vacant position, the position vacancy shall be
110 posted electronically and easily accessible to prospective
111 employees as determined by the state board;

112 (8) Until this subsection is expired pursuant to subdivision
113 (9) of this subsection, the state board, annually, shall report to
114 the Joint Committee on Government and Finance prior to
115 February 1 of each year. Additionally, a copy shall be provided
116 to the Legislative Oversight Commission on Education
117 Accountability. The report shall contain information indicating
118 the effectiveness of the provisions of this subsection on reducing
119 the critical need and shortage of substitute teachers including,
120 but not limited to, the number of retired teachers, by critical need
121 and shortage area position filled and by county, employed
122 beyond the post-retirement employment limit established by the
123 Consolidated Public Retirement Board, the date that each person
124 gave notice to the county board of the person's intent to retire,
125 and the effective date of the person's retirement.

126 (9) The provisions of this subsection shall expire on June 30,
127 2017.

128 (d) (1) Notwithstanding any other provision of this code to
129 the contrary, each year a county superintendent may employ
130 prospective employable professional personnel on a reserve list
131 at the county level subject to the following conditions:

132 (A) The county board adopts a policy to address areas of
133 critical need and shortage as identified by the state board. The
134 policy shall include authorization to employ prospective
135 employable professional personnel;

136 (B) The county board posts a notice of the areas of critical
137 need and shortage in the county in a conspicuous place in each
138 school for at least ten working days; and

139 (C) There are not any potentially qualified applicants
140 available and willing to fill the position.

141 (2) Prospective employable professional personnel may only
142 be employed from candidates at a job fair who have or will

143 graduate from college in the current school year or whose
144 employment contract with a county board has or will be
145 terminated due to a reduction in force in the current fiscal year.

146 (3) Prospective employable professional personnel employed
147 are limited to three full-time prospective employable
148 professional personnel per one hundred professional personnel
149 employed in a county or twenty-five full-time prospective
150 employable professional personnel in a county, whichever is
151 less.

152 (4) Prospective employable professional personnel shall be
153 granted benefits at a cost to the county board and as a condition
154 of the employment contract as approved by the county board.

155 (5) Regular employment status for prospective employable
156 professional personnel may be obtained only in accordance with
157 the provisions of section seven-a, article four of this chapter.

158 (e) The state board annually shall review the status of
159 employing personnel under the provisions of subsection (d) of
160 this section and annually shall report to the Legislative Oversight
161 Commission on Education Accountability on or before
162 November 1 of each year. The report shall include, but not be
163 limited to, the following:

164 (A) The counties that participated in the program;

165 (B) The number of personnel hired;

166 (C) The teaching fields in which personnel were hired;

167 (D) The venue from which personnel were employed;

168 (E) The place of residency of the individual hired; and

169 (F) The state board's recommendations on the prospective
170 employable professional personnel program.

CHAPTER 219

**(Com. Sub. for S. B. 435 - By Senators Blair, D. Hall,
Boso, Carmichael, Kirkendoll, Laird, Stollings, Trump,
Williams, Prezioso, Plymale, Gaunch and Walters)**

[Amended and again passed March 14, 2015; as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5 and §7-26-6, all relating to creating West Virginia Sheriffs' Bureau of Professional Standards; purpose and composition; general powers and duties; authorizing the bureau to promulgate legislative rules; officers; promotion of training; standards for vehicles, badges and uniforms; and standards for interagency cooperation.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5 and §7-26-6, all to read as follows:

ARTICLE 26. WEST VIRGINIA SHERIFFS' BUREAU OF PROFESSIONAL STANDARDS.

§7-26-1. Creation; purpose; composition.

- 1 (a) For the purpose of providing better law enforcement for
- 2 the counties of our state and for providing standardization and
- 3 uniformity of services and operation of the sheriff offices
- 4 throughout the state, there is hereby created the West Virginia
- 5 Sheriffs' Bureau of Professional Standards.

6 (b) The bureau shall be comprised of nine members, as
7 follows:

8 (1) Two statutory members:

9 (i) The Secretary of the Department of Military Affairs and
10 Public Safety, or his or her designee; and

11 (ii) The Executive Director of the West Virginia Sheriffs'
12 Association; and

13 (2) Seven members representing the public and law
14 enforcement to be appointed by the Governor:

15 (i) Five sheriffs of the counties of West Virginia, to be
16 recommended for appointment by the West Virginia Sheriffs'
17 Association; and

18 (ii) Two citizen members.

19 (c) Service of members of the bureau shall be conditioned
20 upon signing all necessary nondisclosure agreements relating to
21 confidential law-enforcement information.

22 (d) Each bureau member shall serve a two-year term
23 commencing July 1, 2015, except that three of the first five
24 sheriffs beginning their term on July 1, 2015, shall serve a one-
25 year term expiring July 1, 2016, at which time new selections for
26 regular two-year terms shall be made for these three positions.

27 (e) Any vacancy on the bureau for a sheriff position shall be
28 filled for the remainder of the unexpired term by selection of the
29 West Virginia Sheriffs' Association. Any vacancy on the bureau
30 for a citizen member position shall be filled for the remainder of
31 the unexpired term by appointment of the Governor.

§7-26-2. General powers and duties; legislative rules.

1 The bureau shall have the power to contract and be
2 contracted with relating to training and operation of state sheriff
3 offices. The bureau may recommend policies and procedures to
4 sheriff offices, including, but not limited to, those that promote
5 cooperation between all state and local law-enforcement officers,
6 eliminate duplication of work, promote the proper and efficient
7 operation of the office of the sheriff and which seek to
8 standardize operation of sheriff offices throughout the state. The
9 bureau may propose legislative rules which adopt a standard
10 badge, uniform and color for the motor vehicles used by the
11 various sheriffs and deputy sheriffs of West Virginia.

§7-26-3. Bureau officers.

1 The bureau shall select a chair, vice chair and secretary from
2 within its appointed members to keep an accurate record of the
3 actions of the bureau and perform such duties as the bureau may
4 prescribe.

§7-26-4. Training promoted by the bureau.

1 The bureau may contract with or agree with any state
2 university or college in West Virginia or any other organization
3 for a university, college or other organization to provide
4 specialized training for sheriffs and deputies as it deems
5 appropriate for the efficient operation of a sheriff's office:
6 *Provided*, That nothing herein shall be construed to circumvent
7 or replace the duties or authority of the training of law-
8 enforcement officers in this state as prescribed in article twenty-
9 nine, chapter thirty of this code.

**§7-26-5. Standard color for motor vehicles used by sheriffs;
standard badges and uniforms; wearing other than
standard uniform or badge; unauthorized wearing of
official uniforms or badges.**

1 (a) The bureau, by legislative rules, may adopt a standard
2 color for the motor vehicles used by the various sheriffs and
3 deputy sheriffs of West Virginia.

4 (b) For purposes of uniformity, the bureau may establish a
5 standard badge and uniform to be worn by all sheriffs and deputy
6 sheriffs.

7 (c) On and after July 1, 2015, any sheriff or deputy sheriff
8 shall not wear any uniform or badge other than the standard
9 uniform and badge as provided in subsection (b) of this section,
10 except when engaged in specialized duty or undercover work, or
11 other similar duties wherein the identity of the officer should be
12 undisclosed: *Provided*, That nothing herein shall be construed to
13 prevent members of any military, fraternal or similar
14 organization or any other law-enforcement officer from wearing
15 any insignia officially adopted or worn prior to the effective date
16 of this section.

17 (d) Nothing in this article prevents an honorably retired
18 sheriff or deputy sheriff from acquiring a standard uniform and
19 insignia in accordance with section seventeen-d, article fourteen
20 of this chapter.

§7-26-6. Standards for interagency cooperation.

1 (a) This section is created for the purpose of enhancing
2 cooperative efforts undertaken by sheriff offices for the more
3 efficient investigation and apprehension of persons who violate
4 the criminal laws of the state of West Virginia or the United
5 States and also to assist the victims of such crimes. The
6 provisions of this section are meant to promote interagency
7 communication, intelligence gathering, multijurisdictional
8 investigations, provision of personnel to work on temporary
9 special assignment with the personnel of another sheriff's office
10 and making available equipment, training, technical assistance
11 and information systems.

12 (b) Sheriffs and deputy sheriffs may, from time to time, be
13 called upon by a sheriff of another jurisdiction for assistance
14 during incidents where the resources of that county are not
15 adequate to meet the needs of a particular circumstance or
16 emergency in accordance with article ten, chapter fifteen of this
17 code. Sheriffs and deputy sheriffs are hereby authorized to
18 provide multiagency assistance to another county pursuant to the
19 requirements outlined in this section: *Provided*, That any mutual
20 aid agreement entered into by a sheriff of any county shall
21 remain in effect unless and until the agreement is withdrawn in
22 writing by the sheriff of that county, regardless of whether a new
23 sheriff of the county is elected or appointed.

24 (c) The provisions of this section apply only to requests for
25 assistance made by and to authorized representatives of a
26 sheriff's office whose jurisdiction is involved in a mutual aid
27 agreement pursuant to article ten, chapter fifteen of this code.
28 The provisions of this section shall be activated only upon
29 request by one of the aforementioned authorized representatives
30 or their designee.

CHAPTER 220

(S. B. 559 - By Senators M. Hall and Ferns)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §30-30-16 of the Code of West Virginia, 1931, as amended, all relating to qualifications for a provisional license to practice as a social worker; providing that certain individuals applying for a provisional license to practice social work meet the education requirement with a baccalaureate

degree; requiring the Board of Social Work to promulgate emergency rules; providing an education alternative for a provisionally licensed social worker seeking to become a licensed social worker; requiring the Secretary of the West Virginia Department of Health and Human Resources to promulgate rules; and requiring a legislative audit of the social worker license application process.

Be it enacted by the Legislature of West Virginia:

That §30-30-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. Provisional license to practice as a social worker.

- 1 (a) To be eligible for a provisional license to practice as a
2 social worker, the applicant must:
 - 3 (1) Submit an application to the board;
 - 4 (2) Be at least eighteen years of age;
 - 5 (3) Be of good moral character;
 - 6 (4) Have a baccalaureate degree in a related field, as
7 provided by legislative rule: *Provided*, That an individual
8 seeking employment as a provisionally licensed social worker
9 with the West Virginia Department of Health and Human
10 Resources shall have a baccalaureate degree;
 - 11 (5) Have obtained regular supervised employment, or the
12 reasonable promise of regular supervised employment
13 contingent upon receiving a provisional license, in a critical
14 social work workforce shortage position, area or setting
15 requiring a social work license: *Provided*, That such employment

16 shall not as an independent practitioner, contracted employee,
17 sole proprietor, consultant or other nonregular employment;

18 (6) Have satisfied the board that he or she merits the public
19 trust by providing the board with three letters of
20 recommendation from persons not related to the applicant;

21 (7) Not be an alcohol or drug abuser, as these terms are
22 defined in section eleven, article one-a, chapter twenty-seven of
23 this code: *Provided*, That an applicant in an active recovery
24 process, which may, in the discretion of the board, be evidenced
25 by participation in an acknowledged substance abuse treatment
26 and/or recovery program may be considered;

27 (8) Not have been convicted of a felony in any jurisdiction
28 within five years preceding the date of application for license
29 which conviction remains unreversed;

30 (9) Not have been convicted of a misdemeanor or felony in
31 any jurisdiction if the offense for which he or she was convicted
32 related to the practice of social work, which conviction remains
33 unreversed; and

34 (10) Meet any other requirements established by the board.

35 (b) The board shall promulgate emergency rules, in
36 accordance with section fifteen, article three, chapter twenty-
37 nine-a of this code, to implement the provisions of subsection (a)
38 of this section.

39 (c) A provisionally licensed social worker may become a
40 licensed social worker, by completing the following:

41 (1) Be continuously employed for four years as a social
42 worker and supervised. The board shall promulgate by
43 legislative rule the supervision requirements;

44 (2) Complete twelve credit hours of core social work study
45 from a program accredited by the council on social work

46 education, as defined by legislative rule, within the four-year
47 provisional license period: *Provided*, That an individual
48 employed as a provisionally licensed social worker with the
49 West Virginia Department of Health and Human Resources shall
50 satisfy this requirement upon completion of the social work
51 training program with the West Virginia Department of Health
52 and Human Resources. The Secretary of the West Virginia
53 Department of Health and Human Resources shall, with the
54 advice of the Higher Education Policy Commission, West
55 Virginia University School of Social Work and Marshall
56 University Department of Social Work, promulgate legislative
57 rules, in accordance with article three, chapter twenty-nine-a of
58 this code, to implement the provisions of this subdivision;

59 (3) Complete continuing education as required by legislative
60 rule; and

61 (4) Pass an examination approved by the board.

62 (d) On or before July 1, 2020, the Legislative Auditor shall
63 cause to be performed a performance audit of the provisional
64 license to practice as a social worker application process and the
65 application process by which a provisional licensee may become
66 a licensed social worker.

CHAPTER 221

(Com. Sub. for S. B. 436 - By Senator Nohe)

[Passed February 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to repeal §29-5A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17,

§29-5A-19, §29-5A-20 and §29-5A-24 of said code; and to amend said code by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all relating to the State Athletic Commission; changing composition of commission; requiring that office of commission be located on the premises of Lottery Commission office; requiring Lottery Commission to provide administrative support; creating a State Athletic Commission Fund; authorizing expenditures; paying expenses of the commission; setting payment schedule; requiring promoter to ensure attendance of appointed officials; requiring the commission to give advance notice of appointed officials; permitting alternates; prohibiting the commission from performing certain functions at events; requiring the commission to follow weight classes as adopted by the Association of Boxing Commissions; increasing certain fees; providing rule-making authority; requiring the commission to follow certain unified rules for professional boxing events; requiring the commission to follow certain unified rules for mixed martial arts events; requiring the commission to follow certain rules for amateur boxing events; and requiring the commission to follow certain rules for amateur mixed martial arts events.

Be it enacted by the Legislature of West Virginia:

That §29-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

- 1 The State Boxing Commission, heretofore created, is hereby
- 2 continued and renamed the State Athletic Commission. The

3 commission shall consist of five persons appointed by the
4 Governor, by and with the consent of the Senate, no more than
5 three of whom shall belong to the same political party and no
6 two of whom shall be residents of the same county at the same
7 time. One member shall have at least three years of experience
8 in the sport of boxing. One member shall have at least three
9 years of experience in the sport of mixed martial arts. One
10 member shall have at least three years of experience in the health
11 care industry as a licensed physician, registered nurse, nurse
12 practitioner or physicians assistant. Two members shall be
13 citizen members who are not licensed under the provisions of
14 this article and who do not perform any services related to the
15 persons regulated under this article. The members shall serve
16 without pay. At the expiration of the term of each member, his
17 or her successor shall be appointed by the Governor for a term
18 of four years. If there is a vacancy in the board, the vacancy shall
19 likewise be filled by appointment by the Governor and the
20 Governor shall likewise have the power to remove any
21 commissioner at his or her pleasure. Any three members of the
22 commission shall constitute a quorum for the exercise of the
23 power or authority conferred upon it. The members of the
24 commission shall at the first meeting after their appointment
25 elect one of their number chairman of the commission, and
26 another of their number secretary of the commission, shall adopt
27 a seal for the commission, and shall make such rules for the
28 administration of their office, not inconsistent herewith, as they
29 may consider expedient; and they may hereafter amend or
30 abrogate such rules. The concurrence of at least three
31 commissioners is necessary to render a choice or decision of the
32 commission.

**§29-5A-1a. Commission office; administrative support provided
by Lottery Commission.**

1 The office of the commission shall be located on the same
2 premises as the office of the Lottery Commission and the Lottery

3 Commission shall provide the commission with any necessary
4 administrative support or management, including, but not limited
5 to:

6 (1) Administrative recordkeeping;

7 (2) Maintaining an accurate and published registry of names,
8 addresses and relevant information of all licensees; and

9 (3) Management of finances and budgetary oversight.

**§29-5A-2. Powers and duties of secretary; penalty for false
swearing, etc.; biennial reports of commission.**

1 It shall be the duty of the secretary to keep a full and true
2 record of all proceedings of said commission, to preserve all its
3 books, documents and papers, to prepare for service such notices
4 and other papers as may be required of him or her by the
5 commission and to perform such other duties as the commission
6 may prescribe; and he or she may at the direction of the
7 commission issue subpoenas for the attendance of witnesses
8 before the commission with the same effect as if they were
9 issued in an action in any circuit court of the state and may
10 administer oaths in all matters pertaining to the duties of his or
11 her office or connected with the administration of the affairs of
12 the commission. The subpoenas shall be on forms prescribed by
13 the commission and served by the sheriff's department of the
14 county in which the individual being subpoenaed resides. Such
15 subpoenas shall be signed by at least two members.
16 Disobedience of such subpoena and false swearing before such
17 secretary shall be attended by the same consequences and be
18 subject to the same penalties as if such disobedience or false
19 swearing occurred in an action in any circuit court of the state.
20 The commission shall make to the Legislature biennial reports
21 of their proceedings for the two years ending with the last day of
22 the preceding December and may submit with such report such

23 recommendations pertaining to its affairs, as to it shall seem
24 advisable.

**§29-5A-3. Commission to have sole control of boxing, etc.,
matches; licenses; municipality not to tax boxing,
etc., club.**

1 (a) The commission has sole direction, management and
2 control of the jurisdiction over all amateur, professional and
3 semiprofessional boxing, sparring matches and exhibitions, or
4 any form thereof, to be conducted, held or given within the state
5 by any club, individual, corporation or association. As used in
6 this article, the term “boxing” includes any fighting event that
7 includes or permits the striking of an opponent with a closed fist,
8 even if wrestling moves, elements of martial arts or striking an
9 opponent with the feet are also permitted. No boxing, sparring or
10 exhibition may be conducted, held or given within the state
11 except pursuant to the commission’s authority and held in
12 accordance with this article. The commission may issue and
13 revoke the license to conduct, hold or give boxing or sparring
14 matches or exhibitions to any club, corporation, association or
15 individual. Every license is subject to rules the commission may
16 prescribe. Every application for a license shall be on a blank
17 form provided by the commission. No promoter’s license may be
18 granted to any club, corporation, association or individual unless
19 the signer of the application is a bona fide resident of the state of
20 West Virginia. Upon application of the promoter’s license, the
21 promoter shall pay a state license fee of \$125 for one year. The
22 fee is nonrefundable and shall be paid in the form of a certified
23 check or money order issued to the Treasurer of the state of West
24 Virginia to be deposited in the fund set forth in section three-b
25 of this article. Nonprofit chartered and charitable organizations
26 are exempt from this license fee for all amateur events. No
27 municipal corporation may impose any license tax on boxing,
28 sparring or exhibition clubs, notwithstanding the provisions of
29 any section of the code respecting municipal taxes and licenses.

30 The granting of a license to a club by the commission, or the
31 holding of a license by a club, individual, corporation or
32 association, does not prevent the commission from canceling or
33 revoking the license to conduct an event as provided in this
34 section.

35 (b) In exercising its jurisdiction over professional and
36 semiprofessional boxing, sparring matches and exhibitions, the
37 commission shall follow the current unified rules of boxing
38 adopted by the Association of Boxing Commissions and
39 requirements to enable the proper sanctioning of all participants,
40 referees, judges and matches or exhibitions conducted under the
41 rules described in subdivision (1), subsection (c), section twenty-
42 four of this article and shall cooperate fully with the Association
43 of Boxing Commissions in order that the sanctioning be
44 extended to state boxers. The commission shall supervise all
45 amateur boxing conducted in this state and any such contest shall
46 follow the amateur rules for boxing as adopted by the United
47 States Amateur Boxing Authority. For full contact boxing events
48 and other boxing events that follow nontraditional rules, the
49 commission may impose any limitations or restrictions
50 reasonably necessary to guarantee the safety of the participants
51 and the fair and honest conducting of the matches or exhibitions
52 and may refuse to license any event that poses an unreasonable
53 degree of risk to the participants.

§29-5A-3a. Power to regulate mixed martial arts.

1 (a) The commission has sole power, direction, management
2 and control over all professional and amateur mixed martial arts
3 contests, matches and exhibitions, or any form thereof, to be
4 promoted, conducted, held or given within the state.

5 (b) As used in this article, the term “mixed martial arts”
6 means a combative sporting contest, the rules of which allow
7 two competitors to attempt to achieve dominance over one

8 another by utilizing a variety of techniques including, but not
9 limited to, striking, grappling and the application of submission
10 holds.

11 (c) A mixed martial arts contest, match or exhibition
12 promoted, conducted, held or given within the state shall be
13 under the commission's authority and be in accordance with the
14 provision of this section. The provisions of this article that apply
15 to boxing shall also apply to mixed martial arts as appropriate.

16 (d) In exercising its jurisdiction over professional and
17 amateur mixed martial arts contests matches and exhibitions, the
18 commission shall follow the current unified rules of mixed
19 martial arts as adopted by the Association of Boxing
20 Commissions to enable the proper equipment, fighting area and
21 weight classes to ensure the safety of contestants and ensure the
22 licensing of all participants, referees and judges, and the
23 approval of contests, matches or exhibitions conducted under the
24 provisions of this section.

25 (e) The commission may issue and revoke a license to
26 promote, conduct, hold or give mixed martial arts contests,
27 matches or exhibitions and may issue and revoke a license to be
28 a contestant. Each license is subject to the provisions of this
29 section and this article and the rules of the commission.

30 (f) The commission shall propose rules for legislative
31 approval, in accordance with the provisions of article three,
32 chapter twenty-nine-a of this code, to implement the provisions
33 of this section, including:

34 (1) Procedures and requirements for the issuance and
35 renewal of licenses: *Provided*, That the procedures and
36 requirements may not:

37 (A) Limit or prohibit mixed martial arts contests, matches or
38 exhibitions; nor

39 (B) Include a provision that a licensee be a West Virginia
40 resident;

41 (2) Exemptions from licensure;

42 (3) Procedures for revoking licenses;

43 (4) Adopting the unified rules of mixed martial arts;

44 (5) A fee schedule;

45 (6) Limitations or restrictions necessary to guarantee the
46 safety of the participants;

47 (7) The requirements for fair and honest conducting of the
48 contests, matches or exhibitions; and

49 (8) Any other rules necessary to effectuate the provisions of
50 this section.

51 (g) Notwithstanding the provisions of this code to the
52 contrary, a municipality may not impose a municipal license tax
53 under section four, article thirteen, chapter eight of this code on
54 mixed martial arts clubs. The granting of a license to a club by
55 the commission, or the holding of a license by a club, individual,
56 corporation or association, does not prevent the commission
57 from revoking the license to conduct an event as provided in this
58 section: *Provided*, That nothing in this subsection limits the
59 authority of a municipality to impose any other taxes or fees on
60 mixed martial arts contests, matches or exhibitions pursuant to
61 article thirteen, chapter eight of this code.

§29-5A-3b. State Athletic Commission Fund.

1 (a) All moneys collected shall be deposited in a special
2 account in the State Treasury to be known as the State Athletic
3 Commission Fund. Expenditures from the fund shall be for the
4 purposes set forth in this article and are not authorized from

5 collections but are to be made only in accordance with
6 appropriation by the Legislature and in accordance with the
7 provisions of article three, chapter twelve of this code and upon
8 fulfillment of the provisions of article two, chapter eleven-b of
9 this code: *Provided*, That for the fiscal year ending June 30,
10 2016, expenditures are authorized from collections rather than
11 pursuant to appropriation by the Legislature.

12 (b) A supplemental appropriation may be authorized by the
13 Legislature for administrative expenditures that exceed
14 collections in the fiscal years ending June 30, 2016, June 30,
15 2017, and June 30, 2018, or until such time as the commission
16 collections are sufficient to fully fund its operations.

17 (c) All money collected and deposited in the State Athletic
18 Commission Fund that remains after the commission satisfies its
19 administrative operating obligations shall be surplus revenue
20 funds available for appropriation: *Provided*, That the
21 commission may retain surplus revenue funds as long as it
22 allocates the surplus for a specific purpose and approves such
23 funds be carried forward for use in the following fiscal year prior
24 to the end of the fiscal year in which the revenues were
25 collected.

§29-5A-5. Expense of commission.

1 On or before December 31 of each year, the secretary of the
2 commission shall present to the Governor projected expenses for
3 the following year. Such projections shall include all expenses
4 and revenues of the commission and its official headquarters.
5 Necessary expenses incurred by the commission shall be
6 submitted on a standard expense form to the Treasurer of the
7 state of West Virginia to be paid from the State Athletic
8 Commission Fund except in such circumstances referred to in
9 subsection (b), section three-b of this article designating such
10 expenses be paid from the General Fund.

§29-5A-6. Payment of official in charge.

1 The deputy, inspector or other officials designated by the
2 commission to be in charge of a boxing or mixed martial arts
3 event shall be paid by the promoter at a minimum rate of \$75 per
4 day for services performed prior to any event at a weigh-in and
5 each day of an event: *Provided*, That not more than one official
6 designated by the commission to be in charge of a boxing or
7 mixed martial arts event may receive compensation for services
8 performed. If a weigh-in occurs within three hours before the
9 boxing bouts are scheduled to begin, the deputy, inspector or
10 other officials will be paid only one rate at a minimum of \$75 for
11 that particular night or day's events. Judges, timekeepers and
12 inspectors shall be paid by the promoter at a minimum rate of
13 \$50 per day for services performed prior to any event and each
14 day of an event. Referees shall be paid by the promoter at a
15 minimum rate of \$75 per day of bouts. Payments to the officials
16 in charge, judges, timekeepers, inspectors or referees exceeding
17 the amounts under this section are prohibited without prior
18 written consent of the promoter: *Provided, however*, That the
19 commission may revise any fees paid to officials through
20 legislative rule-making process beginning June 30, 2018, and
21 every three years thereafter. The commission may not revoke an
22 event permit or license for refusal to pay a fee greater than the
23 fees in this section: *Provided further*, That approved officials are
24 available, willing and able to work the event for the proscribed
25 fees. Deputies, inspectors, judges, referees, timekeepers or any
26 other officials designated by the commission to be in charge of
27 an event shall not accept, other than the fees proscribed herein,
28 any gift, pass or other thing of value in connection with any
29 event.

**§29-5A-8. Issuance of license; qualification for licenses;
application of other provisions of chapter; hearings.**

1 The commission may issue a license to promote, conduct or
2 hold professional boxing, professional or amateur mixed martial

3 arts sparring matches and exhibitions to any person, corporation,
4 association, club or organization eligible for a license under this
5 chapter.

6 Before being granted a license, or the renewal of the license,
7 the applicant must establish to the satisfaction of the commission
8 that he or she:

9 (a) Is skilled, or has knowledge, in the profession of boxing
10 or mixed martial arts;

11 (b) Is of good moral character;

12 (c) Is physically fit and mentally sound;

13 (d) Will conduct his or her business in the best interest and
14 welfare of the public, preserving the safety and health of
15 participants and the best interests of professional boxing or
16 professional or amateur mixed martial arts generally;

17 (e) Will adhere to and comply with all the rules and
18 regulations of the commission pertaining to the license.

19 In the case of a corporate applicant, these factors shall
20 pertain to its officers, directors, principal stockholders and
21 employees.

22 Every license and licensee is subject to such rules, and
23 amendments thereof, as the commission may prescribe.

**§29-5A-17. Referee and judges; appointment by commission;
powers, payment.**

1 (a) The chief official of the boxing match or exhibition shall
2 be the referee. The referee and judges shall be appointed by the
3 commission and shall receive from the commission a card
4 authorizing them to act as such and no club may employ or

5 permit anyone to act as referee except one holding a card of
6 authorization from the commission. The referee has general
7 supervision and control over the match or exhibition and shall be
8 paid by the promoter a minimum of \$75 for each day or night's
9 services. The referee is limited to refereeing a maximum of
10 thirty rounds per day or night unless special consent is given by
11 the commission.

12 (b) Once appointed by the commission, the promoter bears
13 the responsibility for ensuring the attendance of referee and
14 judges at events. The commission shall provide promoters with
15 advance notice of the person(s) appointed as referee and judges.
16 A promoter, at his or her own expense, may request alternate
17 referee(s) and judge(s) be appointed by the commission to serve
18 in the event a first appointed referee or judge is unable to satisfy
19 the role. Under no circumstances may a member of the
20 commission or any employee of the commission serve as a
21 referee or judge for a boxing or mixed martial arts contest
22 conducted in this state.

§29-5A-19. Weight of contestants.

1 No boxer shall be permitted to contest against an opponent
2 ten pounds heavier than himself or herself when the weight of
3 either contestant is less than one hundred fifty pounds. Weight
4 classes as adopted by the Association of Boxing Commissions
5 shall be utilized for all boxing and mixed martial arts contests
6 conducted in this state.

§29-5A-20. Licenses for contestants, referees and managers.

1 No professional contestant, trainer, inspector, referee or
2 professional manager may take part in any boxing contest or
3 exhibition unless holding a license from the state that is issued
4 by the commission upon payment of the following annual license
5 fee schedule: Professional contestant \$25; trainer \$20; inspector

6 \$30; referee \$30 and professional manager \$50.
7 Semiprofessional contestants shall pay a license fee of \$10 for
8 each event. Such fees shall accompany the application and shall
9 be in the form of a certified check or money order and shall be
10 issued to the Treasurer of the state of West Virginia to be
11 deposited in the State Athletic Commission Fund. If a license is
12 not granted, the Treasurer shall refund the full amount.

§29-5A-24. Rules governing contestants and matches.

1 (a) The commission shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code.

4 (b) The commission shall propose such rules to regulate
5 professional and semiprofessional boxers, professional or
6 amateur mixed martial artists, professional and semiprofessional
7 boxing matches and exhibitions and professional or amateur
8 mixed martial arts matches and exhibitions: *Provided*, That for
9 professional boxers and boxing matches and exhibitions, the
10 commission rules shall comply with the current unified rules of
11 boxing as adopted by the Association of Boxing Commissions;
12 for professional mixed martial artists and mixed martial arts
13 matches and exhibitions, the commission rules shall comply with
14 the current unified rules of mixed martial arts as adopted by the
15 Association of Boxing Commissions; for amateur boxers and
16 boxing matches or exhibitions, the commission rules shall
17 comply with the amateur rules for boxing as adopted by the
18 United States Amateur Boxing Authority; and for amateur mixed
19 martial artists and mixed martial arts matches or exhibitions, the
20 commission rules shall follow the current rules for the
21 International Sport Karate Association, the World Kickboxing
22 Association or the International Sport Combat Federation at any
23 given match or exhibition. For full contact boxing and other
24 boxing events that follow nontraditional rules, rules guaranteeing

25 the safety of the participants and the fair and honest conducting
26 of the matches or exhibitions are authorized.

27 (c) The commission shall propose separate rules for amateur
28 boxers and amateur boxing, sparring matches and exhibitions as
29 follows:

30 Rules which comply with the requirements of the rules of the
31 current United States Amateur Boxing Authority to the extent
32 that any boxer complying with them will be eligible to
33 participate in any state, national or international boxing match
34 sanctioned by the current United States Amateur Boxing
35 Authority or the International Amateur Boxing Association.

CHAPTER 222

(H. B. 2523 - By Delegate Ashley)

[Passed February 27, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §15-2-3 of the Code of West Virginia, 1931, as amended, relating to creating a special revenue account to offset costs for the West Virginia State Police 100th Anniversary in 2019.

Be it enacted by the Legislature of West Virginia:

That §15-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-3. State Police structure; how established; training; special revenue account.

1 (a) The superintendent shall create, appoint and equip the
2 State Police which shall consist of the number of troops, districts
3 and detachments required for the proper administration of the
4 State Police. Each troop, district or detachment shall be
5 composed of the number of officers and members the
6 superintendent determines are necessary to meet operational
7 needs and are required for the efficient operation of the State
8 Police. The superintendent shall establish the general
9 organizational structure of the State Police by interpretive rule
10 in accordance with the provisions of article three, chapter
11 twenty-nine-a of this code. The superintendent shall provide
12 adequate facilities for the training of all members of the State
13 Police and shall prescribe basic training requirements for newly
14 enlisted members. He or she shall also provide advanced or
15 in-service training from time to time for all members of the State
16 Police. The superintendent shall hold entry-level training classes
17 for other law-enforcement officers in the state without cost to
18 those officers, except actual expenses for food, lodging and
19 school supplies. The superintendent may hold advanced levels of
20 training classes for other law-enforcement officers in the state
21 for a reasonable daily fee per student not to exceed \$100.

22 (b) There is hereby created in the State Treasury a special
23 revenue account, which shall be an interest bearing account, to
24 be known as the Academy Training and Professional
25 Development Fund. The special revenue account shall consist of
26 training fees, any appropriations that may be made by the
27 Legislature, income from the investment of moneys held in the
28 special revenue account and all other sums available for deposit
29 to the special revenue account from any source, public or
30 private. No expenditures for purposes of this section are
31 authorized from collections except in accordance with the
32 provisions of article three, chapter twelve of this code and upon
33 fulfillment of the provisions set forth in article two, chapter
34 eleven-b of this code. Any balance remaining in the special
35 revenue account at the end of any state fiscal year does not revert

36 to the General Revenue Fund but remains in the special revenue
37 account and shall be used solely in a manner consistent with this
38 article. The superintendent is authorized to expend funds from
39 the account to offset operational and training costs; for building
40 maintenance and repair, for purchases and for equipment repair
41 or replacement for the West Virginia State Police Academy; and
42 to defray necessary expenses incidental to those and other
43 activities associated with law-enforcement training.

44 (c) There is hereby created in the State Treasury a special
45 revenue account, which shall be an interest bearing account, to
46 be known as the State Police 100th Anniversary Fund. The
47 special revenue account shall consist of merchandise sales, any
48 appropriations that may be made by the Legislature, income
49 from the investment of moneys held in the special revenue
50 account and all other sums available for deposit to the special
51 revenue account from any source, public or private. No
52 expenditures for purposes of this section are authorized from
53 collections except in accordance with the provisions of article
54 three, chapter twelve of this code and upon fulfillment of the
55 provisions set forth in article two, chapter eleven-b of this code.
56 Any balance remaining in the special revenue account at the end
57 of any state fiscal year does not revert to the General Revenue
58 Fund but remains in the special revenue account and shall be
59 used solely in a manner consistent with this article. The
60 superintendent is authorized to expend funds from the account
61 to offset costs for the 100th Anniversary celebration; for
62 purchasing 100th Anniversary commemorative merchandise,
63 equipment, vehicles; and to defray necessary expenses incidental
64 to those and other activities associated with the 100th
65 Anniversary of the West Virginia State Police. This fund shall
66 expire on December 31, 2019 and remaining funds shall be
67 transferred to the Academy Training and Professional
68 Development Fund.

CHAPTER 223

(Com. Sub. for S. B. 407 - By Senator Plymale)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-16E-1, §17-16E-2 and §17-16E-3, all relating to implementation of a state safety oversight program pursuant to a mandate per 49 U. S. C. §5329; designating the Division of Public Transit as the State Safety Oversight Agency; specifying powers and duties of the State Safety Oversight Agency; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-16E-1, §17-16E-2 and §17-16E-3, all to read as follows:

ARTICLE 16E. STATE SAFETY OVERSIGHT PROGRAM.

§17-16E-1. Purpose.

1 The purpose of this article is to establish authority for a State
2 Safety Oversight Agency to oversee the safety for fixed
3 guideway public transportation systems in West Virginia not
4 regulated by the Federal Railroad Administration and to
5 accomplish compliance with 49 U. S. C. §5329.

§17-16E-2. Designated oversight agency; prohibitions.

1 (a) The Division of Public Transit created by article sixteen-
2 c of this chapter is hereby designated the State Safety Oversight

3 Agency. The Division of Public Transit shall have the powers
4 and duties assigned to the State Safety Oversight Agency.

5 (b) The State Safety Oversight Agency shall be financially
6 and legally independent from any public transportation entity
7 that the agency oversees. Any public transportation agency is
8 prohibited from providing funds to the State Safety Oversight
9 Agency. The agency may not employ any individual who is also
10 responsible for the administration of rail fixed guideway public
11 transportation programs.

§17-16E-3. Powers and duties; rules.

1 (a) The State Safety Oversight Agency has the following
2 powers and duties:

3 (1) Oversee all safety aspects of the rail fixed guideway
4 public transportation system pursuant to 49 U. S. C. §5329,
5 including:

6 (A) The development, implementation and application of the
7 public transportation system safety plan;

8 (B) Inspection, investigations or hearings involving all
9 aspects of the facility and its operations including infrastructure,
10 documentation, including electronic data, and personnel and may
11 conduct or cause to be conducted such inspections,
12 investigations or hearings; and

13 (C) Respond to information obtained through inspection,
14 investigations, hearings, other incidents or occurrences of
15 significance to the State Safety Oversight Agency by the
16 issuance of directives, appropriate suspension of service,
17 withholding of funding or the imposition of civil or criminal
18 penalties;

19 (2) Enforce federal and state laws on rail fixed guideway
20 public transportation safety;

21 (3) Determine, in consultation with the Federal Transit
22 Administration, an appropriate staffing level for the State Safety
23 Oversight Agency that is commensurate with the number, size
24 and complexity of the rail fixed guideway transit systems in the
25 state;

26 (4) Require that its employees and other designated
27 personnel who are responsible for rail fixed guideway public
28 transportation safety oversight are qualified to perform such
29 functions through appropriate training, including successful
30 completion of the public transportation safety certification
31 training program established under 49 U. S. C. §5329(c);

32 (5) Coordinate all enforcement responsibilities with other
33 governmental authorities as needed;

34 (6) Review, revise, approve, oversee and enforce the public
35 transportation agency safety plan required under 49 U. S. C.
36 §5329(d), including the implementation by the rail fixed
37 guideway public transportation agency of such plan;

38 (7) Investigate and enforce the safety of rail fixed guideway
39 public transportation systems;

40 (8) Audit, at least once every three years, the compliance of
41 the rail fixed guideway public transportation systems in the state
42 with the public transportation agency safety plan required under
43 49 U. S. C. §5329(d);

44 (9) Provide an annual status report on the safety of the
45 state's rail fixed guideway public transportation systems to the
46 Federal Transit Administration, the Governor, the Legislature
47 and the governing body of the rail fixed guideway public
48 transportation system;

49 (10) Prepare and provide to the Governor and Legislature
50 drafts of proposed legislation that may be necessary for the state
51 to remain compliant with the requirements of 49 U. S. C. §5329.

52 (b) The State Safety Oversight Agency shall propose rules
53 for legislative approval in accordance with the provisions of
54 article three, chapter twenty-nine-a of this code to accomplish
55 the purpose of this article, including rules concerning the
56 implementation of the duties set forth in subsection (a) of this
57 section and the inspection and enforcement powers that are
58 reasonably necessary to ensure compliance with 49 U. S. C.
59 §5329.

CHAPTER 224

**(H. B. 2880 - By Delegate(s) Stansbury, Rohrbach,
Householder, R. Phillips, Arvon, Howell, Moffatt,
Shott, Ellington, E. Nelson and Campbell)**

[Amended and again passed March 18, 2015; as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-15A-1, §62-15A-2 and §62-15A-3, all relating to creating an addiction treatment pilot program; defining terms; requiring the Secretary of the Department of Health and Human Resources to create an addiction treatment pilot program; permitting the department to choose the Supreme Court of Appeals of West Virginia to participate in the pilot program; permitting department to choose the Division of Corrections to participate in the pilot program; permitting the department to limit the number of participants; requiring additional support services if medication-assisted treatment is provided; setting forth pilot program requirements; setting forth a participant's requirements; requiring a report; and requiring the report to be submitted to certain entities.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-15A-1, §62-15A-2 and §62-15A-3, all to read as follows:

ARTICLE 15A. ADDICTION TREATMENT PILOT PROGRAM.

§62-15A-1. Definitions.

1 As used in this article:

2 (1) “Addiction service provider” means a person licensed by
3 this state to provide addiction and substance abuse services to
4 persons addicted to opioids.

5 (2) “Adult drug court judge” means a circuit court judge
6 operating a drug court as defined in subsection (a), section one,
7 article fifteen.

8 (3) “Adult Drug Court Program” means an adult treatment
9 court established by the Supreme Court of Appeals of West
10 Virginia pursuant to this article.

11 (4) “Circuit court” means those courts set forth in article
12 two, chapter fifty-one of this code.

13 (5) “Court” means the Supreme Court of Appeals of West
14 Virginia.

15 (6) “Department” means the Department of Health and
16 Human Resources.

17 (7) “Division” means the Division of Corrections.

18 (8) “LS/CMI assessment criteria” means the level of
19 service/case management inventory which is an assessment tool
20 that measures the risk and need factors of adult offenders.

21 (9) “Medication-assisted treatment” means the use of
22 medications, in combination with counseling and behavioral
23 therapies, to provide a whole-patient approach to the treatment
24 of substance use disorders.

25 (10) “Prescriber” means an individual currently licensed and
26 authorized by this state to prescribe and administer prescription
27 drugs in the course of their professional practice.

§62-15A-2. The Department of Health and Human Resources Pilot Program.

1 (a) The secretary of the department shall conduct a pilot
2 program to provide addiction treatment, including medica-
3 tion-assisted treatment, to persons who are offenders within the
4 criminal justice system, eligible to participate in a program, and
5 selected under this section to be participants in the pilot program
6 because of their dependence on opioids.

7 (b) In the case of the medication-assisted treatment provided
8 under the pilot program, a drug may be used only if it has been
9 approved by the United States Food and Drug Administration for
10 use in the prevention of relapse to opioid dependence and in
11 conjunction with psychosocial support, provided as part of the
12 pilot program, appropriate to patient needs.

13 (c) The department may invite the Court and the division to
14 participate in the pilot program.

15 (d) The department may limit the number of participants.

16 (e) (1) If the Court’s Adult Drug Court Program is selected
17 to participate, it shall select persons who are participants in the
18 Adult Drug Court program, who have been clinically assessed
19 and diagnosed with opioid addiction. Participants must either be
20 eligible for medicaid, or eligible for a state, federal or private
21 grant or other funding sources that provides for the full payment

22 of the treatment necessary to participate in the pilot program.
23 After being enrolled in the pilot program, participants shall
24 comply with all requirements of the Adult Drug Court Program.

25 (2) Treatment may be provided under this subsection only by
26 a treatment provider who is approved by the Court or Adult Drug
27 Court Program consistent with the policies and procedures for
28 Adult Drug Courts developed by the Court. In serving as a
29 treatment provider, a treatment services provider shall do all of
30 the following:

31 (A) Provide treatment based on an integrated service
32 delivery model that consists of the coordination of care between
33 a prescriber and the addiction services provider;

34 (B) Conduct any necessary additional professional,
35 comprehensive substance abuse and mental health diagnostic
36 assessments of persons under consideration for selection as pilot
37 program participants to determine whether they would benefit
38 from substance abuse treatment and monitoring;

39 (C) Determine, based on the assessments described in
40 paragraph (B), the treatment needs of the participants served by
41 the treatment provider;

42 (D) Develop, for the participants served by the treatment
43 provider, individualized goals and objectives;

44 (E) Provide access to the non-narcotic, long-acting
45 antagonist therapy included in the pilot program's
46 medication-assisted treatment; and

47 (F) Provide other types of therapies, including psychosocial
48 therapies, for both substance abuse and any disorders that are
49 considered by the treatment provider to be co-occurring
50 disorders.

51 (f) (1) If the Division of Corrections is selected to
52 participate, the division shall select persons, within the custody
53 of the Division of Corrections, who are determined to be at high
54 risk using the LS/CMI assessment criteria into the pilot program.
55 Participants must either be eligible for medicaid, or eligible for
56 a state, federal or private grant or other funding sources that
57 provides for the full payment of the treatment necessary to
58 participate in the pilot program. After being enrolled in the pilot
59 program, a participant shall comply with all requirements of the
60 treatment program.

61 (2) A participant shall:

62 (A) Receive treatment based on an integrated service
63 delivery model that consists of the coordination of care between
64 a prescriber and the addiction services provider;

65 (B) Submit to professional, comprehensive substance abuse
66 and mental health diagnostic assessments of persons under
67 consideration for selection as pilot program participants to
68 determine whether they would benefit from substance abuse
69 treatment and monitoring;

70 (C) Receive, based on the assessments described in
71 paragraph (B), the treatment needs of the participants served by
72 the treatment provider;

73 (D) Submit to the treatment provider, individualized goals
74 and objectives;

75 (E) Receive the non-narcotic, long-acting antagonist therapy
76 included in the pilot program's medication-assisted treatment;
77 and

78 (F) Participate in other types of therapies, including
79 psychosocial therapies, for both substance abuse and any
80 disorders that are considered by the treatment provider to be
81 co-occurring disorders.

§62-15A-3. Report.

- 1 (a) The department shall prepare a report.
- 2 (b) The report shall include:
 - 3 (1) Number of participants;
 - 4 (2) Number of participants successfully completing the
5 program;
 - 6 (3) Offenses committed or offense convicted of;
 - 7 (4) Recidivism Rate;
 - 8 (5) Potential cost saving or expenditures;
 - 9 (6) A statistical analysis which determines the effectiveness
10 of the program; and
 - 11 (7) Any other information the reporting entity finds
12 pertinent.
- 13 (b) The Court and the division should provide any
14 information necessary to the department to complete the report.
- 15 (c) The department shall submit the report to:
 - 16 (1) The Governor;
 - 17 (2) The Chief Justice of the Supreme Court of Appeals of
18 West Virginia;
 - 19 (3) The Joint Committee on Government and Finance; and
 - 20 (4) The Commissioner of the Division of Corrections.
- 21 (d) The report shall be submitted by July 1, 2017 and shall
22 include twelve months of data from the beginning of the
23 administration of the program.

CHAPTER 225

**(H. B. 2535 - By Delegate(s) Longstreth, Ferro,
Caputo, Rowan, O’Neal, Ashley, Hamrick, L. Phillips,
Fleischauer, Skinner and P. Smith)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40; to amend said code by adding thereto a new section, designated §18B-1B-7; and to amend said code by adding thereto a new article, designated §27-6-1, all relating to creating “Jamie’s Law”; requiring a public middle and high school administrator to disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students; requiring each public and private institution of higher education to develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus; requiring each public and private institution of higher education to provide all incoming students with information about depression and suicide prevention resources available to students; requiring the posting of certain information on the website of the public and private institutions of higher education, the Higher Education Policy Commission, and the Council for Community and Technical College Education; and requiring the Bureau for Behavioral Health and Health Facilities to post on its website suicide prevention awareness information.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-40; that said code be amended by adding thereto a new section, designated §18B-1B-7; that

said code be amended by adding thereto a new article, designated §27-6-1; all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40. Suicide prevention awareness training; dissemination of information.

1 (a) This section, section seven, article one-b, chapter
2 eighteen-b of this code and section one, article six, chapter
3 twenty-seven of this code shall be known as “Jamie’s Law”.

4 (b) On or before September 1, 2015 and each year thereafter,
5 a public middle and high school administrator shall disseminate
6 and provide opportunities to discuss suicide prevention
7 awareness information to all middle and high school students.
8 The information may be obtained from the Bureau for
9 Behavioral Health and Health Facilities or from a commercially
10 developed suicide prevention training program approved by the
11 State Board of Education in consultation with the bureau to
12 assure the accuracy and appropriateness of the information.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-7. Student mental health policies; suicide prevention.

1 (a) Each public and private institution of higher education
2 shall develop and implement a policy to advise students and staff
3 on suicide prevention programs available on and off campus that
4 includes, but is not limited to:

5 (1) Crisis intervention access, which includes information
6 for national, state and local suicide prevention hotlines;

7 (2) Mental health program access, which provides
8 information on the availability of local mental health clinics,
9 student health services and counseling services;

10 (3) Multimedia application access, which includes crisis
11 hotline contact information, suicide warning signs, resources
12 offered and free-of-cost applications;

13 (4) Student communication plans, which consist of creating
14 outreach plans regarding educational and outreach activities on
15 suicide prevention; and

16 (5) Post intervention plans which include creating a strategic
17 plan to communicate effectively with students, staff and parents
18 after the loss of a student to suicide.

19 (b) Each public and private institution of higher education
20 shall provide all incoming students with information about
21 depression and suicide prevention resources available to
22 students. The information provided to students shall include
23 available mental health services and other support services,
24 including student-run organizations for individuals at risk of or
25 affected by suicide.

26 (c) The information prescribed by subsection (a),
27 subdivisions (1) through (4) of this section shall be posted on the
28 website of each institution of higher education in this state.

29 (d) Any applicable free-of-cost prevention materials or
30 programs shall be posted on the websites of the public and
31 private institutions of higher education, the Higher Education
32 Policy Commission, and the West Virginia Council for
33 Community and Technical College Education.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 6. SUICIDE PREVENTION AND AWARENESS.

§27-6-1. Dissemination of information.

1 (a) The Bureau for Behavioral Health and Health Facilities
2 shall, on or before August 1, 2015, post on its website suicide
3 prevention awareness information, to include recognizing the
4 warning signs of a suicide crisis. The website shall include
5 information related to suicide prevention training opportunities
6 offered by the bureau or an agency recognized by the bureau as
7 a training provider.

8 (b) The bureau may assist the public middle and high school
9 administrators in providing suicide prevention information to
10 students in the public middle and high schools.

11 (c) The bureau shall annually review, for adequacy and
12 completeness, the materials or programs posted on the websites
13 of the institutions of higher education as required by section
14 seven, article one-b, chapter eighteen-b of this code.

CHAPTER 226

**(S. B. 502 - By Senators Sypolt, Ferns, Gaunch,
Kirkendoll, Leonhardt, Plymale, Prezioso and Stollings)**

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

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which

otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article, but before a permit has been
3 issued, each operator shall furnish a penal bond, on a form to be
4 prescribed and furnished by the secretary, payable to the state of
5 West Virginia and conditioned upon the operator faithfully
6 performing all of the requirements of this article and of the
7 permit. The penal amount of the bond shall be not less than
8 \$1,000 nor more than \$5,000 for each acre or fraction of an acre:
9 *Provided*, That the minimum amount of bond furnished for any
10 type of reclamation bonding shall be \$10,000. The bond shall
11 cover: (1) The entire permit area; or (2) that increment of land
12 within the permit area upon which the operator will initiate and
13 conduct surface mining and reclamation operations within the
14 initial term of the permit. If the operator chooses to use
15 incremental bonding, as succeeding increments of surface
16 mining and reclamation operations are to be initiated and
17 conducted within the permit area, the operator shall file with the
18 secretary an additional bond or bonds to cover the increments in
19 accordance with this section: *Provided, however*, That once the
20 operator has chosen to proceed with bonding either the entire

21 permit area or with incremental bonding, the operator shall
22 continue bonding in that manner for the term of the permit.

23 (b) The period of liability for bond coverage begins with
24 issuance of a permit and continues for the full term of the permit
25 plus any additional period necessary to achieve compliance with
26 the requirements in the reclamation plan of the permit.

27 (c) (1) The form of the bond shall be approved by the
28 secretary and may include, at the option of the operator, surety
29 bonding, collateral bonding (including cash and securities),
30 establishment of an escrow account, self bonding or a
31 combination of these methods. If collateral bonding is used, the
32 operator may elect to deposit cash or collateral securities or
33 certificates as follows: Bonds of the United States or its
34 possessions of the Federal Land Bank or of the Homeowners'
35 Loan Corporation; full faith and credit general obligation bonds
36 of the state of West Virginia or other states and of any county,
37 district or municipality of the state of West Virginia or other
38 states; or certificates of deposit in a bank in this state, which
39 certificates shall be in favor of the department. The cash deposit
40 or market value of the securities or certificates shall be equal to
41 or greater than the penal sum of the bond. The secretary shall,
42 upon receipt of any deposit of cash, securities or certificates,
43 promptly place the same with the Treasurer of the state of West
44 Virginia whose duty it is to receive and hold the deposit in the
45 name of the state in trust for the purpose for which the deposit is
46 made when the permit is issued. The operator making the deposit
47 is entitled, from time to time, to receive from the State Treasurer,
48 upon the written approval of the secretary, the whole or any
49 portion of any cash, securities or certificates so deposited, upon
50 depositing with him or her in lieu thereof cash or other securities
51 or certificates of the classes specified in this subsection having
52 value equal to or greater than the sum of the bond.

53 (2) The secretary may approve an alternative bonding system
54 if it will: (A) Reasonably assure that sufficient funds will be

55 available to complete the reclamation, restoration and abatement
56 provisions for all permit areas which may be in default at any
57 time; and (B) provide a substantial economic incentive for the
58 permittee to comply with all reclamation provisions.

59 (d) The secretary may accept the bond of the applicant itself
60 without separate surety when the applicant demonstrates to the
61 satisfaction of the secretary the existence of a suitable agent to
62 receive service of process and a history of financial solvency and
63 continuous operation sufficient for authorization to self insure.

64 (e) It is unlawful for the owner of surface or mineral rights
65 to interfere with the present operator in the discharge of the
66 operator's obligations to the state for the reclamation of lands
67 disturbed by the operator.

68 (f) All bond releases shall be accomplished in accordance
69 with the provisions of section twenty-three of this article.

70 (g) (1) The Special Reclamation Fund previously created is
71 continued. The Special Reclamation Water Trust Fund is created
72 within the state treasury into and from which moneys shall be
73 paid for the purpose of assuring a reliable source of capital to
74 reclaim and restore water treatment systems on forfeited sites.
75 The moneys accrued in both funds, any interest earned thereon
76 and yield from investments by the State Treasurer or West
77 Virginia Investment Management Board are reserved solely and
78 exclusively for the purposes set forth in this section and section
79 seventeen, article one of this chapter. The funds shall be
80 administered by the secretary who is authorized to expend the
81 moneys in both funds for the reclamation and rehabilitation of
82 lands which were subjected to permitted surface mining
83 operations and abandoned after August 3, 1977, where the
84 amount of the bond posted and forfeited on the land is less than
85 the actual cost of reclamation, and where the land is not eligible
86 for abandoned mine land reclamation funds under article two of

87 this chapter. The secretary shall develop a long-range planning
88 process for selection and prioritization of sites to be reclaimed
89 so as to avoid inordinate short-term obligations of the assets in
90 both funds of such magnitude that the solvency of either is
91 jeopardized. The secretary may use both funds for the purpose of
92 designing, constructing and maintaining water treatment systems
93 when they are required for a complete reclamation of the
94 affected lands described in this subsection. The secretary may
95 also expend an amount not to exceed ten percent of the total
96 annual assets in both funds to implement and administer the
97 provisions of this article and, as they apply to the Surface Mine
98 Board, articles one and four, chapter twenty-two-b of this code.

99 (2) (A) A tax credit shall be granted against the tax imposed
100 by subsection (i) of this section to any mine operator who
101 performs reclamation or remediation at a bond forfeiture site
102 which otherwise would have been reclaimed using funds from
103 the Special Reclamation Fund or Special Reclamation Water
104 Trust Fund The credit authorized pursuant to this subdivision is
105 retroactive and may be claimed for reclamation or remediation
106 performed on or after January 1, 2012: *Provided*, That for
107 reclamation or remediation performed prior to July 13, 2013, no
108 tax credit may be granted unless a written application for the tax
109 credit was submitted to the Tax Commissioner prior to
110 September 1, 2014. The amount of credit shall be determined as
111 provided in this section.

112 (B) The amount of a reclamation tax credit granted under
113 this subsection shall be equal to the amount that the Tax
114 Commissioner determines, based on the project costs, as shown
115 in the records of the secretary, that would have been spent from
116 the Special Reclamation Fund or Special Reclamation Water
117 Trust Fund to accomplish the reclamation or remediation
118 performed by the mine operator, including expenditures for
119 water treatment.

120 (C) To claim the credit, the mine operator shall, from time
121 to time, file with the Tax Commissioner a written application
122 seeking the amount of the credit earned. Within thirty days of
123 receipt of the application, the Tax Commissioner shall issue a
124 certification of the amount of tax credit, if any, to be allocated to
125 the eligible taxpayer. Should the amount of the credit certified be
126 less than the amount applied for, the Tax Commissioner shall set
127 forth in writing the reason for the difference. Should no
128 certification be issued within the thirty-day period, the
129 application will be deemed certified. Any decision by the Tax
130 Commissioner is appealable pursuant to the provisions of the
131 West Virginia Tax Procedure and Administration Act set forth
132 in article ten, chapter eleven of the code. Applications for
133 certification of the proposed tax credit shall contain the
134 information and be in the detail and form as required by the Tax
135 Commissioner.

136 (h) The Tax Commissioner may promulgate rules for
137 legislative approval pursuant to the provisions of article three,
138 chapter twenty-nine-a of this code to carry out the purposes of
139 this subdivision two, subsection (g) of this section.

140 (i) (1) *Rate, deposits and review.*

141 (A) For tax periods commencing on and after July 1, 2009,
142 every person conducting coal surface mining shall remit a
143 special reclamation tax of fourteen and four-tenths cents per ton
144 of clean coal mined, the proceeds of which shall be allocated by
145 the secretary for deposit in the Special Reclamation Fund and the
146 Special Reclamation Water Trust Fund.

147 (B) For tax periods commencing on and after July 1, 2012,
148 the rate of tax specified in paragraph (A) of this subdivision is
149 discontinued and is replaced by the rate of tax specified in this
150 paragraph. For tax periods commencing on and after July 1,
151 2012, every person conducting coal surface mining shall remit
152 a special reclamation tax of twenty-seven and nine-tenths cents

153 per ton of clean coal mined, the proceeds of which shall be
154 allocated by the secretary for deposit in the Special Reclamation
155 Fund and the Special Reclamation Water Trust Fund. Of that
156 amount, fifteen cents per ton of clean coal mined shall be
157 deposited into the Special Reclamation Water Trust Fund.

158 (C) The tax shall be levied upon each ton of clean coal
159 severed or clean coal obtained from refuse pile and slurry pond
160 recovery or clean coal from other mining methods extracting a
161 combination of coal and waste material as part of a fuel supply.

162 (D) Beginning with the tax period commencing on July 1,
163 2009, and every two years thereafter, the special reclamation tax
164 shall be reviewed by the Legislature to determine whether the
165 tax should be continued: *Provided*, That the tax may not be
166 reduced until the Special Reclamation Fund and Special
167 Reclamation Water Trust Fund have sufficient moneys to meet
168 the reclamation responsibilities of the state established in this
169 section.

170 (2) In managing the special reclamation program, the
171 secretary shall: (A) Pursue cost-effective alternative water
172 treatment strategies; and (B) conduct formal actuarial studies
173 every two years and conduct informal reviews annually on the
174 Special Reclamation Fund and Special Reclamation Water Trust
175 Fund.

176 (3) Prior to December 31, 2008, the secretary shall:

177 (A) Determine the feasibility of creating an alternate
178 program, on a voluntary basis, for financially sound operators by
179 which those operators pay an increased tax into the Special
180 Reclamation Fund in exchange for a maximum per-acre bond
181 that is less than the maximum established in subsection (a) of
182 this section;

183 (B) Determine the feasibility of creating an incremental
184 bonding program by which operators can post a reclamation

185 bond for those areas actually disturbed within a permit area, but
186 for less than all of the proposed disturbance and obtain
187 incremental release of portions of that bond as reclamation
188 advances so that the released bond can be applied to approved
189 future disturbance; and

190 (C) Determine the feasibility for sites requiring water
191 reclamation by creating a separate water reclamation security
192 account or bond for the costs so that the existing reclamation
193 bond in place may be released to the extent it exceeds the costs
194 of water reclamation.

195 (4) If the secretary determines that the alternative program,
196 the incremental bonding program or the water reclamation
197 account or bonding programs reasonably assure that sufficient
198 funds will be available to complete the reclamation of a forfeited
199 site and that the Special Reclamation Fund will remain fiscally
200 stable, the secretary is authorized to propose legislative rules in
201 accordance with article three, chapter twenty-nine-a of this code
202 to implement an alternate program, a water reclamation account
203 or bonding program or other funding mechanisms or a
204 combination thereof.

205 (j) This special reclamation tax shall be collected by the Tax
206 Commissioner in the same manner, at the same time and upon
207 the same tonnage as the minimum severance tax imposed by
208 article twelve-b, chapter eleven of this code is collected:
209 *Provided*, That under no circumstance shall the special
210 reclamation tax be construed to be an increase in either the
211 minimum severance tax imposed by said article or the severance
212 tax imposed by article thirteen of said chapter.

213 (k) Every person liable for payment of the special
214 reclamation tax shall pay the amount due without notice or
215 demand for payment.

216 (l) The Tax Commissioner shall provide to the secretary a
217 quarterly listing of all persons known to be delinquent in

218 payment of the special reclamation tax. The secretary may take
219 the delinquencies into account in making determinations on the
220 issuance, renewal or revision of any permit.

221 (m) The Tax Commissioner shall deposit the moneys
222 collected with the Treasurer of the state of West Virginia to the
223 credit of the Special Reclamation Fund and Special Reclamation
224 Water Trust Fund.

225 (n) At the beginning of each quarter, the secretary shall
226 advise the Tax Commissioner and the Governor of the assets,
227 excluding payments, expenditures and liabilities, in both funds.

228 (o) To the extent that this section modifies any powers,
229 duties, functions and responsibilities of the department that may
230 require approval of one or more federal agencies or officials in
231 order to avoid disruption of the federal-state relationship
232 involved in the implementation of the federal Surface Mining
233 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
234 modifications will become effective upon the approval of the
235 modifications by the appropriate federal agency or official.

CHAPTER 227

**(Com. Sub. for H. B. 2968 - By Mr. Speaker (Mr. Armstead),
Ashley, Bates, Perry, Kessinger, Hicks, Cooper, Shott,
McCuskey and Arvon)**

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

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia,
1931, as amended, relating to exempting from property tax certain
real properties in this state owned by nonprofit youth organizations

and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying how one and one quarter percent fee is administered, specifying how monies derived from one and one quarter percent fee are distributed; requiring reports; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

- 1 (a) All property, real and personal, described in this
2 subsection, and to the extent limited by this section, is exempt
3 from taxation:
 - 4 (1) Property belonging to the United States, other than
5 property permitted by the United States to be taxed under state
6 law;
 - 7 (2) Property belonging exclusively to the state;
 - 8 (3) Property belonging exclusively to any county, district,
9 city, village or town in this state and used for public purposes;
 - 10 (4) Property located in this state belonging to any city, town,
11 village, county or any other political subdivision of another state
12 and used for public purposes;
 - 13 (5) Property used exclusively for divine worship;
 - 14 (6) Parsonages and the household goods and furniture
15 pertaining thereto;

16 (7) Mortgages, bonds and other evidence of indebtedness in
17 the hands of bona fide owners and holders hereafter issued and
18 sold by churches and religious societies for the purposes of
19 securing money to be used in the erection of church buildings
20 used exclusively for divine worship or for the purpose of paying
21 indebtedness thereon;

22 (8) Cemeteries;

23 (9) Property belonging to, or held in trust for, colleges,
24 seminaries, academies and free schools, if used for educational,
25 literary or scientific purposes, including books, apparatus,
26 annuities and furniture;

27 (10) Property belonging to, or held in trust for, colleges or
28 universities located in West Virginia, or any public or private
29 nonprofit foundation or corporation which receives contributions
30 exclusively for such college or university, if the property or
31 dividends, interest, rents or royalties derived therefrom are used
32 or devoted to educational purposes of such college or university;

33 (11) Public and family libraries;

34 (12) Property used for charitable purposes and not held or
35 leased out for profit;

36 (13) Property used for the public purposes of distributing
37 electricity, water or natural gas or providing sewer service by a
38 duly chartered nonprofit corporation when such property is not
39 held, leased out or used for profit;

40 (14) Property used for area economic development purposes
41 by nonprofit corporations when the property is not leased out for
42 profit;

43 (15) All real estate not exceeding one acre in extent, and the
44 buildings on the real estate, used exclusively by any college or

45 university society as a literary hall, or as a dormitory or
46 clubroom, if not used with a view to profit, including, but not
47 limited to, property owned by a fraternity or sorority
48 organization affiliated with a university or college or property
49 owned by a nonprofit housing corporation or similar entity on
50 behalf of a fraternity or sorority organization affiliated with a
51 university or college, when the property is used as residential
52 accommodations or as a dormitory for members of the
53 organization;

54 (16) All property belonging to benevolent associations not
55 conducted for private profit;

56 (17) Property belonging to any public institution for the
57 education of the deaf, intellectually disabled or blind or any
58 hospital not held or leased out for profit;

59 (18) Houses of refuge and mental health facility or
60 orphanage;

61 (19) Homes for children or for the aged, friendless or infirm
62 not conducted for private profit;

63 (20) Fire engines and implements for extinguishing fires,
64 and property used exclusively for the safekeeping thereof, and
65 for the meeting of fire companies;

66 (21) All property on hand to be used in the subsistence of
67 livestock on hand at the commencement of the assessment year;

68 (22) Household goods to the value of \$200, whether or not
69 held or used for profit;

70 (23) Bank deposits and money;

71 (24) Household goods, which for purposes of this section
72 means only personal property and household goods commonly

73 found within the house and items used to care for the house and
74 its surrounding property, when not held or used for profit;

75 (25) Personal effects, which for purposes of this section
76 means only articles and items of personal property commonly
77 worn on or about the human body or carried by a person and
78 normally thought to be associated with the person when not held
79 or used for profit;

80 (26) Dead victuals laid away for family use;

81 (27) All property belonging to the state, any county, district,
82 city, village, town or other political subdivision or any state
83 college or university which is subject to a lease purchase
84 agreement and which provides that, during the term of the lease
85 purchase agreement, title to the leased property rests in the
86 lessee so long as lessee is not in default or shall not have
87 terminated the lease as to the property;

88 (28) Personal property, including vehicles that qualify for a
89 farm use exemption certificate pursuant to section two, article
90 three, chapter seventeen-a of this code and livestock, employed
91 exclusively in agriculture, as defined in article ten, section one
92 of the West Virginia Constitution: *Provided*, That this exemption
93 only applies in the case of such personal property used on a farm
94 or farming operation that annually produces for sale agricultural
95 products, as defined in rules of the Tax Commissioner;

96 (29) Real property owned by a nonprofit organization whose
97 primary purpose is youth development by means of adventure,
98 educational or recreational activities for young people, which
99 real property contains a facility built with the expenditure of not
100 less than \$100 million that is capable of supporting additional
101 activities within the region or the state and which is leased or
102 used to generate revenue for the nonprofit organization whether
103 or not the property is used by the nonprofit organization for its

104 nonprofit purpose, subject to the requirements, limitations and
105 conditions set forth in subsection (h) of this section; and

106 (30) Any other property or security exempted by any other
107 provision of law.

108 (b) Notwithstanding the provisions of subsection (a) of this
109 section, no property is exempt from taxation which has been
110 purchased or procured for the purpose of evading taxation
111 whether temporarily holding the same over the first day of the
112 assessment year or otherwise.

113 (c) Real property which is exempt from taxation by
114 subsection (a) of this section shall be entered upon the assessor's
115 books, together with the true and actual value thereof, but no
116 taxes may be levied upon the property or extended upon the
117 assessor's books.

118 (d) Notwithstanding any other provisions of this section, this
119 section does not exempt from taxation any property owned by,
120 or held in trust for, educational, literary, scientific, religious or
121 other charitable corporations or organizations, including any
122 public or private nonprofit foundation or corporation existing for
123 the support of any college or university located in West Virginia,
124 unless such property, or the dividends, interest, rents or royalties
125 derived therefrom, is used primarily and immediately for the
126 purposes of the corporations or organizations.

127 (e) The Tax Commissioner shall, by issuance of rules,
128 provide each assessor with guidelines to ensure uniform
129 assessment practices statewide to effect the intent of this section.

130 (f) Inasmuch as there is litigation pending regarding
131 application of this section to property held by fraternities and
132 sororities, amendments to this section enacted in the year 1998
133 shall apply to all cases and controversies pending on the date of
134 such enactment.

135 (g) The amendment to subdivision (27), subsection (a) of
136 this section, passed during the 2005 regular session of the
137 Legislature, shall apply to all applicable lease purchase
138 agreements in existence upon the effective date of the
139 amendment.

140 (h) Nonprofit youth organization exemption - Limitations,
141 Conditions, Collection and administration of one and one quarter
142 percent fee, limitations and distribution of monies.

143 (1) The exemption from ad valorem taxation provided
144 pursuant to the provisions of subdivision (29), subsection (a) of
145 this section does not apply to a property owned by a nonprofit
146 organization otherwise qualifying for the exemption but which
147 property or facilities are used for-profit or outside the primary
148 purpose of the owner which result in unrelated business taxable
149 income as defined by Section 512 of the Internal Revenue Code
150 of 1986, as amended, unless the income is generated by an
151 activity upon which the one and one quarter percent fee
152 authorized by subdivision (2) of this section is applied as
153 provided in subdivision (3) of this subsection.

154 (2) The owner of real property exempt from ad valorem
155 taxation under subdivision (29), subsection (a) of this section
156 shall pay an amount equal to one and one quarter percent of the
157 gross revenues the owner receives in accordance with this
158 subsection. For purposes of this subsection, "gross revenues"
159 means the gross amount received by the owner as payment for
160 use of the property or the facilities thereon.

161 (3) Gross revenues derived from the following facilities,
162 uses, activities and operations are subject to a fee of one and one
163 quarter percent of such gross revenues:

164 (A) Gross revenues derived from the use of lodging and
165 campground facilities by persons participating in meetings and
166 multiday spectator sports or multiday recreational, celebratory

167 or ceremonial events held on-site where on-site lodging or
168 camping is offered as part of the program. For purposes of this
169 section the term “meeting” means, and is limited to, a gathering,
170 assembly or conference of two or more persons who have
171 deliberately convened at a single specific location at a single
172 specified time and date for a common specific purpose.

173 (B) Gross revenues derived from any retail store located at
174 the facility that is open only to those persons who are attending
175 meetings, spectator sports, recreational, celebratory or ceremo-
176 nial events held on-site at the facility.

177 (C) Gross revenues derived from operations of gift shops at
178 a welcome or information center located adjacent to a public
179 highway operated by the nonprofit organization which is open to
180 the general public.

181 (D) Gross revenues derived from the leasing of zip-lines,
182 canopy tours, wheeled sports and climbing facilities used by the
183 general public on a for-profit basis (i) Under a written agreement
184 with a licensed commercial outfitter operating a business
185 utilizing zip-lines, canopy tours, wheeled sports or climbing
186 areas of a similar nature in the same or an adjacent county where
187 the facilities are located; and (ii) When the property or facilities
188 are used as part of a training or advanced experience offered by
189 the licensed commercial outfitter.

190 (E) Gross revenues derived from the use or operation of zip-
191 lines, canopy tours, wheeled sports facilities or activities,
192 climbing facilities or activities and the use or operation of other
193 sporting facilities on the exempt property that are leased on a
194 for-profit basis for spectator events, such as concerts, spectator
195 sporting events or exhibitions or similar mass gathering events.

196 (F) Gross revenues derived from leases or agreements for
197 use of the property for meetings and mulitday spectator sports or

198 events or multiday recreational, celebratory or ceremonial
199 events, held on site.

200 (4) Notwithstanding any other provision of this section to the
201 contrary, programs or activities occurring on the property or its
202 facilities held in conjunction with a government organization or
203 sponsored by other nonprofit organizations serving youth,
204 veterans, military services, public service agencies including,
205 fire, police, emergency and search and rescue services,
206 government agencies, schools and universities, health care
207 providers and similar organizations or groups which are
208 designed to provide opportunities for learning or training in the
209 areas of leadership, character education, science, technology,
210 engineering, arts and mathematics (STEAM) programs, physical
211 challenges, sustainability, conservation and outdoor learning
212 shall be considered a charitable or nonprofit use for the purposes
213 of this section and not subject to the one and one quarter percent
214 fee.

215 (5) Notwithstanding any other provision of this section to the
216 contrary, activities open to the public through individual visitor
217 passes allowing tours and access to the property and its facilities
218 for the purpose of viewing or participating in demonstrations,
219 programs and facilities providing information and experiences
220 consistent with the owner's nonprofit purposes where zip-lines,
221 canopy tours, wheeled sports or climbing facilities are merely
222 components of the demonstrations, programs and facilities used
223 shall be considered a charitable or nonprofit use for the purposes
224 of this section and not subject to the one and one quarter percent
225 fee: *Provided*, That such individual visitor passes may not
226 include the rental or use of on-site overnight lodging or camping
227 facilities.

228 (6) Administration –

229 (A) The sheriff of the county wherein the majority of the
230 acreage of the property is located as specified in the deed to such

231 property, shall collect, on a monthly basis, all monies derived
232 from the fee of one and one quarter percent of the gross revenues
233 imposed under this subsection.

234 (B) The sheriff of the county wherein the majority of the
235 acreage of the property is located as specified in the deed to such
236 property, shall prescribe such forms and schedules as may be
237 necessary for the efficient, accurate, and expeditious payment
238 and reporting of the one and one quarter percent fee specified in
239 this subsection on gross revenues.

240 (C) The sheriff of the county wherein the majority of the
241 acreage of the property is located as specified in the deed to such
242 property, shall administer the fee imposed under this subsection,
243 including refunds and adjustments.

244 (D) Payment, administration and compliance of fee payers
245 and administrators shall be subject to audit by the Office of
246 Chief Inspector.

247 (E) All monies so collected, net of refunds and adjustments,
248 shall be paid into a special account in the State Treasury, which
249 is hereby created, and the amount thereof shall be distributed and
250 paid annually, by the State Treasurer, on October 1 of each year,
251 into the funds and to the distributees specified in subdivision (7)
252 of this subsection in the amounts specified therein.

253 (7) Distribution –

254 (A) Twenty-five percent of monies so collected, net of
255 refunds and adjustments, shall be paid annually to the Tourism
256 Promotion Fund established pursuant to section twelve, article
257 two, chapter five-b of this code.

258 (B) Twenty-five percent of monies so collected, net of
259 refunds and adjustments, shall be paid annually to the sheriff of
260 the county where the property is located which, but for the

261 exemption provided in subdivision (29), subsection (a) of this
262 section, would be entitled to receive ad valorem taxes on the
263 property. The sheriff shall treat all such payments in the same
264 manner as payments in lieu of taxes, and such payments are
265 subject to the adjustment mandated under section twelve, article
266 nine-a, chapter eighteen of this code. For properties located in
267 more than one county, the amount paid to the sheriff of the
268 county shall be in proportion to the total number of acres located
269 in each county at the close of the fiscal year, as specified in the
270 deed to such property.

271 (C) Fifty percent of monies so collected, net of refunds and
272 adjustments, shall be divided equally and paid annually into
273 separate accounts established and maintained by the sheriffs of
274 the county or counties wherein the property is located and the
275 sheriffs of any other county that is within the jurisdiction of the
276 same economic development authority as the county or counties
277 wherein the property is located to be used solely for the
278 establishment and delivery of a science, technology, engineering,
279 art and math (STEAM) program in conjunction with the owner
280 of the exempt property. The funds shall be divided equally for
281 use in each county and the programs must be approved by the
282 respective county superintendents of schools. Expenditures from
283 the accounts shall be authorized by the county superintendent of
284 schools.

285 (8) If lodging is furnished as part of a retreat, meeting, or
286 multiday spectator sport or event being held on-site wherein on-
287 site lodging or camping is offered as part of the program, any
288 applicable hotel occupancy tax and state and local consumers
289 sales and service tax and use tax shall be paid based upon the
290 actual location of such lodging.

291 (9) If merchants are allowed to do business on the property,
292 the owner or lessee of the property shall offer space to local
293 merchants on terms at least as favorable as are offered to other
294 merchants.

295 (10) For the purposes of this subsection, owner includes the
296 owner holding record title to the property and its affiliates to the
297 extent they are commonly owned, controlled or have the power
298 to appoint the governing body of the affiliate.

299 (11) The Tourism Commission shall include in its annual
300 report submitted to the Governor and the Legislature a summary
301 of funds paid into the Tourism Promotion Fund and recommen-
302 dations pertaining to the administration of this section.

303 (12) This subsection may not be construed to prohibit the
304 owner of property otherwise subject to this section from having
305 portions of the property severed from the remainder of the
306 property, assessed and taxed as if nonexempt and thereafter
307 conducting business on such property the same as any other
308 nonexempt property: *Provided*, That the area of property to be
309 severed shall be approved by the county commission wherein the
310 property lies so as to include in the severance all property
311 substantially supporting the for profit or business activity giving
312 rise to the specific purpose of the severance and excluding all
313 property entitled to the continued benefits of this Act.

314 (i) To assure the implementation of subsection (h) of this
315 section does not harm local and regionally located businesses by
316 use of the tax exempt facility in a manner that cause unfair
317 competition and unreasonable loss of revenue to those
318 businesses, studies shall be periodically conducted to assure that
319 further legislation is in order regarding the uses of the tax
320 exempt facility. The County commission of any county where
321 such a property is located shall report to the Joint Committee on
322 Government and Finance by the first day of January every five
323 years after the effective date of this section. The report shall
324 include information on any unfair business competition resulting
325 from the establishment of the non-profit status, and include a
326 report of the costs and benefits to its county of the tax exemption
327 and associated fee, including an audit of that county's use of the

328 net revenues. The West Virginia University Bureau of Business
329 and Economic Research in coordination of the Center for
330 Business and Economic Research at Marshall University, by
331 January 1, two thousand twenty, shall undertake a study and
332 report to the Committee, the economic impact of this tax
333 exemption and fee to the county and that region of the state, and
334 make any recommendations regarding the benefits and
335 disadvantages for continuing the provision of this tax exemption
336 and fee, included, but not limited to, the impacts to other small
337 and large businesses in the county, the costs to the county has
338 incurred as a result of use of the facility, and any other relevant
339 data that the universities may deem relevant.

CHAPTER 228

**(H. B. 2877 - By Delegate(s) Miller, Williams,
Faircloth, Rowe, Hill, Stansbury, Espinosa and Westfall)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-7 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to \$25,000 the tax liability threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Be it enacted by the Legislature of West Virginia:

That §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13V-7 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION
ACT.**

§11-10-5t. Payment by electronic fund transfers.

1 (a) The term “electronic funds transfer” means and includes
2 automated clearinghouse debit, automated clearinghouse credit,
3 wire transfer and any other means recognized by the Tax
4 Commissioner for payment of taxes.

5 (b) The Tax Commissioner may prescribe by emergency
6 rules, administrative notices, forms and instructions, and the
7 procedures and criteria to be followed by certain taxpayers in
8 order to pay taxes by electronic funds transfer methods.

9 (c) The rules shall set forth the following:

10 (1) Acceptable indicia of timely payment;

11 (2) Which type of electronic filing method or methods a
12 particular type of taxpayer may or may not use;

13 (3) Which types of taxes to which electronic filing
14 requirements apply for any given tax year and implementation
15 dates: *Provided*, That the type of tax to which electronic funds
16 transfer requirements apply during the first tax year is personal
17 income tax withholding by employers;

18 (4) The dollar amount of tax liability per year which, when
19 exceeded, requires or permits electronic funds transfer. Unless
20 and until a legislative rule is promulgated or this section is
21 amended, no person may be required to pay any tax by electronic
22 funds transfer if the amount owed for the tax during the
23 preceding year was less than \$120,000: *Provided*, That for tax
24 years beginning on or after January 1, 2016, no person may be
25 required to pay any tax by electronic funds transfer if the amount
26 owed for the tax during the preceding tax year was less than
27 \$25,000;

28 (5) What, if any, exceptions are allowable, and alternative
29 methods of payment to be used for any exceptions;

30 (6) Procedures for making voluntary electronic funds
31 transfer payments;

32 (7) Any provisions needed to implement the civil penalty
33 created by this section; and

34 (8) Any other provisions necessary to ensure the timely
35 implementation of electronic funds transfer payments.

36 (d) In addition to any other additions and penalties which
37 may be applicable, there is a civil penalty for failing or refusing
38 to use an appropriate electronic funds transfer method when
39 required to do so. The amount of this penalty is three percent of
40 the total tax liability which is or was to be paid by electronic
41 funds transfer for any tax for which electronic funds transfer
42 methods are required to be used by the taxpayer.

43 (e) The provisions of this section are not intended to affect
44 the provisions of other sections of this chapter concerning filing
45 of returns or any other provisions which are not in direct conflict
46 with this section.

47 (f) The State Treasurer shall adopt any procedures or rules
48 necessary or convenient for implementing electronic funds
49 transfers of tax payments authorized by this section and rules
50 adopted by the Tax Commissioner. The treasurer shall draft any
51 procedures and rules adopted in consultation with the Tax
52 Commissioner and the procedures and rules may not conflict
53 with this section or rules adopted by the Tax Commissioner.

54 (g) The provisions of this section become effective on or
55 after January 1, 1998.

§11-10-5z. Electronic filing for certain persons.

1 (a) (1) For tax years beginning on or after January 1, 2009,
2 any person required to file a return for a tax administered under
3 the provisions of this article and who had total annual remittance
4 for any single tax equal to or greater than \$100,000 during the
5 immediately preceding taxable year shall file electronically all
6 returns for all taxes administered under this article.

7 (2) For tax years beginning on or after January 1, 2011, any
8 person required to file a return for a tax administered under the
9 provisions of this article and who had total annual remittance for
10 any single tax equal to or greater than \$10,000 during the
11 immediately preceding tax year shall file electronically all
12 returns for all taxes administered under this article.

13 (3) For tax years beginning on or after January 1, 2015:

14 (i) For returns that are required to be filed prior to January
15 1, 2016, any person required to file a return for a tax
16 administered under the provisions of this article and who had
17 total annual remittance for any single tax equal to or greater than
18 \$10,000 during the immediately preceding tax year shall file
19 electronically all such returns for all taxes administered under
20 this article.

21 (ii) For returns that are required to be filed on or after
22 January 1, 2016, any person required to file a return for a tax
23 administered under the provisions of this article and who had
24 total annual remittance for any single tax equal to or greater than
25 \$25,000 during the immediately preceding tax year shall file
26 electronically all returns for all taxes administered under this
27 article.

28 (b) The Tax Commissioner shall implement the provisions
29 of this section using any combination of notices, forms,
30 instructions and rules that he or she determines necessary. All

31 rules shall be promulgated pursuant to article three, chapter
32 twenty-nine-a of this code.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUC- TION ACT.

§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.

1 (a) *General rule.* — Except as provided in subsection (b) of
2 this section, taxes levied by this article are due and payable in
3 periodic installments as follows:

4 (1) *Tax of \$50 or less per month.* — If a person's aggregate
5 annual tax liability under this article and article thirteen-a of this
6 chapter is reasonably expected to be \$50 or less per month, no
7 installment payments of tax are required under this section
8 during that taxable year.

9 (2) *Tax of more than \$1,000 per month.* — For taxpayers
10 whose aggregate estimated tax liability under this article and
11 article thirteen-a of this chapter exceeds \$1,000 per month, the
12 tax is due and payable in monthly installments on or before the
13 last day of the month following the month in which the tax
14 accrued: *Provided,* That the installment payment otherwise due
15 under this subdivision on or before June 30 each year shall be
16 remitted to the Tax Commissioner on or before June 15 each
17 year. When this subdivision applies, the taxpayer shall, on or
18 before the due date specified in this subdivision, make out an
19 estimate of the tax for which the taxpayer is liable for the
20 preceding month, sign the estimate and mail it together with a
21 remittance, in the form prescribed by the Tax Commissioner, of
22 the amount of tax due to the office of the Tax Commissioner:
23 *Provided, however,* That the installment payment otherwise due
24 under this paragraph on or before June 30 each year shall be
25 remitted to the Tax Commissioner on or before June 15.

26 (3) *Tax of \$1,000 per month or less.* — For taxpayers whose
27 estimated tax liability under this article is \$1,000 per month or
28 less, the tax is due and payable in quarterly installments on or
29 before the last day of the month following the quarter in which
30 the tax accrued. When this subdivision applies, the taxpayer
31 shall, on or before the last day of the fourth, seventh and tenth
32 months of the taxable year, make out an estimate of the tax for
33 which the taxpayer is liable for the preceding quarter, sign the
34 same and mail it together with a remittance, in the form
35 prescribed by the Tax Commissioner, of the amount of tax due
36 to the office of the Tax Commissioner.

37 (b) *Exception.* — Notwithstanding the provisions of
38 subsection (a) of this section, the Tax Commissioner, if he or she
39 considers it necessary to ensure payment of the tax, may require
40 the return and payment under this section for periods of shorter
41 duration than those prescribed in subsection (a) of this section.

42 (c) *Remittance by electronic funds transfer.* — When the
43 taxpayer's annual aggregate liability for tax under this article
44 and article thirteen-a of this chapter exceeds \$50,000 for the
45 prior tax year, payments of estimated tax required by this article
46 and article thirteen-a during the then current tax year shall be by
47 electronic funds transfer, in accordance with rules of the Tax
48 Commissioner and rules of the State Treasurer, except as
49 otherwise permitted by the Tax Commissioner: *Provided*, That
50 for tax years beginning on or after January 1, 2016, when the
51 taxpayer's annual aggregate liability for tax under this article
52 and article thirteen-a of this chapter exceeds \$25,000 for the
53 prior tax year, payments of estimated tax required by this article
54 and article thirteen-a during the then current tax year shall be by
55 electronic funds transfer, in accordance with rules of the Tax
56 Commissioner and rules of the State Treasurer, except as
57 otherwise permitted by the Tax Commissioner.

CHAPTER 229

(Com. Sub. for H. B. 3006 - By Delegate(s) E. Nelson,
Ashley, Anderson, Boggs, Williams, H. White, Storch,
Gearheart, Bates, Espinosa and O'Neal)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §11-10-17a of the Code of West Virginia, 1931, as amended, relating to the determination of the adjusted rate of interest by the Tax Commissioner for the administration of tax deficiencies and overpayments for tax years beginning after December 31, 2016.

Be it enacted by the Legislature of West Virginia:

That §11-10-17a of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-17a. Determination of rate of interest.

- 1 (a) *In general.* — The annual rate of interest established
- 2 under this section shall be such adjusted rate as is established by
- 3 the Tax Commissioner under subsections (b) and (c): *Provided,*
- 4 That for taxable years beginning prior to January 1, 2017, such
- 5 annual rate shall not be less than eight percent per annum.

- 6 (b) *Adjustments of interest rate prior to January 1, 2017.*

- 7 (1) *Establishment of adjusted rate.* — If the adjusted prime
- 8 rate charged by banks (rounded to the nearest full percent):

9 (A) During the six-month period ending on September 30, of
10 any calendar year; or

11 (B) During the six-month period ending on the thirty-first
12 day of March of any calendar year, differs from the interest rate
13 in effect under this section on either such date, respectively, then
14 the Tax Commissioner shall establish, within fifteen days after
15 the close of the applicable six-month period, an adjusted rate of
16 interest equal to such adjusted prime rate.

17 (2) *Effective date of adjustment.* — Any such adjusted rate
18 of interest established under paragraph (1) shall become
19 effective:

20 (A) On January 1, of the succeeding year in the case of an
21 adjustment attributable to paragraph (1)(A) above; and on

22 (B) The first day of July of the same year in the case of an
23 adjustment attributable to paragraph (1)(B).

24 (c) *Adjustment of interest rate after December 31, 2016.* —
25 Each year, the Tax Commissioner shall fix the adjusted rate to
26 equal the adjusted prime rate charged by banks (rounded to the
27 nearest hundredth of a percent) plus three percentage points per
28 annum as of the first business day of December, for which an
29 adjusted prime rate is determined, in the preceding year and it
30 shall be effective January 1.

31 (d) *Definition of “adjusted prime rate.”* — For purposes of
32 subsections (b) and (c), the term “adjusted prime rate charged by
33 banks” means the average predominant prime rate quoted by
34 commercial banks to large businesses, as determined by the
35 board of Governors of the Federal Reserve System.

36 (e) *Application of change in interest rate.*

37 (1) *To deficiencies.* — The interest rate in effect at the time
38 of assessment or when the payment of delinquent tax is made

39 shall not be applied retroactively to the date the tax was due.
40 Interest on moneys owed by the taxpayer shall be the sum of the
41 interest amounts calculated for each year or part thereof from the
42 date prescribed for payment (determined without regard to any
43 extensions) to the date the payment is made using the interest
44 rate in effect for each respective year or part thereof.

45 (2) *To overpayments.* — The interest rate in effect at the
46 time an overpayment of tax is refunded, or a credit therefor is
47 established, by the Tax Commissioner, shall not be applied
48 retroactively to the date the claim for refund or credit was filed
49 with the Tax Commissioner. Interest on moneys owed to
50 taxpayers shall be the sum of the interest amounts calculated for
51 each year or part thereof from date the claim for refund or credit
52 was filed with the Tax Commissioner until date the refund is
53 paid or credit therefor is established (such dates determined as
54 provided in section seventeen) using the interest rate in effect for
55 each respective year or part thereof.

CHAPTER 230

(S. B. 332 - By Senator M. Hall)

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-27, relating to administrative fees for the Tax Division of the Department of Revenue; specifying imposition and retention of fees by the Tax Division of the Department of Revenue from specified taxes and fees and from any interest, additions to tax and penalties related thereto; specifying imposition and retention of fees in payment for

Tax Division services in the collection, distribution and administration of taxes for state and local departments, divisions, subdivisions and agencies; authorizing reimbursements to the Tax Division for transaction fees imposed by the Enterprise Resource Planning System; authorizing fee increases by legislative rule; specifying limitations; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-27, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-27. Administrative fees.

1 (a) Administrative fee for the collection of money for other
2 state departments, divisions, agencies and institutions.

3 The Tax Commissioner may retain one percent of the taxes
4 and fees, including one percent of any interest, additions to tax
5 and penalties related thereto, collected by the Tax Division of the
6 Department of Revenue that are to be deposited into any of the
7 following special revenue funds: The Special Reclamation Fund,
8 the Special Reclamation Water Trust Fund, the Mining and
9 Reclamation Operations Fund, the Solid Waste Reclamation and
10 Environmental Response Fund, the Solid Waste Enforcement
11 Fund, the Solid Waste Management Board Reserve Fund, the
12 Recycling Assistance Fund, the Closure Cost Assistance Fund,
13 the Solid Waste Planning Fund, the Hazardous Waste
14 Emergency Response Fund, the Law-Enforcement Fund, the Gas
15 Field Highway Repair and Horizontal Drilling Waste Study
16 Fund, the Waste Coal-Producing Counties Fund, the Coalbed
17 Methane Gas Distribution Fund, the Eligible Acute Care
18 Provider Enhancement Account, the West Virginia Affordable
19 Housing Trust Fund, the special revenue account in the State

20 Treasury to be appropriated by the Legislature for the purposes
21 of the Division of Forestry and the special medical school fund
22 in the State Treasury to be used solely for the construction,
23 maintenance and operation of a four-year school of medicine,
24 dentistry and nursing. For all taxes collected by the Tax Division
25 of the Department of Revenue that are to be deposited into any
26 other special revenue funds, the Tax Commissioner may retain,
27 as an administrative fee, one percent of the taxes and fees,
28 including one percent of any interest, additions to tax and
29 penalties related thereto: *Provided*, That the Legislature has not
30 expressly and specifically authorized a fee in a provision of this
31 code other than this section, to be collected by, retained by or
32 dedicated to, the Tax Commissioner for the collection,
33 distribution or administration of a specified tax or fee. The
34 amount retained by the Tax Commissioner is a fee for the
35 services provided by the Tax Division in the administration,
36 distribution or collection, or any combination thereof, of those
37 taxes and fees.

38 (b) Administrative fee for the collection, administration and
39 distribution of money for local or municipal government, any
40 other governmental subdivision or other public entity or public
41 corporation, where a fee is not otherwise provided for elsewhere
42 in this code.

43 For all taxes or fees collected by the Tax Division of the
44 Department of Revenue on behalf of any local, county or
45 municipal government, or any other governmental subdivision
46 or public entity or public corporation, including, but not limited
47 to, sanitary districts, water districts and solid waste authorities,
48 the Tax Commissioner may retain, as an administrative fee, one
49 percent of the taxes and fees, including one percent of any
50 interest, additions to tax and penalties related thereto: *Provided*,
51 That the Legislature has not expressly and specifically
52 authorized a fee in a provision of this code other than this
53 section, to be collected by, retained by or dedicated to, the Tax

54 Commissioner for the collection, distribution or administration
55 of a specified tax or fee. For purposes of this section the term
56 “taxes and fees” includes any interest, additions to tax and
57 penalties relating to any taxes or fees.

58 (c) Transaction fees imposed by the Enterprise Resource
59 Planning System may be recovered by the Tax Division of the
60 Department of Revenue.

61 If the Tax Division of the Department of Revenue incurs a
62 fee imposed by the Enterprise Resource Planning System, which
63 is developed, implemented and managed by the West Virginia
64 Enterprise Resource Planning Board under article six-d, chapter
65 twelve of this code, relating to a transaction of any entity or
66 person with the Tax Division of the Department of Revenue,
67 then the Tax Commissioner may charge that entity or person a
68 fee in the amount that the Tax Division of the Department of
69 Revenue incurred or will incur relating to that transaction.

70 (d) Fees collected under this section shall be retained in a
71 revolving fund for the use of the Tax Division of the Department
72 of Revenue.

73 Any fees collected or retained under subsections (a), (b) and
74 (c) of this section shall be held in a revolving fund for the use of
75 the Tax Division of the Department of Revenue for general tax
76 administration, which fund is hereby created in the State
77 Treasury and designated the “Tax Administration Services
78 Fund”. Expenditures from the fund are authorized from
79 collections. Moneys remaining in such fund on the last day of
80 the fiscal year in excess of \$3 million shall be transferred to the
81 General Revenue Fund. The amount remaining in the fund after
82 such transfer, if any, is retained for use by the Tax Division of
83 the Department of Revenue.

84 (e) *Fee increases.* – Any state agency may increase any
85 administrative fee that the agency is authorized to impose by

86 West Virginia statute or West Virginia rule by proposing a
87 legislative rule, for legislative approval, in accordance with the
88 provisions of article three, chapter twenty-nine-a of this code,
89 imposing the increase: *Provided*, That no such increase shall be
90 made within three years of the initial imposition of the fee or
91 within three years of the most recent revision of a statute or rule
92 that increases or decreases the fee.

93 (f) *Effective date.* – The provisions of this section become
94 effective January 1, 2016.

CHAPTER 231

(S. B. 310 - By Senators Sypolt, Williams and Nohe)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §11-13-3 of the Code of West Virginia, 1931, as amended, relating to exempting nonprofit public utility companies from the West Virginia Business and Occupation Tax.

Be it enacted by the Legislature of West Virginia:

That §11-13-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3. Exemptions; annual exemption and periods thereof.

1 (a) *Monthly exemption.* -- For any tax imposed under the
2 provisions of this article with respect to any period beginning on
3 or after July 1, 1985, there is an exemption in every case of
4 \$41.67 per month in amount of tax computed under the

5 provisions of this article. Only one exemption is allowed to any
6 one person, whether the person exercises one or more privileges
7 taxable hereunder.

8 (b) *Exemptions from tax.* — The provisions of this article do
9 not apply to:

10 (1) Insurance companies which pay the State of West
11 Virginia a tax upon premiums: *Provided*, That the exemption
12 does not extend to that part of the gross income of insurance
13 companies which is received for the use of real property, other
14 than property in which any company maintains its office or
15 offices, in this state, whether the income is in the form of rentals
16 or royalties;

17 (2) Nonprofit cemetery companies organized and operated
18 for the exclusive benefit of their members;

19 (3) Fraternal societies, organizations and associations
20 organized and operated for the exclusive benefit of their
21 members and not for profit: *Provided*, That the exemption does
22 not extend to that part of the gross income arising from the sale
23 of alcoholic liquor, food and related services of fraternal
24 societies, organizations and associations which are licensed as
25 private clubs under the provisions of article seven, chapter sixty
26 of this code;

27 (4) Corporations, associations and societies organized and
28 operated exclusively for religious or charitable purposes and
29 production credit associations, organized under the provisions of
30 the federal Farm Credit Act of 1933;

31 (5) Any credit union organized under the provisions of
32 chapter thirty-one of this code or any other chapter of this code:
33 *Provided*, That the exemptions of this section do not apply to
34 corporations or cooperative associations organized under the
35 provisions of article four, chapter nineteen of this code;

36 (6) Gross income derived from advertising service rendered
37 in the business of radio and television broadcasting;

38 (7) Gross income of a nonprofit homeowners' association
39 received from assessments on its members for community
40 services such as road maintenance, common area maintenance,
41 water service, sewage service and security service; and

42 (8) Nonprofit water and sewer companies governed by the
43 Public Service Commission of West Virginia and organized and
44 operated for the exclusive benefit of their members.

CHAPTER 232

**(Com. Sub. for H. B. 2462 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended, relating to the dedication and deposit of certain tax proceeds; reducing the amount of sales tax proceeds annually dedicated to the School Major Improvement Fund by \$2,000,004 for the fiscal year 2016; reducing the amount of sales tax proceeds annually dedicated to the School Construction Fund by \$6 million for the fiscal years 2016; and making stylistic changes.

Be it enacted by the Legislature of West Virginia:

That §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**§11-15-30. Proceeds of tax; appropriation of certain revenues.**

1 (a) The proceeds of the tax imposed by this article shall be
2 deposited in the General Revenue Fund of the state except as
3 otherwise expressly provided in this article.

4 (b) *School Major Improvement Fund.* — After the payment
5 or commitment of the proceeds or collections of this tax for the
6 purposes set forth in section sixteen of this article, on the first
7 day of each month, there shall be dedicated monthly from the
8 collections of this tax, the amount of \$416,667.00 and the
9 amount dedicated shall be deposited on a monthly basis into the
10 School Major Improvement Fund created pursuant to section six,
11 article nine-d, chapter eighteen of this code: *Provided*, That for
12 fiscal year 2016, the amount so dedicated and deposited annually
13 under this subdivision is reduced by \$2,000,004, and the amount
14 so dedicated and deposited monthly is reduced to \$250,000.00
15 for fiscal year 2016. This reduction shall cease for fiscal years
16 beginning after June 30, 2016.

17 (c) *School Construction Fund.* — After the payment or
18 commitment of the proceeds or collections of this tax for the
19 purposes set forth in section sixteen of this article:

20 (1) On the first day of each month, there shall be dedicated
21 monthly from the collections of this tax the amount of
22 \$1,416,667.00 and the amount dedicated shall be deposited into
23 the School Construction Fund created pursuant to section six,
24 article nine-d, chapter eighteen of this code.

25 (2) Except as provided in subdivision (3) of this subsection,
26 effective July 1, 1998, there shall be dedicated from the
27 collections of this tax an amount equal to any annual difference
28 that may occur between the debt service payment for the 1997
29 fiscal year for school improvement bonds issued under the Better
30 School Building Amendment under the provisions of article

31 nine-c, chapter eighteen of this code and the amount of funds
32 required for debt service on these school improvement bonds in
33 any current fiscal year thereafter. This annual difference shall be
34 prorated monthly, added to the monthly deposit in subdivision
35 (1) of this subsection and deposited into the School Construction
36 Fund created pursuant to section six, article nine-d, chapter
37 eighteen of this code.

38 (3) After June 30, 2015, the provisions of subdivision (2) of
39 this subsection shall have no force or effect. After June 30, 2015,
40 there shall be dedicated from the collections of this tax the
41 amount of \$27,216,996 annually. This amount shall be prorated
42 monthly and added to the monthly deposit in subdivision (1) of
43 this subsection and deposited into the School Construction Fund
44 created pursuant to section six, article nine-d, chapter eighteen
45 of this code: *Provided*, That for fiscal year 2016, the amount so
46 dedicated annually under this subdivision is reduced by \$6
47 million. This reduction shall cease for fiscal years beginning
48 after June 30, 2016.

49 (d) *Prepaid wireless calling service.* — The proceeds or
50 collections of this tax from the sale of prepaid wireless service
51 are dedicated as follows:

52 (1) The tax imposed by this article upon the sale of prepaid
53 wireless calling service is in lieu of the wireless enhanced 911
54 fee imposed by section six-b, article six, chapter twenty-four of
55 this code.

56 (2) Within thirty days following the end of each calendar
57 month, the Tax Commissioner shall remit to the Public Service
58 Commission the proceeds of the tax imposed by this article upon
59 the sale of prepaid wireless calling service in the preceding
60 month, determined as follows: For purposes of determining the
61 amount of those monthly proceeds, the Tax Commissioner shall
62 use an amount equal to one twelfth of the wireless enhanced 911
63 fees collected from prepaid wireless calling service under section

64 six-b, article six, chapter twenty-four of this code during the
65 period beginning on July 1, 2007, and ending on June 30, 2008.
66 Beginning on July 1, 2009, the Tax Commissioner shall adjust
67 this amount annually by an amount proportionate to the increase
68 or decrease in the enhanced wireless 911 fees paid to the Public
69 Service Commission under said section during the previous
70 twelve months. The Public Service Commission shall receive,
71 deposit and disburse the proceeds in the manner prescribed in
72 said section.

CHAPTER 233

**(H. B. 2114 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)**

[By Request of the Executive]

[Passed February 17, 2015; in effect from passage.]

[Approved by the Governor on February 25, 2015.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United

3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue Code
6 of 1986, as amended, and any other provisions of the laws of the
7 United States that relate to the determination of income for
8 federal income tax purposes. All amendments made to the laws
9 of the United States after December 31, 2013, but prior to
10 January 1, 2015, shall be given effect in determining the taxes
11 imposed by this article to the same extent those changes are
12 allowed for federal income tax purposes, whether the changes
13 are retroactive or prospective, but no amendment to the laws of
14 the United States made on or after January 1, 2015, may be given
15 any effect.

16 (b) *Medical savings accounts.* — The term “taxable trust”
17 does not include a medical savings account established pursuant
18 to section twenty, article fifteen, chapter thirty-three of this code
19 or section fifteen, article sixteen of that chapter. Employer
20 contributions to a medical savings account established pursuant
21 to those sections are not wages for purposes of withholding
22 under section seventy-one of this article.

23 (c) *Surtax.* — The term “surtax” means the twenty percent
24 additional tax imposed on taxable withdrawals from a medical
25 savings account under section twenty, article fifteen, chapter
26 thirty-three of this code and the twenty percent additional tax
27 imposed on taxable withdrawals from a medical savings account
28 under section fifteen, article sixteen of that chapter which are
29 collected by the Tax Commissioner as tax collected under this
30 article.

31 (d) *Effective date.* — The amendments to this section
32 enacted in the year 2015 are retroactive to the extent allowable
33 under federal income tax law. With respect to taxable years that
34 began prior to January 1, 2016, the law in effect for each of those
35 years shall be fully preserved as to that year, except as provided
36 in this section.

37 (e) For purposes of the refundable credit allowed to a low
38 income senior citizen for property tax paid on his or her
39 homestead in this state, the term “laws of the United States” as
40 used in subsection (a) of this section means and includes the
41 term “low income” as defined in subsection (b), section twenty-
42 one of this article and as reflected in the poverty guidelines
43 updated periodically in the federal register by the U.S.
44 Department of Health and Human Services under the authority
45 of 42 U.S.C. § 9902(2).

CHAPTER 234

**(H. B. 2115 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed February 17, 2015; in effect from passage.]
[Approved by the Governor on February 25, 2015.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of the term “federal taxable income” and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in this
5 article. Any reference in this article to the laws of the United
6 States means the provisions of the Internal Revenue Code of
7 1986, as amended, and any other provisions of the laws of the
8 United States that relate to the determination of income for
9 federal income tax purposes. All amendments made to the laws
10 of the United States after December 31, 2013, but prior to
11 January 1, 2015, shall be given effect in determining the taxes
12 imposed by this article to the same extent those changes are
13 allowed for federal income tax purposes, whether the changes
14 are retroactive or prospective, but no amendment to the laws of
15 the United States made on or after January 1, 2015, shall be
16 given any effect.

17 (b) The term “Internal Revenue Code of 1986” means the
18 Internal Revenue Code of the United States enacted by the
19 federal Tax Reform Act of 1986 and includes the provisions of
20 law formerly known as the Internal Revenue Code of 1954, as
21 amended, and in effect when the federal Tax Reform Act of 1986
22 was enacted that were not amended or repealed by the federal
23 Tax Reform Act of 1986. Except when inappropriate, any
24 reference in any law, executive order or other document:

25 (1) To the Internal Revenue Code of 1954 includes a
26 reference to the Internal Revenue Code of 1986; and

27 (2) To the Internal Revenue Code of 1986 includes a
28 reference to the provisions of law formerly known as the Internal
29 Revenue Code of 1954.

30 (c) Effective date. — The amendments to this section
31 enacted in the year 2015 are retroactive to the extent allowable
32 under federal income tax law. With respect to taxable years that

33 began prior to January 1, 2016, the law in effect for each of those
34 years shall be fully preserved as to that year, except as provided
35 in this section.

CHAPTER 235

**(S. B. 583 - By Senators M. Hall, Walters, Blair,
Boso, Facemire, Laird, Mullins, Plymale, Prezioso,
Stollings, Sypolt and Takubo)**

[Passed March 13, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate on providers of certain nursing facility services; and providing effective dates for the tax rate.

Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

- 1 (a) *Imposition of tax.* — For the privilege of engaging or
- 2 continuing within this state in the business of providing nursing
- 3 facility services, other than those services of intermediate care

4 facilities for individuals with an intellectual disability, there is
5 levied and shall be collected from every person rendering such
6 service an annual broad-based health care-related tax: *Provided*,
7 That hospitals which provide nursing facility services may adjust
8 nursing facility rates to the extent necessary to compensate for
9 the tax without first obtaining approval from the Health care
10 Authority: *Provided, however*, That the rate adjustment is
11 limited to a single adjustment during the initial year of the
12 imposition of the tax which adjustment is exempt from
13 prospective review by the Health Care Authority and further
14 which is limited to an amount not to exceed the amount of the
15 tax which is levied against the hospital for the provision of
16 nursing facility services pursuant to this section. The Health
17 Care Authority shall retroactively review the rate increases
18 implemented by the hospitals under this section during the
19 regular rate review process. A hospital which fails to meet the
20 criteria established by this section for a rate increase exempt
21 from prospective review is subject to the penalties imposed
22 under article twenty-nine-b, chapter sixteen of the code.

23 (b) *Rate and measure of tax.* — The tax imposed in
24 subsection (a) of this section is five and one-half percent of the
25 gross receipts derived by the taxpayer from furnishing nursing
26 facility services in this state, other than services of intermediate
27 care facilities for individuals with an intellectual disability. This
28 rate shall be increased to five and seventy-two one hundredths
29 percent of the gross receipts received or receivable by providers
30 of nursing facility services on and after October 1, 2015, and
31 shall again be decreased to five and one-half percent of the gross
32 receipts received or receivable by providers of nursing services
33 after June 30, 2016.

34 (c) *Definitions.* —

35 (1) “Gross receipts” means the amount received or
36 receivable, whether in cash or in kind, from patients, third-party

37 payors and others for nursing facility services furnished by the
38 provider, including retroactive adjustments under reimbursement
39 agreements with third-party payors, without any deduction for
40 any expenses of any kind: *Provided*, That accrual basis providers
41 are allowed to reduce gross receipts by their bad debts, to the
42 extent the amount of those bad debts was previously included in
43 gross receipts upon which the tax imposed by this section was
44 paid.

45 (2) “Nursing facility services” means those services that are
46 nursing facility services for purposes of §1903(w) of the Social
47 Security Act.

48 (d) *Effective date*. — The tax imposed by this section applies
49 to gross receipts received or receivable by providers after May
50 31, 1993.

CHAPTER 236

(S. B. 398 - By Senators Ferns, D. Hall and Stollings)

[Passed February 27, 2015; in effect July 1, 2015.]

[Approved by the Governor on March 5, 2015.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying expiration date for tax rate on eligible acute care hospitals; changing tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.**§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.**

1 (a) In addition to the rate of the tax imposed by sections nine
2 and fifteen of this article on providers of inpatient and outpatient
3 hospital services, there is imposed on certain eligible acute care
4 hospitals an additional tax of seventy-two one hundredths of one
5 percent on the gross receipts received or receivable by eligible
6 acute care hospitals that provide inpatient or outpatient hospital
7 services in this state through a Medicaid upper payment limit
8 program.

9 (b) For purposes of this section, the term “eligible acute care
10 hospital” means any inpatient or outpatient hospital conducting
11 business in this state that is not:

12 (1) A state-owned or -designated facility;

13 (2) A nonstate, but government-owned facility such as a
14 county or city hospital;

15 (3) A critical access hospital, designated as a critical access
16 hospital after meeting all federal eligibility criteria;

17 (4) A licensed free-standing psychiatric or medical
18 rehabilitation hospital; or

19 (5) A licensed long-term acute care hospital.

20 (c) The taxes imposed by this section may not be imposed or
21 collected until all of the following have occurred:

22 (1) A state plan amendment is developed by the Bureau for
23 Medical Services, as authorized by the Secretary of the
24 Department of Health and Human Resources;

25 (2) The state plan amendment is reviewed by the Medical
26 Fund Services Advisory Council;

27 (3) A comment period of not less than thirty days for public
28 comment on the state plan amendment shall have passed; and

29 (4) The state plan amendment is approved by the Centers for
30 Medicare and Medicaid Services.

31 (d) The state plan amendment shall include all of the
32 following:

33 (1) The provisions of the proposed upper payment limit
34 program or programs;

35 (2) A state maintenance of effort to maintain adequate
36 Medicaid funding; and

37 (3) A provision that any other state Medicaid program will
38 not negatively impact the hospital upper payment limit
39 payments. The taxes imposed and collected may be imposed and
40 collected beginning on the earliest date permissible under
41 applicable federal law under the upper payment limit program,
42 as determined by the secretary.

43 (e) There is continued a special revenue account in the State
44 Treasury designated the Medicaid State Share Fund. The amount
45 of taxes collected under this section, including any interest,
46 additions to tax and penalties collected under article ten of this
47 chapter, less the amount of allowable refunds, the amount of any
48 interest payable with respect to such refunds and costs of
49 administration and collection, shall be deposited into the Special
50 Revenue Fund and may not revert to general revenue. The Tax
51 Commissioner shall establish and maintain a separate account
52 and accounting for the funds collected under this section in an
53 account to be designated as the Eligible Acute Care Provider
54 Enhancement Account. The amounts collected shall be

55 deposited, within fifteen days after receipt by the Tax
56 Commissioner, into the Eligible Acute Care Provider
57 Enhancement Account. Disbursements from the Eligible Acute
58 Care Provider Enhancement Account within the Medicaid State
59 Share Fund may only be used as set forth in this section.

60 (f) The imposition and collection of taxes imposed by this
61 section is suspended immediately upon the occurrence of any of
62 the following:

63 (1) The effective date of any action by Congress that would
64 disqualify the taxes imposed by this section from counting
65 toward state Medicaid funds available to be used to determine
66 the federal financial participation;

67 (2) The effective date of any decision, enactment or other
68 determination by the Legislature or by any court, officer,
69 department, agency or office of state or federal government that
70 has the effect of disqualifying the tax from counting toward state
71 Medicaid funds available to be used to determine federal
72 financial participation for Medicaid matching funds or creating
73 for any reason a failure of the state to use the assessment of the
74 Medicaid program as described in this section; and

75 (3) The effective date of an appropriation for any state fiscal
76 year for hospital payments under the state Medicaid program that
77 is less than the amount appropriate for state fiscal year ending
78 June 30, 2011. Fifty percent of any funds remaining in the
79 Eligible Acute Care Provider Enhancement Account as of June
80 30, 2015, shall be transferred to the West Virginia Medical
81 Services Fund. This transfer shall occur no later than September
82 30, 2015. These funds shall be used during state fiscal year 2016
83 at the discretion of the Bureau for Medical Services. The
84 remaining fifty percent of any funds in the Eligible Acute Care
85 Provider Enhancement Account as of June 30, 2015, shall
86 remain in the Eligible Acute Care Provider Enhancement

87 Account and shall be used in state fiscal year 2016. If the
88 program expires on June 30, 2016, as set forth in subsection (h)
89 of this section, fifty percent of any funds remaining as of June
90 30, 2017, shall be transferred on that date to the West Virginia
91 Medical Services Fund. This transfer shall occur only after state
92 fiscal year 2016 fourth quarter tax collections and program
93 payments. The remaining fifty percent of the funds shall be
94 distributed to the eligible acute care providers no later than June
95 30, 2017. The distribution of funds to the eligible acute care
96 providers shall be made in the same proportion as the taxes paid
97 by the eligible acute care providers into the Eligible Acute Care
98 Provider Enhancement Fund during state fiscal year 2016.

99 (g) The changes to the tax rate in this section enacted in the
100 2015 Regular Session are effective July 1, 2015, upon the
101 approval of the state plan amendment.

102 (h) The tax imposed by this section expires on and after June
103 30, 2016, unless otherwise extended by the Legislature.

CHAPTER 237

**(Com. Sub. for H. B. 2005 - By Delegates Pasdon,
Hamrick, Zatezalo, Romine, McCuskey, Westfall, Arvon,
Overington, Espinosa and Moffatt)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §18A-3-1, §18A-3-1a, §18A-3-1b and
§18A-3-2a of the Code of West Virginia, 1931, as amended; and
to amend said code by adding thereto seven new sections,
designated §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f,

§18A-3-1g, §18A-3-1h and §18A-3-1i, all relating to revising, reorganizing and clarifying provisions regarding teacher certifications, including standard certifications, alternative certifications, certifications for out-of-state teachers and certifications for athletic coaches and extracurricular coaches; expanding criteria upon which a teacher's certificate may be awarded to a teacher from another state; defining terms relating to alternative programs for the education of teachers; authorizing certain partnerships to provide alternative certification programs; modifying entities eligible to deliver alternative programs; specifying permissible partners; requiring partnership agreements and specifying necessary contents; requiring posting of vacancies; limiting circumstance where partnership may enroll alternative program candidate; requiring or authorizing approval by state board of education under certain circumstances; modifying and specifying criteria and components required for alternative certification program delivery; specifying certain required components of alternative certification program; requiring minimum hours of instruction; specifying eligibility criteria for alternative certification program teacher candidate; requiring that employment be in an area of critical need and shortage; providing for professional support team to participate in alternative program delivery and specifying responsibilities; modifying the charges which may be imposed for alternative program participation or delivery; specifying required and prohibited acts by certain entities; requiring continued contract renewal of participating program teacher and continued delivery of alternative certification program under certain circumstances and providing exception; providing retention preference for professional educators; providing for evaluation of and recommendation regarding award of professional teaching certificate for alternative program teacher; authorizing appeal of recommendation under certain circumstances; expanding program fields and conditions in which an alternative program teacher may be employed; removing preference among certain applicants when considering applicants

for alternative teacher programs; modifying provisions for alternative program teacher to attain professional teaching certificate; modifying institutions from which professional teaching certificate candidates may have graduated; providing guidelines for alternative programs for certain highly qualified special education teachers; providing for certification under certain circumstances of teachers educated or certified in other states; expanding criteria upon which a teacher's certificate may be awarded to teachers; removing references to internship programs; extending alternative program teacher certificate and making nonrenewable; removing requirement, regarding athletic and extracurricular coaches, that a currently employed certified professional educator has not applied for position; and requiring legislative rule promulgation by state board.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1, §18A-3-1a, §18A-3-1b and §18A-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h and §18A-3-1i, all to read as follows:

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

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

- 1 (a) The education of professional educators in the state is
- 2 under the general direction and control of the state board after
- 3 consultation with the Secretary of Education and the Arts and the
- 4 Chancellor for Higher Education who shall represent the
- 5 interests of educator preparation programs within the institutions
- 6 of higher education in this state as defined in section two, article
- 7 one, chapter eighteen-b of this code.

8 The education of professional educators in the state includes
9 all programs leading to certification to teach or serve in the
10 public schools. The programs include the following:

11 (1) Programs in all institutions of higher education,
12 including student teaching and teacher-in-residence programs as
13 provided in this section;

14 (2) Beginning teacher induction programs;

15 (3) Granting West Virginia certification to persons who
16 received their preparation to teach outside the boundaries of this
17 state, except as provided in subsection (b) of this section;

18 (4) Alternative preparation programs in this state leading to
19 certification, including programs established pursuant to the
20 provisions of sections one-a, one-b, one-c, one-d, one-e, one-f,
21 one-g, one-h and one-i of this article and programs which are in
22 effect on the effective date of this section; and

23 (5) Continuing professional education, professional
24 development and in-service training programs for professional
25 educators employed in the public schools in the state.

26 (b) After consultation with the Secretary of Education and
27 the Arts and the Chancellor for Higher Education, the state board
28 shall adopt standards for the education of professional educators
29 in the state and for awarding certificates valid in the public
30 schools of this state. The standards include, but are not limited
31 to the following:

32 (1) A provision for the study of multicultural education. As
33 used in this section, multicultural education means the study of
34 the pluralistic nature of American society including its values,
35 institutions, organizations, groups, status positions and social
36 roles;

37 (2) A provision for the study of classroom management
38 techniques, including methods of effective management of
39 disruptive behavior including societal factors and their impact on
40 student behavior; and

41 (3) A teacher from another state shall be awarded a teaching
42 certificate for a comparable grade level and subject area valid in
43 the public schools of this state, subject to section ten of this
44 article, if he or she has met the following requirements:

45 (A) Holds a valid teaching certificate or a certificate of
46 eligibility issued by another state;

47 (B) Has graduated from an educator preparation program at
48 a regionally accredited institution of higher education or from
49 another educator preparation program;

50 (C) Possesses the minimum of a bachelor's degree; and

51 (D) Meets all of the requirements of the state for full
52 certification except employment.

53 (c) The state board may enter into an agreement with county
54 boards for the use of the public schools in order to give
55 prospective teachers the teaching experience needed to
56 demonstrate competence as a prerequisite to certification to
57 teach in the West Virginia public schools.

58 (d) An agreement established pursuant to subsection (c) of
59 this section shall recognize student teaching as a joint
60 responsibility of the educator preparation institution and the
61 cooperating public schools. The agreement shall include the
62 following items:

63 (1) The minimum qualifications for the employment of
64 public school teachers selected as supervising teachers, including
65 the requirement that field-based and clinical experiences be

66 supervised by a teacher fully certified in the state in which that
67 teacher is supervising;

68 (2) The remuneration to be paid to public school teachers by
69 the state board, in addition to their contractual salaries, for
70 supervising student teachers;

71 (3) Minimum standards to guarantee the adequacy of the
72 facilities and program of the public school selected for student
73 teaching;

74 (4) Assurance that the student teacher, under the direction
75 and supervision of the supervising teacher, shall exercise the
76 authority of a substitute teacher;

77 (5) A provision requiring any higher education institution
78 with an educator preparation program to document that the
79 student teacher's field-based and clinical experiences include
80 participation and instruction with multicultural, at-risk and
81 exceptional children at each programmatic level for which the
82 student teacher seeks certification; and

83 (6) A provision authorizing a school or school district that
84 has implemented a comprehensive beginning teacher induction
85 program, to enter into an agreement that provides for the training
86 and supervision of student teachers consistent with the
87 educational objectives of this subsection by using an alternate
88 structure implemented for the support, supervision and
89 mentoring of beginning teachers. The agreement is in lieu of any
90 specific provisions of this subsection and is subject to the
91 approval of the state board.

92 (e) *Teacher-in-residence programs.* —

93 (1) In lieu of the provisions of subsections (c) and (d) of this
94 section and subject to approval of the state board, an institution
95 of higher education with a program for the education of

96 professional educators in the state approved by the state board
97 may enter into an agreement with county boards for the use of
98 teacher-in-residence programs in the public schools.

99 (2) A “teacher-in-residence program” means an intensively
100 supervised and mentored residency program for prospective
101 teachers during their senior year that refines their professional
102 practice skills and helps them gain the teaching experience
103 needed to demonstrate competence as a prerequisite to
104 certification to teach in the West Virginia public schools.

105 (3) The authorization for the higher education institution and
106 the county board to implement a teacher-in-residence program
107 is subject to state board approval. The provisions of the
108 agreement include, but are not limited to, the following items:

109 (A) A requirement that the prospective teacher in a teacher-
110 in-residence program has completed all other preparation courses
111 and has passed the appropriate basic skills and subject matter test
112 or tests required by the state board for teachers to become
113 certified in the area for which licensure is sought;

114 (B) A requirement that the teacher-in-residence serve only
115 in a teaching position in the county which has been posted and
116 for which no other teacher fully certified for the position has
117 been employed;

118 (C) Specifics regarding the program of instruction for the
119 teacher-in-residence setting forth the responsibilities for
120 supervision and mentoring by the higher education institution’s
121 educator preparation program, the school principal, and peer
122 teachers and mentors, and the responsibilities for the formal
123 instruction or professional development necessary for the
124 teacher-in-residence to perfect his or her professional practice
125 skills. The program also may include other instructional items as
126 considered appropriate.

127 (D) A requirement that the teacher-in-residence hold a
128 teacher-in-residence permit qualifying the individual to teach in
129 his or her assigned position as the teacher of record;

130 (E) A requirement that the salary and benefit costs for the
131 position to which the teacher-in-residence is assigned shall be
132 used only for program support and to pay a stipend to the
133 teacher-in-residence as specified in the agreement, subject to the
134 following:

135 (i) The teacher-in-residence is a student enrolled in the
136 teacher preparation program of the institution of higher
137 education and is not a regularly employed employee of the
138 county board;

139 (ii) The teacher-in-residence is included on the certified list
140 of employees of the county eligible for state aid funding the
141 same as an employee of the county at the appropriate level based
142 on their permit and level of experience;

143 (iii) All state-aid-funding due to the county board for the
144 teacher-in-residence shall be used only in accordance with the
145 agreement with the institution of higher education for support of
146 the program as provided in the agreement, including costs
147 associated with instruction and supervision as set forth in
148 paragraph (C) of this subdivision;

149 (iv) The teacher-in-residence is provided the same liability
150 insurance coverage as other employees; and

151 (v) All state aid funding due to the county for the teacher-in-
152 residence and not required for support of the program shall be
153 paid as a stipend to the teacher-in-residence: *Provided*, That the
154 stipend paid to the teacher-in-residence shall be no less than
155 sixty-five percent of all state aid funding due the county for the
156 teacher-in-residence.

157 (F) Other provisions that may be required by the state board.

158 (f) In lieu of the student teaching experience in a public
159 school setting required by this section, an institution of higher
160 education may provide an alternate student teaching experience
161 in a nonpublic school setting if the institution of higher
162 education meets the following criteria:

163 (1) Complies with the provisions of this section;

164 (2) Has a state board approved educator preparation
165 program; and

166 (3) Enters into an agreement pursuant to subdivisions (g) and
167 (h) of this section.

168 (g) At the discretion of the higher education institution, an
169 agreement for an alternate student teaching experience between
170 an institution of higher education and a nonpublic school shall
171 require one of the following:

172 (1) The student teacher shall complete at least one half of the
173 clinical experience in a public school; or

174 (2) The educator preparation program shall include a
175 requirement that any student performing student teaching in a
176 nonpublic school shall complete the following:

177 (A) At least two hundred clock hours of field-based training
178 in a public school; and

179 (B) A course, which is a component of the institution's state
180 board approved educator preparation program, that provides
181 information to prospective teachers equivalent to the teaching
182 experience needed to demonstrate competence as a prerequisite
183 to certification to teach in the public schools in West Virginia.
184 The course also shall include instruction on at least the following
185 elements:

186 (i) State board policy and provisions of this code governing
187 public education;

188 (ii) Requirements for federal and state accountability,
189 including the mandatory reporting of child abuse;

190 (iii) Federal and state mandated curriculum and assessment
191 requirements, including multicultural education, safe schools and
192 student code of conduct;

193 (iv) Federal and state regulations for the instruction of
194 exceptional students as defined by the Individuals with
195 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

196 (v) Varied approaches for effective instruction for students
197 who are at-risk.

198 (h) In addition to the requirements set forth in subsection (g)
199 of this section, an agreement for an alternate student teaching
200 experience between an institution of higher education and a
201 nonpublic school shall include the following:

202 (1) A requirement that the higher education institution with
203 an educator preparation program shall document that the student
204 teacher's field-based and clinical experiences include
205 participation and instruction with multicultural, at-risk and
206 exceptional children at each programmatic level for which the
207 student teacher seeks certification; and

208 (2) The minimum qualifications for the employment of
209 school teachers selected as supervising teachers, including the
210 requirement that field-based and clinical experiences be
211 supervised by a teacher fully certified in the state in which that
212 teacher is supervising.

213 (i) The state superintendent may issue certificates as
214 provided in section two-a of this article to graduates of educator

215 preparation programs and alternative educator preparation
216 programs approved by the state board. The certificates are issued
217 in accordance with this section and rules adopted by the state
218 board after consultation with the Secretary of Education and the
219 Arts and the Chancellor for Higher Education.

220 (1) A certificate to teach may be granted only to a person
221 who meets the following criteria:

222 (A) Is a citizen of the United States, except as provided in
223 subdivision (2) of this subsection;

224 (B) Is of good moral character;

225 (C) Is physically, mentally and emotionally qualified to
226 perform the duties of a teacher; and

227 (D) Is at least eighteen years of age on or before October 1;
228 of the year in which his or her certificate is issued.

229 (2) A permit to teach in the public schools of this state may
230 be granted to a person who is an exchange teacher from a foreign
231 country or an alien person who meets the requirements to teach.

232 (j) In consultation with the Secretary of Education and the
233 Arts and the Chancellor for Higher Education, institutions of
234 higher education approved for educator preparation may
235 cooperate with each other, with the center for professional
236 development and with one or more county boards to organize
237 and operate centers to provide selected phases of the educator
238 preparation program. The phases include, but are not limited to
239 the following:

240 (1) Student teaching and teacher-in-residence programs;

241 (2) Beginning teacher induction programs;

242 (3) Instruction in methodology; and

243 (4) Seminar programs for college students, teachers with
244 provisional certification, professional support team members and
245 supervising teachers.

246 By mutual agreement, the institutions of higher education,
247 the center for professional development and county boards may
248 budget and expend funds to operate the centers through
249 payments to the appropriate fiscal office of the participating
250 institutions, the center for professional development and the
251 county boards.

252 (k) The provisions of this section do not require
253 discontinuation of an existing student teacher training center or
254 school which meets the standards of the state board.

255 (l) All institutions of higher education approved for educator
256 preparation in the 1962-63 school year continue to hold that
257 distinction so long as they meet the minimum standards for
258 educator preparation. Nothing in this section infringes upon the
259 rights granted to any institution by charter given according to
260 law previous to the adoption of this code.

261 (m) *Definitions.* — For the purposes of this section, the
262 following words have the meanings ascribed to them unless the
263 context clearly indicates a different meaning:

264 (1) “Nonpublic school” means a private school, parochial
265 school, church school, school operated by a religious order or
266 other nonpublic school that elects to meet the following
267 conditions:

268 (A) Comply with the provisions of article twenty-eight,
269 chapter eighteen of this code;

270 (B) Participate on a voluntary basis in a state operated or
271 state sponsored program provided to this type school pursuant to
272 this section; and

273 (C) Comply with the provisions of this section;

274 (2) “At-risk” means a student who has the potential for
275 academic failure, including, but not limited to, the risk of
276 dropping out of school, involvement in delinquent activity or
277 poverty as indicated by free or reduced lunch status; and

278 (3) “Exceptional child” or “exceptional children” has the
279 meaning ascribed to these terms pursuant to section one, article
280 twenty, chapter eighteen of this code, but, as used in this section,
281 the terms do not include gifted students.

**§18A-3-1a. Alternative programs for the education of teachers;
purpose; definitions.**

1 (a) *Purpose.* — Sections one-a, one-b, one-c, one-d, one-e,
2 one-f, one-g, one-h and one-i of this article create an alternative
3 means for a qualified person to earn a professional teaching
4 certificate. These sections authorize a school or a school district
5 to offer a rigorous alternative program for teacher certification
6 in partnership with an accredited higher education institution, an
7 entity affiliated with an accredited higher education institution,
8 the West Virginia Department of Education or a regional
9 education service agency, all under the supervision of the State
10 Board.

11 (b) *Definitions.* — For the purposes of this section and
12 sections one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i
13 of this article, the following terms have the meanings ascribed to
14 them, unless the context in which a term is used clearly requires
15 a different meaning:

16 (1) “Alternative program” means a program for teacher
17 education that is offered as an alternative to the standard college
18 or university programs for the education of teachers;

19 (2) “Alternative program teacher” means a teacher who
20 holds an alternative program teacher certificate and who
21 participates in an alternative program;

22 (3) “Area of critical need and shortage” means an opening in
23 an established, existing or newly-created position which has
24 been posted at least two times in accordance with section seven-
25 a, article four of this chapter and for which no fully-qualified
26 applicant has been employed;

27 (4) “Alternative program teacher certificate” means a
28 temporary teacher certificate that authorizes a person to teach
29 while participating in an alternative program;

30 (5) “Approved alternative program” means an alternative
31 program that is approved by the State Board in accordance with
32 section one-e of this article;

33 (6) “Approved education provider” means a partnership that
34 the State Board has approved to provide an alternative program;

35 (7) “Partnership” means a partnership formed pursuant to
36 section one-b of this article to provide an alternative program;

37 (8) “Partnership agreement” means an agreement adopted by
38 a partnership pursuant to section one-b of this article; and

39 (9) “Professional support team” means the group of persons
40 that an approved education provider has selected to train and
41 supervise alternative program teachers.

**§18A-3-1b. Alternative program partnerships; formation;
necessary partners; partnership agreements;
single-provider programs.**

1 (a) *Formation.* – One or more schools or school districts, or
2 any combination of these, may form a partnership with one or
3 more institutions of higher education, one or more entities
4 affiliated with an institution of higher education, the West
5 Virginia Department of Education, a regional education service
6 agency, or any combination of these, to provide an alternative
7 program.

8 (b) *Necessary partners.* – Except as provided in subsection
9 (d) of this section, a partnership shall include at least one of the
10 following:

11 (1) An institution of higher education with an accredited
12 program for the education of professional educators that has
13 been approved by the State Board;

14 (2) An entity affiliated with an institution of higher
15 education that has an accredited program for the education of
16 professional educators that has been approved by the State
17 Board;

18 (3) The West Virginia Department of Education; or

19 (4) A regional education service agency.

20 (c) *Partnership agreement contents.* – A partnership shall
21 adopt a written partnership agreement that governs how the
22 partnership will conduct its alternative program and that
23 identifies the rights and responsibilities of each partner. The
24 partnership agreement shall include, at a minimum, the
25 following elements:

26 (1) Procedures and criteria for determining whether a person
27 is eligible to enroll in the alternative program;

28 (2) A requirement that a vacancy has to be advertised for a
29 ten day period, and if no qualified traditional certified teacher
30 applies, only then may the partnership consider enrolling as
31 person in the alternative program;

32 (3) Procedures and criteria for making a formal offer of
33 employment to a person who is eligible to enroll in the
34 alternative program;

35 (4) A detailed list, with descriptions, of the categories,
36 methods and sources of instruction that the alternative program
37 will provide;

38 (5) A detailed description of the phases of on-the-job
39 training and supervision that the alternative program will
40 provide;

41 (6) A detailed description of the academic and performance
42 standards that an alternative program teacher shall satisfy to
43 receive the partnership's recommendation that the State
44 Superintendent issue to him or her a professional teaching
45 certificate;

46 (7) Procedures for selecting and training the professional
47 support team who will instruct, mentor or supervise alternative
48 program teachers;

49 (8) Provisions for determining tuition or other charges, if
50 any, relating to an alternative program;

51 (9) A requirement, subject to the provisions of subsection
52 (e), subsection one-f of this article, that the hiring authority for
53 any school or school district that hires an alternative program
54 teacher will renew the alternative program teacher's contract
55 from year to year as long as he or she makes satisfactory
56 progress in the alternative education program and until he or she
57 completes the alternative program; and

58 (10) Any other provisions that the partners consider
59 necessary or helpful to ensure that the alternative program
60 operates in accordance with this chapter.

**§18A-3-1c. Alternative program instruction for classroom
teachers; methods; training and evaluation phases;
professional support team; tuition.**

1 (a) *Alternative program instruction.* — An alternative
2 program for classroom teachers shall provide, at a minimum,
3 either six credit hours or six staff development hours of
4 instruction in one or more of the following subjects:

5 (1) Early literacy (if an alternative program teacher will be
6 teaching elementary school children);

7 (2) Student assessment;

8 (3) Development and learning;

9 (4) Curriculum;

10 (5) Classroom management;

11 (6) Use of educational computers and other technology; and

12 (7) Special education and diversity.

13 (b) *Methods of instruction.* – An alternative program may
14 provide instruction through nontraditional methods, including,
15 but not limited to, methods such as a series of modules covering
16 the various topics, electronically delivered instruction, summer
17 sessions, professional development and job-embedded
18 mentoring.

19 (c) *Professional support team.* – If the State Board approves,
20 an alternative program may provide a professional support team
21 whose structure is consistent with the structure that the
22 partnership’s participating school or schools use for supporting,
23 supervising, inducting and mentoring a beginning teacher or
24 teacher-in-residence. If the State Board approves, an alternative
25 program’s professional support team may be trained by and in
26 coordination with the Center for Professional Development.

27 (d) *Professional support team evaluation for classroom*
28 *teachers.* – The professional support team shall submit a written
29 evaluation of the alternative program teacher to the approved
30 education provider. This evaluation shall be submitted on a form
31 specified by the approved education provider and shall be
32 submitted before the first Monday in May on a date set by the
33 approved education provider. The evaluation shall report the

34 alternative program teacher's progress toward meeting the
35 alternative program's academic and performance standards:
36 *Provided*, That all final decisions on the progress of an
37 alternative program teacher shall rest with the principal.

38 (e) *Tuition*. – A partnership may not charge tuition, or
39 impose any other charge for participation in an alternative
40 program, unless the tuition or other charge is necessary to offset
41 the partnership's cost of providing the alternative program:
42 *Provided*, That a partner that is an institution of higher education
43 with an accredited program for the education of professional
44 educators may charge tuition for academic credit that an
45 alternative education teacher receives in the alternative program
46 if:

47 (1) The institution of higher education is the entity that
48 grants the academic credit; and

49 (2) The charge does not exceed the per credit rate charged
50 for students enrolled in its standard program for the education of
51 professional educators.

§18A-3-1d. Alternative program rules; necessary contents.

1 (a) *Alternative program rules*. –

2 (1) The State Board shall promulgate a legislative rule or
3 rules in accordance with article three-b, chapter twenty-nine-a of
4 this code containing procedures for the approval and operation
5 of alternative teacher education programs as provided in this
6 article. The State Board shall promulgate separate procedures for
7 alternative programs for classroom teachers, alternative
8 programs for highly qualified special education teachers, and
9 additional alternative programs to prepare highly qualified
10 special education teachers. These procedures shall be separate
11 from the State Board's other procedures for approving standard
12 teacher education programs.

13 (2) Before promulgating a rule or rules, the State Board shall
14 consult with the Secretary of Education and the Arts and the
15 Chancellor of the Higher Education Policy Commission.

16 (3) Before adopting a rule or rules, the State Board shall
17 submit its proposed rule or rules to the Legislative Oversight
18 Commission on Education Accountability for review.

19 (b) *Necessary contents.* – The State Board’s rule or rules
20 shall include, at a minimum, the following elements:

21 (1) An orderly set of deadlines, forms and guidance to
22 govern:

23 (A) A partnership’s process for applying to become an
24 approved education provider;

25 (B) The State Board’s process for reviewing and acting on
26 a partnership’s application;

27 (C) An approved education provider’s process for seeking
28 persons to enroll in an alternative program; and

29 (D) A person’s process for enrolling in an approved
30 education provider’s alternative program;

31 (2) Procedures for determining whether a partnership
32 agreement complies with sections one-b and one-c of this article;

33 (3) Procedures for determining whether a partnership
34 agreement complies with any additional requirements contained
35 in the State Board’s rule or rules;

36 (4) Standards for how often and for what lengths of time an
37 alternative program teacher must observe in a mentor’s
38 classroom;

39 (5) Guidelines for determining what tuition or other charges
40 an approved education provider may impose relating to an
41 alternative program;

42 (6) A list of the test or tests that a person must pass if he or
43 she seeks a certification to teach American Sign Language; and

44 (7) A list of the test or tests that a person must pass if he or
45 she seeks a certification to teach in selected vocational and
46 technical areas.

§18A-3-1e. State Board approval; prohibited acts.

1 (a) *State Board approval.* –

2 (1) The State Board shall approve a partnership’s application
3 to operate an alternative program for classroom teachers if the
4 State Board determines that the proposed alternative program, in
5 all material respects, complies or will comply with the State
6 Board’s applicable alternative program rules and with the
7 requirements of sections one-b, one-c of this article.

8 (2) The State Board shall approve a partnership’s application
9 to operate an alternative program for a highly qualified special
10 education teacher if the State Board determines that the proposed
11 alternative program, in all material respects, complies or will
12 comply with the State Board’s applicable alternative program
13 rules and with the requirements of section one-g of this article.

14 (3) The State Board shall approve a partnership’s application
15 to operate an alternative program to prepare highly qualified
16 special education teachers if the State Board determines that the
17 proposed alternative program, in all material respects, complies
18 or will comply with the State Board’s applicable alternative
19 program rules and with the requirements of section one-h of this
20 article.

21 (b) *Prohibited acts.* –

22 (1) A partnership may not implement an alternative program
23 until the partnership’s alternative program has been approved by
24 the State Board.

25 (2) A school or school district may not employ, or make a
26 formal offer of employment to, any person for the purpose of his
27 or her participation in an alternative program unless the
28 alternative program is approved by the State Board and the
29 school or school district is a member of the partnership that is
30 operating the alternative program.

31 (3) A school or school district may not continue to employ
32 an alternative program teacher unless he or she makes
33 satisfactory progress in the alternative program for which he or
34 she is employed.

**§18A-3-1f. Alternative program participation; eligibility for
alternative program certificate; contract renewals;
hiring preference.**

1 (a) *Alternative program participation.* – A person may not
2 participate in an alternative program unless he or she holds an
3 alternative program teacher certificate issue by the State
4 Superintendent for the alternative program position in which he
5 or she will be teaching. An alternative program teacher
6 certificate is the same as a professional teaching certificate for
7 the purpose of issuing a continuing contract.

8 (b) *Eligibility for alternative program teacher certificate.* –
9 To be eligible for an alternative program teacher certificate, a
10 person shall:

11 (1) Possess at least a bachelor's degree from a regionally
12 accredited institution of higher education;

13 (2) Pass the same basic skills and subject matter test or tests
14 required by the State Board for traditional program candidates to
15 become certified in the area for which he or she is seeking
16 licensure;

17 (3) Hold United States citizenship;

18 (4) Be of good moral character;

19 (5) Be physically, mentally and emotionally qualified to
20 perform the duties of a teacher;

21 (6) Attain the age of eighteen years on or before October 1
22 of the year in which the alternative program teacher certificate
23 is issued;

24 (7) Receive from a county superintendent a formal offer of
25 employment in an area of critical need and shortage and by a
26 school or school district that is a member of an approved
27 educational provider;

28 (8) Have relevant academic or occupational qualifications
29 that reasonably indicate that the person will be competent to fill
30 the teaching position in which he or she would be employed. For
31 the purposes of this section, “reasonably indicate” means an
32 academic major or occupational area the same as or similar to
33 the subject matter to which the alternative program teacher is
34 being hired to teach; and

35 (9) Qualify for employment after a criminal history check
36 made pursuant to section ten of this article.

37 (c) *Eligibility for alternative program certificate: American*
38 *Sign Language.* – If a person seeks certification to teach
39 American Sign Language, in lieu of subdivisions (1) and (2),
40 subsection (b) of this section, he or she shall pass one or more
41 appropriate State Board approved tests demonstrating his or her
42 proficiency in American Sign Language.

43 (d) *Eligibility for alternative program certificate: selected*
44 *vocational and technical areas.* – If a person seeks certification
45 to teach in selected vocational and technical areas, in lieu of
46 subdivisions (1) and (2), subsection (b) of this section, he or she
47 shall pass one or more appropriate State Board approved tests

48 demonstrating his or her proficiency in the basic skills and
49 occupational content areas.

50 (e) *Contract renewals.* –

51 (1) A county board shall renew an alternative program
52 teacher's contract from year to year as long as he or she makes
53 satisfactory progress in the applicable alternative education
54 program and until he or she completes the alternative program,
55 except as provided in subdivision (2) of this subsection.

56 (2) If the school or school district that employs the
57 alternative program teacher reduces its overall number of
58 teachers, the alternative program teacher is subject to the same
59 force reduction rules and procedures as any other employee,
60 except those that relate to seniority. In no event will an
61 alternative program teacher displace a professional educator as
62 defined in section one, article one of this chapter.

**§18A-3-1g. Alternative program for highly qualified special
education teachers.**

1 (a) An alternative program for highly qualified special
2 education teachers are separate from the programs established
3 under sections one-b and one-h of this article and are applicable
4 only to teachers who have at least a bachelor's degree in a
5 program for the preparation of teachers from an accredited
6 institution of higher education.

7 (b) These programs are subject to the other provisions of
8 sections one-b, one-c, one-e and one-f of this article only to the
9 extent specifically provided in State Board rule.

10 (c) These programs may be an alternative to the standard
11 college and university programs for the education of special
12 education teachers and also may address the content area
13 preparation of certified special education teachers.

14 (d) The programs shall incorporate professional development
15 to the maximum extent possible to help teachers who are
16 currently certified in special education to obtain the required
17 content area preparation.

18 (e) Participation in an alternative education program
19 pursuant to this section may not affect any rights, privileges or
20 benefits to which the participant otherwise would be entitled as
21 a regular employee and may not alter any rights, privileges or
22 benefits of participants on continuing contract status.

**§18A-3-1h. Additional alternative program to prepare highly
qualified special education teachers.**

1 (a) An additional alternative program to prepare highly
2 qualified special education teachers are separate from the
3 programs established under sections one-b and one-g of this
4 article and are applicable only to persons who hold a bachelor's
5 degree from an accredited institution of higher education.

6 (b) These programs are subject to the other provisions of
7 sections one-b, one-c, one-e and one-f of this article only to the
8 extent specifically provided in State Board rule.

9 (c) These programs may be an alternative to the standard
10 college and university programs for the education of special
11 education teachers and also may address the content area
12 preparation of these persons.

**§18A-3-1i. Recommendation for certification of alternative
program teachers; report forms to be prepared by
State Superintendent; appeal.**

1 (a) At the conclusion of an approved alternative program, the
2 approved education provider shall prepare a comprehensive
3 evaluation report on the alternative program teacher's
4 performance.

5 (b) This report shall be submitted directly to the State
6 Superintendent and shall contain a recommendation as to
7 whether or not a professional teaching certificate should be
8 issued to the alternative program teacher. The State
9 Superintendent shall develop standard forms for this report, and
10 the report shall be made on one or more of the State
11 Superintendent's forms.

12 (c) The comprehensive evaluation report shall include one
13 of the following recommendations:

14 (1) Approved: Recommends issuance of a professional
15 teaching certificate;

16 (2) Insufficient: Recommends that a professional teaching
17 certificate not be issued but that the candidate be allowed to seek
18 reentry on one or more occasions in the future to an approved
19 alternative program; or

20 (3) Disapproved: Recommends that a professional teaching
21 certificate not be issued and that the candidate not be allowed to
22 enter into another approved alternative program in this state but
23 not be prohibited from pursuing teacher certification through
24 other approved programs for the education of teachers in this
25 state.

26 (d) The approved education provider shall provide the
27 alternative program teacher with a copy of the alternative
28 program teacher's written evaluation report and certification
29 recommendation before the approved education provider submits
30 them to the State Superintendent. If the alternative program
31 teacher disagrees with the provider's recommendation, the
32 alternative program teacher may, within fifteen days of receipt,
33 request an appeal in accordance with the certification appeals
34 process established by the State Board.

§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
2 professional educators adopted pursuant to section one of this
3 article and subject to the limitations and conditions of that
4 section, the State Superintendent may issue the following
5 certificates valid in the public schools of the state:

6 (a) *Professional teaching certificates.* —

7 (1) A professional teaching certificate for teaching in the
8 public schools may be issued to a person who meets the
9 following conditions:

10 (A) Holds at least a bachelor's degree from a regionally
11 accredited institution of higher education, and

12 (i) Has passed appropriate State Board approved basic skills
13 and subject matter tests in the area for which licensure is being
14 sought; and

15 (ii) Has completed a program for the education of teachers
16 which meets the requirements approved by the State Board; or

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

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

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

24 (B) Holds at least a bachelor's degree from an accredited
25 institution of higher education; and

26 (i) Has passed appropriate State Board approved basic skills
27 and subject matter tests; and

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

30 (iii) Is recommended for a certificate in accordance with the
31 provisions of section one-i of this article relating to the program;
32 and

33 (iv) Is recommended by the State Superintendent based on
34 documentation submitted.

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

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

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

43 (B) The certificate may be renewed subject to rules adopted
44 by the State Board.

45 (b) *Alternative program teacher certificate.* — An
46 alternative program teacher certificate may be issued to a
47 candidate who is enrolled in an alternative program for teacher
48 education approved by the State Board.

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

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

55 (c) *Professional administrative certificate.* —

56 (1) A professional administrative certificate, endorsed for
57 serving in the public schools, with specific endorsement as a
58 principal, vocational administrator, supervisor of instructions or
59 superintendent, may be issued to a person who has completed
60 requirements all to be approved by the State Board as follows:

61 (A) Holds at least a master's degree from an institution of
62 higher education accredited to offer a master's degree; and

63 (i) Has successfully completed an approved program for
64 administrative certification developed by the State Board in
65 cooperation with the chancellor for higher education; and

66 (ii) Has successfully completed education and training in
67 evaluation skills through the center for professional
68 development, or equivalent education and training in evaluation
69 skills approved by the State Board; and

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

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

74 (3) The initial professional administrative certificate is
75 issued provisionally for a period of five years. This certificate
76 may be converted to a professional administrative certificate
77 valid for five years or renewed, subject to the regulations of the
78 State Board.

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

82 (1) Has completed thirty-six semester hours of post-
83 secondary education or its equivalent in subjects directly related
84 to performance of the job, all approved by the State Board; and

85 (2) Demonstrates the proficiencies to perform duties as
86 required of a paraprofessional as defined in section eight, article
87 four of this chapter.

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

89 (1) Other certificates and permits may be issued, subject to
90 the approval of the State Board, to persons who do not qualify
91 for the professional or paraprofessional certificate.

92 (2) A certificate or permit may not be given permanent status
93 and a person holding one of these credentials shall meet renewal
94 requirements provided by law and by regulation, unless the State
95 Board declares certain of these certificates to be the equivalent
96 of the professional certificate.

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

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

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

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

112 (B) The person completes an orientation program designed
113 and approved in accordance with State Board rules.

114 (f) *Teacher-In-Residence Permit.* —

115 (1) A teacher-in-residence permit may be issued to a
116 candidate who is enrolled in a teacher-in-residence program in
117 accordance with an agreement between an institution of higher
118 education and a county board. The agreement is developed
119 pursuant to subsection (e), section one of this article and requires
120 approval by the State Board.

121 (2) The permit is valid only for the teacher-in-residence
122 program position in which the candidate is enrolled and is
123 subject to enrollment in the program. The permit is valid for no
124 more than one school year and may not be renewed.

CHAPTER 238

(Com. Sub. for S. B. 248 - By Senator Williams)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §17C-4-3 of the Code of West Virginia, 1931, as amended, relating to the duty to give information after a car crash; and requiring person involved in a car crash to provide certain insurance, vehicle owner information and exhibit his or her driver's license.

Be it enacted by the Legislature of West Virginia:

That §17C-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCIDENTS.**§17C-4-3. Duty to give information and render aid.**

1 (a) (1) The driver of any vehicle involved in a crash resulting
2 in injury to or death of any person or damage to any vehicle
3 which is driven or attended by any person shall, if physically
4 able to do so, provide to the person struck or the driver or
5 occupant of or person attending any vehicle collided with, the
6 following:

7 (A) His or her name, a valid telephone number where he or
8 she may be contacted and the year, make, model and last four
9 digits of the vehicle identification number of the vehicle he or
10 she is driving; and

11 (B) Proof of security and financial responsibility required by
12 section three, article two-a, and section two, article four, chapter
13 seventeen-d of this code, and if provided by insurance, the
14 information provided upon the certificate of insurance, including
15 the name of the insured, the name and contact information of the
16 insurer and insurance policy number.

17 (2) A driver may meet the requirements of this subsection by
18 providing the information required herein to a law-enforcement
19 officer who is investigating or providing assistance at the scene
20 of the collision, who shall, if practical under the circumstances,
21 provide the information to any person entitled thereto pursuant
22 to this subsection.

23 (b) The driver of any vehicle involved in a crash resulting in
24 injury to or death of any person, if physically able to do so, shall
25 render to any person injured in such crash reasonable assistance,
26 including the carrying, or the making arrangements for the
27 carrying, of such person to a physician, surgeon or hospital for
28 medical or surgical treatment if it is apparent that such treatment
29 is necessary or if such carrying is requested by the injured
30 person.

CHAPTER 239

(S. B. 510 - By Senator Ferns)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §48-16-102, §48-16-103, §48-16-104, §48-16-201, §48-16-203, §48-16-204, §48-16-205, §48-16-206, §48-16-207, §48-16-208, §48-16-209, §48-16-210, §48-16-211, §48-16-301, §48-16-304, §48-16-305, §48-16-307, §48-16-310, §48-16-311, §48-16-313, §48-16-314, §48-16-316, §48-16-317, §48-16-318, §48-16-319, §48-16-401, §48-16-501, §48-16-502, §48-16-504, §48-16-505, §48-16-506, §48-16-507, §48-16-601, §48-16-602, §48-16-603, §48-16-604, §48-16-605, §48-16-606, §48-16-607, §48-16-608, §48-16-609, §48-16-610, §48-16-611, §48-16-613, §48-16-614, §48-16-615, §48-16-701, §48-16-801, §48-16-802, §48-16-902 and §48-16-903 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto fifteen new sections, designated §48-16-105, §48-16-402, §48-16-616, §48-16-702, §48-16-703, §48-16-704, §48-16-705, §48-16-706, §48-16-707, §48-16-708, §48-16-709, §48-16-710, §48-16-711, §48-16-712 and §48-16-713, all relating to amending the Uniform Interstate Family Support Act; implementing language for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; establishing uniform procedures for processing international child support cases; improving enforcement of American child support orders abroad; ensuring that children residing in the United States will receive the financial support due from parents, wherever the parents reside; providing guidelines and procedures for registration, enforcement and modification of foreign support orders from countries that are parties to the convention; providing that a support order from a country that has acceded to the

convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state; providing notice to the nonregistering party; allowing opportunity to challenge order on certain grounds; providing for enforcement of an order unless one of the grounds for denying recognition is established; and requiring documents submitted under the convention be in the original language and a translated version submitted if the original language is not English.

Be it enacted by the Legislature of West Virginia:

That §48-16-102, §48-16-103, §48-16-104, §48-16-201, §48-16-203, §48-16-204, §48-16-205, §48-16-206, §48-16-207, §48-16-208, §48-16-209, §48-16-210, §48-16-211, §48-16-301, §48-16-304, §48-16-305, §48-16-307, §48-16-310, §48-16-311, §48-16-313, §48-16-314, §48-16-316, §48-16-317, §48-16-318, §48-16-319, §48-16-401, §48-16-501, §48-16-502, §48-16-504, §48-16-505, §48-16-506, §48-16-507, §48-16-601, §48-16-602, §48-16-603, §48-16-604, §48-16-605, §48-16-606, §48-16-607, §48-16-608, §48-16-609, §48-16-610, §48-16-611, §48-16-613, §48-16-614, §48-16-615, §48-16-701, §48-16-801, §48-16-802, §48-16-902 and §48-16-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto fifteen new sections, designated §48-16-105, §48-16-402, §48-16-616, §48-16-702, §48-16-703, §48-16-704, §48-16-705, §48-16-706, §48-16-707, §48-16-708, §48-16-709, §48-16-710, §48-16-711, §48-16-712 and §48-16-713, all to read as follows:

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

PART I. GENERAL PROVISIONS.

§48-16-102. Definitions.

1 As used in this article:

2 (1) “Child” means an individual, whether over or under the
3 age of majority, who is or is alleged to be owed a duty of support
4 by the individual’s parent or who is or is alleged to be the
5 beneficiary of a support order directed to the parent.

6 (2) “Child support order” means a support order for a child,
7 including a child who has attained the age of majority under the
8 law of the issuing state or foreign country.

9 (3) “Convention” means the Convention on the International
10 Recovery of Child Support and Other Forms of Family
11 Maintenance, concluded at The Hague on November 23, 2007.

12 (4) “Duty of support” means an obligation imposed or
13 imposed by law to provide support for a child, spouse or
14 former spouse, including an unsatisfied obligation to provide
15 support.

16 (5) “Foreign country” means a country, including a political
17 subdivision thereof, other than the United States, that authorizes
18 the issuance of support orders and:

19 (A) Which has been declared under the law of the United
20 States to be a foreign reciprocating country;

21 (B) Which has established a reciprocal arrangement for child
22 support with this state;

23 (C) Which has enacted a law or established procedures for
24 the issuance and enforcement of support orders which are
25 substantially similar to the procedures under this article; or

26 (D) In which the convention is in force with respect to the
27 United States.

28 (6) “Foreign support order” means a support order of a
29 foreign tribunal.

30 (7) “Foreign tribunal” means a court, administrative agency
31 or quasi-judicial entity of a foreign country which is authorized
32 to establish, enforce or modify support orders or to determine
33 parentage of a child. The term includes a competent authority
34 under the convention.

35 (8) “Home state” means the state or foreign country in which
36 a child lived with a parent or a person acting as parent for at least
37 six consecutive months immediately preceding the time of filing
38 of a petition or comparable pleading for support and, if a child
39 is less than six months old, the state or foreign country in which
40 the child lived from birth with any of them. A period of
41 temporary absence of any of them is counted as part of the six-
42 month or other period.

43 (9) “Income” includes earnings or other periodic
44 entitlements to money from any source and any other property
45 subject to withholding for support under the law of this state.

46 (10) “Income withholding order” means an order or other
47 legal process directed to an obligor’s source of income as
48 defined by section 1-240 [§48-1-240] of this chapter to withhold
49 support from the income of the obligor.

50 (11) “Initiating tribunal” means the tribunal of a state or
51 foreign country from which a petition or comparable pleading is
52 forwarded or in which a petition or comparable pleading is filed
53 for forwarding to another state or foreign country.

54 (12) “Issuing foreign country” means the foreign country in
55 which a tribunal issues a support order or a judgment
56 determining parentage of a child.

57 (13) “Issuing state” means the state in which a tribunal
58 issues a support order or a judgment determining parentage of a
59 child.

60 (14) “Issuing tribunal” means the tribunal of a state or
61 foreign country that issues a support order or a judgment
62 determining parentage of a child.

63 (15) “Law” includes decisional and statutory law and rules
64 and regulations having the force of law.

65 (16) “Obligee” means:

66 (A) An individual to whom a duty of support is or is alleged
67 to be owed or in whose favor a support order or a judgment
68 determining parentage of a child has been issued;

69 (B) A foreign country, state or political subdivision of a state
70 to which the rights under a duty of support or support order have
71 been assigned or which has independent claims based on
72 financial assistance provided to an individual obligee in place of
73 child support;

74 (C) An individual seeking a judgment determining parentage
75 of the individual’s child; or

76 (D) A person that is a creditor in a proceeding under part
77 VII.

78 (17) “Obligor” means an individual or the estate of a
79 decedent that:

80 (A) Owes or is alleged to owe a duty of support;

81 (B) Is alleged but has not been adjudicated to be a parent of
82 a child;

83 (C) Is liable under a support order; or

84 (D) Is a debtor in a proceeding under part VII.

85 (18) “Outside this state” means a location in another state or
86 a country other than the United States, whether or not the
87 country is a foreign country.

88 (19) "Person" means an individual, corporation, business
89 trust, estate, trust, partnership, limited liability company,
90 association, joint venture, public corporation, government or
91 governmental subdivision, agency or instrumentality or any
92 other legal or commercial entity.

93 (20) "Record" means information that is inscribed on a
94 tangible medium or that is stored in an electronic or other
95 medium and is retrievable in perceivable form.

96 (21) "Register" means to record in a tribunal of this state a
97 support order or judgment determining parentage of a child
98 issued in another state or a foreign country.

99 (22) "Registering tribunal" means a tribunal in which a
100 support order or judgment determining parentage of a child is
101 registered.

102 (23) "Responding state" means a state in which a petition or
103 comparable pleading for support or to determine parentage of a
104 child is filed or to which a petition or comparable pleading is
105 forwarded for filing from another state or a foreign country.

106 (24) "Responding tribunal" means the authorized tribunal in
107 a responding state or foreign country.

108 (25) "Spousal support order" means a support order for a
109 spouse or former spouse of the obligor.

110 (26) "State" means a state of the United States, the District
111 of Columbia, Puerto Rico, the United States Virgin Islands or
112 any territory or insular possession subject to the jurisdiction of
113 the United States. The term includes an Indian nation or tribe.

114 (27) "Support enforcement agency" means a public official
115 or governmental entity, or private agency authorized to:

116 (A) Seek enforcement of support orders or laws relating to
117 the duty of support;

118 (B) Seek establishment or modification of child support;

119 (C) Request determination of parentage of a child;

120 (D) Attempt to locate obligors or their assets; or

121 (E) Request determination of the controlling child support
122 order.

123 (28) “Support order” means a judgment, decree, order,
124 decision or directive, whether temporary, final or subject to
125 modification, issued in a state or foreign country for the benefit
126 of a child, a spouse or a former spouse which provides for
127 monetary support, health care, arrearages, retroactive support or
128 reimbursement for financial assistance provided to an individual
129 obligee in place of child support. The term may include related
130 costs and fees, interest, income withholding, automatic
131 adjustment, reasonable attorney’s fees and other relief.

132 (29) “Tribunal” means a court, administrative agency or
133 quasi-judicial entity authorized to establish, enforce or modify
134 support orders or to determine parentage of a child.

§48-16-103. State tribunal and support enforcement agency.

1 (a) The family court is the tribunal of this state.

2 (b) The Bureau for Child Support Enforcement is the support
3 enforcement agency of this state.

§48-16-104. Remedies cumulative.

1 (a) Remedies provided by this article are cumulative and do
2 not affect the availability of remedies under other law or the
3 recognition of a support order on the basis of comity.

4 (b) This article does not:

5 (1) Provide the exclusive method of establishing or
6 enforcing a support order under the law of this state; or

7 (2) Grant a tribunal of this state jurisdiction to render
8 judgment or issue an order relating to child custody or visitation
9 in a proceeding under this article.

**§48-16-105. Application of article to resident of foreign country
and foreign support proceeding.**

1 (a) A tribunal of this state shall apply parts I through VI
2 [§48-16-101 et seq. through §48-16-601 et seq.] and, as
3 applicable, part VII [§48-16-701 et seq.], to a support proceeding
4 involving:

5 (1) A foreign support order;

6 (2) A foreign tribunal; or

7 (3) An obligee, obligor, or child residing in a foreign
8 country.

9 (b) A tribunal of this state that is requested to recognize and
10 enforce a support order on the basis of comity may apply the
11 procedural and substantive provisions of parts I through VI.

12 (c) Part VII [§48-16-701 et seq.] applies only to a support
13 proceeding under the convention. In such a proceeding, if a
14 provision of part VII [§48-16-701 et seq.] is inconsistent with
15 parts 1 through VI [§48-16-101 et seq. through §48-16-601 et
16 seq.], part VII [§48-16-701 et seq.] controls.

PART II. JURISDICTION.

§48-16-201. Bases for jurisdiction over nonresident.

1 (a) In a proceeding to establish or enforce a support order or
2 to determine parentage of a child, a tribunal of this state may
3 exercise personal jurisdiction over a nonresident individual or
4 the individual's guardian or conservator if:

5 (1) The individual is personally served with notice within
6 this state;

7 (2) The individual submits to the jurisdiction of this state by
8 consent in a record, by entering a general appearance or by filing
9 a responsive document having the effect of waiving any contest
10 to personal jurisdiction;

11 (3) The individual resided with the child in this state;

12 (4) The individual resided in this state and provided prenatal
13 expenses or support for the child;

14 (5) The child resides in this state as a result of the acts or
15 directives of the individual;

16 (6) The individual engaged in sexual intercourse in this state
17 and the child may have been conceived by that act of
18 intercourse;

19 (7) The individual has committed a tortious act by failing to
20 support a child resident in this state; or

21 (8) There is any other basis consistent with the constitutions
22 of this state and the United States for the exercise of personal
23 jurisdiction.

24 (b) The bases of personal jurisdiction set forth in subsection
25 (a) of this section or in any other law of this state may not be
26 used to acquire personal jurisdiction for a tribunal of this state to
27 modify a child support order of another state unless the
28 requirements of section 611 [§48-16-611] are met or in the case
29 of a foreign support order, unless the requirements of section 615
30 [§48-16-615] are met.

§48-16-203. Initiating and responding tribunal of state.

1 Under this article, a tribunal of this state may serve as an
2 initiating tribunal to forward proceedings to a tribunal of another

3 state and as a responding tribunal for proceedings initiated in
4 another state or a foreign country.

§48-16-204. Simultaneous proceedings.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable pleading
3 is filed after a petition or comparable pleading is filed in another
4 state or a foreign country only if:

5 (1) The petition or comparable pleading in this state is filed
6 before the expiration of the time allowed in the other state or the
7 foreign country for filing a responsive pleading challenging the
8 exercise of jurisdiction by the other state or the foreign country:

9 (2) The contesting party timely challenges the exercise of
10 jurisdiction in the other state or foreign country; and

11 (3) If relevant, this state is the home state of the child.

12 (b) A tribunal of this state may not exercise jurisdiction to
13 establish a support order if the petition or comparable pleading
14 is filed before a petition or comparable pleading is filed in
15 another state or a foreign country if:

16 (1) The petition or comparable pleading in the other state or
17 foreign country is filed before the expiration of the time allowed
18 in this state for filing a responsive pleading challenging the
19 exercise of jurisdiction by this state;

20 (2) The contesting party timely challenges the exercise of
21 jurisdiction in this state; and

22 (3) If relevant, the other state or foreign country is the home
23 state of the child.

§48-16-205. Continuing, exclusive jurisdiction to modify child support order.

1 (a) A tribunal of this state that has issued a child support
2 order consistent with the law of this state has and shall exercise
3 continuing, exclusive jurisdiction to modify its child support
4 order if the order is the controlling order and:

5 (1) At the time of the filing of a request for modification this
6 state is the residence of the obligor, the individual obligee or the
7 child for whose benefit the support order is issued; or

8 (2) Even if this state is not the residence of the obligor, the
9 individual obligee or the child for whose benefit the support
10 order is issued, the parties consent in a record or in open court
11 that the tribunal of this state may continue to exercise
12 jurisdiction to modify its order.

13 (b) A tribunal of this state that has issued a child support
14 order consistent with the law of this state may not exercise
15 continuing, exclusive jurisdiction to modify the order if:

16 (1) All of the parties who are individuals file consent in a
17 record with the tribunal of this state that a tribunal of another
18 state that has jurisdiction over at least one of the parties who is
19 an individual or that is located in the state of residence of the
20 child may modify the order and assume continuing, exclusive
21 jurisdiction; or

22 (2) Its order is not the controlling order.

23 (c) If a tribunal of another state has issued a child support
24 order pursuant to the Uniform Interstate Family Support Act or
25 a law substantially similar to that article which modifies a child
26 support order of a tribunal of this state, tribunals of this state
27 shall recognize the continuing, exclusive jurisdiction of the
28 tribunal of the other state.

29 (d) A tribunal of this state that lacks continuing, exclusive
30 jurisdiction to modify a child support order may serve as an
31 initiating tribunal to request a tribunal of another state to modify
32 a support order issued in that state.

33 (e) A temporary support order issued ex parte or pending
34 resolution of a jurisdictional conflict does not create continuing,
35 exclusive jurisdiction in the issuing tribunal.

§48-16-206. Continuing jurisdiction to enforce child support order.

1 (a) A tribunal of this state that has issued a child support
2 order consistent with the law of this state may serve as an
3 initiating tribunal to request a tribunal of another state to
4 enforce:

5 (1) The order if the order is the controlling order and has not
6 been modified by a tribunal of another state that assumed
7 jurisdiction pursuant to the Uniform Interstate Family Support
8 Act; or

9 (2) A money judgment for arrears of support and interest on
10 the order accrued before a determination that an order of a
11 tribunal of another state is the controlling order.

12 (b) A tribunal of this state having continuing jurisdiction
13 over a support order may act as a responding tribunal to enforce
14 the order.

§48-16-207. Determination of controlling child support order.

1 (a) If a proceeding is brought under this article and only one
2 tribunal has issued a child support order, the order of that
3 tribunal controls and must be so recognized.

4 (b) If a proceeding is brought under this article, and two or
5 more child support orders have been issued by tribunals of this

6 state, another state or a foreign country with regard to the same
7 obligor and same child, a tribunal of this state having personal
8 jurisdiction over both the obligor and individual obligee shall
9 apply the following rules and by order shall determine which
10 order controls and must be recognized.

11 (1) If only one of the tribunals would have continuing,
12 exclusive jurisdiction under this article, the order of that tribunal
13 controls and must be so recognized.

14 (2) If more than one of the tribunals would have continuing,
15 exclusive jurisdiction under this article:

16 (A) An order issued by a tribunal in the current home state
17 of the child controls; or

18 (B) If an order has not been issued in the current home state
19 of the child, the order most recently issued controls.

20 (3) If none of the tribunals would have continuing, exclusive
21 jurisdiction under this article, the tribunal of this state shall issue
22 a child support order which controls.

23 (c) If two or more child support orders have been issued for
24 the same obligor and same child, upon request of a party who is
25 an individual or that is a support enforcement agency, a tribunal
26 of this state having personal jurisdiction over both the obligor
27 and the obligee who is an individual shall determine which order
28 controls under subsection (b) of this section. The request may be
29 filed with a registration for enforcement or registration for
30 modification pursuant to part VI or [§48-16-601 et seq.] may be
31 filed as a separate proceeding.

32 (d) A request to determine which is the controlling order
33 must be accompanied by a copy of every child support order in
34 effect and the applicable record of payments. The requesting
35 party shall give notice of the request to each party whose rights
36 may be affected by the determination.

37 (e) The tribunal that issued the controlling order under
38 subsection (a), (b) or (c) of this section has continuing
39 jurisdiction to the extent provided in section 16-205 [§48-16-
40 205] or 16-206 [§48-16-206].

41 (f) A tribunal of this state that determines by order which is
42 the controlling order under subsection (b) (1) or (2) or (c) or that
43 issues a new controlling order under subdivision (3) of
44 subsection (b) shall state in that order:

45 (1) The basis upon which the tribunal made its
46 determination;

47 (2) The amount of prospective support, if any; and

48 (3) The total amount of consolidated arrears and accrued
49 interest, if any, under all of the orders after all payments made
50 are credited as provided by section 209 [§48-16-209].

51 (g) Within thirty days after issuance of an order determining
52 which is the controlling order, the party obtaining that order shall
53 file a certified copy of it in each tribunal that issued or registered
54 an earlier order of child support. A party or support enforcement
55 agency obtaining the order that fails to file a certified copy is
56 subject to appropriate sanctions by a tribunal in which the issue
57 of failure to file arises. The failure to file does not affect the
58 validity or enforceability of the controlling order.

59 (h) An order that has been determined to be the controlling
60 order, or a judgment for consolidated arrears of support and
61 interest, if any, made pursuant to this section must be recognized
62 in proceedings under this article.

§48-16-208. Child support orders for two or more obligees.

1 In responding to registrations or petitions for enforcement of
2 two or more child support orders in effect at the same time with

3 regard to the same obligor and different individual obligees, at
4 least one of which was issued by a tribunal of another state or a
5 foreign country, a tribunal of this state shall enforce those orders
6 in the same manner as if the orders had been issued by a tribunal
7 of this state.

§48-16-209. Credit for payments.

1 A tribunal of this state shall credit amounts collected for a
2 particular period pursuant to any child support order against the
3 amounts owed for the same period under any other child support
4 order for support of the same child issued by a tribunal of this
5 state, another state, or a foreign country.

§48-16-210. Application of article to nonresident subject to personal jurisdiction.

1 A tribunal of this state exercising personal jurisdiction over
2 a nonresident in a proceeding under this article, under other law
3 of this state relating to a support order, or recognizing a foreign
4 support order may receive evidence from outside this state
5 pursuant to section 316 [§48-16-316], communication with a
6 tribunal outside this state pursuant to section 317 [§48-16-317],
7 and obtain discovery through a tribunal outside this state
8 pursuant to section 318 [§48-16-318]. In all other respects, parts
9 III through [§§48-3-101 et seq. through §§ 48-6-101 et seq.] VI
10 do not apply and the tribunal shall apply the procedural and
11 substantive law of this state.

§48-16-211. Continuing, exclusive jurisdiction to modify spousal support order.

1 (a) A tribunal of this state issuing a spousal support order
2 consistent with the law of this state has continuing, exclusive
3 jurisdiction to modify the spousal support order throughout the
4 existence of the support obligation.

5 (b) A tribunal of this state may not modify a spousal support
6 order issued by a tribunal of another state or a foreign country
7 having continuing, exclusive jurisdiction over that order under
8 the law of that state or foreign country.

9 (c) A tribunal of this state that has continuing, exclusive
10 jurisdiction over a spousal support order may serve as:

11 (1) An initiating tribunal to request a tribunal of another state
12 to enforce the spousal support order issued in this state; or

13 (2) A responding tribunal to enforce or modify its own
14 spousal support order.

PART III. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceeding under article.

1 (a) Except as otherwise provided in this article, this part
2 applies to all proceedings under this article.

3 (b) An individual petitioner or a support enforcement agency
4 may initiate a proceeding authorized under this article by filing
5 a petition in an initiating tribunal for forwarding to a responding
6 tribunal or by filing a petition or a comparable pleading directly
7 in a tribunal of another state or a foreign country which has or
8 can obtain personal jurisdiction over the respondent.

§48-16-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this article, an
2 initiating tribunal of this state shall forward the petition and its
3 accompanying documents:

4 (1) To the responding tribunal or appropriate support
5 enforcement agency in the responding state; or

6 (2) If the identity of the responding tribunal is unknown, to
7 the state information agency of the responding state with a

8 request that they be forwarded to the appropriate tribunal and
9 that receipt be acknowledged.

10 (b) If requested by the responding tribunal, a tribunal of this
11 state shall issue a certificate or other document and make
12 findings required by the law of the responding state. If the
13 responding tribunal is in a foreign country, upon request, the
14 tribunal of this state shall specify the amount of support sought,
15 convert that amount into the equivalent amount in the foreign
16 currency under applicable official or market exchange rate as
17 publicly reported and provide any other documents necessary to
18 satisfy the requirements of the responding foreign tribunal.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribunal or
3 directly pursuant to subsection (b), section 16-301 [§48-16-301],
4 it shall cause the petition or pleading to be filed and notify the
5 petitioner where and when it was filed.

6 (b) A responding tribunal of this state, to the extent not
7 prohibited by other law, may do one or more of the following:

8 (1) Establish or enforce a support order, modify a child
9 support order, determine the controlling child support order, or
10 determine parentage of a child;

11 (2) Order an obligor to comply with a support order,
12 specifying the amount and the manner of compliance;

13 (3) Order income withholding;

14 (4) Determine the amount of any arrearages and specify a
15 method of payment;

16 (5) Enforce orders by civil or criminal contempt or both;

17 (6) Set aside property for satisfaction of the support order;

18 (7) Place liens and order execution on the obligor's property;

19 (8) Order an obligor to keep the tribunal informed of the
20 obligor's current residential address, electronic mail address,
21 telephone number, employer, address of employment and
22 telephone number at the place of employment;

23 (9) Issue a capias for an obligor who has failed after proper
24 notice to appear at a hearing ordered by the tribunal and enter the
25 capias in any local and state computer systems for criminal
26 warrants;

27 (10) Order the obligor to seek appropriate employment by
28 specified methods;

29 (11) Award reasonable attorney's fees and other fees and
30 costs; and

31 (12) Grant any other available remedy.

32 (c) A responding tribunal of this state shall include in a
33 support order issued under this article or, in the documents
34 accompanying the order, the calculations on which the support
35 order is based.

36 (d) A responding tribunal of this state may not condition the
37 payment of a support order issued under this article upon
38 compliance by a party with provisions for visitation.

39 (e) If a responding tribunal of this state issues an order under
40 this article, the tribunal shall send a copy of the order to the
41 petitioner and the respondent and to the initiating tribunal, if any.

42 (f) If requested to enforce a support order, arrears, or
43 judgment or modify a support order stated in a foreign currency,

44 a responding tribunal of this state shall convert the amount stated
45 in the foreign currency to the equivalent amount in dollars under
46 the applicable official or market exchange rate as publicly
47 reported.

§48-16-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon request,
2 shall provide services to a petitioner in a proceeding under this
3 article.

4 (b) A support enforcement agency of this state that is
5 providing services to the petitioner shall:

6 (1) Take all steps necessary to enable an appropriate tribunal
7 of this state, another state or a foreign country to obtain
8 jurisdiction over the respondent;

9 (2) Request an appropriate tribunal to set a date, time and
10 place for a hearing;

11 (3) Make a reasonable effort to obtain all relevant
12 information, including information as to income and property of
13 the parties;

14 (4) Within two days, exclusive of Saturdays, Sundays and
15 legal holidays, after receipt of a notice in a record from an
16 initiating, responding or registering tribunal, send a copy of the
17 notice to the petitioner;

18 (5) Within two days, exclusive of Saturdays, Sundays and
19 legal holidays, after receipt of communication in a record from
20 the respondent or the respondent's attorney, send a copy of the
21 communication to the petitioner; and

22 (6) Notify the petitioner if jurisdiction over the respondent
23 cannot be obtained.

24 (c) A support enforcement agency of this state that requests
25 registration of a child support order in this state for enforcement
26 or for modification shall make reasonable efforts:

27 (1) To ensure that the order to be registered is the controlling
28 order; or

29 (2) If two or more child support orders exist and the identity
30 of the controlling order has not been determined, to ensure that
31 a request for such a determination is made in a tribunal having
32 jurisdiction to do so.

33 (d) A support enforcement agency of this state that requests
34 registration and enforcement of a support order, arrears or
35 judgment stated in a foreign currency shall convert the amounts
36 stated in the foreign currency into the equivalent amounts in
37 dollars under the applicable official or market exchange rate as
38 publicly reported.

39 (e) A support enforcement agency of this state shall request
40 a tribunal of this state to issue a child support order and an
41 income withholding order that redirect payment of current
42 support, arrears, and interest if requested to do so by a support
43 enforcement agency of another state pursuant to section 319
44 [§48-16-319].

45 (f) This article does not create or negate a relationship of
46 attorney and client or other fiduciary relationship between a
47 support enforcement agency or the attorney for the agency and
48 the individual being assisted by the agency.

§48-16-310. Duties of state information agency.

1 (a) The Bureau for Child Support Enforcement is the state
2 information agency under this article.

3 (b) The state information agency shall:

4 (1) Compile and maintain a current list, including addresses,
5 of the tribunals in this state which have jurisdiction under this
6 article and any support enforcement agencies in this state and
7 transmit a copy to the state information agency of every other
8 state;

9 (2) Maintain a register of names and addresses of tribunals
10 and support enforcement agencies received from other states.

11 (3) Forward to the appropriate tribunal in the county in this
12 state in which the obligee who is an individual or the obligor
13 resides, or in which the obligor's property is believed to be
14 located, all documents concerning a proceeding under this article
15 received from another state or a foreign country; and

16 (4) Obtain information concerning the location of the obligor
17 and the obligor's property within this state not exempt from
18 execution, by such means as postal verification and federal or
19 state locator services, examination of telephone directories,
20 requests for the obligor's address from employers and
21 examinations of governmental records, including, to the extent
22 not prohibited by other law, those relating to real property, vital
23 statistics, law enforcement, taxation, motor vehicles, driver's
24 licenses and social security.

§48-16-311. Pleadings and accompanying documents.

1 (a) In a proceeding under this article, a petitioner seeking to
2 establish a support order, to determine parentage of a child or to
3 register and modify a support order of a tribunal of another state
4 or a foreign country must file a petition. Unless otherwise
5 ordered under section 16-312 [§48-16-312], the petition or
6 accompanying documents must provide, so far as known, the
7 name, residential address and social security numbers of the
8 obligor and the obligee or the parent and alleged parent and the

9 name, sex, residential address, social security number and date
10 of birth of each child for whose benefit support is sought or
11 whose parentage is to be determined. Unless filed at the time of
12 registration, the petition must be accompanied by a copy of any
13 support order known to have been issued by another tribunal.
14 The petition may include any other information that may assist
15 in locating or identifying the respondent.

16 (b) The petition must specify the relief sought. The petition
17 and accompanying documents must conform substantially with
18 the requirements imposed by the forms mandated by federal law
19 for use in cases filed by a support enforcement agency.

§48-16-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing fee or
2 other costs.

3 (b) If an obligee prevails, a responding tribunal of this state
4 may assess against an obligor filing fees, reasonable attorney's
5 fee, other costs and necessary travel and other reasonable
6 expenses incurred by the obligee and the obligee's witnesses.
7 The tribunal may not assess fees, costs or expenses against the
8 obligee or the support enforcement agency of either the initiating
9 or the responding state or foreign country, except as provided by
10 other law. Attorney's fees may be taxed as costs and may be
11 ordered paid directly to the attorney, who may enforce the order
12 in the attorney's own name. Payment of support owed to the
13 obligee has priority over fees, costs and expenses.

14 (c) The tribunal shall order the payment of costs and
15 reasonable attorney's fees if it determines that a hearing was
16 requested primarily for delay. In a proceeding under part VI
17 [§§48-16-601 through 48-16-615], a hearing is presumed to have
18 been requested primarily for delay if a registered support order
19 is confirmed or enforced without change.

§48-16-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding under this
2 article before a responding tribunal, whether in person, by
3 private attorney or through services provided by the support
4 enforcement agency, does not confer personal jurisdiction over
5 the petitioner in another proceeding.

6 (b) A petitioner is not amenable to service of civil process
7 while physically present in this state to participate in a
8 proceeding under this article.

9 (c) The immunity granted by this section does not extend to
10 civil litigation based on acts unrelated to a proceeding under this
11 article committed by a party while physically present in this state
12 to participate in the proceeding.

§48-16-316. Special rules of evidence and procedure.

1 (a) The physical presence of a nonresident party who is an
2 individual in a tribunal of this state is not required for the
3 establishment, enforcement or modification of a support order or
4 the rendition of a judgment determining parentage of a child.

5 (b) An affidavit, a document substantially complying with
6 federally mandated forms or a document incorporated by
7 reference in any of them, which would not be excluded under the
8 hearsay rule if given in person, is admissible in evidence if given
9 under penalty of perjury by a party or witness residing outside
10 this state.

11 (c) A copy of the record of child support payments certified
12 as a true copy of the original by the custodian of the record may
13 be forwarded to a responding tribunal. The copy is evidence of
14 facts asserted in it and is admissible to show whether payments
15 were made.

16 (d) Copies of bills for testing for parentage of a child, and
17 for prenatal and postnatal health care of the mother and child,
18 furnished to the adverse party at least ten days before trial are
19 admissible in evidence to prove the amount of the charges billed
20 and that the charges were reasonable, necessary and customary.

21 (e) Documentary evidence transmitted from outside this state
22 to a tribunal of this state by telephone, telecopier or other
23 electronic means that do not provide an original record may not
24 be excluded from evidence on an objection based on the means
25 of transmission.

26 (f) In a proceeding under this article, a tribunal of this state
27 shall permit a party or witness residing outside this state to be
28 deposed or to testify under penalty of perjury by telephone,
29 audiovisual means or other electronic means at a designated
30 tribunal or other location. A tribunal of this state shall cooperate
31 with other tribunals in designating an appropriate location for the
32 deposition or testimony. The Supreme Court of Appeals shall
33 promulgate new rules or amend the rules of practice and
34 procedure for family law to establish procedures pertaining to
35 the exercise of cross examination in those instances involving
36 the receipt of testimony by means other than direct or personal
37 testimony.

38 (g) If a party called to testify at a civil hearing refuses to
39 answer on the ground that the testimony may be self-
40 incriminating, the trier of fact may draw an adverse inference
41 from the refusal.

42 (h) A privilege against disclosure of communications
43 between spouses does not apply in a proceeding under this
44 article.

45 (i) The defense of immunity based on the relationship of
46 husband and wife or parent and child does not apply in a
47 proceeding under this article.

48 (j) A voluntary acknowledgment of paternity, certified as a
49 true copy, is admissible to establish parentage of the child.

§48-16-317. Communications between tribunals.

1 A tribunal of this state may communicate with a tribunal
2 outside this state in a record, or by telephone, electronic mail or
3 other means, to obtain information concerning the laws, the legal
4 effect of a judgment, decree, or order of that tribunal and the
5 status of a proceeding. A tribunal of this state may furnish
6 similar information by similar means to a tribunal outside this
7 state.

§48-16-318. Assistance with discovery.

1 A tribunal of this state may:

2 (1) Request a tribunal outside this state to assist in obtaining
3 discovery; and

4 (2) Upon request, compel a person over which it has
5 jurisdiction to respond to a discovery order issued by a tribunal
6 outside this state.

§48-16-319. Receipt and disbursement of payments.

1 (a) A support enforcement agency or tribunal of this state
2 shall disburse promptly any amounts received pursuant to a
3 support order as directed by the order. The agency or tribunal
4 shall furnish to a requesting party or tribunal of another state or
5 a foreign country a certified statement by the custodian of the
6 record of the amounts and dates of all payments received.

7 (b) If neither the obligor, nor the obligee who is an
8 individual, nor the child resides in this state, upon request from
9 the support enforcement agency of this state or another state, a
10 tribunal of this state shall:

11 (1) Direct that the support payment be made to the support
12 enforcement agency in the state in which the obligee is receiving
13 services; and

14 (2) Issue and send to the obligor's employer a conforming
15 income withholding order or an administrative notice of change
16 of payee, reflecting the redirected payments.

17 (c) The support enforcement agency of this state receiving
18 redirected payments from another state pursuant to a law similar
19 to subsection (b) of this section shall furnish to a requesting
20 party or tribunal of the other state a certified statement by the
21 custodian of the record of the amount and dates of all payments
22 received.

PART IV. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

1 (a) If a support order entitled to recognition under this article
2 has not been issued, a responding tribunal of this state with
3 personal jurisdiction over the parties may issue a support order
4 if:

5 (1) The individual seeking the order resides outside this
6 state; or

7 (2) The support enforcement agency seeking the order is
8 located outside this state.

9 (b) The tribunal may issue a temporary child support order
10 if the tribunal determines that such an order is appropriate and
11 the individual ordered to pay is:

12 (1) A presumed father of the child;

13 (2) Petitioning to have his paternity adjudicated;

14 (3) Identified as the father of the child through genetic
15 testing;

16 (4) An alleged father who has declined to submit to genetic
17 testing;

18 (5) Shown by clear and convincing evidence to be the father
19 of the child;

20 (6) An acknowledged father as provided by applicable state
21 law;

22 (7) The mother of the child; or

23 (8) An individual who has been ordered to pay child support
24 in a previous proceeding and the order has not been reversed or
25 vacated.

26 (c) Upon finding, after notice and opportunity to be heard,
27 that an obligor owes a duty of support, the tribunal shall issue a
28 support order directed to the obligor and may issue other orders
29 pursuant to section 16-305 [§48-16-305].

§48-16-402. Proceeding to determine parentage.

1 A tribunal of this state authorized to determine parentage of
2 a child may serve as a responding tribunal in a proceeding to
3 determine parentage of a child brought under this article or a law
4 or procedure substantially similar to this article.

PART V. ENFORCEMENT OF SUPPORT ORDER
WITHOUT REGISTRATION.

**§48-16-501. Employer's receipt of income withholding order of
another state.**

1 An income withholding order issued in another state may be
2 sent by or on behalf of the obligee, or by the support

3 enforcement agency, to the person defined as the obligor's
4 source of income under section 1-240 {[§48-1-240]} of this
5 chapter without first filing a petition or comparable pleading or
6 registering the order with a tribunal of this state.

**§48-16-502. Employer's compliance with income withholding
order of another state.**

1 (a) Upon receipt of an income withholding order, the
2 obligor's employer shall immediately provide a copy of the order
3 to the obligor.

4 (b) The employer shall treat an income withholding order
5 issued in another state which appears regular on its face as if it
6 had been issued by a tribunal of this state.

7 (c) Except as otherwise provided in subsection (d) of this
8 section and section 16-503 [§48-16-503], the employer shall
9 withhold and distribute the funds as directed in the withholding
10 order by complying with the terms of the order which specify:

11 (1) The duration and amount of periodic payments of current
12 child support, stated as a sum certain;

13 (2) The person designated to receive payments and the
14 address to which the payments are to be forwarded;

15 (3) Medical support, whether in the form of periodic cash
16 payment, stated as a sum certain, or ordering the obligor to
17 provide health insurance coverage for the child under a policy
18 available through the obligor's employment;

19 (4) The amount of periodic payments of fees and costs for a
20 support enforcement agency, the issuing tribunal and the
21 obligee's attorney, stated as sums certain; and

22 (5) The amount of periodic payments of arrearages and
23 interest on arrearages, stated as sums certain.

24 (d) An employer shall comply with the law of the state of the
25 obligor's principal place of employment for withholding from
26 income with respect to:

27 (1) The employer's fee for processing an income
28 withholding order;

29 (2) The maximum amount permitted to be withheld from the
30 obligor's income; and

31 (3) The times within which the employer must implement
32 the withholding order and forward the child support payment.

§48-16-504. Immunity from civil liability.

1 An employer that complies with an income withholding
2 order issued in another state in accordance with this article is not
3 subject to civil liability to any individual or agency with regard
4 to the employer's withholding of child support from the
5 obligor's income.

§48-16-505. Penalties for noncompliance.

1 An employer that willfully fails to comply with an income
2 withholding order issued in another state and received for
3 enforcement is subject to the same penalties that may be
4 imposed for noncompliance with an order issued by a tribunal of
5 this state.

§48-16-506. Contest by obligor.

1 (a) An obligor may contest the validity or enforcement of an
2 income withholding order issued in another state and received
3 directly by an employer in this state by registering the order in
4 a tribunal of this state and filing a contest to that order as
5 provided in part VI [§48-16-601 et seq.], or otherwise contesting
6 the order in the same manner as if the order had been issued by
7 a tribunal of this state.

8 (b) The obligor shall give notice of the contest to:

9 (1) A support enforcement agency providing services to the
10 obligee;

11 (2) Each employer that has directly received an income
12 withholding order relating to the obligor; and

13 (3) The person designated to receive payments in the income
14 withholding order, or if no person is designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

1 (a) A party or support enforcement agency seeking to
2 enforce a support order or an income withholding order, or both,
3 issued in another state or a foreign support order may send the
4 documents required for registering the order to a support
5 enforcement agency of this state.

6 (b) Upon receipt of the documents, the support enforcement
7 agency, without initially seeking to register the order, shall
8 consider and, if appropriate, use any administrative procedure
9 authorized by the law of this state to enforce a support order or
10 an income withholding order, or both. If the obligor does not
11 contest administrative enforcement, the order need not be
12 registered. If the obligor contests the validity or administrative
13 enforcement of the order, the support enforcement agency shall
14 register the order pursuant to this article.

PART VI. REGISTRATION, ENFORCEMENT AND
MODIFICATION OF SUPPORT ORDER.

§48-16-601. Registration of order for enforcement.

1 A support order or income withholding order issued in
2 another state or a foreign support order may be registered in this
3 state for enforcement.

§48-16-602. Procedure to register order for enforcement.

1 (a) Except as provided in section 706 [§48-16-706], a
2 support order or income withholding order of another state or a
3 foreign support order may be registered in this state by sending
4 the following records to the state information agency in this
5 state:

6 (1) A letter of transmittal to the tribunal requesting
7 registration and enforcement;

8 (2) Two copies, including one certified copy, of the order to
9 be registered, including any modification of the order;

10 (3) A sworn statement by the person requesting registration
11 or a certified statement by the custodian of the records showing
12 the amount of any arrearage;

13 (4) The name of the obligor and, if known:

14 (A) The obligor's address and social security number;

15 (B) The name and address of the obligor's employer and any
16 other source of income of the obligor; and

17 (C) A description and the location of property of the obligor
18 in this state not exempt from execution; and

19 (5) Except as otherwise provided in section 312 [§48-16-
20 312], the name and address of the obligee and, if applicable, the
21 person to whom support payments are to be remitted.

22 (b) On receipt of a request for registration, the clerk of the
23 court shall cause the order to be filed as an order of a tribunal of
24 another state or a foreign support order, together with one copy
25 of the documents and information, regardless of their form.

26 (c) A petition or comparable pleading seeking a remedy that
27 must be affirmatively sought under other law of this state may be

28 filed at the same time as the request for registration or later. The
29 pleading must specify the grounds for the remedy sought.

30 (d) If two or more orders are in effect, the person requesting
31 registration shall:

32 (1) Furnish to the tribunal a copy of every support order
33 asserted to be in effect in addition to the documents specified in
34 this section;

35 (2) Specify the order alleged to be the controlling order, if
36 any; and

37 (3) Specify the amount of consolidated arrears, if any.

38 (e) A request for a determination of which is the controlling
39 order may be filed separately or with a request for registration
40 and enforcement or for registration and modification. The person
41 requesting registration shall give notice of the request to each
42 party whose rights may be affected by the determination.

§48-16-603. Effect of registration for enforcement.

1 (a) A support order or income withholding order issued in
2 another state or a foreign support order is registered when the
3 order is filed in the registering tribunal of this state.

4 (b) A registered support order issued in another state or a
5 foreign country is enforceable in the same manner and is subject
6 to the same procedures as an order issued by a tribunal of this
7 state.

8 (c) Except as otherwise provided in this article, a tribunal of
9 this state shall recognize and enforce, but may not modify, a
10 registered support order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

1 (a) Except as otherwise provided in subsection (d) of this
2 section, the law of the issuing state or foreign country governs:

3 (1) The nature, extent, amount and duration of current
4 payments under a registered support order;

5 (2) The computation and payment of arrearages and accrual
6 of interest on the arrearages under the support order; and

7 (3) The existence and satisfaction of other obligations under
8 the support order.

9 (b) In a proceeding for arrears under a registered support
10 order, the statute of limitation of this state or of the issuing state
11 or foreign country, whichever is longer, applies.

12 (c) A responding tribunal of this state shall apply the
13 procedures and remedies of this state to enforce current support
14 and collect arrears and interest due on a support order of another
15 state or a foreign country registered in this state.

16 (d) After a tribunal of this state or another state determines
17 which is the controlling order and issues an order consolidating
18 arrears, if any, a tribunal of this state shall prospectively apply
19 the law of the state or foreign country issuing the controlling
20 order, including its law on interest on arrears, on current and
21 future support and on consolidated arrears.

§48-16-605. Notice of registration of order.

1 (a) When a support order or income withholding order issued
2 in another state or a foreign support order is registered, the clerk
3 of the court shall notify the nonregistering party. The notice must
4 be accompanied by a copy of the registered order and the
5 documents and relevant information accompanying the order.

6 (b) A notice must inform the nonregistering party:

7 (1) That a registered order is enforceable as of the date of
8 registration in the same manner as an order issued by a tribunal
9 of this state;

10 (2) That a hearing to contest the validity or enforcement of
11 the registered order must be requested within twenty days after
12 notice unless the registered order is under section 707 [§48-16-
13 707];

14 (3) That failure to contest the validity or enforcement of the
15 registered order in a timely manner will result in confirmation of
16 the order and enforcement of the order and the alleged
17 arrearages; and

18 (4) Of the amount of any alleged arrearages.

19 (c) If the registering party asserts that two or more orders are
20 in effect, a notice must also:

21 (1) Identify the two or more orders and the order alleged by
22 the registering party to be the controlling order and the
23 consolidated arrears, if any;

24 (2) Notify the nonregistering party of the right to a
25 determination of which is the controlling order;

26 (3) State that the procedures provided in subsection (b) of
27 this section apply to the determination of which is the controlling
28 order; and

29 (4) State that failure to contest the validity or enforcement of
30 the order alleged to be the controlling order in a timely manner
31 may result in confirmation that the order is the controlling order.

32 (d) Upon registration of an income withholding order for
33 enforcement, the support enforcement agency or the registering
34 tribunal shall notify the obligor's source of income pursuant to
35 section 14-401 et seq. [§48-14-401 et seq.], of this chapter.

**§48-16-606. Procedure to contest validity or enforcement of
registered support order.**

1 (a) A nonregistering party seeking to contest the validity or
2 enforcement of a registered order in this state shall request a

3 hearing within the time required by section 605 [§48-16-605].
4 The nonregistering party may seek to vacate the registration, to
5 assert any defense to an allegation of noncompliance with the
6 registered order or to contest the remedies being sought or the
7 amount of any alleged arrearages pursuant to section 16-607
8 [§48-16-607].

9 (b) If the nonregistering party fails to contest the validity or
10 enforcement of the registered support order in a timely manner,
11 the order is confirmed by operation of law.

12 (c) If a nonregistering party requests a hearing to contest the
13 validity or enforcement of the registered order, the registering
14 tribunal shall schedule the matter for hearing and give notice to
15 the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered support order or seeking to vacate the registration has
3 the burden of proving one or more of the following defenses:

4 (1) The issuing tribunal lacked personal jurisdiction over the
5 contesting party;

6 (2) The order was obtained by fraud;

7 (3) The order has been vacated, suspended or modified by a
8 later order;

9 (4) The issuing tribunal has stayed the order pending appeal;

10 (5) There is a defense under the law of this state to the
11 remedy sought;

12 (6) Full or partial payment has been made;

13 (7) The statute of limitation under section 16-604 [§48-16-
14 604] precludes enforcement of some or all of the alleged
15 arrearages; or

16 (8) The alleged controlling order is not the controlling order.

17 (b) If a party presents evidence establishing a full or partial
18 defense under subsection (a) of this section, a tribunal may stay
19 enforcement of a registered support order, continue the
20 proceeding to permit production of additional relevant evidence
21 and issue other appropriate orders. An uncontested portion of the
22 registered support order may be enforced by all remedies
23 available under the law of this state.

24 (c) If the contesting party does not establish a defense under
25 subsection (a) of this section to the validity or enforcement of a
26 registered support order, the registering tribunal shall issue an
27 order confirming the order.

§48-16-608. Confirmed order.

1 Confirmation of a registered support order, whether by
2 operation of law or after notice and hearing, precludes further
3 contest of the order with respect to any matter that could have
4 been asserted at the time of registration.

§48-16-609. Procedure to register child support order of another state for modification.

1 A party or support enforcement agency seeking to modify or
2 to modify and enforce a child support order issued in another
3 state shall register that order in this state in the same manner
4 provided in sections 16-601 through 16-608 [§§48-16-601
5 through §48-16-608] if the order has not been registered. A
6 petition for modification may be filed at the same time as a
7 request for registration or later. The pleading must specify the
8 grounds for modification.

§48-16-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support order of
2 another state registered for purposes of modification in the same
3 manner as if the order had been issued by a tribunal of this state,
4 but the registered support order may be modified only if the
5 requirements of section 16-611 [§48-16-611] or 16-613 [§48-16-
6 613] have been met.

§48-16-611. Modification of child support order of another state.

1 (a) If section 613 [§48-16-613] does not apply, upon petition
2 a tribunal of this state may modify a child support order issued
3 in another state which is registered in this state if, after notice
4 and hearing, the tribunal finds that:

5 (1) The following requirements are met:

6 (A) Neither the child, nor the obligee who is an individual
7 nor the obligor resides in the issuing state;

8 (B) A petitioner who is a nonresident of this state seeks
9 modification; and

10 (C) The respondent is subject to the personal jurisdiction of
11 the tribunal of this state; or

12 (2) This state is the residence of the child or a party who is
13 an individual is subject to the personal jurisdiction of the tribunal
14 of this state and all of the parties who are individuals have filed
15 consents in a record in the issuing tribunal for a tribunal of this
16 state to modify the support order and assume continuing,
17 exclusive jurisdiction.

18 (b) Modification of a registered child support order is subject
19 to the same requirements, procedures and defenses that apply to
20 the modification of an order issued by a tribunal of this state and
21 the order may be enforced and satisfied in the same manner.

22 (c) A tribunal of this state may not modify any aspect of a
23 child support order that may not be modified under the law of
24 the issuing state, including the duration of the obligation of
25 support. If two or more tribunals have issued child support
26 orders for the same obligor and same child, the order that
27 controls must be so recognized under section 16-207 [§48-16-
28 207] establishes the aspects of the support order which are
29 nonmodifiable.

30 (d) In a proceeding to modify a child support order, the law
31 of the state that is determined to have issued the initial
32 controlling order governs the duration of the obligation of
33 support. The obligor's fulfillment of the duty of support
34 established by that order precludes imposition of a further
35 obligation of support by a tribunal of this state.

36 (e) On the issuance of an order by a tribunal of this state
37 modifying a child support order issued in another state, the
38 tribunal of this state becomes the tribunal having continuing,
39 exclusive jurisdiction.

40 (f) Notwithstanding subsections (a) through (e) of this
41 section and section 201 (b), a tribunal of this state retains
42 jurisdiction to modify an order issued by a tribunal of this state
43 if:

44 (1) One party resides in another state; and

45 (2) The other party resides outside the United States.

§48-16-613. Jurisdiction to modify child support order of another state when individual parties reside in this state.

1 (a) If all of the parties who are individuals reside in this state
2 and the child does not reside in the issuing state, a tribunal of
3 this state has jurisdiction to enforce and to modify the issuing
4 state's child support order in a proceeding to register that order.

5 (b) A tribunal of this state exercising jurisdiction under this
6 section shall apply the provisions of parts I [§48-16-101 et seq.]
7 and II [§48-16-201 et seq.], and the procedural and substantive
8 law of this state to the proceeding for enforcement or
9 modification. Parts III, IV, V, VII and VIII [§§48-16-301 et seq.
10 through §§48-16-501 et seq. and §§48-16-701 et seq. and §§48-
11 16-801 et seq.] do not apply.

§48-16-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child support
2 order, the party obtaining the modification shall file a certified
3 copy of the order with the issuing tribunal that had continuing,
4 exclusive jurisdiction over the earlier order and in each tribunal
5 in which the party knows the earlier order has been registered. A
6 party who obtains the order and fails to file a certified copy is
7 subject to appropriate sanctions by a tribunal in which the issue
8 of failure to file arises. The failure to file does not affect the
9 validity or enforceability of the modified order of the new
10 tribunal having continuing, exclusive jurisdiction.

§48-16-615. Jurisdiction to modify child support order of foreign country.

1 (a) Except as otherwise provided in section 711 [§48-16-
2 711], if a foreign country lacks or refuses to exercise jurisdiction
3 to modify its child support order pursuant to its laws, a tribunal
4 of this state may assume jurisdiction to modify the child support
5 order and bind all individuals subject to the personal jurisdiction
6 of the tribunal whether the consent to modification of a child
7 support order otherwise required of the individual pursuant to
8 section 611 [§48-16-611] has been given or whether the
9 individual seeking modification is a resident of this state or of
10 the foreign country.

11 (b) An order issued by a tribunal of this state modifying a
12 foreign child support order pursuant to this section is the
13 controlling order.

§48-16-616. Procedure to register child support order of foreign country for modification.

1 A party or support enforcement agency seeking to modify,
2 or to modify and enforce, a foreign child support order not under
3 the convention may register that order in this state under sections
4 601 through 608 [§§48-16-601 through §48-16-608] if the order
5 has not been registered. A petition for modification may be filed
6 at the same time as a request for registration or at another time.
7 The petition must specify the grounds for modification.

PART VII. SUPPORT PROCEEDING UNDER CONVENTION.

§48-16-701. Definitions.

1 In this part:

2 (1) “Application” means a request under the convention by
3 an obligee or obligor, or on behalf of a child, made through a
4 central authority for assistance from another central authority.

5 (2) “Central authority” means the entity designated by the
6 United States or a foreign country described in section 102(5)(D)
7 [§48-16-102(5)(D)] to perform the functions specified in the
8 convention.

9 (3) “Convention support order” means a support order of a
10 tribunal of a foreign country described in section 102(5)(D)
11 [§48-16-102(5)(D)].

12 (4) “Direct request” means a petition filed by an individual
13 in a tribunal of this state in a proceeding involving an obligee,
14 obligor or child residing outside the United States.

15 (5) “Foreign central authority” means the entity designated
16 by a foreign country described in section 102(5)(D) [§48-16-
17 102(5)(D)], to perform the functions specified in the convention.

18 (6) “Foreign support agreement:”

19 (A) Means an agreement for support in a record that:

20 (i) Is enforceable as a support order in the country of origin;

21 (ii) Has been:

22 (I) Formally drawn up or registered as an authentic
23 instrument by a foreign tribunal; or

24 (II) Authenticated by, or concluded, registered or filed with
25 a foreign tribunal; and

26 (iii) May be reviewed and modified by a foreign tribunal;
27 and

28 (B) Includes a maintenance arrangement or authentic
29 instrument under the convention.

30 (7) “United States central authority” means the Secretary of
31 the United States Department of Health and Human Services.

§48-16-702. Applicability.

1 This article applies only to a support proceeding under the
2 convention. In such a proceeding, if a provision of this article is
3 inconsistent with parts I through VI [§§48-16-101 et seq. through
4 §§48-16-601 et seq.], this part controls.

§48-16-703. Relationship of Bureau for Child Support Enforcement to United States central authority.

1 The Bureau for Child Support Enforcement of this state is
2 recognized as the agency designated by the United States central
3 authority to perform specific functions under the convention.

§48-16-704. Initiation by Bureau for Child Support Enforcement proceeding under convention.

1 (a) In a support proceeding under this article, the Bureau for
2 Child Support Enforcement of this state shall:

3 (1) Transmit and receive applications; and

4 (2) Initiate or facilitate the institution of a proceeding
5 regarding an application in a tribunal of this state.

6 (b) The following support proceedings are available to an
7 obligee or under the convention:

8 (1) Recognition or recognition and enforcement of a foreign
9 support order;

10 (2) Enforcement of a support order issued or recognized in
11 this state;

12 (3) Establishment of a support order if there is no existing
13 order, including, if necessary, determination of parentage of a
14 child;

15 (4) Establishment of a support order if recognition of a
16 foreign support order is refused under section 708(b)(2) [§48-16-
17 708(b)(2)], (4) [§48-16-708(b)(4)], or (9) [§48-16-708(b)(9)].

18 (5) Modification of a support order of a tribunal of this state;
19 and

20 (6) Modification of a support order of a tribunal of another
21 state or a foreign country.

22 (c) The following support proceedings are available under
23 the convention to an obligor against which there is an existing
24 support order;

25 (1) Recognition of an order suspending or limiting
26 enforcement of an existing support order of a tribunal of this
27 state;

28 (2) Modification of a support order of a tribunal of this state;
29 and

30 (3) Modification of a support order of a tribunal of another
31 state or a foreign country.

32 (d) A tribunal of this state may not require security, bond or
33 deposit, however described, to guarantee the payment of costs
34 and expenses in proceedings under the convention.

§48-16-705. Direct request.

1 (a) A petitioner may file a direct request seeking
2 establishment or modification of a support order or
3 determination of parentage of a child. In the proceeding, the law
4 of this state applies.

5 (b) A petitioner may file a direct request seeking recognition
6 and enforcement of a support order or support agreement. In the
7 proceeding, sections 706 through 713 [§§48-16-706 through
8 §48-16-713] apply.

9 (c) In a direct request for recognition and enforcement of a
10 convention support order or foreign support agreement:

11 (1) A security, bond, or deposit is not required to guarantee
12 the payment of costs and expenses; and

13 (2) An obligee or obligor that in the issuing country has
14 benefited from free legal assistance is entitled to benefit, at least
15 to the same extent, from any free legal assistance provided for by
16 the law of this state under the same circumstances.

17 (d) A petitioner filing a direct request is not entitled to
18 assistance from the Bureau for Child Support Enforcement.

19 (e) This article does not prevent the application of laws of
20 this state that provide simplified, more expeditious rules
21 regarding a direct request for recognition and enforcement of a
22 foreign support order or foreign support agreement.

§48-16-706. Registration of convention support order.

1 (a) Except as otherwise provided in this article, a party who
2 is an individual or a support enforcement agency seeking
3 recognition of a convention support order shall register the order
4 in this state as provided in part VI.

5 (b) Notwithstanding sections 311 [§48-16-311] and 602(a)
6 [§48-16-602(a)], a request for registration of a convention
7 support order must be accompanied by:

8 (1) A complete text of the support order or an abstract or
9 extract of the support order drawn up by the issuing foreign
10 tribunal, which may be in the form recommended by the Hague
11 Conference on Private International Law;

12 (2) A record stating that the support order is enforceable in
13 the issuing country;

14 (3) If the respondent did not appear and was not represented
15 in the proceedings in the issuing country, a record attesting, as
16 appropriate, either that the respondent had proper notice of the
17 proceedings and an opportunity to be heard or that the
18 respondent had proper notice of the support order and an
19 opportunity to be heard in a challenge or appeal on fact or law
20 before a tribunal;

21 (4) A record showing the amount of arrears, if any, and the
22 date the amount was calculated;

23 (5) A record showing a requirement for automatic
24 adjustment of the amount of support, if any, and the information
25 necessary to make the appropriate calculations; and

26 (6) If necessary, a record showing the extent to which the
27 applicant received free legal assistance in the issuing country;

28 (c) A request for registration of a convention support order
29 may seek recognition and partial enforcement of the order.

30 (d) A tribunal of this state may vacate the registration of a
31 convention support order without the filing of a contest under
32 section 707 [§48-16-707] only if, acting on its own motion, the
33 tribunal finds that recognition and enforcement of the order
34 would be manifestly incompatible with public policy.

35 (e) The tribunal shall promptly notify the parties of the
36 registration or the order vacating the registration of a convention
37 support order.

§48-16-707. Contest of registered convention support order.

1 (a) Except as otherwise provided in this article, sections 605
2 through 608 [§§48-16-605 through §48-16-608] apply to a
3 contest of a registered convention support order.

4 (b) A party contesting a registered convention support order
5 shall file a contest not later than thirty days after notice of the
6 registration, but if the contesting party does not reside in the
7 United States, the contest must be filed not later than sixty days
8 after notice of the registration.

9 (c) If the nonregistering party fails to contest the registered
10 convention support order by the time specified in subsection (b)
11 of this section, the order is enforceable.

12 (d) A contest of a registered convention support order may
13 be based only on grounds set forth in section 708 [§48-16-708].
14 The contesting party bears the burden of proof.

15 (e) In a contest of a registered convention support order, a
16 tribunal of this state:

17 (1) Is bound by the findings of fact on which the foreign
18 tribunal based its jurisdiction; and

19 (2) May not review the merits of the order.

20 (f) A tribunal of this state deciding a contest of a registered
21 convention support order shall promptly notify the parties of its
22 decision.

23 (g) A challenge or appeal, if any, does not stay the
24 enforcement of a convention support order unless there are
25 exceptional circumstances.

§48-16-708. Recognition and enforcement of registered convention support order.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, a tribunal of this state shall recognize and enforce a
3 registered convention support order.

4 (b) The following grounds are the only grounds on which a
5 tribunal of this state may refuse recognition and enforcement of
6 a registered convention support order:

7 (1) Recognition and enforcement of the order is manifestly
8 incompatible with public policy, including the failure of the
9 issuing tribunal to observe minimum standards of due process,
10 which include notice and an opportunity to be heard;

11 (2) The issuing tribunal lacked personal jurisdiction
12 consistent with section 201 [§48-16-201];

13 (3) The order is not enforceable in the issuing country;

14 (4) The order was obtained by fraud in connection with a
15 matter of procedure;

16 (5) A record transmitted in accordance with section 706
17 [§48-16-706] lacks authenticity or integrity;

18 (6) A proceeding between the same parties and having the
19 same purpose is pending before a tribunal of this state and that
20 proceeding was the first to be filed;

21 (7) The order is incompatible with a more recent support
22 order involving the same parties and having the same purpose if
23 the more recent support order is entitled to recognition and
24 enforcement under this article in this state;

25 (8) Payment, to the extent alleged arrears have been paid in
26 whole or in part;

27 (9) In a case in which the respondent neither appeared nor
28 was represented in the proceeding in the issuing foreign country:

29 (A) If the law of that country provides for prior notice of
30 proceedings, the respondent did not have proper notice of the
31 proceedings and an opportunity to be heard; or

32 (B) If the law of that country does not provide for prior
33 notice of the proceedings, the respondent did not have proper
34 notice of the order and an opportunity to be heard in a challenge
35 or appeal on fact or law before a tribunal; or

36 (10) The order was made in violation of section 711 [§48-
37 16-711].

38 (c) If a tribunal of this state does not recognize a convention
39 support order under subsection (b)(2) [§48-16-708 (b)(2)], (4)
40 [§48-16-708(b)(4)], or (9) [§48-16-708(b)(9)];

41 (1) The tribunal may not dismiss the proceeding without
42 allowing a reasonable time for a party to request the
43 establishment of a new convention support order; and

44 (2) The Bureau for Child Support Enforcement shall take all
45 appropriate measures to request a child support order for the

46 obligee if the application for recognition and enforcement was
47 received under section 704 [§48-16-704].

§48-16-709. Partial enforcement.

1 If a tribunal of this state does not recognize and enforce a
2 convention support order in its entirety, it shall enforce any
3 severable part of the order. An application or direct request may
4 seek recognition and partial enforcement of a convention support
5 order.

§48-16-710. Foreign support agreement.

1 (a) Except as otherwise provided in subsections (c) and (d)
2 of this section, a tribunal of this state shall recognize and enforce
3 a foreign support agreement registered in this state.

4 (b) An application or direct request for recognition and
5 enforcement of a foreign support agreement must be
6 accompanied by:

7 (1) A complete text of the foreign support agreement; and

8 (2) A record stating that the foreign support agreement is
9 enforceable as an order of support in the issuing country.

10 (c) A tribunal of this state may vacate the registration of a
11 foreign support agreement only if, acting on its own motion, the
12 tribunal finds that recognition and enforcement would be
13 manifestly incompatible with public policy.

14 (d) In a contest of a foreign support agreement, a tribunal of
15 this state may refuse recognition and enforcement of the
16 agreement if it finds:

17 (1) Recognition and enforcement of the agreement is
18 manifestly incompatible with public policy;

- 19 (2) The agreement was obtained by fraud or falsification;
- 20 (3) The agreement is incompatible with a support order
21 involving the same parties and having the same purpose in this
22 state, another state or a foreign country if the support order is
23 entitled to recognition and enforcement under this article in this
24 state; or
- 25 (4) The record submitted under subsection (b) of this section
26 lacks authenticity or integrity.
- 27 (e) A proceeding for recognition and enforcement of a
28 foreign support agreement must be suspended during the
29 pendency of a challenge to or appeal of the agreement before a
30 tribunal of another state or a foreign country.

§48-16-711. Modification of convention child support order.

- 1 (a) A tribunal of this state may not modify a convention
2 child support order if the obligee remains a resident of the
3 foreign country where the support order was issued unless:
- 4 (1) The obligee submits to the jurisdiction of a tribunal of
5 this state, either expressly or by defending on the merits of the
6 case without objecting to the jurisdiction at the first available
7 opportunity; or
- 8 (2) The foreign tribunal lacks or refuses to exercise
9 jurisdiction to modify its support order or issue a new support
10 order.
- 11 (b) If a tribunal of this state does not modify a convention
12 child support order because the order is not recognized in this
13 state, section 708(c) [§48-16-708(c)] applies.

§48-16-712. Personal information: limit on use.

- 1 Personal information gathered or transmitted under this
2 article may be used only for the purposes for which it was
3 gathered or transmitted.

§48-16-713. Record original language: English translation.

- 1 A record filed with a tribunal of this state under this article
- 2 must be in the original language, and, if not in English, must be
- 3 accompanied by an English translation.

PART VIII. INTERSTATE RENDITION.

§48-16-801. Grounds for rendition.

- 1 (a) For purposes of this article, “Governor” includes an
- 2 individual performing the functions of Governor or the executive
- 3 authority of a state covered by this article.

- 4 (b) The Governor of this state may:

- 5 (1) Demand that the Governor of another state surrender an
- 6 individual found in the other state who is charged criminally in
- 7 this state with having failed to provide for the support of an
- 8 obligee; or

- 9 (2) On the demand of the Governor of another state,
- 10 surrender an individual found in this state who is charged
- 11 criminally in the other state with having failed to provide for the
- 12 support of an obligee.

- 13 (c) A provision for extradition of individuals not inconsistent
- 14 with this article applies to the demand even if the individual
- 15 whose surrender is demanded was not in the demanding state
- 16 when the crime was allegedly committed and has not fled
- 17 therefrom.

§48-16-802. Conditions of rendition.

- 1 (a) Before making a demand that the Governor of another
- 2 state surrender an individual charged criminally in this state with
- 3 having failed to provide for the support of an obligee, the
- 4 Governor of this state may require a prosecutor of this state to
- 5 demonstrate that at least sixty days previously the obligee had

6 initiated proceeding for support pursuant to this article or that the
7 proceeding would be of no avail.

8 (b) If, under this article or a law substantially similar to this
9 article, the Governor of another state makes a demand that the
10 Governor of this state surrender an individual charged criminally
11 in that state with having failed to provide for the support of a
12 child or other individual to whom a duty of support is owed, the
13 Governor may require a prosecutor to investigate the demand
14 and report whether a proceeding for support has been initiated or
15 would be effective. If it appears that a proceeding would be
16 effective but has not been initiated, the Governor may delay
17 honoring the demand for a reasonable time to permit the
18 initiation of a proceeding.

19 (c) If a proceeding for support has been initiated and the
20 individual whose rendition is demanded prevails, the Governor
21 may decline to honor the demand. If the petitioner prevails and
22 the individual whose rendition is demanded is subject to a
23 support order, the Governor may decline to honor the demand if
24 the individual is complying with the support order.

PART IX. MISCELLANEOUS PROVISIONS.

§48-16-902. Transitional provision.

1 This article applies to proceedings begun on or after the
2 effective date of the amendments to this article enacted during
3 the 2015 regular session of the West Virginia Legislature, to
4 establish a support order or determine parentage of a child or to
5 register, recognize, enforce, or modify a prior support order,
6 determination, or agreement, whenever issued or entered.

§48-16-903. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can

- 4 be given effect without the invalid provision or application and
5 to this end the provisions of this article are severable.

CHAPTER 240

**(Com. Sub. for S. B. 316 - Senators D. Hall, Leonhardt,
Trump, Stollings, Plymale, Kirkendoll and Nohe)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §59-1-2 and §59-1-2a of the Code of West Virginia, 1931, as amended, all relating to veteran-owned businesses; defining terms; exempting new veteran-owned businesses from certain fees paid to the Secretary of State; and exempting new veteran-owned businesses from paying annual report fees for the first four years after their initial registration.

Be it enacted by the Legislature of West Virginia:

That §59-1-2 and §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

- 1 (a) Except as may be otherwise provided in this code, the
2 Secretary of State shall charge for services rendered in his or her
3 office the following fees to be paid by the person to whom the
4 service is rendered at the time it is done:

- 5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amendment,

7 change of name, registration of trade name, merger,
8 consolidation, conversion, renewal, dissolution, termination,
9 cancellation, withdrawal revocation and reinstatement of
10 business entities organized within the state, as follows:

11 (A) Articles of incorporation of for-profit
12 corporation. \$50.00

13 (B) Articles of incorporation of nonprofit
14 corporation. 25.00

15 (C) Articles of organization of limited
16 liability company 100.00

17 (D) Agreement of a general partnership. 50.00

18 (E) Certificate of a limited partnership. 100.00

19 (F) Agreement of a voluntary association. 50.00

20 (G) Articles of organization of a business trust. 50.00

21 (H) Amendment or correction of articles of incorporation,
22 including change of name or increase of capital stock, in addition
23 to any applicable license tax. 25.00

24 (I) Amendment or correction, including change of name, of
25 articles of organization of business trust, limited liability
26 partnership, limited liability company or professional limited
27 liability company or of certificate of limited partnership or
28 agreement of voluntary association. 25.00

29 (J) Amendment and restatement of articles of incorporation,
30 certificate of limited partnership, agreement of voluntary
31 association or articles of organization of limited liability
32 partnership, limited liability company or professional limited
33 liability company or business trust. 25.00

34 (K) Registration of trade name, otherwise designated as a
 35 true name, fictitious name or D.B.A. (doing business as) name
 36 for any domestic business entity as permitted by law. . . . 25.00

37 (L) Articles of merger of two corporations, limited
 38 partnerships, limited liability partnerships, limited liability
 39 companies or professional limited liability companies, voluntary
 40 associations or business trusts. 25.00

41 (M) Plus for each additional party to the merger in excess of
 42 two. 15.00

43 (N) Statement of conversion, when permitted, from one
 44 business entity into another business entity, in addition to the
 45 cost of filing the appropriate documents to organize the
 46 surviving entity. 25.00

47 (O) Articles of dissolution of a corporation, voluntary
 48 association or business trust, or statement of dissolution of a
 49 general partnership. 25.00

50 (P) Revocation of voluntary dissolution of a corporation,
 51 voluntary association or business trust. 15.00

52 (Q) Articles of termination of a limited liability company,
 53 cancellation of a limited partnership or statement of withdrawal
 54 of limited liability partnership. 25.00

55 (R) Reinstatement of a limited liability company or
 56 professional limited liability company after administrative
 57 dissolution. 25.00

58 (2) For filing, recording, indexing, preserving a record of
 59 and issuing a certificate relating to the registration, amendment,
 60 change of name, merger, consolidation, conversion, renewal,
 61 withdrawal or termination within this state of business entities
 62 organized in other states or countries, as follows:

63	(A) Certificate of authority of for-profit	
64	corporation.	\$100.00
65	(B) Certificate of authority of nonprofit	
66	corporation.	50.00
67	(C) Certificate of authority of foreign	
68	limited liability companies.	150.00
69	(D) Certificate of exemption from certificate	
70	of authority	25.00
71	(E) Registration of a general partnership.	50.00
72	(F) Registration of a limited partnership.	150.00
73	(G) Registration of a limited liability	
74	partnership for two-year term.	500.00
75	(H) Registration of a voluntary association.	50.00
76	(I) Registration of a trust or business trust.	50.00
77	(J) Amendment or correction of certificate of authority of a	
78	foreign corporation, including change of name or increase of	
79	capital stock, in addition to any applicable license tax.	25.00
80	(K) Amendment or correction of certificate of limited	
81	partnership, limited liability partnership, limited liability	
82	company or professional limited liability company, voluntary	
83	association or business trust.	25.00
84	(L) Registration of trade name, otherwise designated as a	
85	true name, fictitious name or D.B.A. (doing business as) name	
86	for any foreign business entity as permitted by law.	25.00
87	(M) Amendment and restatement of certificate of authority	
88	or of registration of a corporation, limited partnership, limited	

89 liability partnership, limited liability company or professional
 90 limited liability company, voluntary association or business
 91 trust..... 25.00

92 (N) Articles of merger of two corporations, limited
 93 partnerships, limited liability partnerships, limited liability
 94 companies or professional limited liability companies, voluntary
 95 associations or business trusts. 25.00

96 (O) Plus for each additional party to the merger in excess of
 97 two. 5.00

98 (P) Statement of conversion, when permitted, from one
 99 business entity into another business entity, in addition to the
 100 cost of filing the appropriate articles or certificate to organize the
 101 surviving entity. 25.00

102 (Q) Certificate of withdrawal or cancellation of a
 103 corporation, limited partnership, limited liability partnership,
 104 limited liability company, voluntary association or business
 105 trust..... 25.00

106 Notwithstanding any other provision of this section to the
 107 contrary, after June 30, 2008, the fees described in this
 108 subdivision that are collected for the issuance of a certificate
 109 relating to the initial registration of a corporation, limited
 110 partnership, domestic limited liability company or foreign
 111 limited liability company shall be deposited in the general
 112 administrative fees account established by this section.

113 (3) For receiving, filing and recording a change of the
 114 principal or designated office, change of the agent of process
 115 and/or change of officers, directors, partners, members or
 116 managers, as the case may be, of a corporation, limited
 117 partnership, limited liability partnership, limited liability
 118 company or other business entity as provided by law. . \$15.00

119 (4) For receiving, filing and preserving a reservation of a
 120 name for each one hundred twenty days or for any other period
 121 in excess of seven days prescribed by law for a corporation,
 122 limited partnership, limited liability partnership or limited
 123 liability company. \$15.00

124 (5) For issuing a certificate relating to a corporation or other
 125 business entity, as follows:

126 (A) Certificate of good standing of a domestic or foreign
 127 corporation. \$10.00

128 (B) Certificate of existence of a domestic limited liability
 129 company and certificate of authorization foreign limited liability
 130 company. 10.00

131 (C) Certificate of existence of any business entity, trademark
 132 or service mark registered with the Secretary of State . . . 10.00

133 (D) Certified copy of corporate charter or comparable
 134 organizing documents for other business entities. 15.00

135 (E) Plus, for each additional amendment, restatement or
 136 other additional document. 5.00

137 (F) Certificate of registration of the name of a foreign
 138 corporation, limited liability company, limited partnership or
 139 limited liability partnership. 25.00

140 (G) And for the annual renewal of the name
 141 registration 10.00

142 (H) Any other certificate not specified in this
 143 subdivision 10.00

144 (6) For issuing a certificate other than those relating to
 145 business entities, as provided in this subsection, as follows:

146 (A) Certificate or apostille relating to the authority of certain
 147 public officers, including the membership of boards and
 148 commissions..... \$10.00

149 (B) Plus, for each additional certificate pertaining to the
 150 same transaction..... 5.00

151 (C) Any other certificate not specified in this
 152 subdivision..... 10.00

153 (D) For acceptance, indexing and recordation of service of
 154 process any corporation, limited partnership, limited liability
 155 partnership, limited liability company, voluntary association,
 156 business trust, insurance company, person or other entity as
 157 permitted by law..... 15.00

158 (E) For shipping and handling expenses for execution of
 159 service of process by certified mail upon any defendant within
 160 the United States, which fee is to be deposited to the special
 161 revenue account established in this section for the operation of
 162 the office of the Secretary of State..... 5.00

163 (F) For shipping and handling expenses for execution of
 164 service of process upon any defendant outside the United States
 165 by registered mail, which fee is to be deposited to the special
 166 revenue account established in this section for the operation of
 167 the office of the Secretary of State..... 15.00

168 (7) For a search of records of the office conducted by
 169 employees of or at the expense of the Secretary of State upon
 170 request, as follows:

171 (A) For any search of archival records maintained at sites
 172 other than the office of the Secretary of State no less
 173 than..... \$10.00

174 (B) For searches of archival records maintained at sites other
 175 than the office of the Secretary of State which require more than

176 one hour, for each hour or fraction of an hour consumed in
177 making a search. 10.00

178 (C) For any search of records maintained on site for the
179 purpose of obtaining copies of documents or printouts of
180 data. 5.00

181 (D) For any search of records maintained in electronic
182 format which requires special programming to be performed by
183 the state information services agency or other vendor any actual
184 cost, but not less than. 25.00

185 (E) The cost of the search is in addition to the cost of any
186 copies or printouts prepared or any certificate issued pursuant to
187 or based on the search.

188 (F) For recording any paper for which no specific fee is
189 prescribed. 5.00

190 (8) For producing and providing photocopies or printouts of
191 electronic data of specific records upon request, as follows:

192 (A) For a copy of any paper or printout of electronic data, if
193 one sheet. \$1.00

194 (B) For each sheet after the first50

195 (C) For sending the copies or lists by fax
196 transmission. 5.00

197 (D) For producing and providing photocopies of lists,
198 reports, guidelines and other documents produced in multiple
199 copies for general public use, a publication price to be
200 established by the Secretary of State at a rate approximating
201 \$2.00 plus .10 per page and rounded to the nearest dollar.

202 (E) For electronic copies of records obtained in data format
203 on disk, the cost of the record in the least expensive available

204 printed format, plus, for each required disk, which shall be
205 provided by the Secretary of State. 5.00

206 (b) The Secretary of State may propose rules for legislative
207 approval, in accordance with the provisions of article three,
208 chapter twenty-nine-a of this code, for charges for on-line
209 electronic access to database information or other information
210 maintained by the Secretary of State.

211 (c) For any other work or service not enumerated in this
212 section, the fee prescribed elsewhere in this code or a rule
213 promulgated under the authority of this code.

214 (d) The records maintained by the Secretary of State are
215 prepared and indexed at the expense of the state and those
216 records shall not be obtained for commercial resale without the
217 written agreement of the state to a contract including
218 reimbursement to the state for each instance of resale.

219 (e) The Secretary of State may provide printed or electronic
220 information free of charge as he or she considers necessary and
221 efficient for the purpose of informing the general public or the
222 news media.

223 (f) There is hereby continued in the State Treasury a special
224 revenue account to be known as the Service Fees and Collections
225 Account. Expenditures from the account shall be used for the
226 operation of the office of the Secretary of State and are not
227 authorized from collections, but are to be made only in
228 accordance with appropriation by the Legislature and in
229 accordance with the provisions of article three, chapter twelve of
230 this code and upon the fulfillment of the provisions set forth in
231 article two, chapter five-a of this code. Notwithstanding any
232 other provision of this code to the contrary, except as provided
233 in subsection (h) of this section and section two-a of this article,
234 one half of all the fees and service charges established in the

235 following sections and for the following purposes shall be
236 deposited by the Secretary of State or other collecting agency to
237 that special revenue account and used for the operation of the
238 office of the Secretary of State:

239 (1) The annual attorney-in-fact fee for corporations and
240 limited partnerships established in section five, article twelve-c,
241 chapter eleven of this code;

242 (2) The fees received for the sale of the State Register, Code
243 of State Rules and other copies established by rule and
244 authorized by section seven, article two, chapter twenty-nine-a
245 of this code;

246 (3) The registration fees, late fees and legal settlements
247 charged for registration and enforcement of the charitable
248 organizations and professional solicitations established in
249 sections five, nine and fifteen-b, article nineteen, chapter
250 twenty-nine of this code;

251 (4) The annual attorney-in-fact fee for limited liability
252 companies as designated in section one hundred eight, article
253 one, chapter thirty-one-b of this code and established in section
254 two hundred eleven, article two of said chapter: *Provided*, That
255 after June 30, 2008, the annual report fees designated in section
256 one hundred eight, article one, chapter thirty-one-b of this code
257 shall upon collection be deposited in the general administrative
258 fees account described in subsection (h) of this section;

259 (5) The filing fees and search and copying fees for uniform
260 commercial code transactions established by section five
261 hundred twenty-five, article nine, chapter forty-six of this code;

262 (6) The annual attorney-in-fact fee for licensed insurers
263 established in section twelve, article four, chapter thirty-three of
264 this code;

265 (7) The fees for the application and record maintenance of
266 all notaries public established by section twenty, article four,
267 chapter thirty-nine of this code;

268 (8) The fees for registering credit service organizations as
269 established by section five, article six-c, chapter forty-six-a of
270 this code;

271 (9) The fees for registering and renewing a West Virginia
272 limited liability partnership as established by section one, article
273 ten, chapter forty-seven-b of this code;

274 (10) The filing fees for the registration and renewal of
275 trademarks and service marks established in section seventeen,
276 article two, chapter forty-seven of this code;

277 (11) All fees for services, the sale of photocopies and data
278 maintained at the expense of the Secretary of State as provided
279 in this section; and

280 (12) All registration, license and other fees collected by the
281 Secretary of State not specified in this section.

282 (g) Any balance in the service fees and collections account
283 established by this section which exceeds \$500,000 as of June
284 30, 2003, and each year thereafter, shall be expired to the state
285 fund, General Revenue Fund.

286 (h)(1) Effective July 1, 2008, there is hereby created in the
287 State Treasury a special revenue account to be known as the
288 General Administrative Fees Account. Expenditures from the
289 account shall be used for the operation of the office of the
290 Secretary of State and are not authorized from collections, but
291 are to be made only in accordance with appropriation by the
292 Legislature and in accordance with the provisions of article
293 three, chapter twelve of this code and upon the fulfillment of the
294 provisions set forth in article two, chapter eleven-b of this code:

295 *Provided*, That for the fiscal year ending June 30, 2009,
296 expenditures are authorized from collections rather than pursuant
297 to an appropriation by the Legislature. Any balance in the
298 account at the end of each fiscal year shall not revert to the
299 General Revenue Fund, but shall remain in the fund and be
300 expended as provided by this subsection.

301 (2) After June 30, 2008, all the fees and service charges
302 established in section two-a of this article for the following
303 purposes shall be collected and deposited by the Secretary of
304 State or other collecting agency in the general administrative
305 fees account and used for the operation of the office of the
306 Secretary of State:

307 (A) The annual report fees paid to the Secretary of State by
308 corporations, limited partnerships, domestic limited liability
309 companies and foreign limited liability companies;

310 (B) The fees for the issuance of a certificate relating to the
311 initial registration of a corporation, limited partnership, domestic
312 limited liability company or foreign limited liability company
313 described in subdivision (2), subsection (a) of this section; and

314 (C) The fees for the purchase of date and updates related to
315 the state's Business Organizations Database described in section
316 two-a of this article.

317 (i) There is continued in the office of the Secretary of State
318 a noninterest-bearing, escrow account to be known as the
319 Prepaid Fees and Services Account. This account shall be for the
320 purpose of allowing customers of the Secretary of State to
321 prepay for services, with payment to be held in escrow until
322 services are rendered. Payments deposited in the account shall
323 remain in the account until services are rendered by the
324 Secretary of State and at that time the fees will be reallocated to
325 the appropriate general or special revenue accounts. There shall

326 be no fee charged by the Secretary of State to the customer for
327 the use of this account and the customer may request the return
328 of any moneys maintained in the account at any time without
329 penalty. The assets of the prepaid fees and services account do
330 not constitute public funds of the state and are available solely
331 for carrying out the purposes of this section.

332 (j) A veteran-owned business, as defined in paragraph
333 thirteen, subsection (a), section two-a of this article, commenced
334 on or after July 1, 2015, is exempt from paying the fees
335 prescribed in paragraphs (A), (B), (C), (D), (E), (F) and (G),
336 subdivision (1), subsection (a) of this section.

**§59-1-2a. Annual business fees to be paid to the Secretary of State;
filing of annual reports; purchase of data.**

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

2 (1) “Annual report fee” means the fee described in
3 subsection (c) of this section that is to be paid to the Secretary of
4 State each year by corporations, limited partnerships, domestic
5 limited liability companies and foreign limited liability
6 companies. After June 30, 2008, any reference in this code to a
7 fee paid to the Secretary of State for services as a statutory
8 attorney in fact shall mean the annual report fee described in this
9 section.

10 (2) “Business activity” means all activities engaged in or
11 caused to be engaged in with the object of gain or economic
12 benefit, direct or indirect, but does not mean any of the activities
13 of foreign corporations enumerated in subsection (b), section one
14 thousand five hundred one, article fifteen, chapter thirty-one-d
15 of this code, except for the activity of conducting affairs in
16 interstate commerce when activity occurs in this state, nor does
17 it mean any of the activities of foreign limited liability
18 companies enumerated in subsection (a), section one thousand

19 three, article ten, chapter thirty-one-b of this code, except for the
20 activity of conducting affairs in interstate commerce when
21 activity occurs in this state.

22 (3) “Corporation” means a “domestic corporation”, a
23 “foreign corporation” or a “nonprofit corporation”.

24 (4) “Deliver or delivery” means any method of delivery used
25 in conventional commercial practice, including, but not limited
26 to, delivery by hand, mail, commercial delivery and electronic
27 transmission.

28 (5) “Domestic corporation” means a corporation for profit
29 which is not a foreign corporation incorporated under or subject
30 to chapter thirty-one-d of this code.

31 (6) “Domestic limited liability company” means a limited
32 liability company which is not a foreign limited liability
33 company under or subject to chapter thirty-one-b of this code.

34 (7) “Foreign corporation” means a for-profit corporation
35 incorporated under a law other than the laws of this state.

36 (8) “Foreign limited liability company” means a limited
37 liability company organized under a law other than the laws of
38 this state.

39 (9) “Limited partnership” means a partnership as defined by
40 section one, article nine, chapter forty-seven of this code.

41 (10) “Nonprofit corporation” means a nonprofit corporation
42 as defined by section one hundred fifty, article one, chapter
43 thirty-one-e of this code.

44 (11) “Registration fee” means the fee for the issuance of a
45 certificate relating to the initial registration of a corporation,
46 limited partnership, domestic limited liability company or

47 foreign limited liability company described in subdivision (2),
48 subsection (a), section two of this article. The term “initial
49 registration” also means the date upon which the registration fee
50 is paid.

51 (12) “Veteran” means the term as defined by subsection (a),
52 section seven, article one, chapter nine-a of this code.
53 Notwithstanding anything in this code to the contrary, a veteran
54 must be honorably discharged or under honorable conditions,
55 and as described in 38 U. S. C. §101.

56 (13) “Veteran-owned business” means a business that meets
57 the following criteria:

58 (A) Is at least fifty-one percent unconditionally owned by
59 one or more veterans; or

60 (B) In the case of a publically owned business, at least
61 fifty-one percent of the stock is unconditionally owned by one or
62 more veterans.

63 (b) *Required payment of annual report fee and filing of*
64 *annual report.* — After June 30, 2008, no corporation, limited
65 partnership, domestic limited liability company or foreign
66 limited liability company may engage in any business activity in
67 this state without paying the annual report fee and filing the
68 annual report as required by this section.

69 (c) *Annual report fee.* — After June 30, 2008, each
70 corporation, limited partnership, domestic limited liability
71 company and foreign limited liability company engaged in or
72 authorized to do business in this state shall pay an annual report
73 fee of \$25 for the services of the Secretary of State as
74 attorney-in-fact for the corporation, limited partnership,
75 domestic limited liability company or foreign limited liability
76 company and for such other administrative services as may be
77 imposed by law upon the Secretary of State. The fee is due and

78 payable each year after the initial registration of the corporation,
79 limited partnership, domestic limited liability company or
80 foreign limited liability company with the annual report
81 described in subsection (d) of this section on or before the dates
82 specified in subsection (e) of this section. The fee is due and
83 payable each year with the annual report from corporations,
84 limited partnerships, domestic limited liability companies and
85 foreign limited liability companies that paid the registration fee
86 prior to July 1, 2008, on or before the dates specified in
87 subsection (e) of this section. The annual report fees received by
88 the Secretary of State pursuant to this subsection shall be
89 deposited by the Secretary of State in the general administrative
90 fees account established by section two of this article.

91 (d) *Annual report.* —

92 (1) After June 30, 2008, each corporation, limited
93 partnership, domestic limited liability company and foreign
94 limited liability company engaged in or authorized to do
95 business in this state shall file an annual report. The report is due
96 each year after the initial registration of the corporation, limited
97 partnership, domestic limited liability company or foreign
98 limited liability company with the annual report fee described in
99 subsection (c) of this section on or before the dates specified in
100 subsection (e) of this section. The report is due each year from
101 corporations, limited partnerships, domestic limited liability
102 companies and foreign limited liability companies that paid the
103 registration fee prior to July 1, 2008, on or before the dates
104 specified in subsection (e) of this section.

105 (2) (A) The annual report shall be filed with the Secretary of
106 State on forms provided by the Secretary of State for that
107 purpose. The annual report shall, in the case of corporations,
108 contain: (i) The address of the corporation's principal office; (ii)
109 the names and mailing addresses of its officers and directors;
110 (iii) the name and mailing address of the person on whom notice

111 of process may be served; (iv) the name and address of the
112 corporation's parent corporation and of each subsidiary of the
113 corporation licensed to do business in this state; (v) in the case
114 of limited partnerships, domestic limited liability companies and
115 foreign limited liability companies, similar information with
116 respect to their principal or controlling interests as determined
117 by the Secretary of State or otherwise required by law to be
118 reported to the Secretary of State; (vi) the county or county code
119 in which the principal office address or mailing address of the
120 company is located; (vii) business class code; and (viii) any
121 other information the Secretary of State considers appropriate.

122 (B) Notwithstanding any other provision of law to the
123 contrary, the Secretary of State shall, upon request of any person,
124 disclose, with respect to corporations: (i) The address of the
125 corporation's principal office; (ii) the names and addresses of its
126 officers and directors; (iii) the name and mailing address of the
127 person on whom notice of process may be served; (iv) the name
128 and address of each subsidiary of the corporation and the
129 corporation's parent corporation; (v) the county or county code
130 in which the principal office address or mailing address of the
131 company is located; and (vi) the business class code. The
132 Secretary of State shall provide similar information with respect
133 to information in its possession relating to limited partnerships
134 domestic limited liability companies and foreign limited liability
135 companies, similar information with respect to their principal or
136 controlling interests.

137 (e) *Annual reports and fees due July 1.* — Each domestic
138 and foreign corporation, limited partnership, limited liability
139 company and foreign limited liability company shall file with the
140 Secretary of State the annual report and pay the annual report fee
141 by July 1 of each year.

142 (f) *Deposit of fees.* — The annual report fees received by the
143 Secretary of State pursuant to this section shall be deposited by

144 the Secretary of State in the general administrative fees account
145 established by section two of this article.

146 (g) (1) *Duty to pay.* — It shall be the duty of each
147 corporation, limited partnership, limited liability company and
148 foreign limited liability company required to pay the annual
149 report fees imposed under this article, to remit them with a
150 properly completed annual report to the Secretary of State, and
151 if it fails to do so it shall be subject to the late fees prescribed in
152 subsection (h) of this article and dissolution or revocation,
153 pursuant to this code: *Provided,* That before dissolution or
154 revocation for failure to pay fees may occur, the Secretary of
155 State shall notify the entity by certified mail, return receipt
156 requested, of its failure to pay, all late fees or bad check fees
157 associated with the failure to pay and the date upon which
158 dissolution or revocation will occur if all fees are not paid in full.
159 The certified mail required by this subdivision shall be
160 postmarked at least thirty days before the dissolution or
161 revocation date listed in the notice.

162 (2) *Bad check fee.* — If any corporation, limited partnership,
163 limited liability company or foreign limited liability company
164 submits payment by check or money order for the annual report
165 fee imposed under this article and the check or money order is
166 rejected because there are insufficient funds in the account or the
167 account is closed, the Secretary of State shall assess a bad check
168 fee to the corporation, limited partnership, limited liability
169 company or foreign limited liability company that is equivalent
170 to the service charge paid by the Secretary of State due to the
171 rejected check or money order. The bad check fee assessed under
172 this subdivision shall be deposited into the account or accounts
173 from which the Secretary of State paid the service charge.

174 (h) *Late fees.* —

175 (1) The following late fees shall be in addition to any other
176 penalties and remedies available elsewhere in this code:

177 (A) *Administrative late fee.* — The Secretary of State shall
178 assess upon each corporation, limited partnership, limited
179 liability company and foreign limited liability company
180 delinquent in the payment of an annual report fee or the filing of
181 an annual report an administrative late fee in the amount of \$50.

182 (B) *Administrative late fees for nonprofit corporations.* —
183 The Secretary of State shall assess each nonprofit corporation
184 delinquent in the payment of an annual report fee or the filing of
185 an annual report an administrative late fee in the amount of \$25.

186 (2) The Secretary of State shall deposit the first \$25,000 of
187 fees collected under this subsection into the General
188 Administrative Fees Account established in subsection (h),
189 section two of this article and shall deposit any additional fees
190 collected under this section into the General Revenue Fund of
191 the state.

192 (i) *Reports to Tax Commissioner; suspension, cancellation*
193 *or withholding of business registration certificate.* —

194 (1) The Secretary of State shall, within twenty days after the
195 close of each month, make a report to the Tax Commissioner for
196 the preceding month, in which he or she shall set out the name
197 of every business entity to which he or she issued a certificate to
198 conduct business in the State of West Virginia during that
199 month. The report shall set out the names and addresses of all
200 corporations, limited partnerships, limited liability companies
201 and foreign limited liability companies to which he or she issued
202 certificates of change of name or of change of location of
203 principal office, dissolution, withdrawal or merger. If the
204 Secretary of State fails to make the report, it shall be the duty of
205 the Tax Commissioner to report such failure to the Governor. A
206 writ of mandamus shall lie for correction of such failure.

207 (2) Notwithstanding any other provisions of this code to the
208 contrary, upon receipt of notice from the Secretary of State that

209 a corporation, limited partnership, limited liability company and
210 foreign limited liability company is more than thirty days
211 delinquent in the payment of annual report fees or in the filing of
212 an annual report required by this section, the Tax Commissioner
213 may suspend, cancel or withhold a business registration
214 certificate issued to or applied for by the delinquent corporation,
215 limited partnership, limited liability company or foreign limited
216 liability company until the same is paid and filed in the manner
217 provided for the suspension, cancellation or withholding of
218 business registration certificates for other reasons under article
219 twelve, chapter eleven of this code.

220 (j) *Purchase of data.* — The Secretary of State will provide
221 electronically, for purchase, any data maintained in the Secretary
222 of State’s Business Organizations Database. For the electronic
223 purchase of the entire Business Organizations Database, the cost
224 is \$12,000. For the purchase of the monthly updates of the
225 Business Organizations Database, the cost is \$1,000 per month.
226 The fees received by the Secretary of State pursuant to this
227 subsection shall be deposited by the Secretary of State in the
228 general administrative fees account established by section two of
229 this article.

230 (k) The Secretary of State is authorized to collect the service
231 fee per transaction, if any, charged for an online service from
232 any customer who purchases data or conducts transactions
233 through an online service.

234 (l) *Rules.* — The Secretary of State may propose rules for
235 legislative approval, in accordance with the provisions of article
236 three, chapter twenty-nine-a of this code, to implement this
237 article.

238 (m) A veteran-owned business, as defined in paragraph
239 thirteen, subsection (a) of this section, commenced on or after
240 July 1, 2015, is exempt from paying the annual report fee,

241 required by this section, for the first four years after its initial
242 registration: *Provided*, That a veteran-owned business is not
243 exempt from any filing deadlines or other fees required by this
244 section.

CHAPTER 241

(Com. Sub. for S. B. 277 - By Senators Miller, D. Hall,
Laird, Williams and Kirkendoll)

[Passed March 9, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5-21a, relating to creating “Noah’s Law”; defining terms; providing for a certificate of birth for a stillborn child; allowing only the mother to request a certificate in certain circumstances; allowing State Registrar to charge a fee for a certificate; specifying the contents of a certificate; and effect of the certificate.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5-21a, to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-21a. Noah’s Law; certificate of birth for a stillbirth; and contents of certificate.

1 (a) This section of the code shall be known as “Noah’s
2 Law”.

3 (b) For the purposes of this section, the term “stillbirth” or
4 “stillborn” means an unintended intrauterine fetal death
5 occurring in this state.

6 (c) Following a report of fetal death as required by section
7 twenty-one of this article, either the mother or father of a
8 stillborn child may request that a certificate of birth resulting in
9 stillbirth be issued by the State Registrar. Only the mother of the
10 child may request a certificate if:

11 (1) The child has not been legitimized;

12 (2) A court has not determined the paternity of the child;

13 (3) If no father has been identified; or

14 (4) If the child was conceived as a result of a sexual assault
15 as defined in article eight-b, chapter sixty-one of this code.

16 (d) The State Registrar may charge a fee for the issuance of
17 the certificate. The fee shall be the same as the fee for a death
18 certificate issued by the State Registrar.

19 (e) The certificate shall include, but is not limited to:

20 (1) The name of the stillborn child;

21 (2) The date of delivery;

22 (3) The county of delivery;

23 (4) The mother’s name and birthplace;

24 (5) The father’s name and birthplace; and

25 (6) The statement: “This certificate is not proof of live
26 birth.”

27 (f) The certificate does not affect the registration, filing or
28 record requirements of this article, nor does the issuance of the
29 certificate impose upon a coroner or medical examiner any
30 additional duties to conduct an investigation.

CHAPTER 242

**(Com. Sub. for H. B. 2515 - By Delegate(s) R. Phillips,
J. Nelson, Eldridge, H. White, Marcum, Reynolds, L. Phillips,
R. Smith, Sobonya, Hill and Arvon)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §20-2-4, §20-2-5, §20-2-5a, §20-2-5g, §20-2-22a and §20-2-42w of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all relating to wildlife; disallowing elk to be possessed if struck by motor vehicle; requiring persons required to deliver wildlife to official checking station to electronically register wildlife; increasing fine for illegal taking of elk; prohibiting hunting wildlife with night vision technology, drone or other unmanned aircraft; clarifying when a person may carry certain firearms; permitting a person to carry firearm for self defense while in the woods; clarifying when a shotgun or rifle is unloaded; permitting hunting with crossbows during certain seasons and with certain limitations; establishing elk management area in Southern West Virginia; establishing elk damage fund; providing for criminal penalties for the illegal taking of elk; clarifying bear laws and Class Y permits; authorizing director to propose legislative rules; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §20-2-4, §20-2-5, §20-2-5a, §20-2-5g, §20-2-22a and §20-2-42w of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-2-5h, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

1 (a) Except for wildlife, lawfully taken, killed or obtained, no
2 person may have in his or her possession any wildlife, or parts
3 thereof, during closed seasons. It is unlawful to possess any
4 wildlife, or parts thereof, which have been illegally taken, killed
5 or obtained. Any wildlife illegally taken, killed or possessed
6 shall be forfeited to the state and shall be counted toward the
7 daily, seasonal, bag, creel and possession limit of the person in
8 possession of, or responsible for, the illegal taking or killing of
9 any wildlife.

10 (b) Wildlife lawfully taken outside of this state is subject to
11 the same laws and rules as wildlife taken within this state.

12 (c) Migratory wild birds may be possessed only in
13 accordance with the Migratory Bird Treaty Act, 16 U. S. C.
14 §703, *et seq.*, and its regulations.

15 (d) The restrictions in this section do not apply to the
16 director or duly authorized agents, who may take or maintain in
17 captivity any wildlife for the purpose of carrying out the
18 provisions of this chapter.

19 (e) Wildlife, except protected birds, elk, spotted fawn, and
20 bear cubs, killed or mortally wounded as a result of being
21 accidentally or inadvertently struck by a motor vehicle may be
22 lawfully possessed if the possessor of the wildlife provides

23 notice of the claim within twelve hours to a relevant
24 law-enforcement agency, and obtains a nonhunting game tag
25 within twenty-four hours of possession. The director shall
26 propose administrative policy which addresses the means,
27 methods and administrative procedures for implementing the
28 provisions of this section.

29 (f) Persons required to deliver wildlife to an official
30 checking station shall, in accordance with rules promulgated by
31 the director, electronically register the wildlife in lieu of the
32 delivery to an official checking station. "Electronically register"
33 means submission of all necessary and relevant information to
34 the division, in the manner designated by rule, in lieu of delivery
35 of the wildlife to an official checking station. The director may
36 promulgate rules, pursuant to article three, chapter twenty-nine-a
37 of this code, governing the electronic registration of wildlife.

**§20-2-5. Unlawful methods of hunting and fishing and other
unlawful acts.**

1 Except as authorized by the director or by law, it is unlawful
2 at any time for any person to:

3 (1) Shoot at any wild bird or wild animal unless it is plainly
4 visible;

5 (2) Dig out, cut out, smoke out, or in any manner take or
6 attempt to take any live wild animal or wild bird out of its den or
7 place of refuge;

8 (3) Use or attempt to use any artificial light or any night
9 vision technology, including image intensification, thermal
10 imaging or active illumination while hunting, locating,
11 attracting, taking, trapping or killing any wild bird or wild
12 animal: *Provided*, That it is lawful to hunt or take coyote, fox,
13 raccoon, opossum or skunk by the use of artificial light or night
14 vision technology.

15 Any person violating this subdivision is guilty of a
16 misdemeanor and, upon conviction thereof, shall for each
17 offense be fined not less than \$100 nor more than \$500, and shall
18 be confined in jail for not less than ten days nor more than one
19 hundred days;

20 (4) Hunt, take, kill, wound or shoot at wild animals or wild
21 birds from an airplane or other airborne conveyance, a drone or
22 other unmanned aircraft, an automobile or other land
23 conveyance, or from a motor-driven water conveyance;

24 (5) Use a drone or other unmanned aircraft to hunt, take or
25 kill a wild bird or wild animal, or to use a drone or other
26 unmanned aircraft to drive or herd any wild bird or wild animal
27 for the purposes of hunting, trapping or killing;

28 (6) Take any beaver or muskrat by any means other than a
29 trap;

30 (7) Catch, capture, take, hunt or kill by seine, net, bait, trap
31 or snare or like device a bear, wild turkey, ruffed grouse,
32 pheasant or quail;

33 (8) Intentionally destroy or attempt to destroy the nest or
34 eggs of any wild bird or have in his or her possession the nest or
35 eggs;

36 (9) Carry an uncased or loaded firearm in the woods of this
37 state with the following permissible exceptions:

38 (A) A person in possession of a valid license or permit
39 during open firearms hunting season for wild animals and
40 nonmigratory wild birds;

41 (B) A person hunting or taking unprotected species of wild
42 animals, wild birds and migratory wild birds during the open
43 season, in the open fields, open water and open marshes of the
44 state;

45 (C) A person carrying a firearm pursuant to sections six and
46 six-a of this article; or

47 (D) A person carrying a firearm for self defense who is not
48 prohibited from possessing firearms by section seven, article
49 seven, chapter sixty-one of this code;

50 (10) Have in his or her possession a crossbow with a nocked
51 bolt, or a rifle or shotgun with cartridges that have not been
52 removed or a magazine that has not been detached, in or on any
53 vehicle or conveyance, or its attachments,. For the purposes of
54 this section, a rifle or shotgun whose magazine readily detaches
55 is considered unloaded if the magazine is detached and no
56 cartridges remain in the rifle or shotgun itself. Except that
57 between five o'clock post meridian of day one and seven o'clock
58 ante meridian, Eastern Standard Time, of the following day, any
59 unloaded firearm or crossbow may be carried only when in a case
60 or taken apart and securely wrapped. During the period from
61 July 1 to September 30, inclusive, of each year, the requirements
62 relative to carrying unloaded firearms are permissible only from
63 eight-thirty o'clock post meridian to five o'clock ante meridian,
64 Eastern Standard Time: *Provided*, That the time periods for
65 carrying unloaded and uncased firearms are extended for one
66 hour after the post meridian times and one hour before the ante
67 meridian times established in this subdivision, if a person is
68 transporting or transferring the firearms to or from a hunting site,
69 campsite, home or other abode;

70 (11) Hunt, catch, take, kill, trap, injure or pursue with
71 firearms or other implement by which wildlife may be taken
72 after the hour of five o'clock ante meridian on Sunday on private
73 land without the written consent of the landowner any wild
74 animals or wild birds except when a big game season opens on
75 a Monday, the Sunday prior to that opening day will be closed
76 for any taking of wild animals or birds after five o'clock ante
77 meridian on that Sunday: *Provided*, That traps previously and

78 legally set may be tended after the hour of five o'clock ante
79 meridian on Sunday and the person tending the traps may carry
80 firearms for the purpose of humanely dispatching trapped
81 animals. Any person violating this subdivision is guilty of a
82 misdemeanor and, upon conviction thereof, in addition to any
83 fines that may be imposed by this or other sections of this code,
84 is subject to a \$100 fine;

85 (12) Hunt, catch, take, kill, injure or pursue a wild animal or
86 wild bird with the use of a ferret;

87 (13) Buy raw furs, pelts or skins of fur-bearing animals
88 unless licensed to do so;

89 (14) Catch, take, kill or attempt to catch, take or kill any fish
90 by any means other than by rod, line and hooks with natural or
91 artificial lures: *Provided*, That snaring of any species of suckers,
92 carp, fallfish and creek chubs is lawful;

93 (15) Employ, hire, induce or persuade, with money, things
94 of value or by any means, any person to hunt, take, catch or kill
95 any wild animal or wild bird except those species in which there
96 is no closed season; or to fish for, catch, take or kill any fish,
97 amphibian or aquatic life that is protected by rule, or the sale of
98 which is otherwise prohibited;

99 (16) Hunt, catch, take, kill, capture, pursue, transport,
100 possess or use any migratory game or nongame birds except as
101 permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et*
102 *seq.*, and its regulations;

103 (17) Kill, take, catch, sell, transport or have in his or her
104 possession, living or dead, any wild bird other than a game bird
105 including the plumage, skin or body of any protected bird,
106 irrespective of whether the bird was captured in or out of this
107 state, except the English or European sparrow (*Passer*

108 domesticus), starling (*Sturnus vulgaris*) and cowbird (*Molothrus*
109 *ater*), which may be killed at any time;

110 (18) Use dynamite, explosives or any poison in any waters
111 of the state for the purpose of killing or taking fish. Any person
112 violating this subdivision is guilty of a felony and, upon
113 conviction thereof, shall be fined not more than \$500 or
114 imprisoned for not less than six months nor more than three
115 years, or both fined and imprisoned;

116 (19) Have a bow and gun, or have a gun and any arrow, in
117 the fields or woods at the same time;

118 (20) Have a crossbow in the woods or fields, or use a
119 crossbow to hunt for, take or attempt to take any wildlife except
120 as otherwise provided in sections five-g and forty-two-w of this
121 article;

122 (21) Take or attempt to take turkey, bear, elk or deer with
123 any arrow unless the arrow is equipped with a point having at
124 least two sharp cutting edges measuring in excess of three
125 fourths of an inch wide;

126 (22) Take or attempt to take any wildlife with an arrow
127 having an explosive head or shaft, a poisoned arrow or an arrow
128 which would affect wildlife by any chemical action;

129 (23) Shoot an arrow across any public highway;

130 (24) Permit any dog owned or under his or her control to
131 chase, pursue or follow the tracks of any wild animal or wild
132 bird, day or night, between May 1 and August 15: *Provided*,
133 That dogs may be trained on wild animals and wild birds, except
134 deer and wild turkeys, and field trials may be held or conducted
135 on the grounds or lands of the owner, or by his or her bona fide
136 tenant, or upon the grounds or lands of another person with his
137 or her written permission, or on public lands at any time.

138 Nonresidents may not train dogs in this state at any time except
139 during the legal small game hunting season. A person training
140 dogs may not have firearms or other implements in his or her
141 possession during the closed season on wild animals and wild
142 birds;

143 (25) Conduct or participate in a trial, including a field trial,
144 shoot-to-retrieve field trial, water race or wild hunt: *Provided*,
145 That any person, group of persons, club or organization may
146 hold a trial upon obtaining a permit pursuant to section fifty-six
147 of this article. The person responsible for obtaining the permit
148 shall prepare and keep an accurate record of the names and
149 addresses of all persons participating in the trial and make the
150 records readily available for inspection by any natural resources
151 police officer upon request;

152 (26) Hunt, catch, take, kill or attempt to hunt, catch, take or
153 kill any wild animal, wild bird or wild fowl except during open
154 seasons;

155 (27) Hunting on public lands on Sunday after five o'clock
156 ante meridian is prohibited;

157 (28) Hunt, catch, take, kill, trap, injure or pursue with
158 firearms or other implement which wildlife can be taken, on
159 private lands on Sunday after the hour of five o'clock ante
160 meridian: *Provided*, That the provisions of this subdivision do
161 not apply in any county until the county commission of the
162 county holds an election on the question of whether the
163 provisions of this subdivision prohibiting hunting on Sunday
164 shall apply within the county and the voters approve the
165 allowance of hunting on Sunday in the county. The election is
166 determined by a vote of the resident voters of the county in
167 which the hunting on Sunday is proposed to be authorized. The
168 county commission of the county in which Sunday hunting is
169 proposed shall give notice to the public of the election by

170 publication of the notice as a Class II-0 legal advertisement in
171 compliance with the provisions of article three, chapter fifty-nine
172 of this code and the publication area for the publication is the
173 county in which the election is to be held. The date of the last
174 publication of the notice shall fall on a date within the period of
175 the fourteen consecutive days next preceding the election.

176 On the local option election ballot shall be printed the
177 following:

178 Shall hunting on Sunday be authorized on private lands only
179 with the consent of the land owner in _____ County?

180 [] Yes

181 [] No

182 (Place a cross mark in the square opposite your choice.)

183 Any local option election to approve or disapprove of the
184 proposed authorization of Sunday hunting within a county shall
185 be in accordance with procedures adopted by the commission.
186 The local option election may be held in conjunction with a
187 primary or general election or at a special election. Approval
188 shall be by a majority of the voters casting votes on the question
189 of approval or disapproval of Sunday hunting at the election.

190 If a majority votes against allowing Sunday hunting, an
191 election on the issue may not be held for a period of one hundred
192 four weeks. If a majority votes “yes”, an election reconsidering
193 the action may not be held for a period of five years. A local
194 option election may thereafter be held if a written petition of
195 qualified voters residing within the county equal to at least five
196 percent of the number of persons who were registered to vote in
197 the next preceding general election is received by the county
198 commission of the county in which Sunday hunting is
199 authorized. The petition may be in any number of counterparts.

200 The election shall take place at the next primary or general
201 election scheduled more than ninety days following receipt by
202 the county commission of the petition required by this
203 subsection: *Provided*, That the issue may not be placed on the
204 ballot until all statutory notice requirements have been met. No
205 local law or regulation providing any penalty, disability,
206 restriction, regulation or prohibition of Sunday hunting may be
207 enacted and the provisions of this article preempt all regulations,
208 rules, ordinances and laws of any county or municipality in
209 conflict with this subdivision.

210 Amendments to this subdivision promulgated during the
211 2015 regular session of the Legislature shall have no effect upon
212 the results of elections held prior to their enactment; and

213 (29) Hunt or conduct hunts for a fee when the person is not
214 physically present in the same location as the wildlife being
215 hunted within West Virginia.

**§20-2-5a. Forfeiture by person causing injury or death of game or
protected species of animal; additional replacement
costs for antlered deer; forfeiture procedures and
costs.**

1 (a) Any person who is convicted of violating a criminal law
2 of this state that results in the injury or death of game, as defined
3 in section two, article one of this chapter, or a protected species
4 of animal, in addition to any other penalty to which he or she is
5 subject, shall forfeit the cost of replacing the game or protected
6 species of animal to the state as follows:

7 (1) For each game fish or each fish of a protected species
8 taken illegally other than by pollution kill, \$10 for each pound
9 and any fraction thereof;

10 (2) For each bear, \$500;

- 11 (3) For each deer or raven, \$200;
- 12 (4) For each wild turkey, hawk or owl, \$100;
- 13 (5) For each beaver, otter or mink, \$25;
- 14 (6) For each muskrat, raccoon, skunk or fox, \$15;
- 15 (7) For each rabbit, squirrel, opossum, duck, quail,
16 woodcock, grouse or pheasant, \$10;
- 17 (8) For each wild boar, \$200;
- 18 (9) For each bald eagle, \$5,000;
- 19 (10) For each golden eagle, \$5,000;
- 20 (11) For each elk, \$4,500; and
- 21 (12) For any other game or protected species of animal,
22 \$100.
- 23 (b) In addition to the replacement value for deer in
24 subdivision (3), subsection (a) of this section, the following cost
25 shall also be forfeited to the state by any person who is convicted
26 of violating any criminal law of this state and the violation
27 causes the injury or death of antlered deer:
- 28 (1) For any deer in which the inside spread of the main
29 beams of the antlers measured at the widest point equals 14
30 inches or greater but less than 16 inches, \$1,000;
- 31 (2) For any deer in which the inside spread of the main
32 beams of the antlers measured at the widest point equals 16
33 inches or greater but less than 18 inches, \$1,500;
- 34 (3) For any deer in which the inside spread of the main
35 beams of the antlers measured at the widest point equals 18
36 inches or greater but less than 20 inches, \$2,000; and

37 (4) For any deer in which the inside spread of the main
38 beams of the antlers measured at the widest point equals 20
39 inches or greater, \$2,500.

40 (5) Any person convicted of a second or subsequent
41 violation of any criminal law of this state which violation causes
42 the injury or death of antlered deer is subject to double the
43 authorized range of cost to be forfeited.

44 (c) Upon conviction, the court shall order the person to
45 forfeit to the state the amount set forth in this section for the
46 injury or death of the game or protected species of animal. If
47 two or more defendants are convicted for the same violation
48 causing the injury or death of game or protected species of
49 animal, the forfeiture shall be paid by each person in an equal
50 amount. The forfeiture shall be paid by the person so convicted
51 within the time prescribed by the court not to exceed sixty days.
52 In each instance, the court shall pay the forfeiture to the Division
53 of Natural Resources to be deposited into the License
54 Fund-Wildlife Resources and used only for the replacement,
55 habitat management or enforcement programs for injured or
56 killed game or protected species of animal.

§20-2-5g. Use of a crossbow to hunt.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, any person lawfully entitled to hunt may hunt with a
3 crossbow during big game firearms season. A person who
4 possesses a valid Class Y permit may also hunt with a crossbow
5 in accordance with section forty-two-w of this article. Further,
6 the director shall designate a separate season for crossbow
7 hunting and identify which species of wildlife may be hunted
8 with a crossbow.

9 (b) Only crossbows meeting all of the following
10 specifications may be used for hunting in West Virginia:

11 (1) The crossbow has a minimum draw weight of one
12 hundred twenty-five pounds;

13 (2) The crossbow has a working safety; and

14 (3) The crossbow is used with bolts and arrows not less than
15 eighteen inches in length with a broad head having at least two
16 sharp cutting edges, measuring at least three fourths of an inch
17 in width.

§20-2-5h. Elk management area; elk damage fund; criminal penalties; rule-making.

1 (a) *Findings.* — The Legislature finds that Eastern Elk were
2 once a common, native species in the state prior to and following
3 its formation, but historical records indicate native elk were
4 extirpated from the state around 1875. Until recently, free
5 roaming elk have not been present in the state. However, elk are
6 now migrating to the state from Kentucky, which has an active
7 elk restoration program. Therefore, the Division of Natural
8 Resources has established an active elk restoration program in
9 Southern West Virginia.

10 (b) *Elk management area.* — The division has established an
11 elk restoration management plan to reintroduce elk to all of
12 Logan County, Mingo County, McDowell County and Wyoming
13 County, and part of Boone County, Lincoln County and Wayne
14 County. The director and the division may not expand the elk
15 management area without statutory authorization.

16 (c) *Elk damage fund.* — There is hereby created a special
17 revenue account in the State Treasury to be known as the Elk
18 Damage Fund to be administered by the division. Ten percent
19 from all application fees for the hunting of elk are to be
20 deposited into the Elk Damage Fund.” Expenditures from the
21 fund shall be for the payment of damages caused to agricultural
22 crops, agricultural fences and personal gardens by elk.

23 (d) *Criminal penalties.* — It shall be unlawful for any person
24 to hunt, capture or kill any elk, or have in his or her possession
25 elk or elk parts, except for elk lawfully taken, killed or obtained
26 during an established open hunting season for elk or by permit.

27 (1) Any person who commits a violation of the provisions of
28 this section is guilty of a misdemeanor and, upon conviction
29 thereof, shall be fined not less than \$1,000 nor more than \$5,000,
30 or confined in jail not less than thirty nor more than one hundred
31 days, or both fined and confined.

32 (2) Any person who commits a second violation of the
33 provisions of this section is guilty of a misdemeanor and, upon
34 conviction thereof, shall be fined not less than \$2,000 nor more
35 than \$7,500, or confined in jail not less than thirty days nor more
36 than one year, or both fined and confined.

37 (3) Any person who commits a third or subsequent violation
38 of the provisions of this section is guilty of a felony and, upon
39 conviction thereof, shall be fined not less than \$5,000 nor more
40 than \$10,000, or imprisoned in a state correctional facility not
41 less than one year nor more than five years, or both fined and
42 imprisoned.

43 (e) *Rulemaking.* — The director shall propose rules for
44 promulgation in accordance with the provisions of article three,
45 chapter twenty-nine-a of this code to:

46 (1) Set forth the parameters of the elk management plan;

47 (2) Establish the procedures for the issuance of depredation
48 permits to persons suffering damage from elk;

49 (3) Establish protocols for the control of elk outside the elk
50 management area;

51 (4) Establish hunting application fees and procedures;

52 (5) Establish procedures for reimbursement from the elk
53 damage fund to those with damage to agricultural crops,
54 agricultural fences and personal gardens caused by elk; and

55 (6) Establish protocols for ensuring elk imported to the state
56 are healthy, tested for tuberculosis, brucellosis and other diseases
57 of critical concern, and from an area where chronic wasting
58 disease has not been detected.

**§20-2-22a. Hunting, tagging and reporting bear; procedures
applicable to property destruction by bear;
penalties.**

1 (a) A person may not hunt, capture, or kill any bear, or have
2 in his or her possession any bear or bear parts, except during the
3 hunting season for bear in the manner designated by rule or law,
4 and as provided in this section. For the purposes of this section,
5 bear parts include, but are not limited to, the pelt, gallbladder,
6 skull and claws of bear.

7 (b) A person who kills a bear shall, within twenty-four hours
8 after the killing, electronically register the bear. A game tag
9 number shall be issued to the person and recorded in writing
10 with the person's name and address, or on a field tag and shall
11 remain on the skin until it is tanned or mounted. Any bear or
12 bear parts not properly tagged shall be forfeited to the state for
13 disposal to a charitable institution, school or as otherwise
14 designated by the director.

15 (c) It is unlawful:

16 (1) To hunt bear without a bear damage stamp, as prescribed
17 in section forty-four-b of this article, in addition to a hunting
18 license as prescribed in this article;

19 (2) To hunt a bear with:

20 (A) A shotgun using ammunition loaded with more than one
21 solid ball; or

22 (B) A rifle of less than twenty-five caliber using rimfire
23 ammunition;

24 (3) To kill or attempt to kill any bear through the use of
25 poison, explosives, snares, steel traps or deadfalls;

26 (4) To shoot at or kill:

27 (A) A bear weighing less than seventy-five pounds live
28 weight or fifty pounds field dressed weight, after removal of all
29 internal organs;

30 (B) Any bear accompanied by a cub; or

31 (C) Any bear cub so accompanied, regardless of its weight;

32 (5) To possess any part of a bear not tagged in accordance
33 with the provisions of this section;

34 (6) To enter a state game refuge with firearms for the
35 purpose of pursuing or killing a bear except under the direct
36 supervision of division personnel;

37 (7) To hunt bear with dogs or to cause dogs to chase bear
38 during seasons other than those designated by the division for
39 the hunting of bear;

40 (8) To pursue a bear with a pack of dogs other than the pack
41 used at the beginning of the hunt once the bear is spotted and the
42 chase has begun;

43 (9) To possess, harvest, sell or purchase bear parts obtained
44 from bear killed in violation of this section;

45 (10) To organize for commercial purposes or to
46 professionally outfit a bear hunt, or to give or receive any

47 consideration whatsoever or any donation in money, goods or
48 services in connection with a bear hunt, notwithstanding the
49 provisions of sections twenty-three and twenty-four of this
50 article; or

51 (11) For any person who is not a resident of this state to hunt
52 bear with dogs or to use dogs in any fashion for the purpose of
53 hunting bear in this state except in legally authorized hunts.

54 (d) The following provisions apply to bear destroying
55 property:

56 (1) (A) Any property owner or lessee who has suffered
57 damage to real or personal property, including loss occasioned
58 by the death or injury of livestock or the unborn issue of
59 livestock, caused by an act of a bear may complain to any natural
60 resources police officer of the division for protection against the
61 bear.

62 (B) Upon receipt of the complaint, the officer shall
63 immediately investigate the circumstances of the complaint. If
64 the officer is unable to personally investigate the complaint, he
65 or she shall designate a wildlife biologist to investigate on his or
66 her behalf.

67 (C) If the complaint is found to be justified, the officer or
68 designated person may, together with the owner and other
69 residents, proceed to hunt, destroy or capture the bear that
70 caused the property damage: *Provided*, That only the natural
71 resources police officer or the wildlife biologist may determine
72 whether to destroy or capture the bear and whether to use dogs
73 to capture or destroy the bear: *Provided, however*, That, if out-
74 of-state dogs are used in the hunt, the owners of the dogs are the
75 only nonresidents permitted to participate in hunting the bear.

76 (2) (A) When a property owner has suffered damage to real
77 or personal property as the result of an act by a bear, the owner

78 shall file a report with the director of the division. The report
79 shall state whether or not the bear was hunted and destroyed and,
80 if so, the sex, weight and estimated age of the bear. The report
81 shall also include an appraisal of the property damage
82 occasioned by the bear duly signed by three competent
83 appraisers fixing the value of the property lost.

84 (B) The report shall be ruled upon and the alleged damages
85 examined by a commission comprised of the complaining
86 property owner, an officer of the division and a person to be
87 jointly selected by the officer and the complaining property
88 owner.

89 (C) The division shall establish the procedures to be
90 followed in presenting and deciding claims under this section in
91 accordance with article three, chapter twenty-nine-a of this code.

92 (D) All claims shall be paid in the first instance from the
93 Bear Damage Fund provided in section forty-four-b of this
94 article. In the event the fund is insufficient to pay all claims
95 determined by the commission to be just and proper, the
96 remainder due to owners of lost or destroyed property shall be
97 paid from the special revenue account of the division.

98 (3) In all cases where the act of the bear complained of by
99 the property owner is the killing of livestock, the value to be
100 established is the fair market value of the livestock at the date of
101 death. In cases where the livestock killed is pregnant, the total
102 value is the sum of the values of the mother and the unborn
103 issue, with the value of the unborn issue to be determined on the
104 basis of the fair market value of the issue had it been born.

105 (e) *Criminal penalties.* – (1) Any person who commits a
106 violation of the provisions of this section is guilty of a
107 misdemeanor and, upon conviction thereof, shall be fined not
108 less than \$1,000 nor more than \$5,000, which is not subject to

109 suspension by the court, confined in jail not less than thirty nor
110 more than one hundred days, or both fined and confined.
111 Further, the person's hunting and fishing licenses shall be
112 suspended for two years.

113 (2) Any person who commits a second violation of the
114 provisions of this section is guilty of a misdemeanor and, upon
115 conviction thereof, shall be fined not less than \$2,000 nor more
116 than \$7,500, which is not subject to suspension by the court,
117 confined in jail not less than thirty days nor more than one year,
118 or both fined and confined. The person's hunting and fishing
119 licenses shall be suspended for life.

120 (3) Any person who commits a third or subsequent violation
121 of the provisions of this section is guilty of a felony and, upon
122 conviction thereof, shall be fined not less than \$5,000 nor more
123 than \$10,000, which is not subject to suspension by the court,
124 imprisoned in a correctional facility not less than one year nor
125 more than five years, or both fined and imprisoned.

§20-2-42w. Class Y special crossbow hunting permit for certain disabled persons.

1 (a) A Class Y permit is a special statewide hunting permit
2 entitling a person to hunt all wildlife during established archery
3 and firearm seasons if the person meets the following
4 requirements:

5 (1) He or she holds a Class Q permit;

6 (2) He or she has a permanent and substantial loss of
7 function in one or both hands while failing to meet the minimum
8 standards of the upper extremity pinch, grip and nine-hole peg
9 tests administered under the direction of a licensed physician; or

10 (3) He or she has a permanent and substantial loss of
11 function in one or both shoulders while failing to meet the

12 minimum standards of the shoulder strength test administered
13 under the direction of a licensed physician.

14 (b) The application form shall include a written statement or
15 report prepared by the physician conducting the test no more
16 than six months preceding the application and verifying that the
17 applicant is physically disabled as described in this section. As
18 part of the application, the applicant shall authorize, by written
19 release, an examination of all medical records regarding his or
20 her qualifying disability. When completed, the permit form
21 constitutes a Class Y permit. The Class Y permit and a
22 completed license application shall be submitted to the Division,
23 which will issue a wallet-sized card to the permittee. The card
24 and all other documents and identification required to be carried
25 by this article shall be in the permittee's possession when
26 hunting.

27 (c) A Class Y permit must be accompanied by a valid
28 statewide hunting license or the applicant must be exempt from
29 hunting licenses as provided in this chapter.

CHAPTER 243

**(Com. Sub. for H. B. 2011 - By Delegate(s) Hanshaw,
Shott, E. Nelson, Rohrbach, Sobonya, Weld, Espinosa,
Statler and Miller)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §23-4-2 of the Code of West Virginia, 1931, as amended, relating generally to a workplace employee injury caused by the deliberate intention of the employer required for the employer to lose immunity from a lawsuit; defining actual

knowledge; eliminating obsolete language referring to the West Virginia Workers Compensation Fund and board of managers; establishing standards related to blood tests administered after accident; providing that intoxication shown by a positive blood test for alcohol or drugs that meet certain thresholds is the proximate cause of any injury; clarifying provisions outlining who may assert claims on behalf of an employee under this section; requiring that a claim for worker's compensation benefits be filed prior to bringing a cause of action under this section unless good cause is shown; providing that actual knowledge must be specifically proven by the employee or other person seeking to recover under this section and shall not be deemed or presumed; providing an employee may prove actual knowledge by evidence of an employer's intentional or deliberate failure to conduct a legally required inspection, audit or assessment; establishing actual knowledge is not established by what an employee's immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent; establishing that proof of actual knowledge of prior accidents, near misses, safety complaints or citations must be proven by documentary or other credible evidence; defining a commonly accepted and well-known safety standard within the industry or business of the employer; exempting certain codes or standards from applying to volunteer fire departments, municipal fire departments and emergency medical response personnel if those entities have followed rules promulgated by the Fire Commission; requiring that if the unsafe working condition relates to a violation of a state or federal safety provision that safety provision must address the specific work, working conditions and hazards involved; establishing that the applicability of state or federal safety provisions is a matter for judicial determination; defining generally serious compensable injury; establishing four categories of serious compensable injury including an injury rated at a whole person impairment of at least thirteen percent (13%) and other threshold requirements, an injury or condition likely to result in death within eighteen (18) months from the date of the filing of the complaint, an injury not capable

of whole person impairment if it causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy and is not a physical injury that has no objective medical evidence to support a diagnosis, or if an employee suffers from complicated pneumoconiosis or pulmonary massive fibrosis and that condition has resulted in an impairment rating of at least fifteen percent (15%); establishing certification requirements for the categories of serious compensable injury; requiring that a verified statement submitted from a person with knowledge and expertise of the workplace safety, statutes, rules, regulations and consensus industry standards specifically applicable to the industry and workplace involved in an injury be served with any complaint asserting certain causes of action brought under this section; providing for the minimum contents of the required verified statement; limiting the use of the required verified statement during litigation; providing for consideration of bifurcation of discovery in certain circumstances; establishing the venue in which claims under this section may be brought; providing that actions accruing prior to the effective date are not affected; and establishing the effective date of July 1, 2015, for the amendments to this section.

Be it enacted by the Legislature of West Virginia:

That §23-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

- 1 (a) Notwithstanding anything contained in this chapter, no
- 2 employee or dependent of any employee is entitled to receive

3 any sum under the provisions of this chapter on account of any
4 personal injury to or death to any employee caused by a self-
5 inflicted injury or the intoxication of the employee. Upon the
6 occurrence of an injury which the employee asserts, or which
7 reasonably appears to have, occurred in the course of and
8 resulting from the employee's employment, the employer may
9 require the employee to undergo a blood test for the purpose of
10 determining the existence or nonexistence of evidence of
11 intoxication: *Provided*, That the employer must have a
12 reasonable and good faith objective suspicion of the employee's
13 intoxication and may only test for the purpose of determining
14 whether the person is intoxicated. If any blood test for
15 intoxication is given following an accident, at the request of the
16 employer or otherwise, and if any of the following are true, the
17 employee is deemed intoxicated and the intoxication is the
18 proximate cause of the injury:

19 (1) If a blood test is administered within two hours of the
20 accident and evidence that there was, at that time, more than five
21 hundredths of one percent, by weight, of alcohol in the
22 employee's blood; or

23 (2) If there was, at the time of the blood test, evidence of
24 either on or off the job use of a nonprescribed controlled
25 substance as defined in the West Virginia Uniform Controlled
26 Substances Act, West Virginia Code §60A-2-201, *et seq.*,
27 Schedules I, II, III, IV and V.

28 (b) For the purpose of this chapter, the commission may
29 cooperate with the Office of Miners' Health, Safety and Training
30 and the State Division of Labor in promoting general safety
31 programs and in formulating rules to govern hazardous
32 employments.

33 (c) If injury results to any employee from the deliberate
34 intention of his or her employer to produce the injury or death,

35 the employee, or, if the employee has been found to be
36 incompetent, his or her conservator or guardian, may recover
37 under this chapter and bring a cause of action against the
38 employer, as if this chapter had not been enacted, for any excess
39 of damages over the amount received or receivable in a claim for
40 benefits under this chapter. If death results to any employee from
41 the deliberate intention of his or her employer to produce the
42 injury or death, the representative of the estate may recover
43 under this chapter and bring a cause of action, pursuant to
44 section six, article seven of chapter fifty-five of this code,
45 against the employer, as if this chapter had not been enacted, for
46 any excess of damages over the amount received or receivable
47 in a claim for benefits under this chapter. To recover under this
48 section, the employee, the employee's representative or
49 dependent, as defined under this chapter, must, unless good
50 cause is shown, have filed a claim for benefits under this chapter.

51 (d)(1) It is declared that enactment of this chapter and the
52 establishment of the workers' compensation system in this
53 chapter was and is intended to remove from the common law tort
54 system all disputes between or among employers and employees
55 regarding the compensation to be received for injury or death to
56 an employee except as expressly provided in this chapter and to
57 establish a system which compensates even though the injury or
58 death of an employee may be caused by his or her own fault or
59 the fault of a co-employee; that the immunity established in
60 sections six and six-a, article two of this chapter is an essential
61 aspect of this workers' compensation system; that the intent of
62 the Legislature in providing immunity from common lawsuit
63 was and is to protect those immunized from litigation outside the
64 workers' compensation system except as expressly provided in
65 this chapter; that, in enacting the immunity provisions of this
66 chapter, the Legislature intended to create a legislative standard
67 for loss of that immunity of more narrow application and
68 containing more specific mandatory elements than the common
69 law tort system concept and standard of willful, wanton and

70 reckless misconduct; and that it was and is the legislative intent
71 to promote prompt judicial resolution of the question of whether
72 a suit prosecuted under the asserted authority of this section is or
73 is not prohibited by the immunity granted under this chapter.

74 (2) The immunity from suit provided under this section and
75 under sections six and six-a, article two of this chapter may be
76 lost only if the employer or person against whom liability is
77 asserted acted with "deliberate intention". This requirement may
78 be satisfied only if:

79 (A) It is proved that the employer or person against whom
80 liability is asserted acted with a consciously, subjectively and
81 deliberately formed intention to produce the specific result of
82 injury or death to an employee. This standard requires a showing
83 of an actual, specific intent and may not be satisfied by
84 allegation or proof of: (i) Conduct which produces a result that
85 was not specifically intended; (ii) conduct which constitutes
86 negligence, no matter how gross or aggravated; or (iii) willful,
87 wanton or reckless misconduct; or

88 (B) The trier of fact determines, either through specific
89 findings of fact made by the court in a trial without a jury, or
90 through special interrogatories to the jury in a jury trial, that all
91 of the following facts are proven:

92 (i) That a specific unsafe working condition existed in the
93 workplace which presented a high degree of risk and a strong
94 probability of serious injury or death;

95 (ii) That the employer, prior to the injury, had actual
96 knowledge of the existence of the specific unsafe working
97 condition and of the high degree of risk and the strong
98 probability of serious injury or death presented by the specific
99 unsafe working condition.

100 (I) In every case actual knowledge must specifically be
101 proven by the employee or other person(s) seeking to recover

102 under this section, and shall not be deemed or presumed:
103 *Provided*, That actual knowledge may be shown by evidence of
104 intentional and deliberate failure to conduct an inspection, audit
105 or assessment required by state or federal statute or regulation
106 and such inspection, audit or assessment is specifically intended
107 to identify each alleged specific unsafe working condition.

108 (II) Actual knowledge is not established by proof of what an
109 employee's immediate supervisor or management personnel
110 should have known had they exercised reasonable care or been
111 more diligent.

112 (III) Any proof of the immediate supervisor or management
113 personnel's knowledge of prior accidents, near misses, safety
114 complaints or citations from regulatory agencies must be proven
115 by documentary or other credible evidence.

116 (iii) That the specific unsafe working condition was a
117 violation of a state or federal safety statute, rule or regulation,
118 whether cited or not, or of a commonly accepted and well-known
119 safety standard within the industry or business of the employer.

120 (I) If the specific unsafe working condition relates to a
121 violation of a commonly accepted and well-known safety
122 standard within the industry or business of the employer, that
123 safety standard must be a consensus written rule or standard
124 promulgated by the industry or business of the employer, such
125 as an organization comprised of industry members: *Provided*,
126 That the National Fire Protection Association Codes and
127 Standards or any other industry standards for Volunteer Fire
128 Departments shall not be cited as an industry standard for
129 Volunteer Fire Departments, Municipal Fire Departments and
130 Emergency Medical Response Personnel as an unsafe working
131 condition as long as the Volunteer Fire Departments, Municipal
132 Fire Departments and the Emergency Medical Response
133 Personnel have followed the Rules that have been promulgated
134 by the Fire Commission.

135 (II) If the specific unsafe working condition relates to a
136 violation of a state or federal safety statute, rule or regulation
137 that statute, rule or regulation:

138 (a) Must be specifically applicable to the work and working
139 condition involved as contrasted with a statute, rule, regulation
140 or standard generally requiring safe workplaces, equipment or
141 working conditions;

142 (b) Must be intended to address the specific hazard(s)
143 presented by the alleged specific unsafe working condition; and

144 (c) The applicability of any such state or federal safety
145 statute, rule or regulation is a matter of law for judicial
146 determination.

147 (iv) That notwithstanding the existence of the facts set forth
148 in subparagraphs (i) through (iii), inclusive, of this paragraph,
149 the person or persons alleged to have actual knowledge under
150 subparagraph (ii) nevertheless intentionally thereafter exposed
151 an employee to the specific unsafe working condition; and

152 (v) That the employee exposed suffered serious compensable
153 injury or compensable death as defined in section one, article
154 four, chapter twenty-three as a direct and proximate result of the
155 specific unsafe working condition. For the purposes of this
156 section, serious compensable injury may only be established by
157 one of the following four methods:

158 (I) It is shown that the injury, independent of any preexisting
159 impairment:

160 (a) Results in a permanent physical or combination of
161 physical and psychological injury rated at a total whole person
162 impairment level of at least thirteen percent (13%) as a final
163 award in the employees workers' compensation claim; and

164 (b) Is a personal injury which causes permanent serious
165 disfigurement, causes permanent loss or significant impairment
166 of function of any bodily organ or system, or results in
167 objectively verifiable bilateral or multi-level dermatomal
168 radiculopathy; and is not a physical injury that has no objective
169 medical evidence to support a diagnosis; or

170 (II) Written certification by a licensed physician that the
171 employee is suffering from an injury or condition that is caused
172 by the alleged unsafe working condition and is likely to result in
173 death within eighteen (18) months or less from the date of the
174 filing of the complaint. The certifying physician must be
175 engaged or qualified in a medical field in which the employee
176 has been treated, or have training and/or experience in
177 diagnosing or treating injuries or conditions similar to those of
178 the employee and must disclose all evidence upon which the
179 written certification is based, including, but not limited to, all
180 radiographic, pathologic or other diagnostic test results that were
181 reviewed.

182 (III) If the employee suffers from an injury for which no
183 impairment rating may be determined pursuant to the rule or
184 regulation then in effect which governs impairment evaluations
185 pursuant to this chapter, serious compensable injury may be
186 established if the injury meets the definition in subclause (I)(b).

187 (IV) If the employee suffers from an occupational
188 pneumoconiosis, the employee must submit written certification
189 by a board certified pulmonologist that the employee is suffering
190 from complicated pneumoconiosis or pulmonary massive
191 fibrosis and that the occupational pneumoconiosis has resulted
192 in pulmonary impairment as measured by the standards or
193 methods utilized by the West Virginia Occupational
194 Pneumoconiosis Board of at least fifteen percent (15%) as
195 confirmed by valid and reproducible ventilatory testing. The
196 certifying pulmonologist must disclose all evidence upon which

197 the written certification is based, including, but not limited to, all
198 radiographic, pathologic or other diagnostic test results that were
199 reviewed: *Provided*, That any cause of action based upon this
200 clause must be filed within one year of the date the employee
201 meets the requirements of the same.

202 (C) In cases alleging liability under the provisions of
203 paragraph (B) of this subdivision:

204 (i) The employee, the employee's guardian or conservator,
205 or the representative of the employee's estate shall serve with the
206 complaint a verified statement from a person with knowledge
207 and expertise of the workplace safety statutes, rules, regulations
208 and consensus industry safety standards specifically applicable
209 to the industry and workplace involved in the employee's injury,
210 setting forth opinions and information on:

211 (I) The person's knowledge and expertise of the applicable
212 workplace safety statutes, rules, regulations and/or written
213 consensus industry safety standards;

214 (II) The specific unsafe working condition(s) that were the
215 cause of the injury that is the basis of the complaint; and

216 (III) The specific statutes, rules, regulations or written
217 consensus industry safety standards violated by the employer
218 that are directly related to the specific unsafe working
219 conditions: *Provided, however*, That this verified statement shall
220 not be admissible at the trial of the action and the Court,
221 pursuant to the Rules of Evidence, common law and subclause
222 two-c, subparagraph (iii), paragraph (B), subdivision (2),
223 subsection (d), section two, article four, chapter twenty-three of
224 this code, retains responsibility to determine and interpret the
225 applicable law and admissibility of expert opinions.

226 (ii) No punitive or exemplary damages shall be awarded to
227 the employee or other plaintiff;

228 (iii) Notwithstanding any other provision of law or rule to
229 the contrary, and consistent with the legislative findings of intent
230 to promote prompt judicial resolution of issues of immunity
231 from litigation under this chapter, the employer may request and
232 the court shall give due consideration to the bifurcation of
233 discovery in any action brought under the provisions of
234 subparagraphs (i) through (v), of paragraph (B) such that the
235 discovery related to liability issues be completed before
236 discovery related to damage issues. The court shall dismiss the
237 action upon motion for summary judgment if it finds pursuant to
238 rule 56 of the rules of civil procedure that one or more of the
239 facts required to be proved by the provisions of subparagraphs
240 (i) through (v), inclusive, paragraph (B) of this subdivision do
241 not exist, and the court shall dismiss the action upon a timely
242 motion for a directed verdict against the plaintiff if after
243 considering all the evidence and every inference legitimately and
244 reasonably raised thereby most favorably to the plaintiff, the
245 court determines that there is not sufficient evidence to find each
246 and every one of the facts required to be proven by the
247 provisions of subparagraphs (i) through (v), inclusive, paragraph
248 (B) of this subdivision; and

249 (iv) The provisions of this paragraph and of each
250 subparagraph thereof are severable from the provisions of each
251 other subparagraph, subsection, section, article or chapter of this
252 code so that if any provision of a subparagraph of this paragraph
253 is held void, the remaining provisions of this act and this code
254 remain valid.

255 (e) Any cause of action brought pursuant to this section shall
256 be brought either in the circuit court of the county in which the
257 alleged injury occurred or the circuit court of the county of the
258 employer's principal place of business. With respect to causes of
259 action arising under this chapter, the venue provisions of this
260 section shall be exclusive of and shall supersede the venue
261 provisions of any other West Virginia statute or rule.

262 (f) The reenactment of this section in the regular session of
263 the Legislature during the year 2015 does not in any way affect
264 the right of any person to bring an action with respect to or upon
265 any cause of action which arose or accrued prior to the effective
266 date of the reenactment.

267 (g) The amendments to this section enacted during the 2015
268 session of the Legislature shall apply to all injuries occurring on
269 or after July 1, 2015.

CHAPTER 244

**(S. B. 578 - By Senators Trump, Carmichael,
Ferns, Gaunch, D. Hall, Karnes, Leonhardt, Maynard,
Nohe and Williams)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §23-4-8d of the Code of West Virginia, 1931, as amended; and to amend and reenact §23-5-7 of said code, all relating to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for nonorthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims.

Be it enacted by the Legislature of West Virginia:

That §23-4-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §23-5-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.**§23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits with exception of settled claims.**

1 Notwithstanding the provisions of subdivision (4),
2 subsection (a), section sixteen of this article, with the exception
3 of claims settled pursuant to article five, section seven of this
4 chapter, a request for medical services, durable medical goods or
5 other medical supplies in an occupational pneumoconiosis claim
6 may be made at any time.

ARTICLE 5. REVIEW.**§23-5-7. Compromise and settlement.**

1 (a) The claimant, the employer and the Workers'
2 Compensation Commission, the successor to the commission,
3 other private insurance carriers and self-insured employers,
4 whichever is applicable, may negotiate a final settlement of any
5 and all issues in a claim wherever the claim is in the
6 administrative or appellate processes: *Provided*, That in the
7 settlement of medical benefits for nonorthopedic occupational
8 disease claims, the claimant shall be represented by legal
9 counsel. If the employer is not active in the claim, the
10 commission, the successor to the commission, other private
11 insurance carriers and self-insured employers, whichever is
12 applicable, may negotiate a final settlement with the claimant
13 and the settlement shall be made a part of the claim record.
14 Except in cases of fraud, no issue that is the subject of an
15 approved settlement agreement may be reopened by any party,
16 including the commission, the successor to the commission,
17 other private insurance carriers and self-insured employers,
18 whichever is applicable. Any settlement agreement may provide
19 for a lump-sum payment or a structured payment plan, or any
20 combination thereof, or any other basis as the parties may agree.

21 If a self-insured employer later fails to make the agreed-upon
22 payment, the commission shall assume the obligation to make
23 the payments and shall recover the amounts paid or to be paid
24 from the self-insurer employer and its sureties or guarantors or
25 both as provided in sections five and five-a, article two of this
26 chapter.

27 (b) Each settlement agreement shall provide the toll-free
28 number of the West Virginia State Bar Association and shall
29 provide the injured worker with five business days to revoke the
30 executed agreement. The Insurance Commissioner may void
31 settlement agreements entered into by an unrepresented injured
32 worker which are determined to be unconscionable pursuant to
33 criteria established by rule of the commissioner.

34 (c) The amendments to this section enacted during the
35 regular session of the Legislature in the year 2015 apply to all
36 settlement agreements executed after the effective date.

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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